



AGENDA

INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD (ISDAB)

COUNCIL CHAMBER, LEDUC COUNTY CENTRE, NISKU

Thursday, March 23, 2023

1. **Order and Roll Call – 10:30 a.m.**
2. **Agenda Adoption**
3. **Subdivision and Development Appeal Hearing SDAB 03-2023**

* a) **10:30 a.m.**

Apellant	Jeff Fenske
Applicant:	Jeff Rup
Landowner's name	Krzysztof Rup and Jolanta Rup
Leduc County Municipal Roll #	298000
Legal description of subject property	SE 27-50-22-W4
Title area:	±43.69 ha (±107.95 ac)
Proposed parcel:	±16.2 ha (±40 ac)
Subdivision application #:	SD22-034

4. **Next meeting date** - to be determined
5. **Adjournment**

Legend

* Items Attached To Agenda

** To be provided

MINUTES OF THE INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD MEETING, LEDUC COUNTY, HELD ON THURSDAY, MARCH 23, 2023, IN THE COUNCIL CHAMBER OF THE COUNTY CENTRE BUILDING, NISKU, ALBERTA.

Order and Roll Call

The meeting was called to order at 10:31 a.m., Thursday, March 23, 2023, by Chair Mary-Ann McDonald with board members Rick Thomas, Gerd Andres, Pat Rudiger and Kelly-Lynn Lewis present.

Present as well were the following:

- Joyce Gavan, Clerk
- Miranda Anderson, Recording Secretary
- Charlene Haverland, Manager – Development Services
- Kala Raymond, Planner – Development Services
- Jeff Fenske, Appellant
- Amelia Fenske, Appellant's wife

Agenda Adoption

01-23 Board member Lewis -- that the agenda for the March 23, 2023 Intermunicipal Subdivision and Development Appeal Board meeting be accepted as circulated.

Carried

Appeal by Jeff Fenske - refusal of Subdivision SD22-034 located at SE-27-50-22-W4, Leduc County, Alberta, Roll #298000

Chair McDonald called the hearing to order at 10:33 a.m. and asked those in attendance to introduce themselves.

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

Joyce Gavan, Clerk, advised of the appeal by Jeff Fenske relating to refusal of Subdivision application SD22-034, located at SE-27-50-22-W4, Leduc County, Alberta.

The reasons for appeal submitted by Mr. Fenske within the notice of appeal received March 7, 2023 are included in the agenda package on pages 10 – 14.

Clerk Joyce Gavan advised the following submissions are provided as part of the hearing package for the Board:

- 1) Appeal received March 7, 2023
- 2) Notice of refusal by Subdivision Authority issued February 24, 2023
- 3) Subdivision Authority's submission
- 4) Appellant's submission

It was confirmed the appeal was submitted properly and is acceptable to the Board.

Chair McDonald asked if any board members 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 Intermunicipal 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 presentations, and the procedures to be followed.

Chair McDonald then called upon the Subdivision Authority to provide background information.

Charlene Haverland, on behalf of the Subdivision Authority, provided a presentation relating to the refusal issued by the Subdivision Authority:

