
Appeal File Number:	018-STU-005
Application Number:	2018-S-005
Appeal Against:	Subdivision Authority of Sturgeon County
Applicant/Appellant:	Robert and Bernice Riopel
Date and Location of Hearing:	July 3, 2018 Sturgeon County Council Chambers – 9613-100 Street, Morinville, AB
Date of Decision:	July 3, 2018
SDAB Members:	Erick Liebl, Chair Lee Danchuk, Chris Kluthe, Wayne Bokenfohr

NOTICE OF DECISION

IN THE MATTER OF an appeal by Robert and Bernice Riopel against the Subdivision Authority's Conditions of Approval on a subdivision application for a property line adjustment on SW-26-56-26-W4M within Sturgeon County.

- [1] This is the decision of the Sturgeon County Subdivision and Development Appeal Board (the "SDAB" or "Board") on an appeal filed with the SDAB pursuant to section 678 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the "MGA" or "Act").
- [2] In making this decision, the Board reviewed all the evidence presented and considered provisions of the *Municipal Government Act*, Sturgeon County's Land Use Bylaw 1385/17, Sturgeon County's Municipal Development Plan (MDP), Sturgeon County's General Municipal Servicing Standards, Sturgeon County's Grid Road Right-of-Way Dedication and Acquisition Policy, and any amendments thereto.

PRELIMINARY MATTERS

- [3] There were no preliminary matters addressed at this hearing.

PROCEDURAL MATTERS

- [4] The appeal was filed on time and in accordance with section 678 of the MGA.
- [5] There were no objections to the proposed hearing process as outlined by the Chair.
- [6] There were no objections to the composition of the Board hearing the appeal.

[7] The Board is satisfied that it has jurisdiction to deal with this matter.

ISSUE

[8] The Applicant/Appellant raised the following grounds of appeal:

a. Unreasonable requests regarding conditions of approval numbers 3, 4 and 6 as listed below:

Condition 3: Pursuant to Provision 662(1) of the MGA, as illustrated in Exhibit 2 and as required by Sturgeon County Engineering Services, a 5-metre wide area parallel and adjacent to the boundary of both parcels and all adjacent roads shall be acquired by Sturgeon County in the future via the terms and conditions of a land acquisition agreement (note: this agreement to be prepared by Sturgeon County).

Condition 4: All upgrades to *existing* culverts and/or *existing* approaches, as determined necessary by the Developing Engineering Officer will be the responsibility of the developer and upgraded to the satisfaction of Sturgeon County Engineering Services and/or Sturgeon County Transportation Services *before* this subdivision is endorsed.

Condition 6: The developer shall apply and obtain approval for development and building permits for the unauthorized mobile home (i.e. double fee penalty applies). All other structures require farm building forms (or potentially development permits if not used for farm purposes), to the satisfaction of the Development Officer.

SUMMARY OF THE DEVELOPMENT AUTHORITY'S POSITION

Hayley Wasylycia, representative for the Development Authority submitted the following report:

Background and Property Information

[9] A subdivision application pertaining to a property located about 2.0 kilometres east of Mearns was approved by Sturgeon County's Municipal Planning Commission ("MPC") on June 5, 2018.

[10] The proposal involves adjustment of a lot line dividing two parcels (± 90 m) to eliminate a fragmentation caused by the Manawan Drainage Ditch.

[11] The purpose of this appeal to the SDAB pertains to the Applicant's submissions with respect to conditions 3, 4, and 6 as listed in the subdivision approval letter. These conditions refer to Sturgeon County's acquisition of a 5-metre right of way via land acquisition agreement, necessary upgrades to existing culverts and approaches, and the double fee penalty for development and building permits, respectively.

Stakeholder Feedback

[12] Sturgeon County Planning and Development Technician: An unauthorized mobile home from 1985 requires both a building permit and development permit (double fee penalties apply). Floor

plans and photos of the mobile home are required to apply for these permits. A farm building confirmation form and accompanying photos are required for the farm buildings.

[13] Engineering Services Report:

Proposed Lot (i.e. southern quarter-section):

- a. Geotechnical investigation recommended prior to any future development.
- b. Land acquisition requirements: 5 m via caveat on Twp Rd 564 and Rge Rd 262.
- c. Approach: upgrades required.

