

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

Board Order No.: 2021-SDAB-010
File No.: 04801003 PRDP20211823
Appeal by: Robinson, Kenneth
Hearing Date: 2021 July 8
Decision Date: 2021 July 23
Board Members: Crystal Kissel, Chair
Wendy Metzger
Tricia Fehr
Hazel George
Morrie M. Goetjen

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 May 27, 2021. In this decision, the Development Authority approved a development permit application for the installation of a Communications Facility (Type C) and associated equipment shelter at the southeast junction of Highway 8 and Range Road 41 (NW-01-24-04-W053) (the Lands).

[2] Upon notice being given this appeal was heard electronically on July 8, 2021 in accordance with the Meeting Procedures (COVID-19 Suppression) Regulation, Alberta Regulation 50/2020.

DECISION

[3] The appeal is denied and the Development Authority's May 27, 2021 decision on PRDP20211823 is upheld.

BACKGROUND

[4] On April 16, 2021, Xplornet Communications Inc. c/o Scott Telecom Services (the Applicant) submitted a development permit application for a commercial communications facility, type c, and associated equipment shelter (the proposed tower) on the Lands.

[5] The Lands are 60.82 hectares (150.30 acres) in size and owned by HCS Investment Holdings Ltd (the Owner).

[6] The Lands' land use designation is Agriculture, General Use (A-GEN) which is regulated in sections 301-307 under Land Use Bylaw C-8000-2020 (the *Land Use Bylaw*).

[7] On May 27, 2021, the Development Authority conditionally approved a development permit application for the proposed tower on the Lands.

[8] On June 9 2021, Ken Robinson (the Appellant) submitted an affected party appeal of the Development Authority's decision to conditionally approve the proposed tower on the Lands.

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

[10] A notice of hearing was circulated to the Appellant, 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

[11] The Board heard verbal submissions from:

- (1) Wayne Van Dijk, Development Officer for the Development Authority;
- (2) Ken Robinson, the Appellant; and
- (3) Sherilyn Batchelder from Scott Telecom Services speaking on behalf of Xplornet Communications Inc., the Applicant.

[12] 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

[13] The Development Authority read from its presentation which was also provided as an exhibit.

[14] The Development Authority pointed out an error in their report, which was also provided as an exhibit. On page 3 of the report, the decision date is identified as May 4, 2021 but it should instead have read May 27, 2021.

[15] The Development Authority believes the approach is coming from Range Road rather than Highway 8. The approach will run the whole length of the quarter section in parallel to Highway 8.

Ken Robinson submissions – the Appellant

[16] The Appellant's opposition was for the visual impact of the tower.

[17] The Appellant made multiple comments to Scott Telecom Services and tried to communicate with Xplornet Communications Inc. but found them to be uncooperative as they only communicated through Scott Telecom Services.

[18] The Appellant stated that Scott Telecom Services had no reason to help landowners regarding visual impacts as they are contracted to acquire the site on the Lands for Xplornet Communications Inc.

[19] The Appellant stated that Xplornet Communications Inc. seems unwilling to talk to anyone about the visual impacts of the tower.

[20] The proposed cell phone tower will sit on the Lands for 30-50 years and Xplornet Communications Inc. could do more to make it more visually appealing to residents and those driving past the Lands.

[21] The Appellant argued there was no effort by the Applicants to make any considerations about the visual impact of the tower.

[22] The Lands are unoccupied by the owner and are strictly agricultural.

[23] The access road is half a mile from the nearest north-south Range Road. The Appellant believes this is because of Alberta Transportation in order to keep access off the major transport coordinator.

[24] The horizon where the tower will go is naturally beautiful and the Appellant doesn't want to stare at a cell phone tower for the next 30-50 years.

[25] The tower will be visible day or night for the next 30-50 years because it will have a flashing light.

[26] The Appellant found examples of towers that were designed with more visual considerations taken into account through a Google search. Cell phone towers can be designed to look more like water towers and other buildings.

[27] The Appellant is asking for help to improve the design of the cell phone tower since the company building it appears to have no desire to.

[28] The Appellant has spoken to many neighbours in the area who are also in support of the appeal and do not want to have the cell phone tower in their views either.

