AGENDA

Monday, March 9, 2020
5:00 PM
Council Chambers
County Administration Building

1. CALL TO ORDER

2. APPROVAL OF AGENDA

3. MINUTES APPROVAL - October 7, 2019

4. DELEGATIONS - 5:15 p.m.
   4.1 Refusal of Development Permit D19/257 - NW 28-46-1-W5M, Lot 15, Block 2, Plan 7921318, Cory Bell, Roll 2998.05

5. UNFINISHED BUSINESS

6. NEW BUSINESS
   Closed to the Public Agenda

7. CLOSED TO PUBLIC

8. Legal Opinion - Report
   Rod Hawken

9. INFORMATION ITEMS

10. ADJOURN
1. CALL TO ORDER
Secretary Rod Hawken called the meeting to order at 5:14 p.m.

2. APPROVAL OF AGENDA
Resolution SDAB20191007.001
MOVED: by Board Member R. Pries
that the Agenda for Monday October 7, 2019 be accepted as presented.
Carried Unanimously

3. MINUTES APPROVAL
Resolution SDAB20191007.002
MOVED: by Board Member C. Daniel
to approve the minutes for the Subdivision and Development Appeal Board - Tuesday, August 27, 2019 meeting.
Carried Unanimously

4. PUBLIC HEARING
Chairperson L. Johnson declared the Hearing open at 5:17 p.m. and a delegation consisting of Brad Engel entered the meeting.

Chairperson L. Johnson introduced the members of the Subdivision and Development Appeal Board and asked if there were any objections to any of the members sitting on the Board.

No objections were presented.

Rod Hawken, Secretary to the Subdivision and Development Appeal Board presented the Summary of Events.

Chairperson L. Johnson asked the Board if they felt the appeal was submitted properly and acceptable.

The Board was of the opinion the appeal was submitted properly and acceptable.

Chairperson L. Johnson asked the Board if they had any Conflict of Interest.

No conflict of interest was noted.
4.1 Refusal of Development Permit Application D19/201 – Bengel Contracting Ltd. (Homeniuk) (File# 418523) – Report – Detached Two Storey Garage

On May 31, 2019, a development permit application was received from Bengel Contracting for a single family residence with a height of thirty-two (32) feet with attached garage and 2038 square foot detached shop. Further that day after doing a brief review of the application, Administration sent an email to Bengel Contracting outlining four concerns. One of the concerns relevant to this hearing was that the detached shop’s square footage was 2038 square feet versus the 1506 square foot limit established by the Land Use Bylaw for accessory buildings.

One June 5, 2019, Administration received an email from Bengel Contracting with direction to remove the detached shop from the application.

On July 23, 2019, Administration sent an email to Bengel Contracting outlining that a review had been conducted of the newly submitted detached shop plans and that the shop though complied with the square footage requirements of the Bylaw, it exceeded the twenty foot height restriction of accessory buildings by six feet. It should also be noted that at this time it was also outlined that engineered drawings were going to be required for the detached shop due to the water table height found on site.

On July 28, 2019, Bengel Contracting responded with direction to once again remove the shop from the development permit application until it could be redrawn.

On August 27, 2019, a new development permit application for the detached shop was submitted by Bengel Contracting. In this application the shop square footage was compliant with the requirements of the Land Use Bylaw, however, the height was still above the twenty-foot height limitation.

On September 16, 2019, a Notice of Refusal of Development Permit was issued for the detached 2 storey garage.

The refusal issued reads as follows:

NOTICE OF REFUSAL OF DEVELOPMENT PERMIT

“You are hereby notified that your application for a development permit with regard to the following:

Detached 2 Storey Garage
NW-30-46-5-W5
Lot 21, Block 4, Plan 0821591
Bengel Contracting Ltd.

has been REFUSED for the following reason:

As stated in Section 10.7.10 (b) of the Land Use Bylaw 2017/38:
10.7.10 (b) Building Height

The Maximum height of an accessory building shall be 6.0 Meters (20 feet).