Remnant Lot (i.e. northern quarter-section):

- a. Geotechnical investigation recommended prior to development.
- b. Land acquisition requirements: 5 m via caveat on Twp Rd 565 and Rge Rd 262.
- c. Approach: None. Prior to development, the applicant must submit an Approach Application to determine access requirements. Two approaches are recommended due to fragmentation caused by drainage ditch.

[14] Fortis Alberta: No objections. Landowner may apply for electrical services.

[15] Telus: No objections, however any relocation of existing facilities will be at developer's expense. Arrange for field locating if excavating.

[16] Sturgeon County Agriculture Services: Proposal lowers the risk of future fragmentation.

[17] Alberta Health Services / Sturgeon County Assessment Services: No objections.

Relevant Legislation

General Municipal Servicing Standards ("GMSS")

[18] Part A.1.3 implies that the GMSS should be considered as *minimum* standards (only), and that certain circumstances may necessitate more "stringent" solutions to address unique or existing challenges. In addition to the GMSS, Engineering Services use best-practice recommendations from the Transportation Association of Canada as well as the Highway Geometric Design Guide, since the GMSS does not provide specific guidance for all situations.

Grid Road Right-of-Way Dedication and Acquisition Policy

[19] Parts 1 and 4 state that Sturgeon County is to use this policy to, "use the subdivision approval process to protect lands for future grid road upgrades," by "conditioning approvals for the subdivision of lands adjacent to grid roads to obtain additional road right-of-way via dedication and/or acquisition."

- [20] Part 6 outlines conditioning these subdivision approvals adjacent to grid roads in accordance with the policy as a responsibility, and not an option: *“The Subdivision Authority has the responsibility to condition subdivision approvals adjacent to grid roads consistent with this policy.”*

Land Use Bylaw 1385/17

- [21] Section 1.6 (Terminology) regarding “Land Fragmentation”: *“Land fragmentation means when a natural or man-made boundary, such as a stream or river, transportation network or registered drainage course, physically divides the landscape. Lands identified as riparian zones or intermittent (unregistered) natural or man-made drainage ways do not constitute grounds for fragmentation.”*
- [22] Section 2.4 (Application for Development Permit): *“An application for a development permit shall be made to the Development Authority on the proper application form. All development permit applications shall adhere to the minimum requirements outlined within the latest version of Sturgeon County’s General Municipal Servicing Standards.”*
- [23] Section 11.1 regarding the ‘Agriculture’ land use district was provided in the agenda package and reviewed.

Municipal Development Plan – Bylaw 1313/13

- [24] Policy 1.4.1 commits Sturgeon County to “apply the full entitlements of environmental, municipal and school reserve dedication during the subdivision process, in accordance with the Municipal Government Act (MGA) and based on the needs of Sturgeon County.”
- [25] Policy 1.4.2 commits Sturgeon County to incorporating the requirements of the Subdivision and Development Regulation, including “direct access to a road, or lawful means of access satisfactory to the subdivision authority”, among other matters.
- [26] Policy 1.4.4 commits Sturgeon County to supporting “right-to-farm legislation by applying the requirements outlined within the Province of Alberta’s Agriculture Operations Practices Act (AOPA). When referred to by the Natural Resources Conservation Board (NRCB), Sturgeon County will apply the objectives of the Integrated Regional Growth Strategy (IRGS) in the referred evaluation (i.e., new or expanding Confined Feeding Operations).”
- [27] Policy 1.4.9 regarding Sturgeon County’s commitment to ensuring that subdivision approval triggers all upgrades necessary to “meet or exceed” requirements outlined within the General Municipal Servicing Standards (GMSS): “Shall ensure that both subdivision and development meet or exceed the standards outlined within the Sturgeon County General Municipal Servicing Standards. Standards should be reviewed and updated along with other County regulatory policies to coincide with innovations in the industry.”
- [28] Policy 2.3.17 regarding Residential Type 4 character: “Shall ensure that the maximum allowable agricultural subdivision layout for a 64 hectares (160 ac) land unit contains two (2) Agricultural

Parcels and two (2) Acreage Lots, as further defined within the Land Use Bylaw. Where a proposed development exceeds the above subdivision density, the applicant must submit an application for a plan amendment and redistricting for consideration by Council.”

