

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: Z. ORDMAN
PANEL MEMBER G. LEASAK
PANEL MEMBER R. SALOMONS

BETWEEN:

GRACE ARCHITECTURE
on behalf of RED DEER NATIVE FRIENDSHIP SOCIETY
Represented by G. Zhang & T. Shur

Appellant

and

CITY OF RED DEER
Represented by E. Stuart, M. Baer & J. Whitesell

Development Authority

DECISION:

MOVED by Z. Ordman, seconded by G. Leasak

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 Grace Architecture regarding the August 19, 2014 decision of the Development Officer which denied the application for the development of a three storey multi-family building, including an 868 m² Cultural Center and sixteen multi-attached residential dwellings, to be located at 4615 Riverside Drive (Lot 4, Block 8, Plan 892 2959) zoned PSR (Public Service Reserve) hereby REVOKES the decision of the Development Officer. The development is approved with the following conditions:

1. The Applicant is to acquire title to the site and enter into a sale & development Agreement with The City of Red Deer that is satisfactory to the City Solicitor;
2. The Applicant is required to enter into a lease agreement with The City of Red Deer for the provision of parking stalls needed to comply with The City of Red Deer, Bylaw 3357/2006 *Land Use Bylaw* (LUB) that will be located on the Public Utility Lot which runs along the length of the east property line, and the lease agreement is to be registered on both titles by caveat;

3. The Applicant is to provide a site plan satisfactory to the department of Engineering Services and Environmental Services which must include:
 - A. Storm water management plan;
 - B. Site drainage plan for the entire site;
 - C. Erosion control plan;
 - D. Location of all planned deep (water, sanitary and storm), shallow and overhead (Atco Gas, Electric Light & Power, Telus and Shaw) 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 department of Engineering Services;
5. The Applicant must make application to, and pay for a driveway crossing through the department of Engineering Services;
6. The Applicant must construct or pay for construction of a 1.5 metre pedestrian sidewalk along the east side of Riverside Drive, running from the building to the corner of 46A Avenue and along the west side of Riverside Drive from the corner to the adjacent transit stop, satisfactory to the department of Engineering Services;
7. The Applicant must construct or pay for construction of a 3.0 metre wide asphalt trail connecting to the existing trail east of the property, satisfactory to the department of Engineering Services;
8. The Applicant must provide a revised site plan showing the location of fire hydrants satisfactory to the department of Emergency Services;
9. The Applicant must provide a fire safety plan that includes protection of adjacent structures, satisfactory to the department of Emergency Services;
10. The Applicant must provide detailed site servicing plans, proposed building service entrance points, metering requirements and the electrical main size for the buildings, satisfactory to the Electric Light & Power department;
11. The Applicant must apply for and pay for all costs related to any necessary changes to the power distribution system or the existing electrical plant, satisfactory to the Electric Light & 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.

CARRIED

FACTS:

1. The Applicant is proposing to develop a three storey multi-family building, including an 868 m² Cultural Center and sixteen multi-attached residential dwellings, to be located at 4615 Riverside

Drive (Lot 4, Block 8, Plan 892 2959) zoned PSR (Public Service Reserve). The proposed development is a permitted use.

2. The proposed development meets the requirements of The City of Red Deer, Bylaw 3357/2006 *Land Use Bylaw* (LUB) except for the provision of parking spaces. The City has entered into a lease agreement with the Applicant in which the majority of the parking spaces needed to comply with the LUB will be located on The City's Public Utility Lot which runs along the length of the east property line of the subject property.
3. The subject property is located in the neighbourhood known as Riverside Light Industrial Park which consists predominantly of industrial and commercial uses. The Red Deer River and Lion's Campground are located adjacent to the site.
4. The letter of denial from the Development Officer gives the reason for denial as:

"The Development Authority shall not issue 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 non-operating landfill, as per section 13(3)(b) of the Municipal Government Act Subdivision and Development Regulation."

5. The Appellant has appealed the decision to this Board.

ISSUES / ARGUMENTS:

AUTHORITY TO VARY SADR

6. Section 13(5) of the Subdivision and Development Regulation, Alberta Regulation 43/2002 (SADR) states that s. 13(3)(b) – the section noted in the reason for denial – may be varied by a development authority with the written consent of the Deputy Minister of Environment and Sustainable Resource Development (Deputy Minister).
7. During the hearing, the Development Authority stated that they did not contact the Deputy Minister to request a variation to the SADR.
8. Section 686(3)(c) of the *Municipal Government Act* (R.S.A. 2000 C M-26) (MGA); states that the Board must notify any person that the Board considers to be affected by the appeal. Given that the Deputy Minister is mentioned specifically in the SADR, the Board believes that he could *potentially* be affected. Thus, in addition to notifying those required by the MGA and the LUB, the Board also provided notice of the hearing to the Deputy Minister.
9. The Deputy Minister did not respond to the notice or attend the hearing.
10. Section 687(3)(b) of the MGA states that:

"(3) In determining an appeal, the subdivision and development appeal board... (b) must have regard to but is not bound by the subdivision and development regulations"

therefore, the Board may consider the application.

