

Appeal No: 0262 005 2014
Hearing Held: August 06, 2014

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: B. FARR
PANEL MEMBER R. KERBER
PANEL MEMBER G. LEASAK
PANEL MEMBER COUNCILLOR L. MULDER
PANEL MEMBER Z. ORDMAN

BETWEEN:

GROUP 2 ARCHITECTURE
on behalf of RED DEER CATHOLIC REGIONAL SCHOOL DIVISION
Represented by K. Jaeger

Appellant

and

CITY OF RED DEER
Represented by E. Stuart, V. Swainson & J. Whitesell

Development Authority

DECISION:

MOVED by G. Leasak, seconded by L. Mulder

NOW THEREFORE BE IT RESOLVED THAT the Subdivision and Development Appeal Board, having heard the parties who wished to speak in favour and against the appeal filed by Group 2 Architecture regarding the July 03, 2014 decision of the Development Officer which denied the application for the development of a modular addition to a school (Ecole Camille J. Lerouge School) which is a discretionary use to be located at 5530-42A Avenue (Lot N, Plan 3882NY) zoned PS (Public Service District) hereby REVOKES the decision of the Development Officer. The development is approved with the following conditions:

1. The Applicant is required to provide a site plan which must include the location of existing and proposed deep (water, sewer, storm, wells and septic systems) and shallow (Atco Gas, Telus, Shaw and Electric Light & Power) utilities satisfactory to Engineering Services Department of The City of Red Deer; and
2. The development must not impact any existing landscaping on the site; satisfactory to the Parks and Open Space Designer of The City of Red Deer.

CARRIED

FACTS:

1. The Applicant is proposing to develop a modular addition to Ecole Camille J. Lerouge School located at 5530 42A Avenue (Lot N, Plan 3882NY) zoned Public Service (PS) District. The proposed development is a discretionary use.
2. The subject property is located in the neighbourhood known as Waskasoo which consists predominantly of other PS uses and residential development. There is an existing elementary school located on the subject property.
3. There is a non operating landfill located east of Lindsay Thurber High School which is located at 4204 58 Street (Lindsay Thurber High School is closer in proximity to the non operating landfill).
4. The letter of denial from the Development Officer gives the reason for denial as:

“The Development Officer lacks the authority to issue a development approval for a ‘school, hospital, food establishment or residential use that is located ‘within 300 metres of the disposal area of an operating or no-operating landfill’, under section 13(3)(b) of the Municipal Government Act Subdivision and Development Regulation.”
5. The Appellants have appealed the decision to this Board.

ISSUES / ARGUMENTS:**DOES SECTION 13(3)(b) OF THE SUBDIVISION AND DEVELOPMENT REGULATION APPLY TO THE PROPOSED DEVELOPMENT?**

6. The lot is approximately 3.04 hectares. Only a portion of the northeast corner of the site (lot) in question is within 300 metres of the non-operating landfill (Exhibit A page 14). While the proposed development will be situated on this lot, the actual location will be approximately 386.25 metres from the non operating landfill. This was not in dispute by either party and is confirmed by the ‘constraints’ map (Exhibit A page 14) and the site plan (Exhibit A page 15).
7. Section 13(3)(b) of the *Subdivision and Development Regulation, Alberta Regulation 43/2002 (SADR)* states (in part) that “...a development authority shall not issue a development permit for a school.....if the building site is(b) within 300 metres of the disposal area of an operating or non operating landfill,”
8. The SADR defines ‘building site’ as meaning “a portion of the land that is the subject of an application on which a building can or may be constructed”.
9. The Board notes that ‘building site’ is not defined in the *Municipal Government Act, RSA 2000, c M-26* and therefore concludes that the legislative intent of the regulation is to ensure a higher degree of review for buildings that will be physically located within 300 metres of non operating landfills, in contrast to the location of a lot in proximity to a non operating landfill.

10. Further to this, in this case, the Board believes it to be logical from a common sense perspective to be concerned about the location of the *building* in proximity to a non operating landfill, rather than the location of the *lot* in proximity to a non operating landfill.
11. Therefore, the Board finds that as the proposed development's actual location will be approximately 386.25 metres from the non operating landfill, s. 13(2)(b) of the SADR does not apply to the proposed development and the Board considers the application against the regulations found in The City of Red Deer, Bylaw 3357/2006 *Land Use Bylaw* (LUB) as well as The City of Red Deer, Bylaw 3408/2008 *Municipal Development Plan Bylaw* (MDP).

