
Appeal File Numbers:	024-STU-010
Application Number:	2024-S-007
Appeal Against:	Subdivision Authority of Sturgeon County
Appellants:	Graham Okerman
Date and Location of Hearing:	July 9, 2024 Council Chambers and Through Electronic Communications
Date of Decision:	July 22, 2024
SDAB Members:	Julius Buski (Chair), Lee Danchuk, Amanda Papadopoulos, Don Rigney, and Kristin Toms

NOTICE OF DECISION

IN THE MATTER OF an appeal by Graham Okerman against the Subdivision Authority’s conditional approval at Lot A;; Plan 7620004; NE 25-54-25-W4 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*.
- [3] The following documents were received and form part of the record:
 - a. The Notice of Appeal;
 - b. A copy of the subdivision application with attachments;
 - c. The Subdivision Authority’s written decision;
 - d. Planning & Development Services Report;
 - e. Appellant’s written submissions for the preliminary matter; and
 - f. Appellant’s written submissions for the merit hearing

PROCEDURAL MATTERS

- [4] There were no objections to the proposed hearing process as outlined by the Chair.
- [5] There were no objections to the composition of the Board hearing the appeal.

PRELIMINARY MATTER

- [6] The Board noted section 678(2)(b) of the *Municipal Government Act* requires the appeal of a subdivision authority decision to be filed within 14 days after receipt of the written decision. The conditional subdivision approval was issued on May 9, 2024. Providing 7 days for mailing, the deadline to appeal the decision was May 30, 2024. The appeal was received on June 19, 2024.

APPELLANT'S SUBMISSION ON THE PRELIMINARY MATTER

- [7] The Appellant, Graham Okerman, submitted that upon receiving notice of the conditional approval of his subdivision, he inquired with County Administration to obtain clarity on Condition #5, which states:

All upgrades to existing culverts and/or existing approaches, and the construction/removal of approaches, as determined necessary by the Development 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.

- [8] Mr. Okerman submitted that he did not receive a response from the County until after the appeal period lapsed. Further, employee turnover resulted in a delay in receiving a response to his questions, and upon hearing back from the County, he filed his appeal within one business day.

SUBDIVISION AUTHORITY'S SUBMISSION ON THE PRELIMINARY MATTER

- [9] The Subdivision Authority submitted that the Board does not have jurisdiction to hear the appeal since it was filed out of time pursuant to section 678(2) of the *Municipal Government Act*.

DECISION OF THE BOARD ON THE PRELIMINARY MATTER

- [10] Section 678(2)(b) of the *Municipal Government Act* (MGA) requires the appeal of a subdivision authority decision to be filed within 14 days after receipt of the written decision. The Subdivision Authority's decision was issued on May 9, 2024, and giving 7 days for mailing, the appeal was required to be received by May 30, 2024. The appeal was received by the Subdivision and Development Appeal Board on June 19, 2024.
- [11] The Board finds that the requirements of the MGA should be interpreted and applied consistently, including deadlines to file appeals on planning and subdivision matters. The scheme of the MGA is to ensure that decisions on subdivision and development matters are made in a timely fashion, which includes the appeal process.
- [12] The Board finds this to be an exceptional circumstance in that the language of Condition #5 is sufficiently vague that the Appellant could not reasonably understand what it is that he would be required to do. The Board understands that conditions may be worded such to give County staff discretion in applying conditions on a case-by-case basis, but when the Appellant sought clarity on the requirements, he did not receive a timely response.
- [13] The Board need only to review the chronology provided by the Subdivision Authority to confirm that the Appellant initially contacted the County regarding Condition #5 before May 16. The Board finds that during the Appellant's communication with the Development Engineer on May 23, a reasonable expectation of timely response was established. The Development Engineer left the County's employ on May 31, and the staff person who took on this file did not contact the Appellant until June 18, over a month later.

[14] In deciding to hear the appeal, the Board also considered the consequences of such a decision. Being a subdivision appeal, only the Applicant has a right of appeal. Further, no adjacent landowners expressed that they are affected by the proposed subdivision, meaning that no other individual's rights have been prejudiced. A decision not to hear the appeal would likely result in a re-application, putting all parties in an identical position.

[15] For all of these reasons, the Board decided to allow the merit hearing to proceed.

MERIT HEARING

ISSUE

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

- Condition #5 of the subdivision approval requiring upgrades to the existing approach should be removed.

RECOMMENDATION OF THE SUBDIVISION AUTHORITY

[17] Martyn Bell, Alex Niznik, and Chris Krath, representatives of the Subdivision Authority, provided a presentation which outlined the Subdivisions Authority's reasons for the conditional approval.

