

Appeal No.: 0262 004 2019
Hearing Date: September 18, 2019

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: K. Howley
PANEL MEMBER: M. Kartusch
PANEL MEMBER: F. Yakimchuk

BETWEEN:

TRICON DEVELOPMENTS INC.

Appellant

and

CITY OF RED DEER
Represented by Beth MacLachlan, Development Officer

Development Authority

DECISION:

The Red Deer Subdivision and Development Appeal Board varies the decision of the Development Officer which refused the Appellant's application for a proposed commercial building, including a fuel station, convenience store and food establishment at 20 Sharpe Avenue (SE-4-38-27-4), on the lands zoned C4 Commercial (Major Arterial) District. The application is conditionally approved with the following conditions:

1. A Development Permit shall not be deemed completed based on this approval until all conditions except those of a continuing nature, have been fulfilled to the satisfaction of the Development Officer.
2. All Development must conform to the conditions of this Development Permit and the Approved Plans and any revisions thereto as required pursuant to this Approval. Any revisions to the Approved Plans must be approved by the Development Authority.
3. The Applicant shall repair or reinstate, or pay for the repair or reinstatement, to original condition, any public property, street furniture, curbing, boulevard landscaping and tree planting or any other property owned by the City which is damaged, destroyed or otherwise harmed by

development or construction on the site. Repairs shall be done to the satisfaction of The City of Red Deer. In the event that the City undertakes the repairs the Applicant shall pay the costs incurred by the City within 30 days of being invoiced for such costs.

4. The Applicant shall provide site drawings conforming to the requirements specified in Section 16 of The City of Red Deer Design Guidelines.
5. The Applicant shall submit additional information in regards to the quick service restaurant (drive-thru) to determine whether a revised Traffic Impact Assessment (TIA) may be required and to ensure the drive-thru meets the minimum standards for vehicle storage and distance to a public road.
6. The Applicant shall implement the requirements of the Environmental Interception Trench and ensure all possible active mitigation methods are implemented on the Proposed Site.

A detailed summary of the decision is provided herein.

JURISDICTION AND ROLE OF THE BOARD

1. The Subdivision and Development Appeal Board (the Board) is governed by the *Municipal Government Act*, RSA 2000, c M-26 (the MGA) as amended. Planning and Development is addressed in Part 17 of the MGA, and also in the *Subdivision and Development Regulation*, Alta Reg 43/2002 (the SDR).
2. The Board is established by The City of Red Deer, By-law No. 3619/2019, *Appeal Boards Bylaw* (April 1, 2019). The duty and purpose of the Board is to hear and make decisions on appeals for which it is responsible under the MGA and The City of Red Deer, Bylaw No. 3357/2006, *Land Use Bylaw* (August 13, 2006) (the LUB).
3. None of the parties had any objection to the constitution of the Board. There were no conflicts identified by the Board Members.
4. There were no preliminary issues for the Board to decide.

BACKGROUND

5. Section 13(2) (b) of the SDR prohibits the Development Authority from approving a DP application for a school, hospital, food establishment or residence, if the building site is within 300 meters of a non-operating landfill.
6. On August 9, 2019, the Development Officer refused the Development Permit Application from the Appellant for a proposed commercial building, including a fuel station, convenience store, and a food establishment 20 Sharpe Avenue (SW-4-38-27-4). The reasons given for the refusal were:

- i. The Development Authority shall not issue a development approval for a school, hospital, food establishment or residential use that is located within 300 meters of the disposal area of an operating or non-operating landfill, as per section 13(3)(b) of the Municipal Government Act Subdivision and Development Regulation.

The proposed Development includes a food establishment which is located approximately 138.36 m from a non-operating landfill – “the Oxbow Dog Park non-operating landfill site.”

7. The Appellant filed an appeal of this decision to the SDAB on August 19, 2019.

8. The Board entered into evidence the following:

Exhibit A.1:	Hearing Materials (9 pages)
Exhibit B.1:	Respondent Report (66 pages)
Exhibit C.1:	Appellant Submission - 2016 Envirowest Phase II Environmental Assessment (46 pages)
Exhibit C.2:	Appellant Submission - 2017 Trace & Associates Supplemental Report (122 pages)
Exhibit C.3:	Appellant Submission - 2017 Trace & Associates Risk Management Plan (142 pages)
Exhibit C.4:	Appellant Submission - 2019 Envirowest Interception Trench Design (11 pages)
Exhibit C.5:	Appellant Submission - 2019 Envirowest Risk Management Presentation (42 pages)

SUMMARY OF EVIDENCE AND ARGUMENT:

The Development Authority

9. The Development Authority stated that the LUB allows a Commercial Building, Fuel Sales, and a Restaurant as Permitted Uses in the C4 District. Commercial Development is subject to the development standards set out in s. 5.6 and 5.7 of the LUB, Fuel Sales and the proposed drive-thru Restaurant comply with the general purpose of the C4 District.
10. The Development Authority explained that the Proposed Site is currently under construction. Phase one consists of a commercial office building with multiple commercial buildings proposed for the Site in future phases.
11. The Development Authority confirmed that the proposed Development is a Permitted Use and complies with the LUB with respect to zoning, size, setbacks, building coverage, height, landscaping and parking. No variances to the LUB are being requested.
12. The Development Authority stated that it is bound by the Subdivision and Development Regulation (SDR) and is prohibited from issuing a Development Permit for the Proposed Site due to the distance from a non-operating landfill.
13. As submitted in the Development Authority’s evidence package, in accordance with the requirements contained in s.13(5) the requirements contained in subsections (1) to (4) of the SDR,

a waiver may be applied for through Alberta Environment and Sustainable Resource Development (ESRD). The Development Officer submitted the Development Permit application and additional documents to the ESRD on August 9, 2019. As of September 10, 2019, no response had been received.