- Introduced the file, including location with map and aerial views (see agenda package pages 24 – 25).
- Ms. Haverland noted an error in GIS labelling on the key plan (page 24), and clarified that the aerial map shows TR 504, but the key plan labels it as Hwy 625. Hwy 625 does not carry past Hwy 21, so the key plan incorrectly labels TR 504 as Hwy 625.
- The application in front of the Board is for a 40-acre parcel, proposed off TR 504.
- Planning and Development recommended a refusal of this application to the Subdivision Authority, with respect to the policies that are in place for the Municipal Development Plan (MDP) and the Land Use Bylaw (LUB).
- Under the 2019 MDP, this area is located in Agricultural Area D, which stipulates that small holdings, such as a 40-acre parcel, should be limited to a farmstead separation, physical severance, agricultural subdivision, or small holdings subdivision.
- Section 4.3.10 of the MDP says there should be no more than three subdivisions or four title areas per quarter section in Agricultural Area D.
- This would be the seventh subdivision of the quarter section, which is incremental unplanned development and surpasses the allowable number of parcels.
- The LUB itself does not conform to Policy 9.21 within the Agricultural Country Residential Transitional District, which does allow for larger agricultural operations, but provides for limited residential. This parcel is being proposed as a large country residential lot, and therefore Planning and Development could not support it.
- The policy within the LUB states that accesses should be provided by an internal road if there are three or fewer parcels; currently there are six, which would not meet that policy given that it has exceeded that amount. As well, there is currently no opportunity for an internal road network.
- The LUB states that the maximum size should be 2.47 to 2.494 acres and should be no larger than is required to include buildings and natural features reasonable to the lot.
- The policy within the Edmonton Metropolitan Regional (EMR) Growth Plan also states that in rural areas, large contiguous areas should be protected to support the agricultural sector; the proposed subdivision does not meet that intent.
- The Subdivision Authority considered this application on February 21, 2023. The recommendation from staff was to refuse it based on policy.
- The applicants have the opportunity to appeal the decision of the Subdivision Authority which is why it is in front of the Board, to determine a decision of approval or refusal of the application.
- There were no adjacent landowner comments received regarding this application.



and sees very limited opportunity for further subdivision within those 40 acres, due to the long, oblong shape that it is. An internal road network off TR 504 would not be possible to bring it into compliance due to the physical characteristics of the parcel.

Chair McDonald asked if there were any questions by the Board members of Subdivision Authority staff.

In response to questions from Board members, Ms. Haverland advised of the following:

- The land is of low capability and has not been farmed in over 20 years.
- In planning, precedent is not taken into consideration. Applicants have the ability to appeal and the LUB does allow for subdivisions to happen. Administration has made recommendations over the years. The first subdivision was approved in 1989 and policy allowed for it; in 2006, two more subdivisions happened after they were refused and then appealed. Another was subdivided in 2016 with a recommended refusal, but they were given another parcel. This is called incremental unplanned development. While there has been precedent set, it should not guide future decisions.
- The EMR Growth Plan covers the County and identifies a priority growth area that surrounds Nisku to Hwy 21. The EMR Growth Plan is a high-level, hierarchy document to guide planning that identifies growth areas but also seeks to preserve agricultural lands. It is an overall plan of the area, but it is still a municipality's prerogative to make these subdivision decisions.
- Area D allows for small agricultural holdings. The other six properties are not considered small agricultural holdings due to their size. In 1989, the first parcel subdivided was 47 acres, which met the requirements, but it was further subdivided. It exceeds the number of parcels allowed under the new MDP for a quarter section for small holdings.
- The MDP objective is to preserve and protect agricultural land, but also allows small agricultural holdings if appropriate.
- Given that it is on low capability land, it was recognized that there would be more small holding parcels on this land, which would provide more opportunity. The reason that it was recommended for refusal was that it exceeds the number of parcels that the MDP allows.

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

Jeff Fenske, appellant, provided the following:

- The land is considered Class 3 – low viability for cropland without any supplemental care and attention. The previous owner says it only ever had pasture animals and the land is rolling and the lowest quality compared to the other parcels. It matches with the other 5 parcels, allowing the larger parcel to be closer to RR 222, which could still be used for passive agriculture if ever sold.
- A talking point arising from the Subdivision assessment was the hydrological assessment that was not done on the land. Given the minimal infrastructure planned, there shouldn't be a threat for flooding neighbouring properties.
- Page 11 of the agenda package shows the tentative plan for the shop with a back agricultural portion for horses and cows.
- Page 13 shows the neighbouring properties and the colourful parcels highlight those that exceed the allowable number of parcels. Some members of the Subdivision Authority were in favour of the



subdivision, stating that precedent had been set and noting this was likely allowed due to the poor viability of the lands.

