
Appeal File Numbers:	024-STU-005
Application Number:	2024-S-005
Appeal Against:	Subdivision Authority of Sturgeon County
Appellant:	Dwayne Bendfeld, KDL Contracting
Date and Location of Hearing:	June 4, 2024 Council Chambers and Through Electronic Communications
Date of Decision:	June 17, 2024
SDAB Members:	Julius Buski (Chair), Lee Danchuk, Don Rigney, Lili Terry, and Kristin Toms

NOTICE OF DECISION

IN THE MATTER OF an appeal by Dwayne Bendfeld, KDL Contracting against the Subdivision Authority's conditional approval to subdivide 2.22 hectares (5.49 acres) from a 4.02-hectare (9.93-acre) parcel at Lot 8, Block 1, Plan 8120408 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(1) 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 (the "Land Use Bylaw" or "LUB"), and Sturgeon County's Municipal Development Plan (MDP), and any amendments thereto.
- [3] The following documents were received and form part of the record:
- The Notice of Appeal;
 - A copy of the subdivision application with attachments;
 - The Subdivision Authority's written decision;
 - Planning & Development Services Report; and
 - Appellant's submission

PRELIMINARY MATTERS

- [4] There were no preliminary matters addressed at the hearing.

PROCEDURAL MATTERS

- [5] The appeal was filed on time and in accordance with section 678(2) of the MGA.
- [6] There were no objections to the proposed hearing process as outlined by the Chair.
- [7] There were no objections to the composition of the Board hearing the appeal.

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

ISSUES

[9] The Appellant raised the following grounds of appeal:

- Condition #4, the requirement to complete a lot grading plan, should be removed.

RECOMMENDATION OF THE SUBDIVISION AUTHORITY

[10] Jonathan Heemskerk and Chris Pullen, representatives for the Subdivision Authority, provided a presentation which included an issue analysis for the Appellant's proposal and reasons for the Subdivision Authority's conditional approval.

[11] The subdivision was registered in 1981 which created a 4.02-hectare parcel as part of the ProNorth Industrial Park development. The applicant proposes a subdivision of 2.22 hectares (5.49 acres) from 4.02 hectares (9.93 acres).

[12] This application is consistent with the Municipal Development Plan's "Non-Residential Type 2" policies and with the Land Use Bylaw's "I3 – Medium Industrial Unserviced" regulations.

[13] The subject parcel is the largest within ProNorth Industrial Park and the proposed split in half would result in two parcels with sizes complementary to other existing lots in the area. There is limited availability of unserviced industrial land in the County and the creation of an extra lot can be supported. Furthermore, it aligns with the following section of the Municipal Development Plan which aims to work with landowners to develop in a way which supports the targeted sectors in the County:

5.5.8 - Should collaborate with landowners and tenants to identify, develop, and implement redevelopment initiatives to improve and expand priority Non-Residential Development Parks that support Sturgeon County's targeted sectors.

[14] Both the 2.22-hectare and 1.8-hectare lots meet the minimum parcel size of 0.6 hectares outlined in the I3 – Medium Industrial Unserviced district.

[15] An abandoned well was identified on the Proposed Lot. Although it does not appear to impact this subdivision application, further due diligence is recommended prior to any future development desired in close proximity.

[16] Part 12 of the Land Use Bylaw requires that all lots districted under this section that are subject to a permit application shall be designed to provide positive drainage in accordance with accepted engineering practices, the General Municipal Servicing Standards (GMSS), and the Residential Lot Grading Procedure to ensure that no adverse drainage impacts affect the subject property or adjoining properties. Therefore, Condition #4 was imposed by the Subdivision Authority.

SUMMARY OF APPELLANT'S POSITION

[17] The Appellant, Dwayne Bendfeld, KDL Contracting requested the Board to remove condition #4 of the subdivision approval with regard to obtaining a lot grading plan.

[18] The Appellant stated that the water does not migrate from one lot to the other. He further explained that there is a dip at the fence line where a trench will be, and the water will migrate down.

[19] Further, the Appellant stated that the lot gradients change as heavy equipment is moved from one location to the other. There is no reason for a lot grading plan as the ground is constantly changing and the water does not flow from one lot to the other.

