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**SUBDIVISION AND DEVELOPMENT APPEAL BOARD****DECISION**

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- Hearing held at: Mountain View County Office  
Council Chambers
- Date of Hearing: June 24, 2016
- Members Present: Ernie Israelson, Chair  
Alana Gibson  
Duncan Milne  
Greg Harris
- Basis of Appeal: This is an appeal to a development permit approved by the Municipal Planning Commission on May 19, 2016. The Appellant has sited the following as the Reasons for Appeal:
- The appellant referred to section 618 of the MGA in the appeal statement however quoted section 617 and is of the opinion that the approving authority failed to give proper regard to section 617:
    - to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement
    - to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta, without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest
  - Condition #15 - Hours of Operation are too excessive
  - Condition #16 – Portable Batch Plant approval should be removed
  - Risks to the surrounding Environment
  - The Approving Authority did not adequately address Section 10.8 of Land Use Bylaw No. 15/15
- Appealed By: Eagle Creek Valley Landowners Association

**Description of Application:**

On June 24, 2016 the Subdivision and Development Appeal Board (SDAB) heard an appeal by Ben Huisman, spokesperson for Eagle Creek Valley Landowners Association, in regard to the approval of a development permit by the Municipal Planning Commission for an Aggregate Extraction – Gravel Pit and Portable Batch Plant on SE 23-34-4-W5M. The Municipal Planning Commission approved the development application on May 19, 2016.

**Findings of Fact:**

1. The Development Permit application is for Aggregate Extraction and Processing which is a discretionary use under the Aggregate Extraction/Processing District (AEP) as defined by Land Use Bylaw No. 15/15.
2. The Portable Batch Plant - Less than 3 months is a Permitted use under the Aggregate Extraction/Processing District (AEP) as defined by Land Use Bylaw No. 15/15.
3. The portion of the property proposed for development is on 109.6 acres within the SE 23-34-4-W5M which is Zoned for Aggregate Extraction and Processing.
4. The subject property is adjacent to existing gravel extraction operations, agricultural, residential and recreational properties.
5. The application was circulated to adjacent landowners within a 1 mile radius of the proposed gravel pit; and to adjacent landowners within a half mile of the proposed haul route.
6. The application must conform with Land Use Bylaw No. 15/15, section 10.8(a) Natural Resource Extraction /Processing and section 14.3. Aggregate Extraction/Processing Natural Resource Extraction/Processing District.
7. The application must comply with the Municipal Development Plan Bylaw No. 09/12, Section 8 which outlines policy objectives for Natural Resources.
8. The proposed Development will require an Alberta Environment Code of Practice Class 1 Gravel Pit approval, which is under the jurisdiction of the Province of Alberta.
9. Alberta Environment is responsible for ensuring Environmental protection measures are adequate and properly implemented.
10. Range Road 41 is the access road to the proposed Development and is directly east of the subject parcel of land. Range Road 41, and access approaches to Range Road 41 are under the jurisdiction of Red Deer County.

**Decision:**

In determining this Appeal the Board:

Considered all of the relevant evidence presented at the Hearing which included the verbal arguments and written submission made by the Appellant, and the verbal arguments and written report provided by the Planning and Development Department and the Applicant.

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

1. The provisions of the Land Use Bylaw No. 15/15.
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. 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.
5. The applicant and landowner shall enter into a Road Use Agreement with Red Deer County which will confirm the haul route and any dust control requirements. Any revisions or amendments to the identified haul route shall be submitted to Mountain View County. A copy of the signed Road Use Agreement shall be submitted to Mountain View County.
6. A Traffic Impact Assessment shall be required if deemed necessary by Red Deer County to support the Road Use Agreement application. Written confirmation from Red Deer County is required if a Traffic Impact Assessment is not required.
7. The applicant/landowner shall obtain specifications and any required permits from Red Deer County for the proposed access off of Range Road 41.
8. Additional uses other than the gravel pit and associated portable batch plant on the SE 23-34-4-W5M will require issuance of a new Development Permit.
9. Regular hours of operation for the gravel pit including stripping and stockpiling, aggregate extraction, loading, crushing, hauling and truck traffic shall be Monday thru Saturday 7:00 am to 7.00 pm. No operation of the pit shall occur on Sundays or Statutory holidays. Hours of operation shall be strictly adhered to.
10. Use of the portable batch plant is approved by this permit; Operation of the plant shall be limited to a maximum of three (3) months for one (1) year from the date of issuance of the permit. The applicant, landowner and/or operator shall reapply for a portable batch plant for any future use within the subject property. Prior to operating the portable batch plant approved with this development permit or any future portable batch plant applications the applicant shall submit information and documentation to the Development Officer that demonstrates how the portable batch plant uses the most current technology to reduce noise and odour impact on area land owners.
11. On the occasion that the applicant, landowner and / or operator wishes to extend the hours of operation for crushing purposes other than the hours specified in Condition #9, the operator shall obtain and submit to Mountain View County written consent from the majority of adjacent landowners within a half (1/2) mile of the subject property.
12. The applicant and/or operator shall provide dust control within the operation of the gravel pit to ensure there are no adverse impacts to adjacent landowners and residences.
13. The applicant, landowner, and/or operator shall restrict the use of engine retarder brakes and reduce the amount of heavy gearing within the pit operating area.
14. All loads leaving the site shall be tarped to prevent spillage of rocks and gravel on the roads.
15. The operator and/or landowner shall comply with the Mountain View County's Community Aggregate Payment Levy, Bylaw No. 14/11.
16. The operator shall install an identification sign at the entrance of the gravel pit property. This sign must be legible and shall include the name of the pit, the legal and rural address, contact information, and hours of operation.