SHOULD THE BOARD VARY THE SADR?

11. The Appellant and the Development Authority both agree and believe that any risk due to the non-operating landfill is negligible.
12. The Appellant stated that the proposed development has incorporated the following design strategies to mitigate any potential risk:
 - A. The two 8-plex buildings will have an 800mm crawl space underneath the building with main floor slabs elevated 1.5 meters above ground;
 - B. The main floor of the 3 storey multi-family building will be elevated 1.5 m above ground and have a reinforced concrete slab, backfilled with clay; and
 - C. There will be no use of ground water, the proposed development will connect to City servicing.
13. The Development Authority spoke to the issue of potential risk from the non-operating landfill and provided the following information:
 - A. The landfill operated from 1960 – late 1970's. Although it was not licensed by The City, The City believes it was comprised mostly of construction debris. In support of this, the Development Authority provided an aerial photograph of the area from 1966.
 - B. Environmental Risk Management Plan (ERMP) – this plan is still in draft form and for that reason, it was not given to the Board for review. However, J. Whitesell, Waste Management Superintendent for The City of Red Deer spoke at length about the plan and its preliminary findings. Based on those, The City has determined that the risk for developments beyond 100m of the non-operating landfill are negligible (the closest part of the proposed development is 150m from the non-operating landfill).
 - C. Provision of an environmental site assessment (ESA) conducted by Tiamat Environmental Consultants Ltd. dated May 10, 2013 which concludes there are no significant concentrations of soil vapour or concerns for the environmental quality of groundwater (Exhibit C page 12) but make the following recommendations (page 14):
 - A. Provision of a conditional environmental review to the final development application with focus on whether subsurface structures are part of the proposed facilities;
 - B. Review of proposed development (including infrastructure) to determine whether further measures are needed to prevent exposure to soil vapours. This should include a winter scenario looking for the 'stack effect' in multi storey building;
 - C. Ensure groundwater is not used for any purpose unless it is appropriately treated and the water quality is verified.
14. The ESA is endorsed by an Environmental Engineer and Project Engineer who belong to The Association of Professional Engineers and Geoscientists. The key results (Exhibit C page i) include:
 - A. Five (5) boreholes indicate no unusual subsoil condition (odours or discolouration);

- B. Groundwater samples from three (3) groundwater monitoring wells indicate no detectable volatile organic compounds (VOC) as referenced from the 53 types of VOC's tested. Inorganic parameters indicate no significant environmental concern which could adversely impact the future development of the site;
- C. Soil vapour samples from two (2) soil vapour wells indicate two broad groups of VOC's, aliphatic hydrocarbons and siloxanes. The relative concentrations are not at a level which would lead to an adverse level of exposure.
15. J. Whitesell is the Waste Management Superintendent for The City of Red Deer. As she holds a professional engineering designation and is appointed to a provincial committee tasked with reviewing the regulations in question, and making recommendations for future regulations, the Board considered her opinion to be that of an expert in the field.
16. J. Whitesell stated that the setbacks in the SADR are not based on scientific analysis, but rather have been in place since 1978 and have been carried forward through the years. She also stated that monitoring and evaluation of non-operating landfills is a relatively new area of study and as such, it is difficult to determine the risks that may be posed, if any.
17. The ESA is a recent study, completed approximately 16 months ago by professionals who are in the best position to evaluate whether the non-operating landfill could adversely affect the proposed development. The study did not identify significant environmental concerns with respect to the site.
18. The ESA also corroborates the information provided by J. Whitesell who has expertise in the area.
19. The Board agrees, based on the information available, that the risk for developments beyond 100m of the non-operating landfill is negligible and that any risk that may exist will be mitigated with the design strategies identified earlier in this decision.
20. Further, no one spoke in opposition to the proposed development, nor was there any evidence provided to contradict the evidence presented.

CONDITIONS OF APPROVAL

21. If the proposed development were to be approved, the Development Authority recommended twelve conditions of approval, all of which the Board concurs with.
22. The Board is mindful that it may not sub-delegate its authority and believes, based on the representations of the Development Authority, that they are standard conditions that would be required of any development of a similar nature.

CLOSING:

23. For the reasons detailed above, the decision of the Development Officer is revoked and the development is approved subject to the conditions listed on page 1 & 2 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 24th day of September, 2014 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.

V Connors for Zef Ordman

Zef Ordman, Acting Chair
Subdivision & Development Appeal Board

EXHIBIT LIST

- AHearing Material Package (25 pages)
- B..... Red Deer Native Friendship Center Site Servicing Review April 2013 (Stantec Engineering)
- C..... Environmental Site Assessment May 2013 (Tiamat Environmental Consultants)
- D..... Hearing Materials – replacement page 13 / 14
- E..... Development Authority power point presentation
- F..... City Department Internal Responses to application referred to in pg. 13 of hearing materials)