



**Subdivision & Development Appeal Board**

Appeal No.: 0262 002 2015

Hearing Date: July 07, 2015

**SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION**

CHAIR: W. FARR  
PANEL MEMBER: R. KERBER  
PANEL MEMBER: Z. ORDMAN

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BETWEEN:

RED DEER NATIVE FRIENDSHIP SOCIETY

Appellant

and

CITY OF RED DEER  
Inspections & Licensing

Development Authority

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The Red Deer Native Friendship Society filed a development application that was refused by the Development Authority due to the subject property location being within 300 meters of the disposal area of a non-operating landfill. This is an Appeal from the refusal by the Development Authority to grant a Development Permit.

The Appeal hearing commenced on July 7, 2015, in the Council Chambers of the City of Red Deer, within the Province of Alberta.

**Appeared on behalf of Appellant:**

Grace Zhang – Agent for Grace Architecture  
Tanya Schur and Paul Beaumont – for Red Deer Native Friendship Society

**Appeared on behalf of the Development Authority:**

Erin Stuart – Inspections & Licensing Manager  
Martin Kvapil – Development Officer  
Michelle Baer – City Solicitor  
Janet Whitesell – Waste Management Superintendent

**Others:** Darren Tootoosis (Red Deer Native Friendship Society), Ward Yurystowski (City of Red Deer, Environment & Utilities Engineer), Aiden Guo

**Area Landowners:** Denise Gagne, Jim Marke, Steve Chow

**DECISION:** The Red Deer Subdivision and Development Appeal Board reverses the decision of the Development Officer, and allows for a Development Permit subject to standard requirements and the list of conditions as outlined in this decision and agreed to by the parties.

## JURISDICTION AND ROLE OF THE BOARD

1. The legislation governing municipalities in the Province of Alberta is the *Municipal Government Act*, RSA 2000, c M-26 [MGA]. Planning and Development is addressed in Part 17 of the MGA, and further in the *Subdivision and Development Regulation*, Alta Reg 43/2002 [SDR].
2. The Board is established by City of Red Deer, By-law No 3487/2012, *Appeal Boards Bylaw*. The duty and purpose of the Red Deer Subdivision and Development Appeal Board ("SDAB" or "the Board") is to hear and make decisions on appeals for which it is responsible under the MGA and City of Red Deer, By-law No 3357/2006, *Land Use Bylaw*.

## BACKGROUND

3. The subject property is located at 4615 Riverside Drive (Lot 4, Block 8, Plan 892 2959), Red Deer, Alberta. The subject property is within the neighborhood known as Riverside Light Industrial Park, which consists predominantly of industrial and commercial uses. The Lion's Campground is located adjacent to the site and the Red Deer River flows alongside the site. The zoning for the subject property is PSR (Public Service Reserve).
4. On August 19, 2014, the Appellant applied for a Development Permit at the subject property. The Development authority refused the application.
5. The Appellant filed an appeal with the City of Red Deer SDAB. The SDAB heard the matter on September 17, 2014. In a decision dated September 17, 2014, the SDAB revoked the refusal of the Development Authority and allowed for a Development Permit subject to standard requirements and a list of conditions agreed to by the parties.
6. On November 24, 2014, The City of Red Deer completed an Environmental Risk Management Plan for historical waste management sites in the Riverside Light Industrial Park. The subject property is located within the area of study.
7. The Appellant applied for a new Development Permit in June of 2015. In that Application, the Appellant proposed a design that varied from the original application that was heard on September 17, 2014. The new Development Permit incorporated the design changes for the development of two residential buildings, each containing eight dwelling units, and a site development including a future cultural center and semi-detached dwelling building (two units).
8. The Development Officer refused the application, as per the letter of refusal, dated June 12, 2015. The letter of refusal states that the Development Authority cannot issue a Development Permit where the subject property is within 300 meters of the disposal area of a non-operating landfill (*Subdivision and Development Regulation*, s 13(3)(b)). The subject property is within 300 meters of the disposal area of a non-operating landfill and the Development Authority refused the application accordingly.
9. On June 12, 2015, the Appellant submitted this appeal to the SDAB and paid the required fee.

## PRELIMINARY MATTERS

10. The hearing on this matter commenced on July 7, 2015, at 5:05 p.m., in the Council Chambers of City Hall in the City of Red Deer, in the Province of Alberta.
11. The Board confirmed that no Board Member raised any conflicts of interest with regard to this application, and that neither party had any objection to the panel hearing the appeal.
12. Neither party raised preliminary matters or concerns.
13. The Board confirmed that the main issue before them is the setback in relation to the proposed development with revisions from the original plan.
14. The Board entered the following submissions, from the Hearing Materials page 1-104, into the record as Exhibits:
  - Exhibit A – pg 1-13 – Appeal form and Notice of Hearing
  - Exhibit B – pg 14-15 – Submission of Appellant
  - Exhibit C – pg 16-102 – Submission of the City of Red Deer Development Authority
  - Exhibit D – pg 103-104 – Submission of area resident