As per your Development Permit application submitted on August 28, 2019, the proposal for a detached 2 storey garage with the proposed height of 7.92 metres (26 feet) exceeds the 6.0 metres (20 feet) maximum building height outlined in the Lakeshore Residential District Section 10.7.10 (b).

You are further notified that you may appeal this decision to the Development Appeal Board in accordance with the provisions of Section Four of this Bylaw. Such an appeal shall be made in writing and shall be delivered either personally or by mail so as to reach the Secretary of the Subdivision Appeal Board not later than twenty-one (21) days following the date of decision of this notice. The notice of appeal shall contain a statement of the grounds of appeal as well as $150.00 for appeal fee.”

On September 19, 2019 Administration received an appeal from Bengel Contracting Ltd. The appeal letter stated the following:
"We are appealing the decision of Wetaskiwin County to refuse the construct of a 2 story detached garage on the following grounds:

- The owner’s RV & its accessories are tall and we need the height of the overhead door to accommodate this height.
- There are similar shops in the area that are over the height restrictions.
- The development will be finished with high end materials and will be a nice looking shop (to match/compliment the house)"

A Subdivision and Development Appeal Board Hearing was scheduled for Monday, October 7, 2019 and a Notice of Appeal Hearing was sent to the Applicant/Appellant, adjacent landowners and the Subdivision and Development Appeal Board and the Director of Planning and Economic Development on September 25, 2019.

It is the opinion of the Development Authority that the appeal of Refusal of Development Permit D19/201 for the ‘two storey detached shop’ be denied for the following reason.

- The proposed two storey detached garage of seven point ninety-two (7.92) metres exceeds the height restriction of six (6) metres for accessory buildings within the Lakeshore Residential District of the County’s Land Use Bylaw 2017/48.

D. Blades, Director of Planning and Development, reviewed the Development Officer's report.

The Board asked for clarification regarding the height of the dwelling.

D. Blades replied the dwelling is 32 feet.

The Board asked why the applicant requested the height of the accessory building?

D. Blades replied the accessory building is designed for Recreational Unit storage. The height issue is related to the peak and ascetic aspect of the building.

The Board asked what the second level or loft's intended use is?

D. Blades stated the applicant can provide that information but he believed the loft is for storage.

The Board asked for clarification regarding the height restriction in the Lakeshore District. Is the height restriction to manage use, limit size or for aesthetic reasons?

D. Blades stated that is correct.

The Applicant/Appellant, Bengel Contracting Ltd. provided opening remarks.

B. Engel of Bengel Contracting Ltd. presented on behalf of the owners of the property.

The home owners proposed building a house and a shop that is intended for permanent living. The house design is a rustic, timber frame house with a steep roof pitch. The house is located in the middle of the lot with attached garage and stretches across most of the lake view. The detached shop is not infringing on the lake view.

The primary use of the shop is to store a large recreational unit with an air conditioning unit on top which exceeds 13 feet.

In trying to keep the pitch of the shop roof aligned with the pitch of the dwelling, the shop needed to be higher. The house has a 12x12 pitch and the shop designed was lowered to 8x12 pitch from 10X12 pitch.

The Board questioned what the loaf area was for.

B. Engel stated it the space above is for storage and the windows were added to give it a more residential look.

The Board questioned if the height could be lowered without loosing integrity?
B. Engel stated the height could be flat roof but aesthetically it would not match the house or residential look of the accessory building. There is no residence to the left of the property that view would be impede.

The Board asked about the pitch of the roof.

B. Engel replied the original accessory building was 10x12 pitch, right now it is an 8x12 pitch and the house is 12 x12 pitch.

The board asked the appellant to describe the topography of the area, is it possible to dig down to reduce the height above ground?