- [29] Policy 2.3.19 regarding Residential Type 4 character: “May vary the size of an Acreage Lot and an Agricultural Parcel due to a Land Fragmentation or to accommodate an existing farmstead; however, compliance must be adhered to regarding the maximum agriculture density standard.”

Municipal Government Act and its Regulations

- [30] Section 654(1) of the *Municipal Government Act* (“MGA”) implies that the Subdivision Authority must not approve an application for subdivision unless the subject land is deemed to be suitable, and unless the proposal conforms to the land use bylaw and any statutory plans in effect (i.e. Municipal Development Plan and any Area Structure Plan).
- [31] Section 654(1)(c) of the MGA implies that the proposed subdivision must meet Part 1 Provision 7(g) of the Subdivision and Development Regulation, which pertains to the 2015 Alberta Private Sewage Systems Standard of Practice.
- [32] Section 655(1) of the MGA authorizes the Subdivision Authority to impose any conditions of approval determined necessary to ensure that the requirements of the MGA, the Subdivision and Development Regulation, the Municipal Development Plan and the prevailing Land Use Bylaw are all complied with.
- [33] Section 662 of the MGA allows Sturgeon County to require land dedication for the purposes of roads and public utilities.
- [34] Sections 666 and 667 of the MGA allow Sturgeon County to require money in place of municipal reserve, up to 10% of the assessed value of all created parcels which are between and 0.8 hectares (1.98 ac) and 16 hectares (39.54 ac) in size.
- [35] Section 7 of the Subdivision and Development Regulation requires the Subdivision Authority to consider various matters when making a decision on a subdivision application – including topography, soil characteristics, storm water collection and dispersal, potential for flooding or subsidence, accessibility to a road, water and sewage adequacy, the use of land in the vicinity and any other matters considered necessary.
- [36] Section 9 of the Subdivision and Development Regulation requires that every lot created by subdivision has either “direct access to a road, or lawful means of access satisfactory to the subdivision authority”.

Analysis

[37] The proposed lot line adjustment (as shown on the right) is minor in nature and deemed consistent with Land Use Bylaw regulation and Municipal Development Plan policy since:

- a. It eliminates an existing fragmentation caused by the Manawan Drainage Ditch (and therefore increases agricultural opportunities); and
- b. Each resulting property would remain considered 'full' quarter-sections in terms of future subdivision potential – as confirmed by Part 11.1.3(c)(ii) of the Land Use Bylaw.



[38] Section 662 of the MGA allows Sturgeon County to require land dedication for the purposes of roads and public utilities: *"662(1) A subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land for the purpose of roads, public utilities, or both."* Therefore, Sturgeon County's acquisition of this land is not a requirement beyond the municipality's jurisdiction.

[39] The Applicant's proposal to eliminate Condition 3 of the approval letter, requiring a, *"5 metre wide area parallel and adjacent to the boundary of both parcels and all adjacent roads,"* is not consistent with Sturgeon County's approach in conducting subdivision and is not abnormal or unfair in administration's opinion. This condition is implemented to ensure the possibility of necessary construction and improvement for the public good in Sturgeon County. In accordance with the County's Grid Road Dedication Policy, Sturgeon County applies this condition to *all* subdivisions where the 5 metre wide area has not already been taken as condition of a previous subdivision.

[40] The Applicant has also claimed that Condition 4 of the approval letter, requiring upgrades to existing culverts and approaches, is unreasonable. Sturgeon County utilizes subdivision as a way to ensure infrastructure in the municipality is upkept to the standards within the General Municipal Servicing Standards (GMSS). This requirement is imposed upon all subdivisions, as above, to ensure the construction and improvement of all infrastructure for the well-being and safety of Sturgeon County public, as outlined through Policy 1.4.9 of the Municipal Development plan, which states that subdivision approval must trigger all upgrades necessary to *"meet or exceed"* requirements outlined within the GMSS: *"Shall ensure that both subdivision and development meet or exceed the standards outlined within the Sturgeon County General Municipal Servicing Standards. Standards should be reviewed and updated along with other County regulatory policies to coincide with innovations in the industry."*

[41] Appeal of Condition 6 listed in the approval letter is not within the jurisdiction of the SDAB. Appeal of this condition must be done via an appeal to Council.

