

AGENDA

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

Thursday, November 7, 2019

1. **Order and Roll Call** – 9:00 a.m.
2. **Agenda Adoption**
3. **Adoption of Previous Minutes**
 - * September 12, 2019 Subdivision and Development Appeal Board Meeting
4. **Subdivision and Development Appeal Hearing**
 - * a) 9:00 a.m. SD19-044 Appeal by Gordon D. Putnam, Q.C., Putnam & Lawson, on behalf of Herman & Jeannie Eisenkrein, to subdivide an undeveloped ± 1.0 ha (± 2.47 ac) parcel for country residential use from a previous subdivision with a title area of ± 2.3 ha (± 5.51 ac) on Lot 1, Block 1, Plan 0724797, Pt. SE 32-50-23-W4 (50532 – Range Road 234)
Roll #725010
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 THURSDAY, NOVEMBER 7, 2019 IN THE COUNCIL CHAMBER OF THE COUNTY CENTRE BUILDING, NISKU, ALBERTA.

Order and Roll Call

The meeting was called to order at 9:00 a.m., Thursday, November 7, 2019 by Chair Mary-Ann McDonald as Chair with Board Members Pat Rudiger, Rod Giles and Larry Wanchuk present.

Also present were Ms. Joyce Gavan, Clerk; Laurie Stoetzel, Recording Secretary; Dave Desimone, Senior Planner; Rae-Lynne Spila, Senior Municipal Engineer; and 1 other individual.

Agenda Adoption

53-19 Board Member Rod Giles -- that the agenda for the November 7, 2019 Subdivision and Development Appeal Board meeting be accepted as circulated.

Carried

Previous Minutes – September 12, 2019 Subdivision and Development Appeal Board Meeting

54-19 Board Member Rod Giles -- that the September 12, 2019 Subdivision and Development Appeal Board meeting minutes, be accepted as circulated.

Carried

Appeal by Gordon Putnam, Q.C., Putnam & Lawson, on behalf of Herman and Jeannie Eisenkrein, whereby Subdivision Application SD19-044 was refused to subdivide an undeveloped ± 1.0 ha (± 2.47 ac) parcel for country residential use from a previous subdivision with a title area of ± 2.3 ha (± 5.51 ac) on Lot 1, Block 1, Plan 0724797, Pt. SE 32-50-23-W4 (50532 – Range Road 234).

Chair McDonald called the hearing to order at 9:01 a.m. and introduced Board Members and staff.

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

Joyce Gavan, Clerk, advised of the appeal by Gordon Putnam, Q.C., Putnam & Lawson, on behalf of Herman and Jeannie Eisenkrein, whereby Subdivision Application SD19-044 was refused to subdivide an undeveloped ± 1.0 ha (± 2.47 ac) parcel for country residential use from a previous subdivision with a title area of ± 2.3 ha (± 5.51 ac) on Lot 1, Block 1, Plan 0724797, Pt. SE 32-50-23-W4 (50532 – Range Road 234).

The reasons for appeal are as follows:

1. Notwithstanding policies 4.5.1.5, 4.5.1.6 and 8.1.0.2 of the Municipal Development Plan Bylaw 08-19, the Land Use Bylaw and the Edmonton Metropolitan Region Growth Plan, this appeal is being made pursuant to Section 654(2) of the Municipal Government Act which indicates that:
 - 2) *A subdivision authority may approve an application for subdivision approval even though the proposed subdivision does not comply with the land use bylaw if, in its opinion,*
 - (a) *the proposed subdivision would not*
 - (i) *unduly interfere with the amenities of the neighbourhood, or*



- (ii) *materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,*
- and
- (b) *the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.*

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

- 1) Staff Report
- 2) Notice of SDAB hearing package dated October 15, 2019
- 3) Notice of Appeal received October 10, 2019
- 4) Refusal by Subdivision Authority dated September 19, 2019 with refused site plan
- 5) Key Plan
- 6) Subdivision Application SD19-044
- 7) Air Photo
- 8) Proposed Subdivision Clear Plan
- 9) Tentative Plan of Subdivision
- 10) Summary of Submissions from Appellant, Gordon Putnam, on behalf of Jeannie & Herman Eisenkrein

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(s) if they had any objection to any of the members of the Subdivision and Development Appeal Board hearing this appeal, and Mr. Putnam expressed no objections.

Chair McDonald called upon the appellant to come forward.

Mr. Gordon Putnam, Q.C. introduced himself on behalf of Herman and Jeannie Eisenkrein.