DECISION OF THE BOARD

[20] **The Board DENIES the appeal, UPHOLDS the decision of the Subdivision Authority made on May 8, 2024 to conditionally approve subdivision application 2024-S-005, and approves the subdivision subject to the following conditions:**

- 1) Pursuant to section 654(1)(d) of the *Municipal Government Act*, any outstanding taxes on the subject property shall be paid or arrangements be made, to the satisfaction of Sturgeon County, for the payment thereof.
- 2) The applicant shall retain the services of a professional Alberta Land Surveyor, who shall submit a drawing to Sturgeon County resembling Exhibit 2, dated May 6, 2024, and submit it in a manner that is acceptable to Land Titles.
- 3) All upgrades to existing culverts and/or existing approaches, and construction, removal, and relocation of approaches, as determined necessary by the 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.
- 4) The applicant shall complete and submit a lot grading plan. The plan will include overall grading, swales, and infrastructure to accommodate lot grading, along with pre / post grading contours, swale locations and percentage grades clearly shown. The proposed lot and remnant lot must operate independently with site grading, and drainage directed towards the public right of way. Both access locations and culvert invert elevations for the remnant and proposed lot are to be shown on the lot grading plans. This must be completed to the satisfaction of Sturgeon County Engineering Services and/or Sturgeon County Transportation Services before this subdivision is endorsed.
- 5) The applicant is to obtain all necessary permits to comply with the Land Use Bylaw – to the satisfaction of the Development Authority.

ADVISORY NOTES

- 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.
- Pursuant to section 2.4.3 of the Land Use Bylaw, at the development permit stage on any property, it is highly recommended that the developer retain the services of a qualified

engineering professional to prepare and submit a geotechnical investigation confirming that the proposed building site on 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.

- A search of the Alberta Energy Regulator's *Abandoned Well Map Viewer* identified an abandoned well on the Proposed Lot. Further due diligence is recommended prior to any future development desired in close proximity..
- For expansion and connection to water services, please contact Sturgeon County Utility and Waste Management Services.

REASONS FOR THE DECISION

- [21] The Appellant's request is to subdivide 2.22 hectares (5.49 acres) from a 4.02 hectares (9.93 acres) parcel. The property is districted I3 Medium Industrial Unserviced District and is located within the ProNorth Industrial Park.
- [22] The Subdivision Authority submitted that the proposal is consistent with the Municipal Development Plan's Non-Residential Type 2 policies and with the Land Use Bylaw's I3 – Medium Industrial Unserviced regulations. Both the 2.22-hectare and 1.8-hectare lots meet the minimum parcel size of 0.6 hectares outlined in the I3 – Medium Industrial Unserviced district. Furthermore, the proposed subdivision aligns with section 5.5.8 of the Municipal Development Plan, which aims to work with landowners to develop in a way which supports the targeted sectors in the County.
- [23] The Board heard from the Subdivision Authority that the subject parcel is the largest within ProNorth Industrial Park and the proposed split in half would result in two parcels with sizes complimentary to other existing lots in the area. There is limited availability of unserviced industrial land in the County and the creation of an extra lot can be supported.
- [24] The Board heard from the Appellant that the requirement to obtain a lot grading plan is futile as the grading of the property is constantly changing with the movement of heavy equipment around the site. Furthermore, water does not flow from one lot to the other; it migrates through the gravel and dissipates into the ground.
- [25] The Board heard from the Subdivision Authority that the requirement for a lot grading plan is a standard condition for subdivision approvals in accordance with Part 12 of the Land Use Bylaw. The policy requires that the property owner provide surface drainage plans, forming part of the subdivision application, to confirm that drainage from the property will not negatively affect the subject property or adjoining properties.
- [26] The Board heard that the conditional approval is in line with the Sturgeon County General Municipal Servicing Standards (GMSS). Section 1.19.2.6 of the GMSS outlines the lot grading plan requirements and section 3.3.9.2 outlines the lot and landscape grading requirements. The GMSS is a document derived from the Municipal Development Plan and approved by Sturgeon County Council, which the Board finds it cannot blatantly disregard.
- [27] The Board finds that although the Appellant may own both lots, the subdivision is in contemplation of selling one of the lots, and it is incumbent on the Board to consider future landowners. It is necessary now to protect the assets of the property and ensure the water

sheds away from the buildings so as not to cause potential issues for unknowing future landowners.

[28] Although the issue before the Board is the requirement for a lot grading plan, the Board finds that the appeal is a *hearing de novo*, and the Board must consider the subdivision application in its entirety. Having received no evidence from adjacent landowners or other parties indicating opposition to the application, the Board finds that the proposed subdivision would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land.

[29] For all of these reasons, the Board denies the appeal, upholds the decision of the Subdivision Authority to conditionally approve the subdivision application with the inclusion of condition #4, and approves the subdivision subject to the conditions listed above.

Dated at the Town of Morinville, in the Province of Alberta, this 17th day of June, 2024.