[18] The application proposes a lot line adjustment to increase the size of an existing acreage from 1 hectare (2.47 acres) to 1.61 hectares (3.98 acres) to setback the parcel from future multi-lot residential development and allow room for a shop to be constructed.

[19] This application is consistent with the *Municipal Government Act*, Municipal Development Plan, and Land Use Bylaw.

[20] Condition #5 of the conditional subdivision approval requires all upgrades to existing culverts and/or existing approaches, and construction/removal of approaches, as determined by the Development Engineering Officer to be the responsibility of the developer.

[21] Range Road 250 is predominantly a gravel structure that transitions to light hot mix asphalt pavement approximately 12.5 metres (22 feet) south of the subject parcel approach. The paved portion of the roadway services the Trestle Ridge multi-lot subdivision. The existing acreage approach is gravel and connects to the adjoining roadway which is paved.

[22] Proposed subdivisions and/or lot line adjustments result in the requirement for applicants to bring each approach into compliance with County standards.

Sturgeon County Access Approach Construction Guidelines indicate that:

2.8 – All approaches shall have the same structure as the adjoining roadway and be constructed up to the property line.

General Municipal Servicing Standards indicate that:

4.1.5.7 Structure: Approach structure (surfacing) shall be consistent with the subdivision roadway it adjoins, at a minimum, up to the property line.

[23] Upon inspection, the Development Engineer determined the proposed lot approach must be paved to match the existing surface treatment of the adjoining Range Road 250.

SUMMARY OF APPELLANT'S POSITION

[24] The Appellant, Graham Okerman, requested the Board remove Condition #5 of the subdivision approval as the primary reason he was provided for this condition is that the gravel from his driveway would bring rocks onto the paved portion of Range Road 250 south of the approach. However, Range Road 250 transitions to gravel only 22 feet south of his approach, and traffic driving north would bring much more gravel onto the paved surface driving at higher speeds than the traffic coming from his property onto Range Road 250.

[25] The paved portion of Range Road 250 was completed at the expense of a private citizen, and not Sturgeon County. If in the future the County decides to pave the balance of the southern portion of Range Road 250, it would make sense at that time to require his approach to also be paved.

DECISION

[26] **The Board DENIES the appeal, UPHOLDS the decision of the Subdivision Authority made on May 9, 2024, and APPROVES the subdivision subject to the following conditions:**

1. Pursuant to section 654(1)(d) of the *Municipal Government Act* (MGA), any outstanding taxes on the subject properties 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 8, 2024, and submit it in a manner that is acceptable to Land Titles.
3. Pursuant to section 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 the Proposed Lot and the adjacent road shall be dedicated as road allowance via plan of survey at no cost to Sturgeon County.
4. Pursuant to section 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 the Remnant Lot and the 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).
5. **All upgrades to existing culverts and/or existing approaches, and construction/removal of approaches, as determined necessary by the Development 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.**

ADVISORY NOTES

- 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 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.

- 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.
- The subject properties shall not be used in any manner or way that impedes or will impede the use of adjacent lands for agricultural purposes or agricultural operations, as defined in the *Agricultural Operation Practices Act*, RSA 2000 c.A-7.
- A search of the Alberta Energy Regulator's *Abandoned Well Map Viewer* identified an abandoned well on the Remnant Lot. Further due diligence is recommended prior to any future development desired in close proximity.

REASONS FOR THE DECISION

- [27] The Applicant's request is for a lot line adjustment to increase the size of an existing acreage from 1 hectare (2.47 acres) to 1.61 hectares (3.98 acres) to setback the parcel from future multi-lot residential development and allow room for a shop to be constructed.
- [28] The Subdivision Authority submitted that the proposal is consistent with the *Municipal Government Act*, Municipal Development Plan, and Land Use Bylaw.
- [29] The Board heard from the Subdivision Authority that the requirement for upgrades to the existing culverts and/or approaches is a standard condition for subdivision approvals. The conditional approval is in line with the Strugeon County General Municipal Servicing Standards (GMSS). Section 4.1.5.7 of the GMSS outlines the approach structure (surfacing) shall be consistent with the subdivision roadway it adjoins. The Board referred to section 1.4.9 of the Municipal Development Plan (MDP), which states that subdivision and development must meet or exceed standards within the GMSS.
- [30] The Board finds that it should not seek to blatantly disregard the requirements of a statutory plan in varying Condition #5 as recommended by the Subdivision Authority.
- [31] 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.
- [32] For all of these reasons, the Board denies the appeal, upholds the decision of the Subdivision Authority, and approves the subdivision subject to the conditions listed above.

Dated at the Town of Morinville, in the Province of Alberta, this 22nd day of July, 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;
- Appellant's written submission for the preliminary matter; and
- Appellant's written submission for the merit hearing