

AGENDA

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

Wednesday, July 4, 2018

1. **Order and Roll Call** – 10:00 a.m.
2. **Agenda Adoption**
3. **Adoption of Previous Minutes**
- June 14, 2018 Subdivision and Development Appeal Board Meeting
5. **Subdivision and Development Appeal Hearing**
 - * a) 10:00 a.m. Stop Order E18-004 Roll #1549020 Ryan Tousignant – Unauthorized Site Levelling, Infilling & Lot Grading – Lot 4, Block 1, Plan 0927024 Pt. NE 13-48-26-W4; ± 7.72 ha (± 19.08 ha) (48266 Range Road 260)
6. **Next Meeting Date** – July 19, 2018
7. **Adjournment**



Legend
* Items Attached To Agenda

MINUTES OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD MEETING, LEDUC COUNTY, HELD ON WEDNESDAY, JULY 4, 2018 IN THE COUNCIL CHAMBER OF THE COUNTY CENTRE BUILDING, NISKU, ALBERTA.

Order and Roll Call

The meeting was called to order at 10:02 a.m., Wednesday, July 4, 2018 by Chair Mary-Ann McDonald with Board Members Shirley Jolly, Doug Ruel, Pat Rudiger and Rick Smith 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; Mr. Ata Muhammad, Planner; and Ms. Rae-Lynne Spila, Municipal Engineer.

Present as well were four other individuals.

Agenda Adoption

49-18 Board Member Jolly -- that the Agenda for the July 4, 2018 Subdivision and Development Appeal Board meeting be accepted as circulated.

Carried

Previous Minutes – June 14, 2018 Subdivision and Development Appeal Board Minutes

50-18 Board Member Rudiger -- that the June 14, 2018 Subdivision and Development Appeal Board meeting minutes be confirmed as circulated.

Carried

Appeal by Ryan Tousignant whereby Stop Order SD18-004 was issued for the unauthorized site levelling, infilling and lot grading located on Lot 4, Block 1, Plan 0927024, Pt. NE 13-48-26-W4; ± 7.72 ha (± 19.08 ac) (48266 Range Road 260).

Chair McDonald called the hearing to order at 10:03 a.m. and introduced Board Members and staff.

Chair McDonald asked if any Board Member felt a need to 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 Ryan Tousignant whereby Stop Order SD18-004 was issued for the unauthorized site levelling, infilling and lot grading located on Lot 4, Block 1, Plan 0927024, Pt. NE 13-48-26-W4; ± 7.72 ha (± 19.08 ac) (48266 Range Road 260). The reasons for appeal are as follows:

1. In January, 2018, I came into the Planning & Development Office to inquire what was required for a permit to construct a dugout and construct a clay-pad for a future barn for



livestock. At that time I was advised by staff that no permit was required for agricultural use. The only permit required would be for electrical.

2. In February, 2018 I commenced the work with constructing the clay-pad using the clay from the dugout.
3. In early spring I was contacted by Ata and was told a Stop Order would be placed if this was not for agricultural use. I again advised my intent is to start an agricultural operation by having livestock.
4. On May 26, 2018 I was served by the County Peace Officer with this Stop Order dated April 25, 2018. I never did received the "registered letter" at the address indicated because I don't use this mailbox. I have a Nisku box (Box 1123) that all my mail goes to.
5. This dugout and pad is for agricultural use. I have invested a considerable amount of money to get this in place.
6. With this stop order I have been advised all work must stop resulting in more delays to getting my agricultural operation into place before winter. I am very anxious to get this into place as no animals can be brought in without water supply and shelter.
7. There has been no infill material brought onto my land. The black dirt that has been dug out is placed on my land and my intent was to seed it back to hay this spring however this now has been halted.
8. I also respectfully request that if this appeal is successful, I would be reimbursed my appeal fee of \$152.00 as I did my due diligence in getting the proper permits in place and was advised by the County it was not necessary and now much to my dismay was served with a Stop Order that is inaccurate.

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

- 1) Staff Report.
- 2) Notice of SDAB Hearing package dated June 14, 2018.
- 3) Notice of Appeal received June 12, 2018.
- 4) Stop Order dated April 25, 2018 (Registered & Regular Mail).
- 5) Copy of Registered envelop returned on May 25, 2018.
- 6) Stop Order April 25, 2018 (hand delivered May 25, 2018).
- 7) Air Photo of the property.
- 8) Air Photo of Alberta Merged Wetland Inventory.
- 9) Site Photos.

