
Appeal File Numbers:	024-STU-009
Application Number:	2024-S-011
Appeal Against:	Subdivision Authority of Sturgeon County
Appellants:	Russel Pollard
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 Russel Pollard against the Subdivision Authority’s conditional approval to consolidate an existing 1.51 hectares into the 30.71-hectare remnant and a subsequent subdivision of 1 hectare from the resulting 32.22 hectares at 7820343; ;2 (NW-23-54-26-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(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:
 - a. The Notice of Appeal;
 - b. A copy of the subdivision application with attachments;
 - c. The Subdivision Authority’s written decision; and
 - d. Planning & Development Services Report

PRELIMINARY MATTERS

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

PROCEDURAL MATTERS

- [1] The appeal was filed on time and in accordance with section 678(2) of the MGA.
- [2] There were no objections to the proposed hearing process as outlined by the Chair.
- [3] There were no objections to the composition of the Board hearing the appeal.
- [4] The Board is satisfied that it has jurisdiction to deal with this matter.

ISSUES

- [5] The Appellant raised the following grounds of appeal based on the conditional subdivision approval:
 - The Appellant should not be responsible for approach upgrades as required by Condition #5.
 - The Appellant should not be responsible for paying money-in-lieu of municipal reserve as required by Condition #6.
 - The Appellant should not be responsible for obtaining permits as required by Condition #7 as all structures on the property are farm buildings or have existing permits.

RECOMMENDATION OF THE SUBDIVISION AUTHORITY

- [6] Martyn Bell, Alex Niznik, and Chris Krath, representatives of the Subdivision Authority, provided a presentation which outlined the Subdivision Authority's reasons for the conditional approval.
- [7] The application proposes a consolidation of an existing 1.51 hectares (3.73 acres) into the 30.71-hectare (75.9 acre) remnant and a subsequent subdivision of 1 hectare (2.47 acres) from the resulting 32.22 hectares (79.63 acres).
- [8] Section 654(1) of the *Municipal Government Act* provides that a subdivision authority must not approve an application for subdivision approval unless: (a) the land that is proposed to be subdivided is, in the opinion of the subdivision authority, suitable for the purpose for which the subdivision is intended; and (b) the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan and, subject to subsection (2), any land use bylaw that affects the land proposed to be subdivided.
- [9] The proposal as presented did not conform with the Municipal Development Plan Residential Type 4 policies, specifically Policy 2.3.17 which ensures agricultural subdivisions minimize the total amount of land being taken out of production. The subdivision as initially proposed by the Applicant would have fragmented a portion of farmland between the proposed subdivision's eastern boundary and the eastern boundary of the remnant lot. This fragmented land would have been approximately 18 metres in width and would have been difficult to farm as a result. Administration and the Applicant agreed to shift the proposed subdivision to the east, aligning with the eastern boundary of the quarter section, minimizing the amount of agricultural land taken out of production and ensuring adherence to the Municipal Development Plan subdivision policies.
- [10] The Subdivision Authority approved the application with conditions, including the requirement to upgrade culverts and/or existing approaches to the County's standards, paying money-in-lieu of municipal reserve, and obtaining all necessary permits to comply with the Land Use Bylaw.

- [11] 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. This is in accordance with the County's General Municipal Servicing Standards (GMSS) to ensure appropriate drainage and is required anytime land is subdivided. The Subdivision Authority is requiring the Appellant to cut and taper the ends of the culvert and rip rap each end. The approaches on the remnant lot must be spaced 90 metres apart which means one of the approaches needs to be removed and the remaining approach widened.
- [12] Condition #6 of the original conditional subdivision approval required the Appellant to pay money in lieu of municipal reserve pursuant to section 669 of the MGA, which is a common requirement when subdividing agricultural land. The Subdivision Authority's initial interpretation considered the proposed lot to be a new subdivision and therefore the money in lieu condition was added. After further review and conversations with the Appellant, the Subdivision Authority requests the removal of the requirement of money in lieu of reserve payment and instead defer the requirement by caveat to be prepared by Sturgeon County. The initial acreage is being consolidated back into the remnant lot and therefore this application should be considered a lot line adjustment. Further, the money in lieu totaling nearly \$8,400 was already collected as part of the acreage subdivision in 2006.
- [13] Condition #7 requires the Appellant to obtain all necessary permits to comply with the Land Use Bylaw. Sturgeon County records show there are three existing permits for the property: a single detached dwelling, a barn, and a mobile home. Other structures require further information: a garage, two hay sheds, a tarp building, and a cow shed. Most of the structures except for the garage and dugout appear to be farm buildings and would only require a farm building declaration. A dugout requires a permit to ensure appropriate setback from the road right-of-way.