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

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

Dave Desimone, Senior Planner, provided a PowerPoint presentation relating to the appeal on Subdivision File SD19-044, highlighting the following:

1. Rock Creek Estates is located between Silver Bear and Marquis Estate. Rock Creek Estates was conditionally approved in April of 2006 and endorsed in 2007. An application for the subdivision of this lot was refused in 2014 and again in 2016 by the Subdivision Authority.
2. Rock Creek Estates is located in the east half of the quarter section and is comprised of 18 lots. This application is proposing an additional lot which will bring the total residential lots for the entire quarter section to 37 lots. The quarter section is located within the Country Residential area as identified in the Leduc County Municipal Development Plan.



3. Policy 4.5.1.3 of the Municipal Development Plan states country residential development shall not exceed 50 residential lots per quarter section in accordance with the Edmonton Metropolitan Region Growth Plan. However, Policies 4.5.1.5 and 4.5.1.6 state infill of existing Country Residential subdivisions shall be encouraged where it is sensitive to the existing development and must respect the character of the existing development. The design of the proposed subdivision includes a property line perpendicular to the adjacent property, orienting the property line along the width of the existing lot rather than the depth, which is not in keeping with the character of the existing subdivision. This design would have the adjacent property owner share property lines with two developed properties, rather than one as the rest of the subdivision is designed. Administration is of the opinion this is a precedent setting change in the character and design of an existing country residential subdivision.
4. Due to the design, the proposed subdivision would also prevent the existing lot from having access to the internal road designed for the subdivision and would only have access to Range Road 234. The original conditional approval for Rock Creek Estates, dated April 26, 2006, expressly states each lot must have an access approach off internal roads only. The existing approach from the subject property to Range Road 234 still exists despite this requirement.
5. Policy 8.1.0.2 of the Municipal Development Plan stipulates as part of any land use decision, the County shall consider the safe, efficient and cost effective provision of transportation infrastructure services to ensure the sustainable development pattern within the County. Administration is of the opinion allowing country residential infill subdivisions to provide access to municipal roads rather than internal roads is also precedent setting and would encourage future country residential infill subdivision in this manner.
6. The applicants have submitted a drainage plan for this proposed subdivision which has been reviewed to the satisfaction of Public Works & Engineering.
7. There were seven (7) adjacent landowner comments submitted regarding the proposed subdivision. The full comments are included within this report.
8. The following referral comments were received:
Alberta Health Services – no objection; if well water is to be used, water availability tests are recommended to protect existing water well users from reduced volume or decreased water quality caused from the additional demand on the aquifer.
Leduc County Public Works & Engineering – the proposed south parcel currently has two access approaches. The access off of Range Road 234 will need to be removed to the satisfaction of Public Works & Engineering.
9. On September 17, 2019 the Subdivision Authority refused Subdivision Application SD19-044 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 08-19:
 - a) Policy 4.5.1.5 which stipulates that infill of existing country residential subdivisions is encouraged where it is sensitive to the existing development;
 - b) Policy 4.5.1.6 which stipulates infill of existing country residential subdivisions must respect the character of the existing subdivision; and



- c) Policy 8.1.0.2 which stipulates as part of any land use decision, the County shall consider the safe, efficient and cost-effective provision of transportation infrastructure services to ensure the sustainable development pattern within the County.
- 2) There were seven (7) adjacent landowners that submitted a letter indicating they are against the proposed subdivision.
- 3) The policies of the Municipal Development Plan, Land Use Bylaw and Edmonton Metropolitan Region Growth Plan are not met by this application.

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

In response to questions from Board Members, Mr. Desimone provided the following information:

1. Access to the house was always to Range Road 234 prior to the subdivision.
2. Condition of subdivision approval in 2006 was that the access be changed from Range Road 234 to the internal roadway but this did not get completed.

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

Mr. Gordon Putnam, Q.C., on behalf of Herman and Jeannie Eisenkrein, appellants, provided the following information:

- 1) The Eisenkrein's have retained me to handle this appeal and only reviewed the report once the agenda was created.
- 2) Reviewed application, location, policies and reasons for refusal.
- 3) The subdivision as proposed contravenes the land use policies. Is there sufficient planning merit that the SDAB can exercise its discretion?
- 4) The LUB and MDP have to be considered, is there sufficient reasons to allow?
- 5) The proposed subdivision is suitable for the intended use as it is already designated Country Residential.
- 6) This subdivision was approved in 2007 for 36 lots including the access to the remnant lot off of RR 234. Mr. Eisenkrein paid a 10,000 deposit to maintain Range Road 234.
- 7) The lot sizes are different, so there is no uniformity as within the city.
- 8) The application is suitable but does not conform to objectives of LUB and MDP. Pursuant to s. 654(2) of MGA, the proposal would not unduly interfere with the amenities of the neighbourhood.
- 9) Disagrees that approval is not sensitive to the existing character. Will not significantly change the character or have a high impact on the subdivision.
- 10) Creating new lots would not impact existing services; no new draw on services by developer or the County.
- 11) The proposal of 37 lots from 36 lots would have minimal impact on infrastructure services.
- 12) The proposed lot is suitable for Country Residential lots as there is a building pocket and soil conditions are suitable.
- 13) There is a history of the drainage and a Drainage Plan was submitted which was approved by Public Works & Engineering. Not prone to flooding.
- 14) There is access to the south parcel from the internal road and an existing approach to the north parcel from RR 234; which was used prior to the original subdivision being approved therefore no new access is required.



