

AGENDA

SUBDIVISION AND DEVELOPMENT APPEAL BOARD LEDUC COUNTY COUNCIL CHAMBER, COUNTY CENTRE, NISKU, ALBERTA

Thursday, April 12, 2018

1. **Order and Roll Call** – 9:30 a.m.
2. **Agenda Adoption**
3. **Adoption of Previous Minutes**
 - * March 19, 2018 Subdivision and Development Appeal Board Meeting
4. **Subdivision and Development Appeal Hearing**
 - * a) 9:30 a.m. D18-014 Appeal by Russ McCurdy, Maxwell Real Estate Polaris, on behalf of Mohammad and Dorothy Carlson-Haque
Roll #696000 Infilling & Grading (Volume 302,000 m³ over an area of 164,670 m²) on Lot 1, Plan 9323321, Pt. NW 25-50-23-W4th (50465 Hwy 21)
 - * b) 10:30 a.m. D18-016 Appeal by Matt O'Lain – Infilling and Grading (81,364 m³)
Roll #1326000 on NE 12-49-25-W4 (25031 Twp Rd 492)
Applicant/Landowner's: Herman and Alice Bulten
5. **Next Meeting Date** – Thursday, April 19, 2018
6. **Adjournment**

Legend

- * Items Attached To Agenda

MINUTES OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD MEETING, LEDUC COUNTY, HELD ON THURSDAY, APRIL 12, 2018 IN THE COUNCIL CHAMBER OF THE COUNTY CENTRE BUILDING, NISKU, ALBERTA.

Order and Roll Call

The meeting was called to order at 9:30 a.m., Thursday, April 12, 2018 by Chair Mary-Ann McDonald and Board Members Shirley Jolly, Doug Ruel and Larry Wanchuk present.

Also present were Mr. Garrett Broadbent, Clerk of the Subdivision and Development Appeal Board; Ms. Joyce Gavan, Recording Secretary; and Mr. Colin Richards, Team Lead Development.

Present as well were two individuals.

Agenda Adoption

10-18 Board Member Ruel -- that the Agenda for the April 12, 2018 Subdivision and Development Appeal Board meeting be accepted as circulated.

Carried

Adoption of Previous Minutes – March 19, 2018

11-18 Board Member Wanchuk -- that the March 19, 2018 Subdivision and Development Appeal Board minutes be confirmed as circulated.

Carried

Appeal by Russ McCurdy, Maxwell Real Estate Polaris, on behalf of Mohammad and Dorothy Carlson-Haque, whereby Development Permit Application D18-014 was refused for a Infilling & Grading located on Lot 1, Plan 9323321, Pt. NW 25-50-23-W4, (50465 Hwy 21).

Chair McDonald called the hearing to order at 9:32 a.m. and introduced Board Members and staff.

Chair McDonald referenced the April 10, 2018 email from Russ McCurdy, Appellant; and April 10, 2018 letter from Brian Meaney, Contractor for Mr. McCurdy, requesting an adjournment.

Adjourn Hearing - Appeal by Russ McCurdy, Maxwell Real Estate Polaris, on behalf of Mohammad and Dorothy Carlson-Haque, whereby Development Permit Application D18-014 was refused for a Infilling & Grading located on Lot 1, Plan 9323321, Pt. NW 25-50-23-W4, (50465 Hwy 21)

12-18 Board Member Jolly -- that the hearing of appeal by Russ McCurdy, Maxwell Real Estate Polaris, on behalf of Mohammad and Dorothy Carlson-Haque, whereby Development Permit Application D18-014 was refused for Infilling & Grading (Volume 302,000m³ over an area of 164,670 m²) located on Lot 1, Plan 9323321, Pt. NW 25-50-23-W4, (50465 Hwy 21), be adjourned until Friday, May 11, 2018 commencing at 9:00 a.m.

Carried



Recess

The meeting recessed at 9:36 a.m. and reconvened at 10:30 a.m., with Chair Mary-Ann McDonald and Board Members Shirley Jolly, Doug Ruel and Larry Wanchuk present.

Also present were Mr. Garrett Broadbent, Clerk of the Subdivision and Development Appeal Board; Ms. Joyce Gavan, Recording Secretary; Mr. Colin Richards, Team Lead Development; and Ms. Rae-Lynne Spila, Municipal Engineer.