- As a majority landowner of the 107 acres, with everything that has happened they feel they should also have the opportunity to subdivide so their kids can grow up there. As longtime residents and active members of the community they are hoping to set their roots there.

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

In response to questions from Board members, Mr. Fenske advised the proposed parcel will be coming off Hwy 504.

In response to a question, Ms. Haverland advised that the policy now is two accesses allowed and there are currently none on TR 504. The other accesses are off RR 222.

In response to questions from Board members, Mr. Fenske advised of the following:

- He had an informal discussion with Council members. Councillors Smith and Viridi were in favour, and Councillor Smith understands the value of the land is not good and participating in the tax base would be good for the community.
- They are planning to have horses, cows, and chickens on the land. It is about finding the right balance with the soil.
- There is a tree stand that's poplar. The rest of the land is rolling low line area. A resident in the area has sheep on his four acres.

Chair McDonald asked if there was anyone who wished to speak in support of the appeal (opposed to the subdivision refusal) and there was no one.

Chair McDonald asked if there was anyone who wished to speak against the appeal (in support of the refusal by the subdivision authority) and there was no one.

Chair McDonald asked if there were any written submissions and the Clerk confirmed there were none.

Chair McDonald called upon administrative staff to provide final comments.

Charlene Haverland, Subdivision Authority, provided the following final comments:

- This is the seventh parcel on this quarter section, and while precedent has been set, continued precedent is not good planning. They do recognize that every application is individual and should be considered on its own merit.
- Administration can only make a recommendation based on policy. The MDP was adopted by Council and did limit the parcels out of a quarter section. Administration is obligated to follow policy and has no authority to vary policy; the Subdivision Authority had that authority and chose not to vary. It is before the Board to decide if they will approve or refuse the application.
- Administration would recommend that we uphold the policies of the MDP and refuse the application.



Chair McDonald asked Board members if they had any questions of administration. Ms. Haverland provided the following:

- The subject lands are located in the Beaver Hills Initiative Area. While the lands are in the area, it would not entail further protection due to its size of 40 acres.
- The drainage system through the property has some impact on the biosphere. There could be a long-term effect if the subdivision were to be supported. This would be addressed in the development process; a drainage plan would be required, along with analysis of the drainage system for any house being proposed.

Chair McDonald asked Board members if they have any further questions, and there were none.

Chair McDonald called upon the appellant to provide final comments.

Jeff Fenske, appellant, provided the following closing comments:

- The appellant hopes the Board will take into consideration that the request is genuine and they are currently living with the parents (landowners).
- They feel it meshes with the local lot strategies. i.e., with multiple parcels outside of what is allowable.
- The lot is linear and long and they have no intention of further subdividing.
- The appellant has professional experience with hydrological assessments with Stantec and knows it won't affect shed of water towards other regions.

Chair McDonald asked if Board members had any questions for the appellant.

In response to questions from Board members, the appellant provided the following.

- The long-term intent is to build a house and not subdivide further.
- This is the appellant's in-laws' property.

Chair McDonald asked the appellant, Jeff Fenske, if he felt he received a fair hearing, and he responded affirmative.

Conclusion of Public Hearing

Chair McDonald declared the hearing concluded at 11:06 a.m.

Recess

The hearing recessed at 11:07 a.m. and reconvened at 11:10 a.m. with the following people in attendance: Chair McDonald and Board members Rick Thomas, Pat Rudiger, Gerd Andres and Kelly-Lynn Lewis.

Present as well were the following:

- Joyce Gavan, Clerk
- Miranda Anderson, Recording Secretary



In-Camera

02-23 Board Member Thomas -- that the Intermunicipal Subdivision and Development Appeal Board meet in-camera.

Carried

The in-camera session commenced at 11:10 a.m.

Revert to Intermunicipal Subdivision and Development Appeal Board Meeting

03-23 Board Member Rudiger -- that the in-camera session revert to the Intermunicipal Subdivision and Development Appeal Board meeting.