- 15) This property is unique as it is serviced with power, gas and internet at the property line. Water supply is by cistern and an approved private sewage disposal system would be installed.
- 16) Neighboring landowner opposition is a concern however, 7 landowners supported the application and there is nothing in the opposition letters with evidence regarding drainage problems or diminishing of property values.
- 17) There is merit regarding the EMGP with no more than 50 lots but this lot is unique. One lot in the subdivision is bigger than the rest and can be subdivided due to alignment of lots and basic design of the subdivision.
- 18) There is an existing access to the house so no additional work is required.
- 19) The proposed subdivision would not unduly interfere with the value and enjoyment of landowners.

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

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

- The applicants did not disclose the reason to subdivide as it is not necessary to a planning decision.
- The applicants have created a wind buffer and the parcel is physically severed already.
- The approach off Range Road 234 was approved in the final acceptance certificate.
- The Eisenkrein's are the developer of the subdivision.
- Water will flow to south ditch and follow the drainage course.
- Are aware of some issues with neighbors on west side; they have created trees and landscaping features on Eisenkrein's property.
- The Applicants are prepared to do whatever else is required.

Chair McDonald asked the Clerk to read/present any other relevant information and/or correspondence. Ms. Gavan advised there were no submissions.

Chair McDonald noted there was no one in attendance to speak in support or against the appeal.

Chair McDonald called upon administrative staff to provide final comments.

Senior Planner Dave Desimone provided the following closing comments:

- The \$10,000 fee that was paid by the applicant in 2016 was for deficiencies that were required to be made to the internal road not for the maintenance of Range Road 234 as submitted by Mr. Putnam.
- The condition that all accesses must be via the internal access road has not been done nor followed up on by the applicants.
- There is some planning merit to the application, to encourage infill of up to 50 lots.
- A change in the character and design of this existing subdivision would set a precedence.
- Also precedent setting is to allow access onto Range Road 234 when lots are to be accessed via internal road. Compliance aside, would set precedence for infill development to have access to the range road vs internal road.
- If the subdivision is granted, a provincially approved private sewage system would be accepted. Holding tanks, field or a mound would require soil testing.

Municipal Engineer Ray Lynne Spila also provided the following clarification:



- With respect to enforcement of access onto Range Road 234, the County cannot force the developer to comply until a new development or subdivision application is submitted and approved.
- The drainage plan will work with the drainage channeled to the front ditch; this needs to be rectified whether the subdivision is approved or not.

Chair McDonald called upon the appellant to provide final comments.

Mr. Putnam, on behalf of Herman and Jeannie Eisenkrein, provided the following closing comments:

- The proposal does not exceed 50 lots per quarter which is the maximum as set out in the Edmonton Metropolitan Region Growth Plan.
- The subject lot is unique in size, location and access (both internal and via RR 234). No other lots in this subdivision could present the case so we argue it is not setting precedent.
- Access to the existing and proposed lot is efficient, safe and cost-effective as they both exist and no additional work is required by Leduc County.
- The drainage plan submitted has been approved by Public Works & Engineering.

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

Conclusion of Public Hearing

Chair McDonald declared the Public Hearing concluded at 9:52 a.m.

Messrs. Putnam and Desimone and Ms. Spila

Messrs. Putnam and Desimone and Ms. Spila exited the Council Chamber at 9:53 a.m.

In Camera

55-19 Board Member Giles -- that the Subdivision and Development Appeal Board meet In Camera.

Carried

The In Camera session commenced at 9:54 a.m.

Revert to Subdivision and Development Appeal Board Meeting

56-19 Board Member Giles -- 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 10:24 a.m.

Appeal by Gordon Putnam, Q.C., Putnam & Lawson, on behalf of Herman and Jeannie Eisenkrein, whereby Subdivision Application SD19-044 was refused to subdivide an undeveloped ± 1.0 ha (± 2.47 ac) parcel for country residential use from a previous subdivision with a title area of ± 2.3 ha (± 5.51 ac) on Lot 1, Block 1, Plan 0724797, Pt. SE 32-50-23-W4 (50532 – Range Road 234).

