

## **AGENDA**

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

**Friday, March 29, 2019**

1. **Order and Roll Call** – 9:00 a.m.
2. **Agenda Adoption**
3. **Adoption of Previous Minutes**
  - \* March 8, 2019 Subdivision and Development Appeal Board Meeting
  - \* March 15, 2019 Subdivision and Development Appeal Board Meeting
4. **Subdivision and Development Appeal Hearing**
  - \* a) 9:00 a.m. SD18-058 Appeal by Chris Oster to subdivide four parcels of  
Roll #2291000 16.19 ha (40 ac) each for country residential use from  
an unsubdivided quarter section with a title area of  
±64.36 ha (±159.03 ac) on NE 22-50-27W4.
5. **Next Meeting Date** – at the call of the Chair.
6. **Adjournment**

\* Legend  
Items Attached To Agenda



**MINUTES OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD MEETING, LEDUC COUNTY, HELD ON FRIDAY, MARCH 29, 2019 IN THE COUNCIL CHAMBER OF THE COUNTY CENTRE BUILDING, NISKU, ALBERTA.**

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**Order and Roll Call**

The meeting was called to order at 9:00 a.m., Friday, March 29, 2019 by Chair Mary-Ann McDonald as Chair with Board Members Pat Rudiger, Doug Ruel, Rod Giles and Rick Smith present.

Also present were Ms. Joyce Gavan, Clerk; Laurie Stoetzel, Recording Secretary; Dave Desimone, Senior Planner; Charlene Haverland, Manager of Development Services; Rae-Lynn Spila, Acting Manager of Engineering and 7 other individuals.

**Agenda Adoption**

**20-19** Board Member Ruel -- that the Agenda for the March 29, 2019 Subdivision and Development Appeal Board meeting be accepted as circulated.

Carried

**Previous Minutes**

**21-19** Board Member Rudiger -- that the March 8, 2019 Subdivision and Development Appeal Board meeting minutes, be accepted as circulated.

Carried

**22-19** Board Member Giles -- that the March 15, 2019 Subdivision and Development Appeal Board meeting minutes, be accepted as circulated.

Carried

**Appeal by Chris Oster whereby Subdivision Application SD18-058 was refused to subdivide four parcels of  $\pm 16.19$  ha ( $\pm 40$  ac) each for country residential use from an unsubdivided quarter section with a title area of  $\pm 64.36$  ha ( $\pm 159.03$  ac) on NE 22-50-27-W4.**

Chair McDonald called the hearing to order at 9:00 a.m. and introduced Board Members and staff.

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

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

Ms. Joyce Gavan, Clerk, advised of the appeal by Chris Oster whereby Subdivision Application SD18-058 was refused to subdivide four parcels of  $\pm 16.19$  ha ( $\pm 40$  ac) each for country residential use from an unsubdivided quarter section with a titled area of  $\pm 64.36$  ha ( $\pm 159.03$  ac) on NE 22-50-27-W4.

The reasons for appeal are as follows:

1. Intend to keep the land agricultural, we do not intend to change to country residential.
2. Part 9.3.8 of the Land Use Bylaw is not applicable to our proposed subdivision.
3. Believe that the subdivision is fully compatible with agriculture and do not intend to change how it is farmed. We do not see that simply having more property lines will have a measurable impact on farming.



Ms. Gavan advised the following information is attached for the Board:

- 1) Staff Report.
- 2) Notice of SDAB hearing package dated March 5, 2019.
- 3) Notice of Appeal received March 5, 2019.
- 4) Refusal by Subdivision Authority dated February 20, 2019 with refused site plan.
- 5) Tentative Plan.
- 6) Subdivision Application SD18-058.
- 7) Application letter.
- 8) Key Plan.
- 9) Air Photo.

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

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 the appellant if he 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 called upon the appellant(s) to come forward. Mr. Chris Oster, Appellant, came forward and introduced his siblings Thomas Oster, Patty Oster and James Oster as well as his wife Melanie. Chris indicated he would be speaking on behalf of his siblings.