SUMMARY OF APPELLANT'S POSITION

- [14] The Appellant, Russel Pollard, attended the hearing and provided verbal submissions to the Board.
- [15] With respect to Condition #5 requiring that the existing culverts and existing approaches be upgraded, he submitted that the County should be responsible for improvements as the existing culvert was likely damaged by County plows. Further, the County recently completed work in that area and should have rip rapped the culvert at that time in order to bring it to the current standard.
- [16] With respect to Condition #6, the Appellant agreed with the Subdivision Authority's recommendation to take the municipal reserve by caveat rather than money in lieu.
- [17] The Appellant submitted that, with respect to Condition #7, the structures and dugout have the appropriate permits, including a permit issued for the dugout in the 1980s, which can be provided to the Subdivision Authority.

DECISION OF THE BOARD

- [18] **The Board GRANTS THE APPEAL IN PART and APPROVES subdivision application 2024-S-011 subject to the following conditions (note revision to Condition #6):**

- 1) Pursuant to section 654(1)(d) of the 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 27, 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 Township Road 544 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 Township Road 544 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.
- 6) **Pursuant to section 666 of the MGA, municipal reserves owing on the Remnant Lot shall be deferred to caveat (note: this caveat to be prepared by Sturgeon County).**
- 7) 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.
- 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.
- *FireSmart* principles should be incorporated into all future construction and development. Please visit www.firesmartcanada.ca.

REASONS FOR THE DECISION

- [19] The Appellant's request is to subdivide an existing 1.51 hectares (3.73 acres) into the 30.71-hectare (75.9 acre) remnant and a subsequent subdivision of 1 hectare (2.47 acres) from the resulting 32.22 hectares (79.63 acres).
- [20] The Subdivision Authority submitted that the Appellant's original application was inconsistent with the Municipal Development Plan Residential Type 4 policies which seek to minimize the amount of agricultural land taken out of production. The Subdivision Authority and the Appellant worked together to resolve this issue, and the conditional subdivision approval conforms with Land Use Bylaw "AG – Agriculture District" and Municipal Development Plan regulations.
- [21] The Subdivision Authority submitted that the requirement to bring the existing culvert to current standard is a requirement of the General Municipal Servicing Standards (GMSS), specifically section 3.3.8.15, which relates to culvert sizing, material, treatment, and installation. 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.
- [22] The Board finds that it should not seek to blatantly disregard the requirements of a statutory plan in varying Condition #5. Furthermore, the Appellant's position regarding this Condition is not that the standard is unreasonable, but that the County should be responsible for paying costs to improve the culvert as a result of a County plow damaging it and having recently completed construction at this location without rip rapping the culvert to bring it in line with the GMSS. The Board finds that it is appropriate for infrastructure to be brought into conformance with modern standards at the time of subdivision, in this case, to ensure appropriate drainage, with the developer responsible for making the improvements.
- [23] The Subdivision Authority requested the Board to revise Condition #6 of the original conditional subdivision approval, removing the requirement of money in lieu of reserve payment and instead deferring the requirement by caveat to be prepared by Sturgeon County, as this should be considered a lot line adjustment, with the money in lieu already collected as part of the acreage subdivision in 2006. The Appellant agreed with this recommendation, and the Board varied this condition accordingly.
- [24] With respect to Condition #7 requiring appropriate permits, the Board heard from the parties that some structures have permits and some would be exempt as farm buildings, with the garage and dugout likely requiring permits. The Board finds this to be an appropriate condition to ensure that all structures and other improvements requiring permits are brought into compliance with the Land Use Bylaw at the time of subdivision.
- [25] 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.
- [26] For all of these reasons, the Board grants the appeal in part and approves the subdivision subject to the conditions listed above, with a revised Condition #6 as noted above.

Dated at the Town of Morinville, in the Province of Alberta, this 22nd day of July, 2024.

A handwritten signature in blue ink, appearing to read 'J. Buski', is positioned above a horizontal line.

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; and
- Planning & Development Services Report.