57-19 Board Member Rudiger – that the Subdivision and Development Appeal Board disallow the appeal by Gordon Putnam, Q.C., Putnam & Lawson, on behalf of Herman and



Jeannie Eisenkrein and upholds refusal of Subdivision Application SD19-044 to subdivide an undeveloped ± 1.0 ha (± 2.47 ac) parcel for country residential use from a previous subdivision with a title area of ± 2.3 ha (± 5.51 ac) on Lot 1, Block 1, Plan 0724797, Pt. SE 32-50-23-W4 (50532 – Range Road 234).

Findings of Fact

- 1) The subject property is located in the east half of the quarter section and is comprised of 18 lots. This application is proposing an additional lot, which will bring the total residential lots for the entire quarter section to 37 lots. The quarter section is located within the Country Residential area as identified in the Leduc County Municipal Development Plan.
- 2) The design of the proposed subdivision includes a property line perpendicular to the adjacent property, orienting the property line along the width of the existing lot rather than the depth, which is not in keeping with the character of the existing subdivision. This design would have the adjacent property owner share property lines with two developed properties, rather than one as the rest of the subdivision is designed.
- 3) Due to the design, the proposed subdivision would also prevent the existing lot from having access to the internal road designed for the subdivision and would only have access to Range Road 234. The original conditional approval for Rock Creek Estates, dated April 26, 2006, expressly states each lot must have an access approach off internal roads only. The existing approach from the subject property to Range Road 234 still exists despite this requirement.
- 4) The subject lot was approved in 2007 with a condition that the access be removed from Range Road 234. Leduc County Public Works & Engineering have also indicated the access onto Range Road 234 will need to be removed if the proposed subdivision is approved.
- 5) The appellant submitted the two accesses would remain as they exist; access onto Range Road 234 has been in existence prior to the original subdivision being approved and there would be no impact on transportation infrastructure services. There was no evidence presented to confirm the impact on transportation infrastructure.
- 6) Policy 8.1.0.2 of the Municipal Development Plan stipulates that as part of any land use decision, the County shall consider the safe, efficient and cost effective provision of transportation infrastructure services to ensure the sustainable development pattern within the County.
- 7) The drainage plan submitted would be acceptable by the Leduc County Public Works & Engineering department.
- 8) There were seven letters of support and seven letters in opposition.

The Board considered the following relevant statutory and planning documents:

Municipal Development Plan

1. *Policy 4.5.1 Country Residential Development* has historically been concentrated on lower capability soils in the northeast area of the County. To continue to provide rural living opportunities, lands districted Country Residential or designated Country Residential by this Plan will continue to accommodate this type of development.
2. *Policy 4.5.1.5* states that infill of existing country residential subdivisions is encouraged where it is sensitive to the existing development.



3. *Policy 4.5.1.6* states that infill of existing country residential subdivisions must:
 - a. have a suitable building site as defined within the Leduc County Land Use Bylaw;
 - b. be serviced by water, wastewater, stormwater and transportation infrastructure to the satisfaction of the County and province, where applicable
 - c. not fragment contiguous natural areas or have negative impact on the adjacent environmentally significant areas; and
 - d. respect the character of the existing subdivision.
4. *8.1.0.2 Transportation Infrastructure* – as part of any land use decision, the County shall consider the safe, efficient, and cost-effective provision of transportation infrastructure services to ensure a sustainable development pattern within the County.

The Board affirms:

- that country residential infill subdivisions that provide access to municipal roads rather than internal roads is precedent setting and would encourage future country residential infill subdivision in this manner;
- that the character of the subdivision would be altered by orienting the property line along the width of the existing lot rather than the depth; and
- that the existing approach from the subject property to Range Road 234 still exists despite the requirement by Leduc County to have this access removed since 2006.

Reasons for Refusal

- 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 08-19:
 - a) Policy 4.5.1.5 which stipulates that infill of existing country residential subdivisions is encouraged where it is sensitive to the existing development;
 - b) Policy 4.5.1.6 which stipulates infill of existing country residential subdivisions must respect the character of the existing subdivision; and
 - c) Policy 8.1.0.2 which stipulates as part of any land use decision, the County shall consider the safe, efficient and cost-effective provision of transportation infrastructure services to ensure the sustainable development pattern within the County.
- 2) The policies of the Municipal Development Plan, Land Use Bylaw and Edmonton Metropolitan Region Growth Plan are not met by this application.

Carried

Next Meeting

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



Adjournment

58-19 Board Member Wanchuk -- that the Subdivision and Development Appeal Board meeting be adjourned.

Carried

The Subdivision and Development Appeal Board meeting concluded at 10:25 a.m.

A handwritten signature in blue ink, appearing to read "McDonald", written over a horizontal line.

Chair

A handwritten signature in blue ink, appearing to read "D. G.", written over a horizontal line.

Clerk