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

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

Mr. Ata Muhammad, Planner, provided a PowerPoint presentation relating to the Stop Order to Ryan Tousignant, highlighting the following:

1. On April 25, 2018 a Stop Order was issued to the landowner for unauthorized site leveling, infilling and lot grading. The Stop Order was served by Registered as well as by Regular Mail. The Development Authority received the unclaimed copy of the Stop Order on May 25, 2018. The Stop Order was then served through hand delivery on May 25, 2018.
2. This is an appeal by Ryan Tousignant against a decision of the Development Authority to issue a Stop Order regarding site leveling, infilling and lot grading without the required development permit.

3. The subject property is designated as an Agricultural (AG) District in accordance with Leduc County Land Use Bylaw 7-08. Pursuant to Section 9.1.1 of the Land Use Bylaw, the general 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."*
4. Pursuant to Part 3.1.1 of the Leduc County Land Use Bylaw 7-08 (requires Development Permit): *"Any use or development of lands, buildings or signs in the County requires a valid development permit unless it specifically exempted from requiring a development permit by this Bylaw or by federal or provincial legislation."*
5. Pursuant to Part 3.2.1(b) of the Leduc County Land Use Bylaw 7-08 (Development Not Requiring a Permit): *"Agriculture, Extensive; Agriculture, Livestock or Agriculture, Horticulture use, structure, excavation or building in a district where the use is listed as permitted, including but not limited to a barn, hay shed, machine shed, livestock shelter, granary, dugout, and the outdoor storage of equipment, supplies and products directly associated with the agricultural operation, but not including a Confined Feeding Operation or a dwelling;"*
6. Pursuant to Part 3.2.1(s)(i) of the Leduc County Land Use Bylaw 7-08 (Landscaping): *"in all districts, where the amount of topsoil or similar material being deposited, does not exceed 100 cubic metres, providing that the material deposited is sourced from within the confines of the subject parcel in which the landscaping is to occur, and does not impede or interfere with the natural flow of surface water onto adjacent lands or into public ditches."*
7. Pursuant to Part 6.14.1 of the Leduc County Land Use Bylaw 7-08: (Site Leveling, Infilling, Grading & Stockpiling): *"No topsoil, fill, aggregate or other similar material shall be deposited on, moved within, or removed from a property without first obtaining a development permit, unless specifically exempt under Section 3.2."*
8. The subject property is located ± 1.8 km south of Township Road 484 and is accessed off of Range Road 260. The total area of the subject property is ± 7.72 ha (± 19.08 ac). In accordance with the Leduc County Land Use Bylaw 7-08, the parcel is districted within Agricultural (AG) District. Development on the subject property consists of a dwelling, manufactured and a recently built accessory building.
9. A planning history search of the subject property reveals that the existing dwelling, manufactured on the lands was approved on August 11, 2006 as a secondary dwelling on the adjacent principal parcel, and later, the existing parcel was subdivided from the adjacent principal parcel. The recently built accessory building on the parcel has no planning record. The subject parcel includes a tree stand and pasture land.
10. According to the County Geographical Information System (GIS), the front portion (south east) of the subject parcel has been classified as Class I/II wetlands. The unauthorized infilling, site leveling and lot grading activities that were noted on April 24, 2018 took place at the front portion of the parcel which is mainly classified as Class I/II wetlands and "Fen" in accordance with Alberta Environment Merged Wetland Inventory.
11. On April 24, 2018 Leduc County Planning & Development department received a permit inquiry from the County's Agricultural Services Department, regarding extensive infilling activities on the subject parcel. The concern also mentioned that the area is an important seasonal drainage flow area for the Whitemud tributary from the south. Staff reviewed the planning record of the subject parcel and found no planning approval for the infilling and lot grading activities.
12. Staff visited the subject parcel on the same day and noted heavy machinery such as backhoe, a dump truck and grader on the parcel. Staff also observed a dugout that was filled with water, while infilling materials, resulting from the excavation activities had been stockpiled as well as placed over standing water and leveled in an effort to fill the easterly

portion of the lands that contained low spots. This area is identified as a Class I/II wetland. Staff contacted the appellant over the phone on April 24, 2018 and advised to stop the grading work and submit a development permit application. Staff also advised the appellant that copies of a "Stop Order" will be mailed by regular and registered mail. The appellant indicated that he will be attending the office to collect a copy of his "Stop Order". On May 25, 2018 the registered copy of the "Stop Order" was returned by Canada Post as it was unclaimed by the appellant. Staff then requested County Bylaw Enforcement Services to personally serve the "Stop Order" at the subject property.