## POSITIONS OF THE PARTIES

### Development Authority Position

15. The Development Authority, represented by Michelle Baer, City Solicitor, advised that the *SDR s 13(3)(b)* does not allow the Development Authority to approve a Development Permit where the subject property is within 300 metres of a non-operating landfill, unless the Provincial Government varies that requirement. The subject property is approximately 180 meters from a former landfill. In accordance with *SDR s 13(3)(b)*, the Development Authority denied the application for a Development Permit at the subject property.
16. In accordance with s 680(2)(d) of the *MGA*, the SDAB has the authority to hear an appeal of the Development Authority's decision to deny an application for a Development Permit, and must have regard to but is not bound by the *Subdivision and Development Regulations [SDR]*.
17. Ms. Baer referred to page 15 of the Hearing Materials (Exhibit B), and noted that the Appellant has requested pre-approval should further design changes come forward. The City does not consider this pre-approval to be within the Board's jurisdiction to grant.
18. Martin Kvapil, a City of Red Deer Development Officer, confirmed that the proposed development revisions, including an enclosed stairway and a change in building shape from octagonal to rectangular, meet existing planning guidelines and *Land Use Bylaw* requirements.
19. Mr. Kvapil further confirmed that public consultation on the proposed development of the subject property did not result in any responses as of the date of their report.

20. Mr. Kvapil advised that The City considers the proposed development of a detached dwelling to be a permitted use, as it meets all requirements of relevant planning criteria within the *Land Use Bylaw*, including s 7.12, as described in Exhibit C, pages 17-18.
21. Waste Management Superintendent, Janet Whitesell, spoke on behalf of the Development Authority to the "Environmental Risk Management Plan: Historic Waste Disposal Site, Riverside Light Industrial Park in The City of Red Deer" (Exhibit C, pages 31 – 102, the "Environmental Report"). Ms. Whitesell described the history of the landfill and explained that the City recently completed site-specific studies to assist in better identifying actual risks related to the landfill.
22. Ms. Whitesell advised that the Environmental Report assessed negligible risk potential where a development lies beyond a 100-meter radius of this landfill site. She advised that from an environmental perspective, there is no objection to the proposed development.
23. Mr. Kvapil reiterated that the subject property is within 300 meters of the disposal area of a non-operating landfill. As a result, the Development Officer denied the application for a Development Permit.
24. Mr. Kvapil advised the Board that, other than the restrictions imposed by *SDR*, s 13(3)(b), the Development Authority has no objection to the revised development design, as it conforms with current plans and policies for the area.
25. Mr. Kvapil recommended that the Board approve the issuance of a Development Permit subject to the conditions numbered 1 through 12, as noted on pages 19-20 of the Hearing Materials within Exhibit C, and noted below:
  - 1) The Applicant to enter into a revised Sale & Development Agreement with the City of Red Deer, that is satisfactory to the City Solicitor;
  - 2) The Applicant is required to enter into an agreement with The City of Red Deer for the allowance of parking stalls needed to comply with The City of Red Deer Land Use Bylaw 3357/2006 that will be located on the Public Utility Lot, which runs along the length of the east property line;
  - 3) The Applicant is required to provide a detailed site plan, satisfactory to Engineering Services and Environmental Services, which must include:
    - a) Storm Water Management Plan for the entire site, including identification of outlets and delineation of the Red Deer River 100-year high watermark;
    - b) Site grading plan for the entire site;
    - c) Erosion Control Plan;
    - d) Utility plan displaying the location of all planned deep (water, sanitary, and storm), shallow, and overhead utilities - Including a detail of the existing power line and proposed access road running adjacent to the power line to ensure appropriate clearances are maintained;
    - e) All planned structures for the site, which may be labelled as part of any future phase.
  - 4) The Applicant must make application to, and pay for new service connections (water, sanitary and storm) through the Engineering Customer Service Section;

- 5) The Applicant must make application to, and pay for, a driveway crossing through the Engineering Customer Services Section;
  - 6) The Applicant must construct or pay for the construction of a 1.5 metre pedestrian sidewalk along the east side of Riverside Drive, running from the street-front entrance of the future Cultural Centre to the corner of 46A Avenue and along the west side of Riverside Drive from the corner to the adjacent transit stop, satisfactory to Engineering Services;
  - 7) The Applicant must construct or pay for the construction of a 3.0 metre wide asphalt trail connection to the existing 3.0 metre wide asphalt trail East of the property, satisfactory to Engineering Services;
  - 8) The Applicant is required to submit a revised site plan, indicating the location of the fire hydrant(s), satisfactory to Emergency Services;
  - 9) The Applicant is required to submit a fire safety plan that includes protection of adjacent structures, satisfactory to Emergency Services;
  - 10) The Applicant to provide detailed site servicing plans, proposed building service entrance points, metering requirements and the electrical main size for the new buildings, satisfactory to Electric, Light and Power;
  - 11) The Applicant to apply and pay for all costs related to necessary changes to the power distribution system or the existing electrical plant, satisfactory to Electric, Light and Power department; and
  - 12) The Applicant shall not remove any natural vegetation from the site, except as required to carry out the development in compliance with the approved plans.
26. In response to questioning from the Board, Ms. Baer clarified that condition #1 is required in order to allow full conveyance of the land title to the property owner subject to the conditions set out in the Sale and Development Agreement.