14. The Development Authority stated that in her experience these applications/requests do not receive a response from ESRD and she is aware of an ESRD policy not to approve such requests where there is existing development on the site, as is the case in this appeal.
15. The proposed Development was reviewed by the City's Environmental Services Department. The Development Authority spoke to the letter from Janet Whitesell, Waste Management Superintendent, dated May 2, 2019 (Exhibit B.1). This letter stated that the City's Environmental Services Department does not support any development adjacent to this non-operating landfill.
16. The Development Authority's correspondence with Ms. Whitesell confirmed the reasoning for not supporting the application. Ms. Whitesell stated the landfill operated for more than 30 years, only closing in 2004, and contains over 1.6 million metric tonnes of garbage. Other non-operating landfills in the city are either much older or contain at most 2 years of garbage in comparison. While there is annual monitoring of the site, risk assessment is a point in time and risks can change over time.

The Appellant

17. The Appellant stated that there is a Risk Management Plan (RMP) in place for the site of the proposed development, Exhibits C3 & C5.
18. The Appellant explained that in the RMP prepared by Trace Associates (2017) and authored by Emily Low (currently of Envirowest Engineering Inc.), the plan recommended engineering controls as a proactive step by Tricon as part of the future redevelopment activities at the Site.
19. Envirowest Engineering Inc. (Envirowest) was retained by Tricon Developments Ltd. to provide additional information pertaining to the engineering designs and specifications of the interception trench and vapour barrier at the Site. Ms. Low spoke on behalf of the Appellant from submissions marked as Exhibit C.5; Risk Management Summary dated September 10, 2019. She explained this specific exhibit is to provide supplemental data to the previously reported conclusions and recommendations related to the RMP and previous Environmental Site Assessments (ESAs).
20. Ms. Low took the Board through the report to show that public safety would be secured through engineering measures. She outlined contingency plans that would be in place, an interception trench and vapour barrier installation designed specifically for this site would mitigate the risk associated with the proximity of the food establishment.

21. In summation, the Appellant stated that they are proposing to build to a higher standard and provided a proposed plan that includes both building and site mitigation protection that goes above municipal standards.

FINDINGS AND REASONS

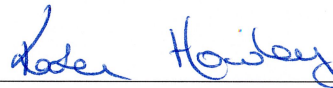
22. The Development Authority is prohibited from issuing a development permit approval for a school, hospital, food establishment or residential use that is located within 300 meters of non-operating landfill as per s. 13(3)(b) of the Subdivision and Development Regulation.
23. The Board must have regard to but is not bound by the regulation as per s.687 (3) of the MGA. Nor is it bound by the SDR, which requires consent of the ESRD to vary the 300 meter landfill setback.
24. The "site" is zoned C4, in which the LUB allows a commercial building, Fuel Sales, and a Restaurant as Permitted Uses.
25. The Board is satisfied that the proposed development conforms to the LUB with respect to the zoning. Additionally, fuel Sales and the proposed drive-thru Restaurant comply with the intended purpose of the C4 district.
26. Ms. Whitesell's correspondence with the Development Authority (Exhibit B.1) dated June 7, 2019, stated they do not support any Development adjacent to this non-operating landfill. Ms. Whitesell felt the level of detail provided by the Appellant was insufficient and as such, did not show a comprehensive understanding of the potential risks that the proposed mitigative engineering measures are meant to address.
27. The Appellant explained that they are proposing to build to a higher standard and provided a proposed plan that includes both building and site mitigation protection that goes above municipal standards. This proposed plan was not before the Development Authority and was provided to the Board to supplement the information contained in the Appellants Development Permit application.
28. Susan Widdecke from Berry Architecture stated that she is the Architect for phase 1 of the development and spoke in favour of the application. She stated that there is a new building code in place for gas mitigation that occurs in the architectural phase of development. She stated that field reviews are conducted (including gas level testing) to ensure completion and functioning of protection features.
29. The Board acknowledges that the Development Authority was bound by SDR in refusing the application. The Board is also cognizant of the reservations raised by Ms. Whitesell but, in light of all of the evidence before the Board, was not persuaded that those reservations amounted to sufficient reasons to consider denying the Development Permit Application.

30. The Board is satisfied that the implementation of the plans proposed by the Appellant and presented to the Board orally and in writing, combined with the conditions recommended by the Development Authority would negate any concerns for public safety.
31. The Board finds that it should exercise its discretion under section 687(3)(b) of the *MGA* to vary the Development Authority's refusal of the Development Permit Application for a proposed commercial building, including a fuel station, convenience store, and a food establishment located at 20 Sharpe Avenue (SW-4-38-27-4).

CLOSING:

32. Based on the evidence and responses to the questions of the Board, the Board is satisfied that the concerns raised by the City's Environmental Services Department can be effectively addressed with the use of conditions placed on the permit. For these reasons, the decision of the Development Authority is varied, and the application is approved with conditions as stated above.

Dated at the City of Red Deer, in the Province of Alberta, this 30 day of September and signed by the Chair on behalf of all panel members who agree that the content of this document adequately reflects the hearing, deliberations, and decision of the Board.



K. Howley, 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** after the issue of this decision.

APPENDIX A

- Exhibit A.1: Hearing Materials (9 pages)
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