B. Engle stated they are already dealing with the high water table and have raised the property a meter. Going deeper isn't an option. B. Engle also wouldn't recommend the access point for the accessory building being lower than the surrounding topography in the event of flooding.

The Board asked why two large doors and two smaller doors?

B. Engle stated the two large doors are for the Recreational Unit and a boat. That way the home owner has the to option use either door to navigate the equipment through. Aesthetically two large doors looks better than the one large door. The two smaller doors are for the side by side, lawn mower and other equipment.

D. Blades, Director of Planning and Development, provided closing comments.

The land immediate west is an undeveloped road right of way, and lands to the left of the road allowance is under the ownership of the original developer and there is reserves to the south adjacent to the lake.

Recommendation is for the appeal to be denied because the height does not comply with the Land Use Bylaw.

The Board asked if there is a Restrictive Covenant in the area?

D. Blade replied not that I am aware of.

The Board asked if there are any buildings in the development above 20’?

D. Blades stated he isn't aware of any.

B. Engel stated it looks like there are buildings in the area that are over the height restriction but not positive.

The Board asked if there are any concerns or complaints regarding this design from adjacent land owners?

D. Blades replied no.

The Board questioned if any recent changes to Land Use Bylaw that would affect this?

D. Blades replied no, not since 2017.

The Board asked about the site plan and the 1.5 meter set back from undeveloped road allowance?

D. Blades replied that 6 meter is the required setback from a road. Administration can adjust to 75% or 1.5 meters.

The Board asked about topography in general?

B. Engel stated there is a small hill when you come down the road to the curve, then as you come into the lot it does fall.

B. Engel, Applicant/ Appellant, provided closing comments.

If it is a use issue we can meet the height restrictions. Bengel Contracting Ltd. tried meet the landowner needs while also aligning the aesthetics of the accessory building to match the house.

Chairperson L. Johnson questioned the appellants if they felt they had a fair hearing. The appellants stated that they felt they had a fair hearing.
Chairperson L. Johnson stated that with Provincial Legislation, the Board is required to issue a decision within 15 days from the date of today’s hearing. No decision is binding on the Board until it issues a written decision.

The Decision of the Subdivision and Development Appeal Board is final and binding on all person’s subject only to an appeal upon question of law or upon a question of jurisdiction pursuant to Section 688 of the Municipal Government Act, Chapter M-26.

Chairperson L. Johnson declared the hearing closed at 6:00 p.m. and the Board thanked the delegation for attending and they left the hearing.

The Board discussed the following to come to a decision:

- The development should conform with the Land Use Bylaw and aesthetic reasons are not a compelling reason to vary.
- A concern was raised about kicking back to the architectural controls which is a subdivision issue not a planning issue.
- There are other ways for the applicant to accommodate the height concern.
- If this permit was approved the Board would have to vary the height and the setbacks.

Reasons for the Board Decision:

- The proposed two storey detached garage of seven point ninety-two (7.92) metres exceeds the height restriction of six (6) metres for accessory buildings within the Lakeshore Residential District of the County’s Land Use Bylaw 2017/48.
- The Board was of the opinion that aesthetic value to match the roof contour of the dwelling is not a compelling planning reason to approve the proposed development and the applicant provided evidence that the height restrictions could be met.
- The two storey detached garage is a discretionary use within the Lakeshore Residential District of the County’s Land Use Bylaw 2017/48. As a variance to the height of the two story detached garage would be required as well as a variance to the setback of the side yard adjacent to the road allowance, the Board was of the opinion the development of the two storey detached garage as proposed was not suitable for this site.

Resolution SDAB20191007.003

MOVED: by Board Member T. Hoogland that the Board deny the appeal from Bengel Contracting Ltd. within NW-30-46-5-W5M, Plan 0821591, Block 4, Lot 21 for the Refusal of Development Permit D19/201, ‘two storey detached shop’.