17. Soils shall be separated into top soil, sub soil piles and all piles and berms shall be seeded to prevent the contents from being blown off site and shall be used for reclamation purposes within the pit.
18. Positive drainage shall be maintained throughout the life of the pit as per the submitted Area Drainage Plan illustration and shall be in consultation with Mountain View County.
19. The operator shall plant a minimum of 2 rows of trees with at least one of the rows being Coniferous trees along the east and south property boundaries to create a visual site barrier. The specifics of the landscaping must be designed to provide maximum screening for adjacent properties and be designed by a Landscape Professional. The Landscape design plan must be approved by the Development Officer and the landscaping planted within one (1) year from the date of the issuance of the development permit to ensure practicable screening is in place prior to any gravel extraction and processing taking place. The landscaping shall be continued to be maintained and cared for. If any trees or shrubs either die and/or are removed from the property, replacement trees or shrubs shall be planted.
20. The applicant, landowner and/ or operator shall implement progressive reclamation consistent with their submitted application and return the pit back to an agricultural use with an end pit lake in conformance with Alberta Environments approvals. Any additional uses for the subject property shall require the issuance of permits from Mountain View County. A maximum of 30 acres in total shall be disturbed at any one time (excluding access roads); the remainder of the pit shall either remain in its natural state or reclaimed.
21. The applicant, landowner and/ or operator shall conform to the noise control methods identified within Section 6.7.1 of "A Guide to the Code of Practice for Pits" published by Alberta Environment.
22. The applicant, landowner and/ or operator shall observe and practice the standard code of practice for pits as described within the "A Guide to the Code of Practice for Pits" published by Alberta Environment.
23. That the applicant, landowner and/or operator complies with Section 6.6.2 Extraction Setbacks of the "A Guide to the Code of Practice for Pits" for the southerly gravel pit setbacks from the property lines.
24. The applicant, landowner and/ or operator shall dispose of any chemicals collected and contained on site at an approved waste facility in a timely manner to prevent possible soil contamination. Any contamination clean up shall be the responsibility of the owner and/ or operator.
25. That the applicant, landowner and/or operator shall meet any standards and obtain any approvals and inspections required under the Fire Code or Petroleum Tank Management Association of Alberta.
26. The applicant shall not be permitted to burn waste on site at any time.
27. The applicant shall ensure all gravel pit operations are located outside of the 100 meter buffer as required by Alberta Energy Regulator (AER).
28. A final reclamation certificate shall be obtained from Alberta Environment and submitted to Mountain View County upon completion/reclamation of the gravel pit area.
29. This approval is for a wet pit extraction gravel pit. Approvals shall be obtained from Alberta Environment to ensure compliance with all relevant Provincial Legislation.
30. The operator and/ or landowner shall ensure that all truckers and/ or contractors are aware of and comply with the conditions of this development permit relating to the operation of the gravel pit.

31. This permit shall be reviewed by administration every five (5) years to confirm compliance with the above conditions. If the review confirms non-compliance, the Approving Authority will take the appropriate actions to remedy the non-compliance.
32. Berming shall be constructed to mitigate noise and visual impacts of the active pit area. Any berms being constructed within the pit area shall ensure that positive drainage is maintained on the subject property.
33. The applicant shall give notification, via Canada Post or by hand delivery to adjacent landowners within 1 mile of the subject property, 30 days prior to submitting a Water Act Approval application to Alberta Environment.
34. If the applicant does not obtain Alberta Environment registration within five (5) years of the date of issuance of the Development Permit and submit a copy of the registration to Mountain View County, this Development Permit approval ceases and the Development Permit itself is deemed void, expired and without effect

**Reasons:**

1. The Land is appropriately zoned for Aggregate Extraction and Processing.
2. The hours of operation approved by Municipal Planning Commission are consistent with other Aggregate Extraction businesses in the area, therefore the Subdivision and Development Appeal Board does not deem it appropriate to reduce the Hours of Operation.
3. The Portable Batch Plant- less than 3 months is a Permitted Use in the Aggregate Extraction / Processing District (Section 14.3). The Land Use Bylaw requires that applications for a Permitted Use require the issuance of a Development Permit (with or without conditions) unless exempted by the Land Use Bylaw. There are no exemptions identified in the Land Use Bylaw that justify the Subdivision and Development Appeal Board refusing the application for this Permitted Use.
4. Environmental concerns and impacts on adjacent land owners will be addressed by Alberta Environment during their consideration of an application for a Class 1 gravel pit operation.
5. The Access road to the proposed development is under the jurisdiction of Red Deer County and the Subdivision and Development Appeal Board did not receive any objections to the proposed use of this road from the Road Authority.
6. The Subdivision and Development Appeal Board finds that Municipal Planning Commission gave proper consideration to 10.8 a of the Land Use Bylaw.
7. The Subdivision and Development Appeal Board confirms that the application is consistent with the Municipality's statutory plans which take into consideration the principles of section 617 of the Municipal Government Act.

**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 and the Applicant.
2. Verbal presentation and written submission to the Subdivision and Development Appeal Board by the Appellant.
3. Verbal presentation and written submission to the Subdivision and Development Appeal Board by adjacent Landowners.

**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: \_\_\_\_\_

*Armi Karachan*  
Chair

Date Signed: \_\_\_\_\_

*July 5, 2016*