

**ROCKY VIEW COUNTY
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

Board Order No.: 2021-SDAB-004
File No.: 04714176; PRDP20203988
Appeal by: Agnieszka and Robert Turowski
Hearing Date: 2021 April 15
Decision Date: 2021 April 30
Board Members: Crystal Kissel, Chair
Tricia Fehr
Hazel George
Morrie M. Goetjen
Wendy Metzger

DEVELOPMENT APPEAL DECISION

INTRODUCTION

[1] This is an affected party appeal to the Rocky View County Subdivision and Development Appeal Board (the Board) from a decision of the Rocky View County Development Authority issued February 25, 2021.

[2] In this decision, the Development Authority approved a development permit application for single-lot regrading, placement of clean fill and topsoil, for site landscaping at 31103 Windhorse Drive (Lot 21, Block 3, Plan 0914791; NE-14-24-03-W05M) (the Lands).

[3] Upon notice being given this appeal was heard electronically on April 15, 2021 in accordance with the Meeting Procedures (COVID-19 Suppression) Regulation, Alberta Regulation 50/2020.

DECISION

[4] The appeal is allowed and the Development Authority's February 25, 2021 decision on PRDP20203988 is overturned.

BACKGROUND

[5] On November 25, 2020, Wenyan (Wendy) Chang (the Applicant) submitted a development permit application for single-lot regrading, placement of clean fill and topsoil, for site landscaping (the proposed development) on the Lands.

[6] The Lands are approximately 0.81 hectares (2.02 acres) in area and are owned by the Applicant.

[7] The Lands' are designated as Residential, Country Residential District (R-CRD) under *Land Use Bylaw C-8000-2020* (the *Land Use Bylaw*).

[8] On February 25, 2021, the Development Authority issued a written conditional approval for the proposed development on the Lands.

[9] On March 18, 2021, Agnieszka and Robert Turowski (the Appellants) filed an affected party appeal of the Development Authority's decision to conditionally approve the proposed development on the Lands.

[10] The appeal was received on time in accordance with section 686(1)(b) of the *Municipal Government Act* RSA 2000, c M-26 (MGA).

[11] A notice of hearing was circulated to the Appellants, Applicant, Development Authority, and adjacent landowners in accordance with the MGA and Rocky View County Council Policy C-327, *Circulation and Notification Standards*.

SUMMARY OF EVIDENCE

[12] The Board heard verbal submissions from:

- (1) Bronwyn Culham, Development Officer for the Development Authority;
- (2) Bianca Duncan, Municipal Engineer for the Development Authority;
- (3) Agnieszka and Robert Turowski, the Appellants; and
- (4) Wenyan (Wendy) Cheng, the Applicant.

[13] The written documents submitted as exhibits and considered by the Board are listed in the exhibit list at the end of this decision.

Development Authority's Submissions

[14] The Lands are located 0.81 kilometers (1/2 mile) east of Range Road 32 and 0.12 kilometers (1/8 mile) south of Lower Springbank Road, within the Windhorse subdivision. The Lands are approximately 0.81 hectares (2.02 acres) in size, are designated R-CRD, and are surrounded by residential uses.

[15] The Lands fall within the Montebello Conceptual Scheme, the Central Springbank Area Structure Plan, and the *Land Use Bylaw*. The Applicant's development permit application was assessed in accordance with the *Land Use Bylaw*.

[16] The proposed development is for single-lot regrading and placement of clean fill and topsoil for site landscaping purposes, with a proposed depth change of up to 1.00 meters (3.28 feet) and a total of 1.90 acres in size. The intent of the application was to meet the requirements of the *Land Use Bylaw* and the landscaping requirements of the Windhorse community.

[17] The total volume of materials to be placed on the Lands would be 926 cubic metres, which the Applicant indicated would be approximately 150 truckloads worth of material. The Applicant would be using the native topsoil and would not be removing any materials from the Lands.

[18] Upon review of the Applicant's grading plan, it appears that the materials will not be distributed evenly across the Lands. Some portions of the Lands will be a higher than others, such as with the berm, after the landscaping work is complete.

[19] The existing berm on the Lands is proposed to be one metre maximum in height.

[20] On February 24, 2021, the Municipal Planning Commission, acting as the Development Authority, conditionally approved the Applicant's development permit application. The Development Authority's conditional approval included several prior-to issuance conditions, including:

- (1) a \$10,000 refundable security deposit (condition #2);
- (2) road use agreements (condition #3); and
- (3) a grade slip from MPE Engineering (condition #4) verifying that the as-built grading plan is in accordance with the overall stormwater management plan.

[21] The Applicant has met prior-to-issuance conditions #3 and #4.