IS RISK STILL A FACTOR NOTWITHSTANDING THE SADR?

12. The Development Authority is of the opinion that any risk due to the non-operating landfill is negligible. They gave several reasons for this including:
 - A. Environmental Risk Management Plan (ERMP) – recently completed for the non operating landfill. Initially, two environmental site assessments were conducted that included a review of past waste disposal practices, physical investigation and identification of impacts to groundwater and soil gas. The data gathered was analyzed against a Health Canada guiding document upon which the City of Red Deer's Environmental Services Department was able to determine that there is negligible risk.
 - B. A condition of development for Lindsay Thurber High School (in approximately 2000) was the installation of a methane trench to conduct annual monitoring of methane levels. There are no causes for concern arising from the annual reports (which are shared with the Applicant).
 - C. The landfill was only operational between 1965-1967.
 - D. Building type – the proposed development does not have a foundation and will sit on pilings (with a 1 meter crawl space). If gasses were present they would find the path of least resistance and be vented out.
 - E. The existing school is approximately 250 metres from the non operating landfill and the proposed development will be located approximately 375 meters from the non operating landfill.
13. The Development Authority also stated that they do not believe the setbacks in the SADR to be based on (current) knowledge; they were developed in the 1930's and have been carried forward through the years. Further, there are no industry standards that indicate how long a non operating landfill may continue to generate gasses.
14. Given that environmental issues fall under the jurisdiction of the Provincial and Federal government; that the proposed development is outside what appears to be the provincially established area for concern (300 metres); that the existing developments (schools) experience very little or no methane gas activity, and that there is no evidence to the contrary, the Board is convinced that the risk to this proposed development is small.

15. Further, this small risk is well mitigated by the annual monitoring conducted by Lindsay Thurber High School.

COMMUNITY LETTERS

16. Four letters of concern were submitted by area landowners that identified (generally) four areas of concern. At the hearing, the Applicant addressed these concerns as follows:
- A. Excessive traffic / congestion: the Applicant agreed that traffic congestion occurs at peak times (when school starts and when school ends) but advised that the school does provide incentives for students to ride transit (students that live further than 1.6 km from the school receive free transit).
 - B. Availability of parking / speeding: the Applicant stated that Ecole Camille J. Lerouge School is an elementary school and as such, the students do not drive and are therefore not contributing to the availability (or lack of) on street parking and speeding. Further, the Development Authority advised that there are currently 87 parking stalls provided on the school site which is 60 stalls more than what is required under the LUB (27 stalls are required).
 - C. Behavior of students: the Applicant stated that as an elementary school, their campus is closed – meaning that students are not permitted off school grounds during breaks.
 - D. Eyesore / aesthetics of proposed development: the Applicant stated that the proposed development is a short term solution to space restrictions at the school. The Applicant advised that an addition is planned at St. Francis of Assisi (middle school) at which time middle school students will be transferred from Ecole Camille J. Lerouge School and the proposed development will no longer be needed.

LUB / MDP & RECOMMENDED CONDITIONS OF APPROVAL

17. In its written submission, the Development Authority stated that the proposed development complies with the LUB and the MDP. Where no evidence or argument to the contrary is advanced, it is reasonable for the Board to rely on professional acumen to evaluate the proposed development against legislated requirements.
18. If approved, the Development Authority recommended two conditions of approval. The Board has reviewed these and finds them to be standard conditions that would be required of any proposed development.

CLOSING:

19. For the reasons detailed above, the decision of the Development Officer is revoked and the development approved subject to the conditions listed on page 1 of this decision.

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in section 688 of the Municipal Government Act which requires an application for leave to appeal to be filed and served within 30 days of this decision.

Dated at the City of Red Deer, in the Province of Alberta this 18th day of August, 2014 and signed by the Chair on behalf of all five panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



Bill Farr, Chair
Subdivision & Development Appeal Board

EXHIBIT LIST

Exhibit AHearing Materials Package pages 1-23
Exhibit B..... Full Size Drawings (title page, site plan, floor plan and elevation Plan)