### **Appellant Position**

27. The Appellant had no formal presentation. The Appellant requested clarification on conditions #5, 6, and 7 on page 20 of the Hearing Materials within Exhibit C.
28. The Appellant noted that condition #5 should state “crossings” in plural rather than the singular “crossing” as there are two crossings. The Development Authority indicated they agree with this correction.
29. The Appellant expressed concern about conditions #6 and #7 as they are linked to a future project phase (phase 2), and it may be necessary to defer part of the sidewalk and asphalt trail to phase 2. The Development Authority advised that The City is satisfied that the existing wording will allow it to work with the Appellant to resolve these concerns. However, any new or further revised development plans would need to go through the standard approval processes.
30. The Appellant did not express concerns about any other conditions, and did not make any further presentation.

## Other Presentations

31. The Board acknowledged that Area resident, Jim Marke, did not submit any written evidence, but he expressed the following two concerns in person:
- 1) He is not convinced that the setting aside of the 300 meter radius as prescribed in the *MGA* should be permitted. He is not clear as to what authority allows for this variance from the Act.
  - 2) He is concerned that the environmental report indicates that some hydrocarbons were detected. Further, the report was done "in-house," which calls into question the impartiality of the reported environmental risks.
32. In response to the concerns raised by Mr. Marke, Ms. Baer confirmed that *MGA* 680(2)(d) grants authority to the SDAB to consider but not be bound by the *SDR*, specifically s. 13(3)(b).
33. Ms. Baer further noted that the environmental report was completed by a third party under contract and the City is confident that the report is both accurate and impartial.

## ISSUES AND BOARD FINDINGS

34. The Board finds that the Development Authority lacks the authority to grant a Development Permit when it falls within the 300-meter radius of a non-operating landfill. The Board confirms that the subject development is approximately 180 meters from the former landfill area.
35. The Board is satisfied that *MGA* s 680(2)(d) requires an SDAB to consider the provisions of the *SDR*; however, the *SDR* is not binding on a SDAB. The Board is aware that the Development Authority routinely refuses any application for a Development Permit where the subject property is within 300 meters of a landfill. The applicant may appeal to the SDAB where application for a Development Permit has been refused based on *SDR*, s 13(3)(b).
36. As per s 13(5) of the *SDR*, the Board Clerk notified the Deputy Minister of Environment and Sustainable Resource Development to request the Deputy Minister's consent to the proposed development. The Deputy Minister did not respond to the notice or attend the hearing.
37. The Board further notes that *MGA* s 687(3)(c) allows an SDAB to confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own. The Board finds that it has jurisdiction to confirm, revoke or vary the Development Authority's decision to refuse this Development Permit.
38. The Board is satisfied that Ms. Whitesell is qualified to speak to the Environmental Report. The Board is further satisfied that the Environmental Report confirms that the risk for developments beyond 100 meters of this former landfill is negligible and not warranting special environmental considerations.
39. The Board is satisfied that public consultation was adequate and that existing guidelines are sufficient.

40. Based on the evidence presented and agreed to by both parties, the Board is satisfied that the proposed development complies with the applicable *Land Use Bylaw* and neighborhood planning requirements.

#### DECISION SUMMARY

For the reasons detailed above, and in accordance with *MGA* s 687(3)(c), the Board REVERSES the decision of the Development Authority to deny the Development Permit for the revised development plan at the subject property, and allows for the issuance of a Development Permit subject to:

- 1) all existing and applicable standard requirements; and
- 2) conditions #1-12 contained within Exhibit C, and restated in paragraph #25 of this decision, and as agreed to by the parties, including the correction of the singular word "crossing" in condition #5 to be replaced by "crossings" as written below:

*Condition #5 "The Applicant must make application to, and pay for, driveway crossings through the Engineering Customer Services Section;"*

#### CLOSING:

Dated at the City of Red Deer, in the Province of Alberta, this 17<sup>th</sup> day of July, 2015 and signed by the Chair on behalf of all three panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



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William Farr, Chair  
Subdivision & Development Appeal Board

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal, 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.

## **APPENDIX A**

Documents presented at the Hearing and considered by the Board.

### **EXHIBIT LIST (based on Hearing Materials page number references)**

Exhibit A – pg 1-13 – Appeal form and Notice of Hearing

Exhibit B – pg 14-15 – Submission of Appellant

Exhibit C – pg 16-102 – Submission of the City of Red Deer Development Authority

Exhibit D – Pg 103-104 - Submission of area resident