[22] Notice of the Development Authority's decision was circulated to 110 adjacent landowners, and one affected party appeal was received in response. No letters were received at the time the Development Authority prepared its report for this hearing.

Robert Turowski Submissions – representing the Appellants

[23] The Appellants did not have problems with the Applicant, who is their neighbour, for over five years until construction of a house began on the Lands, which included excavation, grading, and landscaping work.

[24] During construction, the Applicant placed a long berm along their property line, at which point surface water began accumulating on the Appellants' property. Since construction, water has began accumulating on the Appellants' property in the springtime or after heavy rainfall, often remaining on the property until June.

[25] The Applicant's property used to slope gently from north to south, and the Appellants' property slopes from south to north. Prior to placement of the berm, surface water would naturally drain between the two properties in an easterly direction.

[26] Water drainage issues began on the Appellants' property when the Applicant began raising the level of the Lands by three or four feet. When the Lands were raised, a large pool of water began forming on the Appellants' property.

[27] The Appellants contacted the Applicant and the president of the Homeowner's Association when the water drainage issues started. They could not come to a resolution, which made the Appellants feel like they needed to submit a complaint to Rocky View County to resolve the issue.

[28] The Appellants do not wish to make the Applicant's life miserable. They are not opposed to the construction occurring on the Lands in general. They are concerned with the one spot where surface water is accumulating on their property.

[29] The Applicant also trespassed on the Appellants' property during the construction process and placed soil on their lands. The Appellants wondered why the soil was not placed on the part of their property where the surface water was accumulating. The Appellants would not have complained if this had occurred.

[30] The Applicant asked the Appellants if they would like to hire a contractor together to construct a long drainage ditch for the surface water. The Appellants were unsure why they were asked this, as there would be no need for a ditch if their landscaping work was done correctly.

[31] The Appellants suggested that the Applicant is aware of the issues that the construction on the Lands has caused to their property. The Appellants believe the solution to the drainage issues would require a bobcat and would not take much in terms of costs or time.

[32] The Appellants wish to sell their property and are concerned about the surface water accumulation and soft soil. They are unable to use their tractor without damaging their property due to the surface water.

[33] When the Appellants were subdividing a different property a couple of kilometers away from the Windhorse community, they were required to put in place expensive drainage mitigation measures. When they asked why they had to do this, they were told that their subdivision must also take into account the neighbouring properties. They did not construct a berm.

Wenyan (Wendy) Cheng Submissions – the Applicant in opposition of the appeal

[34] The Applicant is a retired geologist and her husband is a professional geophysicist.

[35] The developer of the Windhorse community went bankrupt, leaving the community development unfinished. The surface water drainage system was not complete and lots were not levelled, which has caused problems for landowners in the community.

[36] The president of the Homeowner's Association suggested to the Applicant that landowners should take surface water from their properties to community ditches where it then flows into community stormwater ponds. There are five approved stormwater ponds for the community, none of which are located on the Lands or the Appellants' property.

[37] The elevation contour map provided by the Appellants shows that the natural topography goes from high to low, sloping from the Lands towards the Appellants' property. Surface water should flow in this direction naturally.

[38] The Applicant wants to be a good neighbour and does not want to cause problems for her neighbours, who are the Appellants, so she built a berm along the property line to stop surface water from draining onto the Appellants' property. The Applicant feels it is unfortunate that she is being deemed to have bad intentions.

[39] Prior to the Applicant's landscaping work and construction of the berm, certain parts of the Lands were actually lower than the Appellants' property, which caused surface water to drain from the Appellants' property onto the Lands.

[40] Surface water from the Appellants' property flowed into the lower parts of the Lands, which caused problems with the Applicant's walkout basement and septic system, particularly during spring snowmelt. The Applicant's septic specialist recommended that they raise the Lands so surface water does not accumulate near the septic system.

[41] The Applicant regraded their property to address these surface water problems, as the surface water should flow into a community ditch and then into a community stormwater pond, rather than draining between the two properties.

[42] Before they began their landscaping work, the Applicant referenced the Windhorse Storm Water Management Plan, which refers to the five community stormwater ponds. The Applicant's landscaping plan indicates that surface water should drain west into the nearest community ditch.

[43] After the Applicant finished construction of the berm, surface water from the Appellants' property began pooling on their own property rather than draining onto the Lands. The way in which the surface water drained between the two properties before the landscaping work and berm was due to the unfinished levelling of the properties.

[44] The Applicant offered to build a ditch with the Appellants between their property lines to resolve the water drainage issues for both properties. The Appellants agreed to this but refused to contribute financially because they intend to sell their property and did not want to invest further.

[45] The Applicant decided to resolve the surface water issues on her own by submitting a development permit application to change the topography of the Lands to allow more water to flow from east to west, into a community ditch. The Applicant indicated she is still willing to dig a ditch along the property line if the Appellants are willing to pay their share of the cost.