[29] For some of the neighbours in the area, they have trees between them and the proposed cell phone tower and will only have the flashing light in their view.

[30] The photos included in the Appellant's presentation of more visually-masked cell phone towers came from country residential acreage areas where people had objected to the visuals of cell phone towers. In those cases, the companies involved were cooperative with the residents' objectives. The water tower example was in a subdivision setting but the tree one was from a rural subdivision in California.

[31] The Appellant lives in a homestead setting with no neighbours directly around him.

[32] The Appellant has a southern view from his house towards the proposed cell phone tower.

[33] The parcels surrounding the Appellant are all agricultural and are involved in crop farming. To the west there are residential properties as well as a few very minor horse operations.

[34] The parcels surrounding the proposed cell phone tower would be unoccupied.

Sherilyn Batchelder from Scott Telecom Services, speaking on behalf of Xplornet Communications Inc.'s submissions – the Applicant

[35] Scott Telecom Services was engaged by Xplornet Communications Inc. to complete land use approval for this projects.

[36] During the public consultation period, Scott Telecom Services did have several communications with the Appellant and did provide these communications as part of their report in the exhibits.

[37] While the Appellant communicated his opposition to the visual nature of the proposed self-support cell phone tower, suggesting a monopole structure would be preferable, Xplornet Communications Inc. has installed thousands of similar installations in rural communities throughout Canada.

[38] A self-support structure is the preferred structure due to the lattice permitting views of the sky and surrounding area through the structure. The Applicant believes a solid monopole structure would create a more significant visual impact.

[39] A submission was made to Transport Canada and NAV Canada and no lighting is required for the proposed cell phone tower.

[40] While the Appellant has proposed a shrouded structure in his presentation, the required size would be prohibitively costly as the proposed cell phone tower is 45 metres tall.

[41] If the proposed cell phone tower was designed to be in the shape of a tree or a water tower, it would be more intrusive and would not blend with the surroundings of the Lands.

[42] Commercial towers are federally regulated and the Applicant requests the decision of the development authority be upheld.

Ken Robinson's rebuttal submissions – the Appellant

[43] While Scott Telecom Services believes the self-supporting 150-metre structure would be visually better than the monopole, the monopole can be designed to blend into the visual impact.

[44] A 150-metre tree-looking structure would be better than an erector-set pole.

[45] The Appellant believes the cost is the only reason the Applicant is not taking steps to make the structure look better.

[46] The Appellant thinks it is ludicrous that seeing through three sections of a structure is considered visually better than a single pole and doesn't know where the Appellant got that public opinion.

FINDINGS & REASONS FOR DECISION

[47] The Board finds that a Communications Facility (Type C) and associated equipment shelter is a discretionary use in the Agricultural, General District (A-GEN) in accordance with section 302 of *Land Use Bylaw*.

[48] The Board finds it has the authority to make a decision on the matter pursuant to section 687 of the *Municipal Government Act*.

[49] 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.

[50] The Board finds that the application meets all requirements of Policy A-308, Commercial Communications Facilities.

[51] The Board finds that the location chosen for this Communications Facility (Type C) and associated equipment shelter, is in an open area with no other structures within the quarter section on either side and does not directly interfere with the use of the adjacent properties.

[52] The Board finds that the design of the Communications Facility (Type C) and associated equipment shelter including its height will provide for the future needs of the area.

[53] The Board finds that there will be no lighting required for this structure so the visual impact of the structure will not be as obtrusive to the surrounding area.

[54] Given the above findings and pursuant to section 687 of the *Municipal Government Act*, the Board finds that the proposed development would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The Board also finds the proposed development conforms to the use prescribed for the Lands in the *Land Use Bylaw*.

CONCLUSION

[55] For the reasons set out above, the appeal is denied and the Development Authority's May 26, 2021 decision on development permit application PRDP20211823 is upheld.

Dated at Rocky View County, in the Province of Alberta on July 23, 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 Report (133 pages) |
| 2. | Development Authority Presentation (7 pages) |
| 3. | Appellant Presentation (10 pages) |
| 4. | Letters in Support of Appeal (4 pages) |
| 5. | Applicant Presentation (43 pages) |