Present as well were six (6) other individuals.

Appeal by Matt O'Lain whereby Development Permit Application D18-016 by Herman and Alice Bulten was Conditionally Approved for Infilling and Grading located at NE 12-49-25-W4 (25031 Twp Rd 492).

Chair McDonald called the hearing to order at 10:31 a.m. and introduced Board Members and staff.

Chair McDonald asked if any Board Member felt a need step down from this hearing within the boundaries of Conflict of Interest, and there was no one.

Chair McDonald asked if anyone had any objection to any of the members of the Subdivision and Development Appeal Board hearing this appeal, and there was no objection indicated.

Chair McDonald explained the purpose of the hearing, the order of presentation and the procedures to be followed.

Chair McDonald then called upon the Clerk to introduce the subject of this appeal.

Mr. Garrett Broadbent, Clerk, advised of the appeal by Matt O'Lain whereby Development Permit Application D18-016 by Herman and Alice Bulten was conditionally approved for infilling and grading (81,364 m³) located at NE 12-49-25-W4, (25031 Twp Rd 492). The reasons for appeal are as follows:

1. Concerns regarding our drainage that flows north onto NE 17-49-25-W\$ (which has now been approved for infill).
2. Request that a portion of the 15 foot setback along the property line on the south portion of infill area 1 (running east-west) contains a drainage grade to allow water to drainage (to the slough) west of infill area 1.
3. In accordance with Figure 1, the proposed infill is split into Infill Area 1 and Infill Area 2. There are no concerns at this time with Infill Area 2 which is north of the proposed drainage canal.
4. The significant concerns with Infill Area 1 (south of the proposed drainage canal) are as follows:
 - The proposed infill will dramatically change the drainage of our adjacent land. The drainage will no longer be allowed to follow the natural drainage of the land resulting in a large portion of our land being prevented from drainage properly. This area currently floods in the spring but does drain as the ice dams melt away.
 - At this time, this land is planted in a hay crop, newly planted shelter belt and horse pasture. The proposed changes to the natural drainage will prevent this area from draining properly and most likely will result in a loss of agricultural production/shelter belt and a portion of our horse pasture.

- Our land does not drain through the ditch, north to the canal. We have a small slough that is the low spot on the Eastern portion of our land. The drainage here flows through the NW portion of the slough onto the adjacent land – right where the proposed infill will go. This will directly eliminate the natural drainage resulting in flooding of our land. We believe that we will lose crop production, trees and potentially a portion of our horse pasture if this infill proceeds.
- The portion of our land that is highlighted as “ACI” (on figure 1) drains through the NW corner of our property. This is near the proposed infill. If the infill affects the drainage, our agricultural land will be flooded. We will lose crop production, our newly planted shelter belt trees and a portion of our horse pasture.

Mr. Broadbent advised the following information is attached for the Board:

- 1) Staff Report.
- 2) Appeal Received March 19, 2018.
- 3) Notice of SDAB Hearing package dated March 23, 2018.
- 4) Development Permit Conditional Approval to Herman and Alice Bulten dated March 2, 2018.
- 5) Development Permit Application D18-016.
- 6) Key Plan.

The Board confirmed the appeal was submitted properly and acceptable to the Board.

Chair McDonald asked the Clerk to read/present any other relevant information and/or correspondence, and Mr. Broadbent advised there was none.

Chair McDonald called upon the Planning and Development Department to provide background information.

Mr. Colin Richards, Team Lead Development Services, provided the following information relating to the appeal by Matt O'Lain:

1. This is an appeal against the decision of the Leduc County Development Authority, whereby an application to apply 81,364 m³ of topsoil/fill material over two portions of the subject site was conditionally approved by the County Development Authority.
2. The appellant, who resides at the property immediately south of the subject site holds concern that the southern portion of the approved grading works may result in flooding on their property, and as a result has appealed the decision. The intent of the appeal is not for the SDAB to overturn the decision and refuse the development, but for the SDAB to consider adding a further condition to the Notice of Decision to require that a drainage channel be constructed between the site and the appellants lands to channel any waterflow away from the appellants property.
3. The subject property is located immediately off of Range Road 250 and ± 1.7 km south of the City of Leduc's southern boundary.
4. Development on the property consists of one dwelling and a number of agricultural accessory buildings. The majority of the site is a natural, undeveloped form and is utilized for active farming.
5. In accordance with the Municipal Development Plan (MDP) – Part 3 Agricultural, the subject property is located within the defined “Agricultural Area B”. The purpose of the Agricultural Area B is to conserve and protect extensive areas of land for agricultural uses; to encourage and accommodate a broad range of agricultural-related pursuits; and to retain and enhance the County's agricultural community.