Carried

The in-camera session reverted to the Intermunicipal Subdivision and Development Appeal Board meeting at 11:37 a.m.

Appeal by Jeff Fenske - refusal of Subdivision SD22-034 located at SE-27-50-22-W4, Leduc County, Alberta, Roll #298000

04-23 Board Member Rudiger -- that the Intermunicipal Subdivision and Development Appeal Board allow the appeal by Jeff Fenske and conditionally approves Subdivision Application SD22-034 to subdivide one ± 16.2 ha (± 40 ac) parcel from a previously subdivided quarter section of ± 43.69 ha (± 107.95 ac).

Preliminary matters

1. The Chair confirmed with the parties in attendance that there was no opposition to the composition of the Board.
2. The Board confirmed the appeal was submitted to the correct Board in accordance with S. 656(2) of the Municipal Government Act, RSA 2000, c M-26.
3. The Board confirmed the appeal meets the requirements of Section 686 of the Municipal Government Act, RSA 2000, c M-26 relating to filing notice of appeal.

Findings of fact

1. The subject lands are located at Township Road 504 and Range Road 222A. The proposed subdivision represents the seventh (7th) parcel out of this quarter section. Records indicate that a 19.33 ha (47.76 ac) parcel was subdivided from the quarter section in 1989. Two 4.09 ha (10.01 ac) parcels and one 11.13 ha (27.5 ac) parcel was subdivided from the quarter in 2006 and one parcel was subdivided in 2016.
2. The map provided within the appellant's submission highlighted the land ownership and location to similar multi-lot quarters exceeding policy allotments. There have been approvals of multiple lots on Range Road 222 just east off Township Road 504; that property has ten (10) titled pieces exceeding planning limits. The quarter on the bend off Range Road 222A north of the subject lands has eight (8) parcels exceeding policy limits. Another quarter to the south on Range Road 222A is another quarter exceeding planning limits. Additionally there are a number of forty (40) acre parcels in and around the area similar to the subject of this appeal.
3. The topography of the land is rolling with low capability soil (Class 3) and best suited for pasture use (raising cows, horses, chickens and sheep).

4. The appellant submitted there is no intent to further subdivide the subject lands. They wish to reside in this area and raise their three children where both sets of grandparent reside on Township Road 504 and Hay Lakes, making use of the lands in accordance with Policy 4.3.1.9 (Agriculture Area D. Smallholdings).
5. The proposed subdivision meets the Municipal Development Plan Policy described within 4.3.02 Area D - Smallholding being the subject parcel is 40 acres, surrounded by a mixture of multi-lot subdivisions and other smallholding parcels and consists of lower capability soils best suitable for pasture farming.
6. There were no adjacent landowner comments submitted regarding the proposed subdivision.

Legislative framework

The Board considered the following legislation in making their decision:

Municipal Development Plan (MDP) Bylaw No. 08-19

4.3 Agriculture

Principle

The County champions the importance of agriculture and is committed to ensuring its long-term viability.

Objectives

1. To conserve agricultural land on a comprehensive basis as a means of ensuring the long-term viability of agriculture.
2. To minimize fragmentation of agricultural land for purposes that is not supportive to the agricultural industry.
3. To minimize the loss of agricultural land by limiting the amount of land converted to a non-agricultural use.

General Policies

4.3.02 Area D – Smallholding

To provide for agricultural activities on smaller tracts of land.

4.3.1.9 Agriculture Area D. Smallholdings

To support diversification of agricultural operations on smaller tracts of land and to minimize potential impacts on the Beaverhills UNESCO Biosphere, subdivision in Agricultural Area D.

Smallholding, subdivision shall be limited to:

- a. Farmstead subdivision;
- b. Physical severance;
- c. Agricultural subdivision;
- d. Smallholding subdivisions

4.3.10

There shall be no more than three subdivisions (four titled areas) per quarter section in Agricultural Area D. Smallholding.