Findings and Conclusions

- [42] According to Part 17 of the Municipal Government Act (“MGA”), the general purpose of planning policies is to provide a means to achieve orderly development “*without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.*”
- [43] In this regard, imposing conditions of road dedication, and approach and culvert upgrades, is considered by Administration to be an extent of requirement necessary to ensure the overall greater public interest in the long term.
- [44] Upgrades of culverts and approaches to meet or exceed standards outlined in the General Municipal Servicing Standards is required by Policy 1.4.9 of the Municipal Development Plan; Section 655(1) of the MGA provides for this condition to be met.

SUMMARY OF APPELLANT/APPLICANT’S POSITION – MR. ROBERT RIOPEL

Mr. Riopel provided a verbal presentation, giving his reasons for the appeal. To summarize:

- [45] Mr. Riopel expressed that approval conditions 3, 4, and 6 as set out in the subdivision application conditional approval letter dated June 6, 2018 were unreasonable for the following reasons:
- a. The County is asking for two miles of linear road allowance when all he is trying to do is add six acres from one quarter to another to preserve good farm land and eliminate a land fragmentation.
 - b. The County is asking for Mr. Riopel’s approach to be widened when, in Mr. Riopel’s opinion, it is not required as the approach was brought up to GMSS standards six or seven years ago by a contractor hired by the County. At that time, they raised the road by three feet and rebuilt all the approaches along Township Road 564 including Mr. Riopel’s.
 - c. The mobile home was on the property when he bought the land thirty years ago. He has paid all property taxes as required since he has been on the land and feels the mobile home should be grandfathered with respect to applying for development and building permits.

RESPONSES FROM QUESTIONS OF THE BOARD

- [46] The Current Planning and Development department confirmed that although a caveat will be attached to the property, the two linear miles of acquisitioned land will still be available for cultivating by the landowner. When the County needs the land, they will purchase it from the landowner at agricultural rates.
- [47] In checking with Transportation Services, no record was obtained that an upgrade to Mr. Riopel’s approach was done. A site assessment was completed by Engineering Services, and the current approach measures 6.6 metres in width at the property line, where the standard requirement is 7.529 metres at the property line to accommodate for two-lane traffic.

- [48] According to Engineering Services, Township Road 564 is classified as an arterial roadway as it is a connector to provincial highways such as Highway 2 and Highway 44. These types of roadways have the highest traffic volume with the potential of 500 vehicles per day. As such, the road will be paved in the future and should be upgraded to the standard of 40 metres in width. It is currently 20 metres. Engineering Services is asking the landowner for five metres on the north side and five metres on the south side of the roadway rather than the ten metres that is required for future road widening.

SUMMARY OF POSITION OF PERSONS WHO SPOKE IN FAVOUR OF THE APPEAL

- [49] Mr. Dave Kluthe, adjacent landowner, spoke in favour of the appeal, expressing his opinion that Mr. Riopel's driveway did not require widening as it had been brought up to highway standards by a company out of Westlock that was hired by the County. He further noted that Mr. Riopel is only looking at completing a lot line adjustment to preserve good farm land. In Mr. Kluthe's opinion, having to complete a 5 metre widening of the roadway should not have to be done at this time.

SUMMARY OF POSITION OF PERSONS WHO SPOKE AGAINST THE APPEAL

- [50] There were no persons that spoke against the appeal.

DECISION

The Board **ALLOWED** the appeal in part, and **VARIED** the decision of the Subdivision Authority, providing conditional approval of Subdivision Permit 2018-S-005, subject to the following conditions:

- [51] Pursuant to Provision 654(1)(d) of the MGA, any outstanding taxes on the subject property(ies) shall be paid or arrangements be made, to the satisfaction of Sturgeon County, for the payment thereof.
- [52] The Applicant shall retain the services of a professional Alberta Land Surveyor, who shall survey the subdivision and submit a drawing to Sturgeon County.
- [53] Pursuant to Provision 669 of the MGA, municipal reserves owing on both parcels shall be deferred by caveats, proportionately (note: these caveats to be prepared by Sturgeon County).
- [54] The developer shall apply and obtain approval for development and building permits for the unauthorized mobile home (i.e. double fee penalty applies). All other structures require farm building forms (or potentially development permits if not used for farm purposes), to the satisfaction of the Development Officer.
- [55] Due to a confined feeding operation in close proximity, a restrictive covenant created by, and to the satisfaction of Sturgeon County shall be registered upon the land title certificate of the Remnant Lot (i.e. northern quarter-section), advising landowners that their property shall not be used in any manner which may impede the use of adjacent lands for agricultural purposes or operations, pursuant to the *Agricultural Operations Practices Act*.