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

Dave Desimone, Senior Planner, provided the following information relating to the appeal by Chris Oster:

1. The subject lands are located off Township Road 504 and Range Road 272. The quarter section is unsubdivided.
2. The Farmland Assessment Rating (FAR) established by the County Assessment Department indicates the subject land consists of a mix of low and high capability agricultural land (12% - 76%). The policies of the Municipal Development Plan indicate that on high capability agricultural land subdivision shall be limited to one lot out of the quarter section. The proposed lots would be considered the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> parcels out of the quarter section. The applicant has stated their reasons for the subdivision is to create multiple parcels for development.
3. The southern portion of the land is high capacity agricultural land with a FAR of 62% to 76%. The majority of the northern land is treed. The definition of high capacity agricultural land refers to the Canada Land Inventory, Type 1 Soil. A small portion in the north east corner is type 2 Soil.
4. The Municipal Development Plan indicates that it shall minimize the amount of high capability agricultural land removed from farming because of non-agricultural development and the fragmentation of land. Leduc County policies do not support incremental unplanned development. Section 3.3.14 of the Municipal Development Plan requires that new country residential parcels be located on low capability land, well defined and compatible with

adjacent land uses without setting precedent for further subdivision of the surrounding lands. It is the opinion of staff that the proposed subdivision is precedent setting and removes high agricultural land from farming.

5. Leduc County Public Works & Engineering submitted comments regarding the proposed subdivision stating it is County policy to have an internal road when there are three or more parcels. Part 9.3.8 of the Leduc County Land Use Bylaw stipulates that access to individual lots shall in all cases be by internal collector or service roads constructed for the subdivision unless there are three or fewer parcels on any one particular public roadway. The proposed subdivision does not include an internal road for access to the parcels.
6. The proposed subdivision is in the Rural Area of the Edmonton Metropolitan Region Growth Plan (EMRGP). Policy 6.2.1 of the EMRGP stipulates that in the rural area, large contiguous agricultural areas will be protected and maintained to enable efficient agricultural production and to support the agricultural sector in the Region.
7. There were no adjacent landowner comments submitted regarding the proposed application.
8. Road access for the proposed parcels are two proposed accesses off of Township Road 504 and two existing accesses are off Range Road 272.
9. Referral comments are as follows:

Leduc County Agricultural Services – this property is listed as Canada No. 1 soil, with a FAR on the south portion of 62% to 76%. This is high capability agricultural land and should not be fragmented without serious consideration. Agricultural would not support this subdivision.

Leduc County Parks and Recreation – Parks and Recreation do not support this subdivision. This subdivision makes dealing with municipal reserve dedication very difficult as future subdivision is not likely to occur in this agricultural area.

Leduc County Public Works – it is County policy to have an internal road when there are three or more parcels. New access approaches will be required for two of the proposed parcels. On the remaining two parcels, there are existing access approaches that will need to be inspected to ensure they meet current Leduc County standards. Approaches adjacent to Range Road 272 will require asphalt.

10. On February 19, 2019 the Subdivision Authority refused Subdivision Application SD18-058 for the following reasons:
  - 1) Pursuant to Section 654(1)(b) of the Municipal Government Act, the proposed subdivision does not conform to the following policies of the Municipal Development Plan:
    - a) Objective 3.1.1 stipulates productive agricultural land shall be protected for agricultural use;
    - b) Objective 3.1.2 stipulates that fragmentation and the amount of high capability land removed from production for non-agricultural development shall be minimized;
    - c) Policy 3.3.1 states that on high capability agricultural land, subdivision shall be limited to one lot from an unsubdivided quarter section and must be a suitable size and shape for agricultural use (approximately 32 ha) or small enough to minimize loss of high capability land and be easily managed as a residential site (1 ha); and