6. In accordance with the Land Use Bylaw No. 07-08, the subject property is designated as an Agricultural (AG) District. Pursuant to Section 9.1.1 of the Land Use Bylaw the general purpose of this district is:

"The purpose of this district is to provide primarily for larger agricultural operations and limited higher intensity agricultural activities on smaller lots, while at the same time providing for limited residential and other uses having a secondary role to agriculture."

Part 6.14 addresses site leveling, infilling, grading and stockpiling requirements, and the following key regulations are considered applicable to the decision issued for this application:

6.14.2 - any application made for Site Leveling, Infilling, Grading or Stockpiling under Section 6.14 shall be processed as a discretionary use in all Districts, unless specifically exempt under Section 3.2.

7. The applicant submitted the application to apply additional topsoil to two areas of the site in order to increase the agricultural productivity of the lands. The proposal was supported by all the County's internal departments, including Public Works & Engineering and Agricultural Services and was subsequently approved subject to a number of conditions which were included to ensure the development does not negatively impact the site or surrounding lands. The appellant has submitted the appeal requesting the SDAB add an additional condition of approval to the Notice of Decision to ensure that the approved grading works do not result in additional flooding on the appellants property.
8. In response to the appeal, the Development Authority can confirm that during the processing and review of Development Permit Application D18-16, the proposal was reviewed by Public Works and Engineering, who reviewed a number of factors of the development, including potential flooding risk. Public Works & Engineering provided no objection to the proposal, subject to a number of conditions which were included in the Notice of Decision. These conditions are designed to protect adjacent properties from flooding as a result of the development, and included the following:

Condition 4:

Within one month of completion of the approved grading, the applicant shall submit a final grade post-survey of the development areas to the satisfaction of Leduc County Public Works & Engineering.

The purpose of Condition 4 is to allow the Development Authority to review the project once completed to ensure that the work was undertaken in accordance with the approved plans to ensure that no adverse flooding events occur as a result of the development.

Condition 12:

Site grading shall not be permitted to direct additional surface drainage from the subject lot onto an adjacent lot unless provided for in an approved drainage plan or storm water management plan for the area.

The purpose of Condition 12 is to ensure that should any adverse flooding occur as a result of the development, that the County can use its enforcement channels to remedy the infraction.

9. Upon further review of the application, the Development Authority remains satisfied that the proposal will not unduly impact neighbouring properties by way of increased runoff/flooding. The County's Public Works & Engineering Department have advised that should the SDAB be minded to grant the request of the appellant and require, through condition, that a

drainage channel be constructed between the development area and the appellants property, this would not create any negative impacts on the overall proposal.

Chair McDonald asked Board Members if there were any questions of the Development Authority, and there were none.

In response to questions by Board Members, Mr. Richards and Ms. Spila advised of the following:

- The depth of the fill is proposed to be approximately 1-2 feet.
- Staff conducted a review and advises there is standing water that takes time to dissipate; however feel there would be no impact to drainage onto the appellants land with the proposed development.
- Should the SDAB feel that a drainage channel be included as a condition, then the landowner would be required to work with the County to our satisfaction.
- The slough comes from adjacent lands; that is why the 15 foot setback is there.
- The applicant indicates he does not want to alter the natural drainage and would not be allowed to fill in the slough.

Chair McDonald called upon the Appellant to speak to the proposed development.

Mr. Matt O'Lain, Appellant, provided the following information:

1. Referencing the topographical map, our land drains from the south to north; the drainage canal would be a benefit to the area.
2. Referenced another drawing showing the scaling; this is extremely low land and slowly works its way to the slough; in the meantime in the spring it takes a long time for drainage; do not want adverse flooding onto our horse pasture and hay land.
3. The slough drains northerly and feel the infill will impact the drainage.
4. Proposed a drainage swale be constructed to flow westerly.
5. How is the infill to be placed on the land e.g. flat, sloped?
6. My concerns are twofold:
 - i) what happens when the applicant sells his land e.g. compliance with new landowner; and
 - ii) in winter with freezing question the travel to infill and time it will take to drain.