- Reasons:
  - The proposed two storey detached garage of seven point ninety-two (7.92) metres exceeds the height restriction of six (6) metres for accessory buildings within the Lakeshore Residential District of the County’s Land Use Bylaw 2017/48.
  - The Board was of the opinion that aesthetic value to match the roof contour of the dwelling is not a compelling planning reason to approve the proposed development and the applicant provided evidence that the height restrictions could be met.
  - The two storey detached garage is a discretionary use within the Lakeshore Residential District of the County’s Land Use Bylaw 2017/48. As a variance to the height of the two story detached garage would be required as well as a variance to the setback of the side yard adjacent to the road allowance, the Board was of the opinion the development of the two storey detached garage as proposed was not suitable for this site.

Carried Unanimously
5. **ADJOURN**

   **Resolution SDAB20191007.004**
   
   MOVED: by Board Member R. Pries
   
   that the meeting adjourn at 6:10 p.m.

   **Carried Unanimously**

   ____________________________
   CHAIRPERSON

   ____________________________
   SECRETARY
Background

On November 1, 2019, a Notice Letter was sent from the County’s Bylaw Enforcement Department to Jason Epp and Cory Bell. The Notice Letter indicated that a complaint had been made against their property with respect to miniature horses that were being kept on site. The Notice further outlined their ability to apply for a Development Permit or to remove the livestock.

On December 2, 2019, Cory Bell & Jason Epp submitted a Development Permit Application to the County for the three miniature horses that were on site. During the review of the Application, there were a couple of items that were missing that Administration worked with the Applicants to obtain.

On January 23, 2020, the County issued a Notice of Refusal of Development Permit for the ‘3 miniature horses’.

The refusal issued reads as follows:

NOTICE OF REFUSAL OF DEVELOPMENT PERMIT

“You are hereby notified that your application for a development permit with regard to the following:

3 Miniature Horses
NW-28-46-1-W5
Lot 15, Block 2, Plan 7921318
BELL, CORY

has been REFUSED for the following reason:

The applicant’s property is 1.27 acres, which would allow for 0.56 animal units. A miniature horse is classified as a foal under 750 pounds as per Appendix A of Land Use Bylaw 2017/48
and therefore has a factor of 3.3. When this factor is multiplied by 0.56, the number of miniature horses that would be allowed is 1.8. Therefore, only one miniature horse is allowed and would not require a development permit.

As per Section of Section 9.2 of Land Use Bylaw 2017/48

9.2 Animal Restrictions

9.2.1 Including within Hamlets, Lakeshore Residential, Lakeshore Mixed Use, Recreational Resort Holding, Mixed Recreational Resort, Mobile Home, Rural Conservation, and Urban Residential districts (excluding those lots adjacent to lakeshores or County Reserve land bordering on lakeshore) there shall be allowed four (4) small livestock, but shall be subject to an approved discretionary development permit, which shall be issued solely at the discretion of the Development Officer

a) The Rural Residential, Country Residential, and Restricted Country Residential districts are subject to the following:

i. 0.44 animal units (Animal units are as outlined and defined by the AOPA in Appendix A of this Bylaw) per titled acre with no development permit required. A permit shall not be issued for any proposals above the 0.44 animal unit per acre threshold.

You are further notified that you may appeal this decision to the Development Appeal Board in accordance with the provisions of Section Four of this Bylaw. Such an appeal shall be made in writing and shall be delivered either personally or by mail so as to reach the Secretary of the Subdivision Appeal Board not later than twenty-one (21) days following the date of decision of this notice. The notice of appeal shall contain a statement of the grounds of appeal as well as $150.00 for appeal fee.”

On February 20, 2020, Administration received an appeal from Cory Bell. The appeal letter stated the following:

“This is letter is supplement to the appeal of 18 Aspen Acres in regards to the decision to not allow our 2 miniature horses and pony stay on our property.