[46] The berm is intended to be permanent and to remain on the Lands after the grading and landscaping work is finished on the Lands. The Applicant would be willing to remove the berm, but that would result in even more surface water flowing onto the Appellants' property.

[47] The pool of water on the Appellants' land is only about 20 square meters over their 8,000 square meter property. The surface water is from the Appellants' own property and they should resolve their problems on their own rather than draining water onto the Lands.

[48] The Appellants complained that the Applicant trespassed onto their property to place soil, but the Applicant said that this is not true. Neither the Applicant nor their contractors trespassed or placed soil on their property.

[49] During assessment of the development permit application, MPE Engineering reviewed the Applicant's landscaping plan on behalf of the Development Authority. The engineer concluded that he did not see any issues with the berm and that it would act as a natural barrier from stormwater. Further, portions of stormwater would be absorbed by planted vegetation.

[50] The Applicant is aware and understands the conditions of approval of her development permit application.

Robert Turowski Rebuttal – representing the Appellants

[51] The Appellants wonder if it is normal to have a slope going from northwest to southeast and then to change the slope to go from east to west. The Appellants do not know how this will be done.

[52] The topography of the Lands shows a gentle slope from north to south, but it is not exactly north to south. It is actually from the northwest to the southeast.

[53] The Applicant stated that the slope is from the southeast but that is not exactly the case. One needs to see the area as it is only a small portion that slopes in this direction.

[54] The Applicant stated that the pool of water is about 20 square meters, but it is actually around 10 meters wide by about 40 meters long. This is the area where both the Lands and the Appellant's property meet in the middle and that is where the surface water should drain.

[55] The Appellants do not care about the pond. They talked about the pond to show that the Applicant is trespassing onto their property and to show the direction of surface water drainage.

[56] Satellite images from ten to twenty years ago show green grass in the southeast corner of the Lands, where the pond is located. The surface water should flow this direction. Now the Applicant is trying to change that.

[57] The issues the Applicant had with her septic system should not have occurred as the Lands are supposed to slope down towards the Appellants' property.

[58] MPE Engineering stated that they did not see issues with the Applicant's berm, but they were not provided information about the elevations and topography of the Lands.

[59] The Applicant stated that the trespassing did not occur, but it did occur in 2019 and the Appellants sent photos to Rocky View County showing the damage to the soil and tracks from heavy equipment on their property.

FINDINGS & REASONS FOR DECISION

[60] The Board finds that stripping and grading is a discretionary use for all land use districts within the *Land Use Bylaw*. The Board finds it has the authority to make a decision on the matter pursuant to section 687 of the *Municipal Government Act*.

[61] The Board reviewed all evidence and arguments, written and verbal, submitted by the parties and focused on the most relevant evidence and arguments in outlining its reasons. The Board also considered the context of the proposed development, sound planning considerations, the merits of the application, and all applicable legislation, plans, and policies.

[62] The Board notes that while the development permit application is for single-lot regrading, placement of clean fill and topsoil, for site landscaping on the Lands, much of the evidence the Board heard was in regards to a berm on the Lands. The Board notes that the berm appears to have been the trigger for the Appellants' initial complaints.

[63] The Board finds that the berm is referenced in the Applicant's landscaping plan but it is not addressed in the Development Authority's conditions of approval. The Board is not satisfied that the conditions of approval imposed by the Development Authority adequately address the berm and its potential impact on neighbouring properties.

[64] The Board heard conflicting evidence from the Appellants and the Applicant on the natural direction of surface water flow on the Lands and the Appellants' property. The Board notes that it was not provided sufficient topographical information to determine the natural flow of surface water between the two properties.

[65] The Board finds that the fill already placed on the Lands appears to be causing additional surface water issues. The Board further finds that the berm is exacerbating existing drainage issues between the two properties and may be affecting the natural surface water drainage course of the Lands.

[66] Given the above findings, and pursuant to section 687 of the *Municipal Government Act*, the Board finds that the proposed development would materially interfere and affect the use, enjoyment, and value of neighbouring parcels of land.

CONCLUSION

[67] For the reasons set out above, the appeal is allowed and the Development Authority's February 25, 2021 decision on PRDP202003988 is overturned.

Dated at Rocky View County, in the Province of Alberta on April 30, 2021.



Crystal Kissel, Chair
Subdivision and Development Appeal Board

EXHIBIT LIST

Documents presented at the hearing and considered by the Board.

- | NO. | ITEM |
|------------|--|
| 1. | Development Authority's Report to the Board (41 pages) |
| 2. | Development Authority's PowerPoint (7 pages) |
| 3. | Applicant's PowerPoint (10 pages) |