

SUBDIVISION AND DEVELOPMENT APPEAL BOARD

DECISION

Hearing held at: Mountain View County Office
Council Chambers

Date of Hearing: November 18, 2016

Members Present: Greg Harris
Angela Aalbers
Alana Gibson
Ron Vogel

Basis of Appeal: This is an appeal to a development permit approved by the Municipal Planning Commission on November 3, 2016. The Appellant has sited the following as the Reason for Appeal:

- Lack of clarity on what plus or minus 18 acres means
- The approved tree clearing area does not take into account all of the flat land available on the property that is suitable for tree clearing
- Limiting the approval to 18 acres will not provide access to the tree clearing area.

Appealed By: Alen & Lucy Petrovic

Description of Application:

On November 18, 2016 the Subdivision and Development Appeal Board heard an appeal by Alen and Lucy Petrovic, in regard to the approval of a development permit by the Municipal Planning Commission for Tree Clearing on NE 30-31-4 W5M. The Municipal Planning Commission approved the development application on November 3, 2016.

The essential Policy areas that the Subdivision and Development Appeal Board must consider in this appeal are:

- Municipal Development Plan (MDP) Section 6, Environmental Land Use Policies and Protection of Environmentally Significant Areas.
- Land Use Bylaw 15/15 which lists Tree Clearing in an Environmentally Significant Area as a Discretionary Use.
- Mountain View County Policy #6009 Environmental Protection Guidelines.

Findings of Fact:

1. The subject parcel is 150.96 acres and is zoned Agricultural District (A) District.
2. The application is for Tree Clearing as defined by Land Use Bylaw 15/15, and is considered a discretionary use on Agricultural land when within an Environmentally Significant Area.
3. The application for tree clearing is in a level 4 Environmentally Significant Area identified in the 2008 Environmentally Significant Areas Report completed by Summit Environmental.
4. The Soils on the subject property are rated as Class 5 and Class 6 according to the Canadian Land Inventory Soil Database.
5. Class 5 and 6 Soils are suitable for the applicants intended use, which is a perennial forage crop.
6. The use of Plus or Minus in the Municipal Planning Commission approval is a common practice recommended by Planning and Development to allow a development to proceed without the need of an official Survey. The Plus or Minus provision does not allow the applicant to significantly deviate from the approved size.
7. The access for the tree clearing area is not contained within the +/- 18 acre approved site.
8. The application was referred to Agricultural Services to assist with an Environmental inspection of the property.

Decision:

The decision of the Subdivision and Development Appeal Board is to **uphold the appeal** and approve the Development Permit application subject to the following conditions:

1. All of the Conditions identified in the November 3, 2016 Notice of Decision from Municipal Planning Commission with the following substitutions:
 - I. Condition 13 is replaced with the following:

Prior to issuance of the Development Permit the specific setbacks must be identified by a forestry consultant and accepted by the Development Officer. The tree clearing area is limited to a maximum area of 31.69 acres within the southwest portion of subject property. Tree clearing shall not include areas on slopes, along valleys, ephemeral or intermittent streams or within 50 feet of the westerly slope of the McDougall Coulee. Tree clearing on portions of the access trail outside of the 31.69 acre approved tree clearing area shall be limited to the width necessary for access by logging equipment and future agricultural equipment.
 - II. Condition 16 is replaced by the following:

Timber, brush, stumps, logs or roots shall not be piled or buried outside of the 31.69 acre area that is permitted for tree clearing. Special precaution must be exercised to protect the Environmentally Significant area outside of the 31.69 acre boundary.
 - III. Condition 18 is replaced by the following:

The subject area is contained within an Environmentally Significant Area – Class 4, therefore any tree clearing outside of the approved area determined by the forestry consultant in accordance with condition #13 shall require a new Development Permit.
 - IV. Condition 22:

Advance notice of Log hauling and the intended route must be provided to the County's Operational Services Department. If a Road Use Agreement is determined to

be required by Operational Services the Road Use Agreement must be implemented prior to Log hauling.

Reasons:

1. The Administrative review of the property was not properly conducted. Policy #6009 indicates that the purpose of an onsite inspection and referral to Agricultural Services is to protect features and characteristics of environmental significance to the County. The report provided by Planning and Development at the hearing indicated that the result of the onsite inspection by staff was focused on identifying the area that was suitable for Tree Clearing, which is not supported by Policy #6009. The intent of the staff inspection should have been directed at identifying specific onsite environmental features that are important to the County and specifying why conservation and protection of the lands is necessary.
2. The approval of 18 acres lacks comprehensive rationale from the County to justify why the boundaries of the 18 acres were selected. The Appeal Board finds that the Applicants justification and request for a tree clearing area of 31.69 acres is appropriate. The Applicant has given consideration to environmental protection and has proposed a plan that will protect seasonal drainage areas and will be setback a minimum of 50 feet from the McDougall Coulee. The Applicants proposal also takes into consideration access to the tree clearing area.
3. The area contained in the applicants 31.69 acres is suitable for the intended use which is perennial forages. The Appeal Board is satisfied that the agricultural purpose that will result from this development permit is compatible with the Soil Classification (Class 5 and 6) uses and limitations and that the enhanced Agricultural use of this area is in compliance with the Municipal Development Plan policies contained in Section 6 and Policy #6009 Environmental Protection Guidelines.

Evidence:

The Board considered the following evidence in making its decision:

1. Report and verbal presentation to the Subdivision and Development Appeal Board including all attachments presented to the Board by the Planning and Development Department.
2. Verbal presentation and written submission to the Subdivision and Development Appeal Board by the Appellant.

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)

The appeal must be to the Court of Appeal of the Province on a question of law or jurisdiction with respect to a decision of the Subdivision and Development Appeal Board.

Section 688(2)

An application for leave to appeal pursuant to subsection (1) must be made to a judge of the Court of Appeal within 30 days after the issue of the decision sought to be appealed, and notice of the application must be given to:


- (a) the Subdivision and Development Appeal Board; 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 leave 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.

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

Per: 

Chair

Date Signed: December 1, 2016