- d) Policy 3.3.14 stipulates country residential use shall only be allowed on low capability land in the Agricultural areas where the subdivision represents a specific case and would not set a precedent or encourage further subdivision of surrounding lands.
- 2) Pursuant to Section 654(1)(b) of the Municipal Government Act, the proposed subdivision does not conform to the following policies of Land Use Bylaw 7-08:
  - a) Part 9.3.8 which states access to individual lots shall in all cases be by internal collector or service roads constructed for the subdivision unless there are three or fewer parcels on any one particular public roadway.
  - b) Part 10.1.2 which states that the minimum size for agricultural lots in all Land Use Districts should be 32.4 ha (80.0 ac) or such size as results from a physical severance;
  - c) Part 10.1.4 which states that new residential lots in the Agricultural district be a minimum of 1.0 ha (2.4 ha) and maximum of 2.0 ha (4.94 ac).
- 3) Pursuant to Section 654(1)(c) of the Municipal Government Act, the proposed subdivision does not conform to Policy 6.2.2 of the Edmonton Metropolitan Region Growth Plan which states in the rural area, large contiguous agricultural areas will be protected and maintained to enable efficient agricultural production and to support the agricultural sector in the Region.
- 4) The policies of the Municipal Development Plan, Land Use Bylaw, and Edmonton Metropolitan Region Growth Plan were not met by this application.

Chair McDonald asked Board Members if there were any questions of administrative staff, and there were none.

Chair McDonald asked the Clerk to read/present any other relevant information and/or correspondence. Ms. Gavan distributed the appellant(s) submission.

Chair McDonald called upon the appellant(s) to speak to the proposed development.

Mr. Chris Oster, on behalf of his siblings Patty, Thomas and James Oster, presented a written submission providing responses to the reasons for refusal, highlighting the following:

Municipal Development Plan Policies

- The land has been in the family since 1890's and was inherited by the current 4 owners, being myself and three siblings.
- The subdivision application is not a rezoning application; the land will remain as agricultural zoning and would be protected for agricultural uses. The landowners would follow acceptable uses on the Land Use Bylaw.
- Also notable is that only 60% of the total area is farmable land.
- The land would remain as agricultural land and therefore is not being removed from production of agricultural purposes.
- A very small amount of farmland would be lost should the parcels be fenced. The total of 0.8% would be reduced from the farmland which is a very small portion and not reasonable grounds to reject the subdivision and should not be used against the application.
- The additional lots are required for the number of co-owners of the property (4 owners). In the event the owners wish to live on the agricultural land to enjoy rural living, the size and location of the proposed lots aims to maximize agriculture for 60% farmable land. There is no change



to the access/availability to farm these lands. Other similar subdivisions have been allowed by the County.

- No country residential use is proposed/pursued; there are no plans to change the zoning.

#### Land Use Bylaw

- By the Land Use Bylaw definition, access to individual lots does not apply as there are 2 public access roads and 3 or fewer parcels accessing off of any one roadway. Approaches would be inspected as part of the subdivision process and upgraded to County standards. There are existing approaches to the southern parcels off of Range Road 272 and an existing approach in the north west corner. An approach to the north east parcel would have to be constructed.
- The site is currently physically separated by heavily treed areas and based on number of co-owners and no change to zoning, we do not feel the minimum agricultural lot size of 80 ac should apply to this subdivision.
- The proposed subdivision is not a residential development as it will remain agriculture.

#### Edmonton Metropolitan Region Growth Plan (EMRGP)

- The subdivision is remaining as an agriculture zone and 60% of the property that is farmable will be maintained. An agreement has already been made with current land's farmer and this arrangement will continue. Accesses for farming equipment is unimpeded/unchanged with the subdivision. By continuing to support local farms in renting the land, this subdivision encourages/supports the agricultural sector.

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

In response to questions by Board Members, Mr. Oster provided the following information:

- The northern parcels are currently in hay.
- The purpose of subdividing would continue as farming.
- Each landowner may have one house on each of the 4 parcels.
- There are no plans by the 4 landowners to move out to the property at the present time.
- The quarter section cannot be used as collateral for a mortgage with four co-owners on Title.
- We all currently reside off the subject lands and within the Edmonton area.
- The existing approaches were identified on the overhead. There are none on the northeast corner and a basic approach in the northwest corner. None of the approaches have culverts and would require upgrading to County standards.