The horses Dora, Biscuit and Oreo have been a part of our family now for a year and half. We took on responsibility for Dora and Biscuit due to the fact that they could no longer be cared for by their previous owner. Dora used to be a therapy horse for children at the Stollery hospital in Edmonton, and Biscuit was rescued from an abusive home. Our family including 3 children fell in love with them immediately, we had been keeping them at friends of ours over the winter at their horse ranch, however this was proving to cause them problems as to the fact that their breed does not due well in open pasture (they have a tendency to founder). In the spring after we contacted the county to see if it would be a problem, and we’re told that you could not foresee any, we began to build them a dry pen which is much more suitable.
We cleared a more than ample space, fenced it, and built a suitable shelter for them. We then, to the joy of our kids (especially our 3 year old daughter) moved them in along with our other pony which we had also been keeping at the ranch as they developed a great friendship, a herd within the herd you could say. They are provided with quality hay, oats and treats and are well groomed and maintained. Many of our neighbours stop to say hello and people who walk through our development always stop for a look as well. Then for some reason we were visited by an officer from your by-law department and informed that they could not stay. We contacted the county to inquire why as we were already given the impression that there would be no issue. Upon further contact we were informed that we were only zoned for 1.8 foals based on some sort of calculation (how you can have 0.8 of an animal still confuses us, and why should it be rounded down to 1, not the math I was taught in school). Furthermore we were told that the miniature horses were being judged on the same scale as a foal, a foal is significant larger than a miniature horse.

The main point of this letter is that we believe given the circumstances mentioned above, the care we provide and the smiles and happiness that these animals bring. Not to mention the costs we incurred to provide a great life for these animals and the cost it would be to repurpose their pen, why does the county simply let their decision come down to an equation. These animals have taught our children responsibilities by way of chores, and both of our boys’ grades in school have improved since the horses have arrived. We are people, our horses are beings with feelings and emotions. The passers by and well wishers are people. These animals harm no one, they do not cause noise, they do not escape their pen. Their waste is hauled away bi-weekly. We find it disappointing that a rural governing body, would not take any of this into consideration. These are the joys that made us want to move out of the city and into this community.

We hope upon reading this you think long and hard before you decide to take away a little girls mini horses, instead of just punching your data into spreadsheet and it spitting out an answer.

Sincerely the family at 18 Aspen Acres”

On February 28, 2020, Administration received a letter of concern from Otto and Carolynn Lehner. The letter of concern stated the following:

"We, the owners of a residential/recreational property of Lot 26, Block 2, number five Sir William Crescent, object to the approval of the above mentioned application. We strongly oppose the approval for the following reasons:

Aspen Acres is zoned as residential/recreational property and assessed taxes accordingly. Should there be livestock allowed, we expect a downgrade in taxes to the agricultural designation.
The application was submitted only after a complaint was made. The corral and horses were introduced in fall of 2019 without a regard for established process and without any notification to adjacent property owners.

The presence of livestock is in the contradiction to the approved land use. Notwithstanding the fact, it detracts from the overall appearance, and decreases the property values. The concentration of horse manure emanates foul odors that will only get worse in the summer. It will also breed hundreds of flies and insects.

While we are unable to attend the hearing in person March 9, 2020, we expect this letter of objection will be read for the record at the hearing.

Regards,
Otto and Carolynn Lehner"

On March 2, 2020, Administration received a letter of concern from Otto and Carolynn Lehner. The letter of concern stated the following:

"We, Arlene & Lew Parson, the owners of 3 Residential/recreational propertys, consisting of lots – 21, 22 and 23 Aspen Acres strongly oppose this permit. Our reasons are:

#1 – When we purchased our property’s it was understood that we were in a Residential zone, not Agricultural, with a possibility of Livestock, and pay taxes accordingly.

#2 – Cory Bell and Jason Epp, proceeded to bring in 3 miniature horses with no Regard for neighbourhood concerns! They only applied for a permit after a compliant was issued.

#3 – We live here full time and eventho it’s winter, the smell is foul. We can imagine how bad it will be in the summer, bringing flies, insects and Rodants.