13. The appellant in his appeal letter stated that he contacted Leduc County Planning and Development Department in January, 2018 and inquired if he required a development permit for the construction of a dugout for livestock and that the County staff advised him that no development permit is required. The County has no record of the appellant inquiry regarding construction of a dugout, but notwithstanding this, the County Land Use Bylaw 7-08 only exempts the construction of a dugout for agricultural, livestock operation, providing it complies with all relevant provisions of the bylaw.
14. The exemption clause of Section 3.2 of the bylaw is a conditional section and is only valid where a development meets the intent of all other relevant provisions of the bylaw. Leduc County Land Use Bylaw Section 6.14 regulates activities pertaining to site leveling, infilling, grading and stockpiling are not exempted from requirements from a development permit. These activities are considered as discretionary uses in all land use districts as per section 6.14.2.
15. The intent of Section 6.14 of the Leduc County Land Use Bylaw is to avoid disturbance of natural drainage patterns, protect County wetlands and to preserve the integrity of County soils by keeping it free from contaminants and soil borne pests including but not limited to Clubroot or Canola. The Stop Order was issued for contravention of Section 6.14 (Site leveling, infilling, grading & Stockpiling) work and not for the construction of the "dugout" or for starting an agricultural livestock operation. The unauthorized infilling and grading activities took place in Class I/II wetlands and as per Section 6.14.20 of the Leduc County Land Use Bylaw 7-08, the appellant may require Alberta Environment approval.
16. Staff recommends that the SDAB dismiss the appeal and uphold the issuance of the Stop Order on the basis that the site leveling, infilling and grading activities took place on the subject parcel in contravention of Part 3, Part 6 and Part 9 of the Leduc County Land Use Bylaw 7-08. It is recommended that the infill works be applied through a development permit in conjunction with County departments and Alberta Environment to ensure the stability of the site for leveling works.

Chair McDonald asked Board Members if there were any questions of the administrative staff.

In response to questions by Board Members, Mr. Muhammad advised of the following:

- The classification of Wetlands I & II is provided as an imagery and provides the County with a heads up that the subject area is within a wetland area.
- Alberta Environment governs the management of wetlands classified as I and II.
- The creek does not flow directly through the subject land; however is a slough like area.
- Upon the site visit in April, it appeared there was no soil brought in; however stock piles of dirt and dirt being pushed in were evident.

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

Mr. Ryan Tousignant, Appellant, and Mr. Larry Nelson, Contractor who performed the work, provided the following information:



1. Have owned the subject property for six years and intend to put back into hay land for livestock.
2. There has been no dirt placed on water bodies nor any soil hauled in.
3. Submitted photographs taken July 3, 2018 of showing the location of the dugout and subject parcel.
4. Submitted a satellite image map from Alberta Environment indicating there is no classification of wetland.
5. At the west end of property the soil was 4 inches and working easterly there became 10 inches of soil; that top soil was all spread to the east of where the pad was to be built.
6. The top soil was stripped where the barn is proposed to be built.
7. The dugout is located in the north east portion within the low spot to collect the water naturally.
8. The south east corner of property is the lowest part of property and did not receive any infill to maintain that wet area.
9. Was advised by the County staff that as long as no hauling was brought in a permit was not required.
10. Due to freezing in the fall, one pile of clay was stockpiled.
11. Use a GPS system when doing work to take shots of elevations of topography of land. The equipment dozer also has a GPS to maintain the level of water for proper drainage patterns.

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

In response to questions by Board Members, Messrs. Tousignant and Nelson advised of the following:

- The topography does contain a lower area in the south east corner of parcel.
- Utilize the Alberta Wetlands website which shows many classifications in this area.
- The dirt in the photographs was deposited in March, 2018 (from the dugout) when the topsoil was stripped.
- The flooding occurred due to a culvert and a fast thaw. Upstream there are five culverts and then downstream there are two culverts. Was advised by the County that this is a culvert issue with flooding.
- The dugout is not as deep as usual due to sandstone so constructed the dugout wider.
- There is no water standing on the subject land and seed the land to hay.
- Documentation was provided showing this is for farming use.
- A Caveat has been placed on subject property filed on May 17, 2018 preventing my mortgage getting renewed; was advised that a caveat cannot be placed until there is no resolution or the Stop Order is not adhered to. The Stop Order was delivered on May 25, 2018 so question why the caveat was issued prior to the receipt of the Stop Order.

Mr. Muhammad responded advising the Stop Order was registered on June 6, 2018 and explained the process of registering a caveat.

Mr. Tousignant continued:

- Upon having the Stop Order delivered on May 25, 2018 an appeal was lodged within the 19 day time period.
- The wrong address was used in the deliverance of the April 25, 2018 dated Stop Order as I use a PO box.
- With respect to the reference that regarding me saying I would come into the office and pick up the Stop Order, the telephone conversation I heard was that Mr. Muhammad would speak



to his supervisor to determine whether this is agricultural related use that does not require a permit and get back to me. Then on May 25, 2018 I was delivered the Stop Order from a Peace Officer.