4.3.1.11

Of the three subdivisions (four titled areas) referred to in Policy 4.3.1.10, a maximum of one subdivision may be a Farmstead subdivision.



4.3.1.12

Subdivision of a Smallholding shall be specific to the existing or proposed agricultural operation and shall be supported by a plan that describes the agricultural operation and its requirements, including but not limited to:

- a. size and location of parcel;
- b. soil characteristics and topography;
- c. access, water wells, irrigation, sewage infrastructure and manure management needs; and;
- d. any potential impacts on air quality, surface water, environmental features, groundwater and surrounding properties.

Edmonton Metropolitan Region Growth Plan

Objective 6.2

Minimize the fragmentation and conversion of prime agricultural lands for non-agricultural uses.

6.2.2 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.

Leduc County Land Use Bylaw No. 7-08

Part 9.2.1 the purpose of the Agricultural/Country Residential Transitional District is to provide primarily for larger agricultural operations, while at the same time providing for limited residential and other uses having a secondary role to agriculture.

Part 9.3.8 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.

Part 10.1.4 that unless otherwise indicated in a statutory plan, the sizes for new residential lots should be minimum 1 ha (2.47 ac) and maximum 2.0 ha (4.94 ac).

Reasons for decision

In consideration of the above, the Board concludes:

1. The proposed subdivision meets the objectives and policies of the Municipal Development Plan.
2. The conditional approval will address the requirements, including but not limited to:
 - (a) Minimize potential impacts on the Beaverhills UNESCO Biosphere;
 - (b) Size and location of parcel;
 - (c) Soil characteristics and topography;
 - (d) Access, water wells, irrigation, sewage infrastructure and manure management needs; and
 - (e) Any potential impacts on air quality, surface water, environmental features, groundwater and surrounding properties.
3. The Board is satisfied the lands are compatible with the surrounding area in that there are several multi-lot quarters comprised of multi-lot subdivisions.

Decision

In consideration of the above, the Intermunicipal Subdivision and Development Appeal Board approves Subdivision Application SD22-034 to subdivide one ± 16.2 ha (± 40 ac) parcel from a previously subdivided quarter section of ± 43.69 ha (± 107.95 ac), subject to the following conditions:

1. Pursuant to Section 655(1)(b) of the Municipal Government Act, the applicant/owner (shall) enter into a development agreement with Leduc County and abide by the terms therein. The development agreement shall include, but is not limited to the:
 - i) provision for lot grading and/or filling; and
 - ii) design and construction of a storm water management system prepared by a certified engineer.
2. Pursuant to Section 654(1)(d) of the Municipal Government Act, all outstanding taxes are to be paid or make arrangements satisfactory with Leduc County for the payment thereof;
3. Pursuant to Section 7(g) of the Subdivision & Development Regulation, confirm any existing sewage disposal system(s) on the subject property is/are in compliance with the *Private Sewage Disposal Systems Regulation*. Should the existing system(s) not be in compliance, the applicant/owner shall either modify the existing system(s) or install a new system;
4. Pursuant to Section 9(a) of the Subdivision and Development Regulation, the applicant/owner shall provide access to each lot created. Approaches shall be constructed to Leduc County Development Standard;
5. Pursuant to Section 669(1) of the Municipal Government Act, municipal reserves in the amount of ten percent of the title area shall be deferred to the title of the remnant parcel; and
6. That the subdivision be registered pursuant Alberta Land Titles requirements.

Carried

Other importation information for the appellants/applicant

This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26.

An application for leave to the appeal must be made to the Court of Appeal within 30 days after the issue of this decision and notice of the application must be given to the Intermunicipal Subdivision and Development Appeal Board and any other persons that the court directs.

Next Meeting

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

Adjournment

05-23 Board Member Lewis -- that the Intermunicipal Subdivision and Development Appeal Board meeting be adjourned.

Carried



The Intermunicipal Subdivision and Development Appeal Board meeting concluded at 11:38 a.m.


Chair
Clerk