Chair McDonald asked if there was anyone in attendance to speak in support of the proposed development, and there was no one.

Chair McDonald asked if there was anyone in attendance to speak against the proposed development, and there was no one.

Chair McDonald asked administrative staff to provide final comments.

Senior Planner Dave Desimone provided the following closing comments:

- Within the policies of the Edmonton Metropolitan Growth Plan and Land Use policies, agricultural land is best maintained by minimizing subdivisions.
- The applicant is subdividing the lands regardless of districting and are doing this to divide the property amongst the 4 owners.



- The MDP and EMRGP identifies the best methods to maintain agricultural land by minimizing subdivisions. These policies do not always align with ownership and conflicts with keeping the land as agricultural. There are other methods that could be explored when it comes to ownership of land amongst members of family.
- The lands could be alternately subdivided into two 80 ac parcels with a 5 ac parcel subdivided from the northern 80 acres. However, this does not align with what the applicants are wanting to accomplish.
- Regardless of the applicant's intentions, the LUB permitted uses within the agricultural district, would allow for a permit to be issued to build residences.

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

- Our family would like to make it clear that this is not a rezoning application and therefore no change to the current farming will happen.
- The land is remaining as an agricultural zone and we have discussed with our neighbor, Randy Sharko, regarding continuing the farming operation.
- It is also worth noting that there are no opposing comments received from adjacent landowners.
- We are unable to live and enjoy rural living by having the land jointly owned by all parties and this also makes taxation/County matters more difficult to manage. Taxation is also expected to increase which will help support the County's operations.
- We ask that the Board re-consider their decision based on the clear responses to each reason for refusal as well as our intended use of the land.

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

### **Conclusion of Public Hearing**

Chair McDonald declared the Public Hearing concluded at 9:27 a.m.

### **Messrs. Oster, and Desimone and Mrs. Spila and Haverland**

Messrs. Oster, and Desimone; and Mrs. Spila and Haverland exited the Council Chamber at 9:29 a.m.

### **In Camera**

**23-19** Board Member Smith -- that the Subdivision and Development Appeal Board meet In Camera.

Carried

The In Camera session commenced at 9:30 a.m.

### **Revert to Subdivision and Development Appeal Board Meeting**

**24-19** 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 10:06 a.m.

**Appeal by Chris Oster whereby Subdivision Application SD18-058 was refused to subdivide four parcels of  $\pm 16.19$  ha ( $\pm 40$  ac) each for country residential use from an unsubdivided quarter section with a title area of  $\pm 64.36$  ha ( $\pm 159.03$  ac) on NE 22-50-27-W4.**

**25-19** Board Member Smith – that the Subdivision and Development Appeal Board allow the appeal by Chris Oster conditionally approving Subdivision Application SD18-058 and varying the application by reducing the subdivision from four (4) parcels to three (3) parcels for country residential use from an unsubdivided quarter section with a title area of  $\pm 64.36$  ha ( $\pm 159.03$  ac) on NE 22-50-27-W4 as follows:

- Two parcels each  $\pm 16.19$  ha ( $\pm 40$  ac), as identified on the attached plan of the northerly treed portion of the subject quarter section; and
- One  $\pm 32.38$  ha ( $\pm 80$  ac) parcel by combining the proposed two  $\pm 16.19$  ha ( $\pm 40$  ac) southerly parcels of the subject quarter section, as identified on the attached plan.