Chair McDonald asked if there were any questions by the Board Members of the appellant.

In response to questions by Board Members, Ms. Spila advised that the drainage is considered "sheet" drainage type.

Mr. O'Lain acknowledged the drainage as sheet type and questioned the effect to drainage if 1-2 feet of infill is added.

Chair McDonald called upon the Applicant(s) to speak to the appeal.

Mr. Herman Bulten, Applicant, provided the following comments:

- There is an assumption that the infill will just be placed flat; however it will be tapered.
 - There are 3 weeping tiles installed on the subject property which ties into the drainage channel, as shown on a drawing by Agri-Trends.
 - There is no intention to flood out the neighbor.
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- There is a slough that was dug out years ago by previous landowner for the purpose of selling black dirt. That black dirt still remains as piles.
- There is a fence line on neighbouring property (appellant's) where there is a slough located and a drainage channel has been dug to drain into my property.
- The reason for the development of this topsoil infill is to make better use of agricultural for the use of pasture land; this is low land and poor quality soil.
- Would not object to the extra condition as requested by the appellant.

In response to questions by Board Members, the following information was provided by technical staff:

- There has been no study completed on the subject land.
- There is a dugout on property to release water to the west; the dugout was constructed years ago. The reason for the dugout was to attract wildlife.
- When the soil is placed and grass grows there will be a place to access the reservoir.
- If the SDAB determines to include a condition that an appropriate channel be constructed, it will be required prior to commencement of construction. The County would have enforcement mechanisms to ensure the applicant make corrections.

Chair McDonald called upon anyone wishing to speak in support or against the appeal, and there was no one.

Chair McDonald asked administrative staff if there was any correspondence submitted, and there was none.

Chair McDonald asked if Technical Staff had any final comments, and there were none.

Chair McDonald asked the appellant if he had any final comments, and Mr. O'Lain provided the following closing comments:

- My concern is mainly with the spring runoff; do not want water to back up onto our horse pasture and hay land and destroy trees.
- Do not want to prevent the soil from being laid.
- Just want protection by getting it in writing in case the land becomes sold in a couple of years and then the land floods.
- Clarified that there is no drainage ditch dug on his property; moved only some clay to construct home.

Chair McDonald asked the appellant if he felt he received a fair hearing, and Mr. O'Lain responded affirmatively.

Conclusion of Public Hearing

Chair McDonald declared the Public Hearing concluded at 11:13 a.m.

Mr. Richards; Ms. Spila; Mr. O'Lain; Mr. & Mrs. Bulten; and 3 Other Individuals

Mr. Richards; Ms. Spila; Mr. O'Lain; Mr. & Mrs. Bulten; and 3 individuals exited the Council Chamber at 11:14 a.m.

In Camera

13-18 Board Member Wanchuk -- that the Subdivision and Development Appeal Board meet In Camera.

Carried

The In Camera session commenced at 11:15 a.m.

Revert to Subdivision and Development Appeal Board Meeting

14-18 Board Member Wanchuk -- that the In Camera session revert to the Subdivision and Development Appeal Board meeting.

Carried

The In Camera session reverted to the Subdivision and Development Appeal Board meeting at 11:43 a.m.

Appeal by Matt O'Lain whereby Development Permit Application D18-016 by Herman and Alice Bulten was Conditionally Approved for Infilling and Grading located at NE 12-49-25-W4 (25031 Twp Rd 492).

15-18 Board Member Jolly -- that Subdivision and Development Appeal Board allow the appeal by Matt O'Lain and vary the conditional approval of Development Permit Application D18-016 by Herman and Alice Bulten for infilling and grading located at NE 12-49-25-W4, (25031 Twp Rd 492).

Findings of Fact

- 1) The intent of the appeal is for the Subdivision and Development Appeal Board to consider adding a further condition to the Notice of Decision to require that a drainage swale be constructed between the site and the appellants land to channel any waterflow away from the appellants property.
- 2) The appellant acknowledged that if a drainage swale on the south property line of the applicant's property was included as a condition, his concerns of spring runoff flooding would be addressed.
- 3) The County has indicated that Conditions 4 and 12 address the drainage issue and added that there would be no negative impacts with the addition of this additional condition.
- 4) The appellant indicated that the landowner and he jointly proposed the solution.

