

Appeal No.: 0262 005 2019
Hearing Date: October 16, 2019

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: K. Howley
PANEL MEMBER: T. Handley
PANEL MEMBER: M. Kartusch
PANEL MEMBER: T. Lacoste
PANEL MEMBER: F. Yakimchuk

BETWEEN:

KEN DIDYCHUK

Appellant

and

CITY OF RED DEER
Represented by Debbie Hill, Development Officer
Erin Stuart, Inspections & Licensing Manager

Development Authority

DECISION:

The Red Deer Subdivision and Development Appeal Board varies the September 26, 2019 decision of the Development Officer which refused the Appellant's application for a Discretionary Use Secondary Suite (two bedroom) located at 17 Waghorn Close, legally described as Lot 64, Block 42, Plan 605TR (the 'Site') in Red Deer, Alberta. The Site is zoned R1 Residential (low density) District. The application is 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 Appellant 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 Appellant shall pay the costs incurred by the City within 30 days of being invoiced for such costs.
4. Prior to the occupancy of the secondary suite, the Appellant shall ensure any approved walkway from the driveway to the secondary suite entrance has been completed, to the satisfaction of the Development Officer.
5. In consultation with Environmental Services, the Appellant shall submit to the Development Officer a proposed plan for passive mitigation measures respecting any environmental impact to the Appellant's property owing to its proximity to the former Red Deer College landfill.

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 Regulation).
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(3)(b) of the Regulation prohibits the Development Authority from approving a development permit application for a school, hospital, food establishment or residence, if the building site is within 300 meters of a non-operating landfill.
6. On September 26, 2019, the Development Officer refused the Development Permit Application from the Appellant for a Discretionary Use Secondary Suite (two bedroom) located at 17 Waghorn Close, legally described as Lot 64, Block 42, Plan 605TR (the Site) in Red Deer, Alberta. The Site is zoned R1 Residential (low density) District. The reasons given for the refusal were:

“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 residential use for a two bedroom secondary suite which is located approximately 191.19 m from a non-operating landfill – the Red Deer College non-operating landfill site.”

7. The Appellant filed an appeal of this decision to the Board on September 26, 2019.
8. The Board entered into evidence the following:

Exhibit A.1:	Hearing Materials (9 pages)
Exhibit B.1:	Respondent (Development Authority) Report (62 pages)
Exhibit C.1:	Appellant Submission (9 pages)

SUMMARY OF EVIDENCE AND ARGUMENT:

The Development Authority

9. The Development Authority stated that the LUB allows secondary suites as a discretionary use in the R1 District. Secondary suites are subject to the development standards set out in s. 4.7(9) of the LUB.
10. The Development Authority stated that the proposed development complies with the LUB with respect to zoning, size, setbacks, building coverage, height, landscaping and parking. No variances to the LUB are needed, and the Development Authority believes the secondary suite is an appropriate use for the Site.
11. The Development Authority stated that the proposed development is 191.19 m from the non-operating Red Deer College landfill (the landfill). The landfill operated from 1970 – 1972 and the estimated age of the waste material is approximately 47 years.
12. The Development Authority stated that it is bound by s. 13(1) to (4) of the Regulation which prohibits the issuance of a development permit within 300 m of a non-operating landfill.
13. Further, although s. 13(5) of the Regulation allows for an application to be made to the Deputy Minister of Alberta Environment and Sustainable Resource Development (the ESRD) to waive this restriction, the Development Officer has not made a request because:
 - A. The City has previously been advised by the ESRD that in accordance with their policies they will not issue a letter of consent where there is pre-existing development on the Site; and

- B. The City assessed non-operating landfills and developed an Environmental Risk Management Plan (the 'Plan') for non-operating landfills. This included the Red Deer College landfill, and the Plan recommends passive mitigation measures for development within 200 and 300 m of the landfill.
14. The proposed Development was reviewed by the City's Environmental Services Department who support the development if one of the following two approaches are taken:
- A. The residential building is developed with a sub-slab depressurization system with a minimum depressurization of 4 – 10 pa; or
- B. The Applicant (Appellant) conducts environmental monitoring of the soil gas and groundwater at the Site and conducts a risk analysis to arrive at a recommendation for an alternative risk management strategy. The analysis and recommendation must be completed and stamped by a professional registered with APEGA and must include analysis for the chemicals of concern identified in the Plan. The alternative risk management strategy must be submitted to the City for review and approval.