**Findings of Fact**

- 1) The subject land shows a 60% total area that is farmable; with 40% unfarmed land.
- 2) Two of the subject  $\pm 16.19$  ha ( $\pm 40$  ac) northerly parcels show extensive tree coverage minimizing the amount of productive agricultural land use. This may be considered an environmentally sensitive area.
- 3) The two southerly proposed  $\pm 16.19$  ha ( $\pm 40$  ac) parcels consist of less tree coverage; with one parcel having an existing country residential homestead (abandoned) and associated farm structures.
- 4) There are two existing accesses off Range Road 272; the appellant indicated there is one located in the northwest portion off Township Road 504. Leduc County Public Works & Engineering indicated the existing access approaches will need to be inspected to ensure they meet County standards.
- 5) Leduc County Agricultural Services did not support the proposed subdivision as the Farmland Assessment Rating (FAR) on the south portion is rated at 62% - 76% high capability land. Parks and Recreation indicated their non-support due to the dedication of municipal reserve dedication.
- 6) The appellant indicated the subject lands have been in the family since the 1890's. The subject parcel has been inherited amongst the four siblings and their intent is to eventually enjoy living in a rural setting with the intent of land to remain for agricultural use.
- 7) There were no objections received.

The Board considered the following relevant statutory and planning documents:

**Municipal Development Plan – 3 Agricultural** - the purpose of the agricultural area 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.

- The Board considered that due to the extensive tree cover on the two northerly parcels, the preservation of high quality agricultural land would not be affected.
- By combining the two southerly parcels into a  $\pm 32.38$  ha ( $\pm 80$  ac) parcel, this portion of higher FAR land rated at 62% - 72% would be conserved and protected for agricultural use.



Land Use Bylaw 7-08 - 10.1.2 states that the minimum size for agricultural lots in all Land Use Districts should be 32.4 ha (80 ac) or such size as results from a physical severance.

- The Board did not hear any evidence of a physical severance on the southerly portion to justify two  $\pm 32.38$  ha ( $\pm 40$  acre) parcels.

Edmonton Metropolitan Region Growth Plan (EMRGP) – Objective 6.2 is to minimize the fragmentation and conversion of prime agricultural lands for non-agricultural uses. In rural areas, large contiguous agricultural areas will be protected and maintained to enable efficient agricultural production and to support the agricultural sector in the Region.

- The Board determined this objective could be met by combining the two proposed parcels of  $\pm 16.19$  ha ( $\pm 40$  ac) and allowing a one  $\pm 32.38$  ha ( $\pm 80$  ac) parcel.

Approval Conditions:

1. Pursuant to Section 655(1)(b) of the Municipal Government Act, the applicant/owner enter into a development agreement with Leduc County and abide by the terms therein.
2. Pursuant to Section 654(1)(d) of the Municipal Government Act, the applicant/owner pay any outstanding property taxes to Leduc County or make satisfactory arrangements with the Council of Leduc County for the payment thereof.
3. Pursuant to Section 9(a) of the Subdivision and Development Regulation, the applicant/owner shall provide access to the newly created lots and access to the remnant lot. The applicant/owner shall apply for approval of locations of access and each approach shall be built to Leduc County Development Standard.
4. Pursuant to Section 669(1) of the Municipal Government Act, Municipal Reserves in the amount of ten percent of the title area be deferred against the title of the larger remnant parcel.
5. Pursuant to Section 7(g) of the Subdivision & Development Regulation, the applicant/owner confirm that any existing sewage disposal system(s) on the subject property is/are in compliance with the *Private Sewage Disposal Systems Regulation* in force at the time of application. Should the existing system(s) not be in compliance, modifications to the existing system(s) or installation of new system(s) shall be require.
6. The subdivision be registered pursuant Alberta Land Titles requirements.

Carried

Next Meeting

The next scheduled Subdivision and Development Appeal Board meeting will be at the call of the Chair.

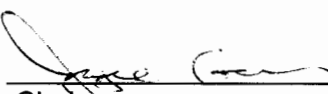
Adjournment

**26-19** Board Member Smith -- that the Subdivision and Development Appeal Board meeting be adjourned.

Carried

The Subdivision and Development Appeal Board meeting concluded at 10:15 a.m.

  
Chair

  
Clerk