Conditional Approval Conditions

Development Permit Application D18-016 is approved subject to the following conditions:

1. Approval is granted based on the information provided by the applicant for the approved development (infilling and grading) only and no other development.
2. The approved development shall be located as shown on the approved Site Plan and final grading shall not exceed levels indicated within the submitted grading plans dated January 16, 2018. The Site Plan shall include a drainage swale on the applicant's south property line within the 15 foot setback to allow for water to drain westerly into the natural drainage course.
3. The maximum quantity of material that may be deposited within each approved infill area, as delineated on the Site Plan, is defined as follows:
 - a. Infill Area 1: 46,244 m³
 - b. Infill Area 2: 35,120 m³

4. Within one month of the completion of the approved grading, the applicant shall submit a final grade post-survey of the development areas to the satisfaction of Leduc County Public Works & Engineering.
5. Materials used for filling on a site shall be free of contaminants and debris to the satisfaction of the Development Authority.
6. Prior to the importation of material onto the subject site, soil testing of the source material shall be completed by an accredited laboratory and the results shall be submitted to the County for review and approval. The applicant shall submit a minimum of ten (10) test results representative of the material being utilized for the project, and shall be tested for soil borne pests, club root and hydrocarbons.
7. Appropriate erosion control barriers shall be implemented to prevent any sedimentation into any nearby wetlands to the satisfaction of the County.
8. The movement of material onto the property will require the applicant to enter into a Road Use Agreement with the County. The applicant must contact Public Works and Engineering prior to the movement of material to discuss this requirement.
9. The approach must be maintained to avoid any damage to the County owned road surface due to construction activity. A post development inspection will be conducted and the applicant/landowner must rectify any damage to the approach or County roadway.
10. All new accesses, approaches or upgrades, including driveways required off of a Leduc County public roadway, as a result of the development shall first require an Access Application to be provided to the satisfaction of, and approved by Leduc County Public Works and Engineering.
11. Site grading shall not be permitted to direct additional surface drainage from the subject lot onto an adjacent lot unless provided for in an approved drainage plan or storm water management plan for the area.
12. Site grading shall not be permitted to impede or interfere with the natural flow of surface water onto adjacent lands or public ditches.
13. The site shall be maintained in a neat and orderly manner including the containment of all construction materials and refuse, to the satisfaction of the Development Authority.
14. The applicant/landowner shall provide firefighting access at all times to the satisfaction of Leduc County Fire Services.
15. The approved grading works shall be completed within six (6) months of the commencement of development unless an additional development permit has been issued by the County extending this approval.
16. No further development, expansion or change in use is permitted unless approved by Leduc County.

Failure to comply with any of the preceding conditions will render this permit null and void.

The applicant is also advised of the following:

1. This Development Permit is issued under the Leduc County Land Use Bylaw 7-08. It does not exempt you from compliance with any other municipal bylaw or statutory plan applicable to the approved development, any relevant federal and provincial statute or regulation, or any easement, covenant, agreement or contract affecting the subject lands.

2. The County administers the Safety Codes Act and you must obtain any Safety Codes (building, electrical, gas or plumbing) permit(s) required prior to commencing construction. Increased setback distances from property lines, and/or modifications to plans for proposed buildings may be required in order to achieve compliance under the Alberta Safety Codes Act.
3. To contact Leduc Public Works & Engineering at 780-979-6185 regarding approach approvals and Road Use Agreements as required.
4. To contact Leduc County Fire Services at (780) 955-7099 regarding compliance with Alberta Fire Code.

Development Permit D18-016 shall expire after one year from the date of decision unless development has commenced.

Carried

Next Meeting

The next scheduled Subdivision and Development Appeal Board meeting will be held on Thursday, April 19, 2018 commencing at 9:00 a.m.


Adjournment

16-18 Board Member Wanchuk -- that the Subdivision and Development Appeal Board meeting be adjourned.

Carried

The Subdivision and Development Appeal Board meeting concluded at 11:46 a.m.


Chair


Clerk