Julius Buski, Chair

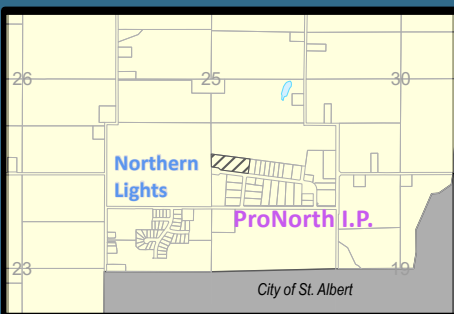
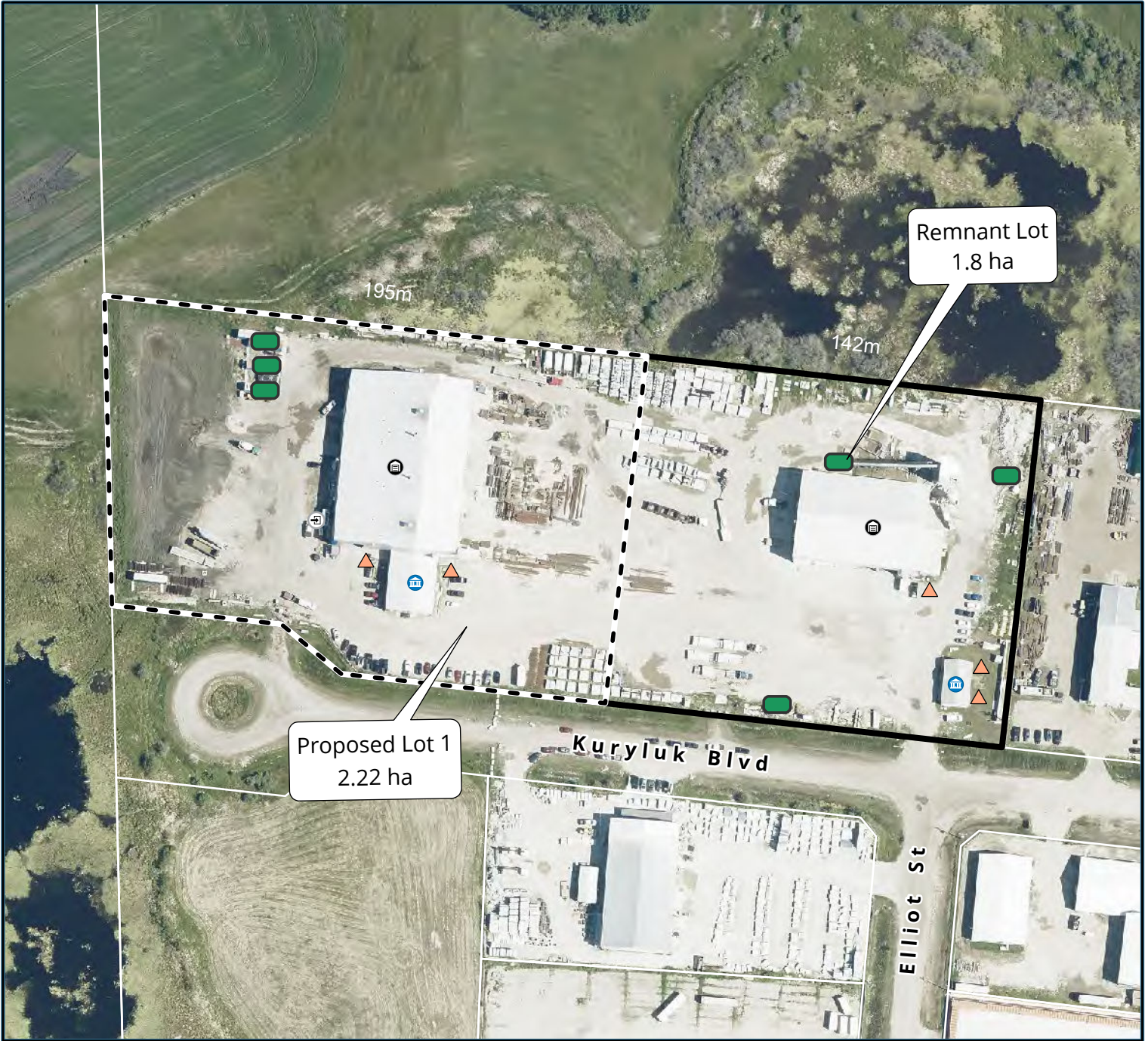
Pursuant to Section 688(1)(a) of the Municipal Government Act (MGA), an appeal of a decision of the Subdivision and Development Appeal Board lies with the Alberta Court of Appeal on a matter of law or jurisdiction. In accordance with Section 688(2)(a), if a decision is being considered, an application 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.

APPENDIX "A"
List of Submissions

- The Notice of Appeal;
- A copy of the subdivision application with attachments;
- The Subdivision Authority's written decision;
- Planning & Development Services Report; and
- Appellant's submission.

Exhibit 2 [Subdivision Authority Decision]

File Number: 2024-S-005



Legal Description: 8120408;1;8

Roll Number: 3712015

Total Acres/Hectares: 9.90ac / 4.00ha

Land Use: I3 - Medium Industrial Unserviced

Municipal Address: 43 26004 Twp Rd 554

Date: 5/06/2024

Legend

- Existing Approach
- Office
- Septic Tank
- Shipping Container
- Shop