The Appellant

15. The Appellant stated that he understands the concerns of area landowners with regard to the use of the Site for a secondary suite. He described the features of the property that are favourable to the proposed development. These include a separate rear entrance with staircase on the outside wall, appropriate landscaping for runoff (dry basement), a large yard that can accommodate a future garage and the larger size of the primary dwelling (compared to others).
16. The Appellant stated that he uses a set methodology for ongoing management of properties. He attracts a high end tenant with the use of upgrades to the property - including much larger windows in basements, dual forced air furnaces and shiplap insulation to ensure both living spaces are warm and comfortable, dedicated laundry and entrances, and particle water filters and softeners.
17. The Appellant explained that he provides yard care services to his rental properties and also attends the properties regularly to maintain the water filters and softeners. He believes that these activities allow him as the landlord to monitor the property more closely and more frequently while maintaining the tenant's dignity to keep their privacy.
18. The Appellant provided the Board with a Residential Landfill Gas Mitigation Assessment completed by Parkland GEO dated October 10, 2019 describing a design that would be suitable to mitigate potential landfill gas for the Site. The Appellant indicated that he is willing to undertake completion of the design and mitigation measures.
19. In summation, the Appellant stated that they are proposing to build to a higher standard and he provided a proposed plan that includes both building and site mitigation protection that goes above municipal standards.

FINDINGS AND REASONS

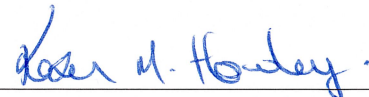
20. Because the proposed development is a discretionary use within the LUB, the Board first considered whether the use as a secondary suite is appropriate for the Site.
21. Section 4.7(9.5) of the LUB prohibits secondary suites in neighbourhoods if their approval would result in the number of secondary suites in that neighbourhood being beyond 15% of the total number of detached dwelling units. Approval of the proposed development would result in 7.5% of the neighbourhood detached dwelling units having secondary suites. This was not disputed and the Board is satisfied that this requirement is met.
22. The Board reviewed the photos, maps and parking plan provided by the Development Authority. The lot is pie shaped, can be accessed by front and back lanes, and has a good sized driveway. The yard is large and the proposed development complies with the requirements of the LUB – including parking provisions. The Development Authority conducted a site visit and deemed the site to be appropriate. The Board agrees with this determination.
23. During the notification process, the Development Authority received two letters opposed to the proposed development and one in favor. At the hearing, the Board heard from an area landowner who also opposed the proposed development. The primary concerns relate to parking and traffic.
24. During its review of the proposed development, the Board considered the concerns of the area landowners. The Board understands the concern relating to parking is the lack of, or availability of, on street parking.
25. The Board is aware of the close proximity of the Site to Red Deer College which could impact the availability of on street parking. For these reasons, the Board considered whether or not to impose an extra condition on the application to provide a fourth parking stall.
26. The Board is mandated to uphold legislation unless there are compelling circumstances to vary it. While the Board is of the opinion that a correlation between the number of required parking stalls and number of bedrooms in a dwelling may be cause for increased parking requirements in some areas of the City, there is no evidence to support it in this application.
27. Further, the Board could find no evidence to support the theory that approval of this single application would unduly interfere with or materially affect the use, enjoyment or value of the neighbourhood.
28. On the contrary, based on the photographs and maps (Exhibit B.1 page 32) the Board believes the majority of dwellings on the street have driveways or off street parking. On street parking is not regulated by The City and the Board concurs with the Development Authority that the small green space opposite the Site allows for on street parking in front of it.

29. 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 a non-operating landfill as per s. 13(3)(b) of the Regulation. The Board must have regard to but is not bound by the Regulation as per s.687 (3) of the MGA.
30. The landfill was active for a short period of time 47 years ago. The neighbourhood and the dwelling are already in existence. The Board finds these to be mitigating factors in the assessment of risk. Further, the City conducted a phase two site assessment on the landfill and has indicated their support of the application if the Appellant undertakes a mitigation plan.
31. Additionally, the Appellant explained that they propose to build the secondary suite to a higher construction standard and also provided a proposed mitigation plan that goes above municipal standards.
32. The Board acknowledges that the Development Authority was bound by Regulation in refusing the application, and in light of all of the evidence before the Board, was not persuaded that there are sufficient reasons to deny the application.
33. 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 negate concerns for public safety.
34. 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 discretionary use Secondary Suite (two bedroom) located at 17 Waghorn Close, legally described as Lot 64, Block 42, Plan 605TR (the 'Site') in Red Deer, Alberta.

CLOSING:

35. Based on the evidence and responses to the questions of the Board, and the reasons explained in this decision, the Board varies the decision of the Development Authority, and the application is approved with conditions as stated above.

Dated at the City of Red Deer, in the Province of Alberta, this 24 day of October 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)
- Exhibit B.1: Respondent (Development Authority) Report (62 pages)
- Exhibit C.1: Appellant Submission (9 pages)