Advisory Notes:

- [56] Natural Gas servicing to any new subdivision is the responsibility of the applicant. The applicant will be required to provide the required easements across existing lots or subdivided lots for natural gas servicing, if service is approved by the natural gas provider. Sturgeon County does not allow natural gas servicing lines to be located within the road right of way. Setbacks from the road right of way are required. Easements of private property must be obtained by the applicants or service providers. Any service lines which cross Sturgeon County property will require a crossing agreement with conditions.
- [57] Pursuant to Section 2.4.3 of the LUB, at the development permit stage on any property, it is highly recommended that the developer retain the services of a qualified professional to prepare and submit a geotechnical investigation confirming that the proposed building site is suitable for development and prescribing any preventative engineering measures to be taken to make the building site suitable for future development or future development suitable for the building site.
- [58] Pursuant to the *Water Act* and the Alberta Wetland Policy, any future development or site grading which might alter or disturb a wetland may require additional approvals from Alberta Environment and Parks.
- [59] A search of the Alberta Energy Regulator's *Abandoned Well Map Viewer* revealed an abandoned well located in the southwest corner of the Proposed Lot (i.e. southern quarter-section), which appears to be designated 'RecCertified'.
- [60] Any parcel which does not yet have an existing approach must collaborate with Current Planning & Development Services to submit an Approach Application and determine access requirements prior to any construction in the future. No development permits shall be issued until a suitable approach has been constructed to General Municipal Servicing Standards and inspected. For assistance with access issues and inspections, please telephone 780-939-8275.

REASONS FOR THE DECISION

The Board considered the following in making their decision:

- [61] That the Subdivision Authority is of the opinion, after considering the factors set out in section 7 of the Subdivision and Development Regulations, that the lands are suitable for the purpose for which the subdivision is intended.
- [62] The Board is of the opinion that the proposed subdivision eliminates a fragmentation caused by the Manawan Drainage Ditch and further, that using a natural boundary as the lot line adjustment is the most optimal way to increase agricultural opportunities.
- [63] As the proposed subdivision is a minor lot line adjustment (± 90 m) to eliminate a fragmentation caused by the Manawan Drainage Ditch, the Board is of the opinion that the request for a 5 metre land acquisition is premature.

**SUBDIVISION and
DEVELOPMENT**
APPEAL BOARD

Sturgeon County
9613-100 Street, Morinville, AB T8R 1L9

- [64] There is no anticipated change in the use of the Applicant's approach (driveway) because of the proposed subdivision.
- [65] There was support from an adjacent landowner who presented his reasons of support to the Board.
- [66] There were no objections submitted from any of the adjacent property owners who had been notified of the appeal.
- [67] The Board did not consider the appeal on Condition 6 listed in the approval letter as it is the Board's opinion that this condition would need to be appealed to Council and therefore, is not within the jurisdiction of the SDAB.
- [68] The proposed subdivision development conforms with the prescribed use as defined in the land use bylaw and would not unduly interfere with or affect the use, enjoyment or value of neighbouring properties; and materially interfere with or affect the use, enjoyment or value of neighbouring properties.

Dated at the Town of Morinville, in the Province of Alberta, this 17th day of July, 2018.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD
Sturgeon County



Erick Liebl, Chair

Pursuant to Section 688(1)(a) of the Municipal Government Act (MGA), an appeal of a decision of the Subdivision and Development Appeal Board lies with the Alberta Court of Appeal on a matter of law or jurisdiction. In accordance with Section 688(2)(a), if a decision is being considered, an application for permission to appeal must be filed and served within 30 days after the issuance of the decision and, notice of the application for permission must be provided to the Subdivision and Development Appeal Board and in accordance with Section 688(2)(b), any other persons that the judge directs.