In response to questions by Board Members, Mr. Muhammad provided the following clarification advising the address used for the Stop Order is what is reflected within the County database.

Chair McDonald asked if anyone in attendance to speak in support or against the appeal, and there was no one.

Chair McDonald asked if there was any additional correspondence submitted, and Mr. Broadbent advised there was none.

Chair McDonald asked if Technical Staff had any final comments.

Mr. Muhammad provided the following closing comments:

- To be considered is whether the site leveling, infilling and lot grading requires a permit; administration considers the scope of this work is not exempted under Section 3.2.1(b) of the Leduc County Land Use Bylaw 7-08.
- It is the opinion of staff that this type of development does require a Development Permit in accordance with Section 6.14.1
- This is in accordance with Section 6.14.1 of the Leduc County Land Use Bylaw.

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

- *"Just didn't know it was this hard to be a farmer these days"*; have attempted to abide the rules and were advised a permit was not required due to being an agricultural use.
- The drainage pattern has not been altered on this parcel.
- Created the dugout so will be more appealing and allow wildlife to utilize it as well as livestock.

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

Conclusion of Public Hearing

Chair McDonald declared the Public Hearing concluded at 11:02 a.m.

Messrs. Richards, Muhammad, Tousignant, Nelson and Two Individuals

Messrs. Richards, Muhammad, Tousignant, Nelson and 2 individuals exited the Council Chamber at 11:03 a.m.

In Camera

51-18 Board Member Smith -- that the Subdivision and Development Appeal Board meet In Camera.

Carried

The In Camera session commenced at 11:04 a.m.

Revert to Subdivision and Development Appeal Board Meeting

52-18 Board Member Smith -- 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 11:33 a.m.

Appeal by Ryan Tousignant whereby Stop Order E18-004 was issued for the unauthorized site levelling, infilling and lot grading located on Lot 4, Block 1, Plan 0927024, Pt. NE 13-48-26-W4; ± 7.72 ha (± 19.08 ac) (48266 Range Road 260).

53-18 Board Member Smith -- that Subdivision and Development Appeal Board disallow the appeal by Ryan Tousignant and upholds the Stop Order E18-004 issued for the unauthorized site levelling, infilling and lot grading located on Lot 4, Block 1, Plan 0927024, Pt. NE 13-48-26-W4; ± 7.72 ha (± 19.08 ac), 48266 Range Road 260.

Findings of Fact

- 1) The subject site is a 19.88 parcel and designated within the Agricultural (AG) District in accordance with Leduc County Land Use Bylaw 7-08.
- 2) The Stop Order was issued for contravention of Section 6.14 (site leveling, infilling, grading & stockpiling) work and not for the construction of the dugout, or for starting an agricultural livestock operation.
- 3) Section 6.14.1 of the Leduc County Land Use Bylaw states "*No topsoil, fill, aggregate or other similar material shall be deposited on, moved within, or removed from a property without first obtaining a development permit, unless specifically exempt under Section 3.2.*"
- 4) According to the County Geographical Information System (GIS), the front portion (South East) of the subject parcel has been identified as Class I/II Wetlands. The unauthorized infilling, site leveling and lot grading activities that were noted on April 24, 2018 took place at the front portion of the parcel which is mainly identified as Class I/II wetlands.
- 5) The County spoke to the appellant on April 24, 2018 via telephone call and advised the appellant to stop development and submit a Development Permit Application. Staff also advised the appellant that copies of a Stop Order will be mailed by regular and registered mail.
- 6) The Board received evidence that a caveat is registered on the subject lands as a result of this Stop Order. In accordance with Section 646(1)(3) of the Municipal Government Act, the municipality must discharge the caveat when the order has been complied with.

Stop Order E18-004 is issued as follows:

1. The unauthorized infilling, grading, stockpiling activities at the above mentioned lands must cease immediately and comply with the Land Use Bylaw 7-08 as follows:
 - (i) Immediately cease infilling, lot grading, stockpiling activities at the above mentioned lands.
 - (ii) Submit a complete development permit application for the unauthorized development (infilling) within 30 days receipt of this "Notice of Subdivision and Development Appeal Board Decision".

2. Should the landowner(s) responsible for the infraction fail to obtain proper planning approvals from the County, it will be his responsibility to fully reclaim the above mentioned lands back to its natural state and topography by removing the unauthorized infill materials from the affected portion of the lands.

Carried

Next Meeting

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

Adjournment

54-18 Board Member Ruel -- that the Subdivision and Development Appeal Board meeting be adjourned.

Carried

The Subdivision and Development Appeal Board meeting concluded at 11:54 a.m.


Chair


Clerk