#4 – the appearance.
The Corral is positioned in the front yard, and quite an eyesore to see these animals walking in their own feces with limited space which is also shared with chickens.

Regard’s,
Arlen & Lew Parsons”

A Subdivision and Development Appeal Board Hearing was scheduled for Monday, March 9, 2020, and a Notice of Appeal Hearing was sent to the Applicant/Appellant, adjacent landowners, the Subdivision and Development Appeal Board, and the Director of Planning and Economic Development on February 24, 2020.

**Recommendations**
It is the opinion of the Development Authority that the appeal of Refusal of Development Permit D19/257 for the '3 miniature horses' be denied for the following reason:

- The applicant’s property is 1.27 acres, which would allow for 0.56 animal units. A miniature horse is classified as a foal under 750 pounds as per Appendix A of Land Use Bylaw 2017/48 and therefore has a factor of 3.3. When this factor is multiplied by 0.56, the number of miniature horses that would be allowed is 1.8. Therefore, only one miniature horse is allowed and would not require a development permit.

**Recommended Resolution**

that the appeal of Refusal of Development Permit D19/257 for the '3 miniature horses' be denied for the following reason:

- The applicant’s property is 1.27 acres, which would allow for 0.56 animal units. A miniature horse is classified as a foal under 750 pounds as per Appendix A of Land Use Bylaw 2017/48 and therefore has a factor of 3.3. When this factor is multiplied by 0.56, the number of miniature horses that would be allowed is 1.8. Therefore, only one miniature horse is allowed and would not require a development permit.
NOTICE OF REFUSAL OF DEVELOPMENT PERMIT

You are hereby notified that your application for a development permit with regard to the following:

3 Miniature Horses
NW-28-46-1-W5
Lot 15, Block 2, Plan 7921318
BELL, CORY

has been REFUSED for the following reason:

The applicants property is 1.27 acres, which would allow for 0.56 animal units. A miniature horse is classified as a foal under 750 pounds as per Appendix A of Land Use Bylaw 2017/48 and therefore has a factor of 3.3. When this factor is multiplied by 0.56, the number of miniature horses that would be allowed is 1.8. Therefore, only one miniature horse is allowed and would not require a development permit.

As per Section of Section 9.2 of Land Use Bylaw 2017/48

9.2 Animal Restrictions

9.2.1 Including within Hamlets, Lakeshore Residential, Lakeshore Mixed Use, Recreational Resort Holding, Mixed Recreational Resort, Mobile Home, Rural Conservation, and Urban Residential districts (excluding those lots adjacent to lakeshores or County Reserve land bordering on lakeshore) there shall be allowed four (4) small livestock, but shall be subject to an approved discretionary development permit, which shall be issued solely at the discretion of the Development Officer.

a) The Rural Residential, Country Residential, and Restricted Country Residential districts are subject to the following:

i. 0.44 animal units (Animal units are as outlined and defined by the AOPA in Appendix A of this Bylaw) per titled acre with no development permit required. A permit shall not be issued for any proposals above the 0.44 animal unit per acre threshold.
You are further notified that you may appeal this decision to the Development Appeal Board in accordance with the provisions of Section Four of this Bylaw. Such an appeal shall be made in writing and shall be delivered either personally or by mail so as to reach the Secretary of the Subdivision Appeal Board not later than twenty-one (21) days following the date of decision of this notice. The notice of appeal shall contain a statement of the grounds of appeal as well as $150.00 for appeal fee.

DATE OF DECISION: January 30, 2020
Appeal Deadline: February 20, 2020

Jarvis Grant
Development Officer
County of Wetaskiwin No. 10
County of Wetaskiwin No. 10
Development Permit Appeal Form

Upon receiving this completed Appeal Form a Hearing will be scheduled within 30 days. The Hearing will be scheduled after 5:15 p.m. Monday - Thursday. You will be notified of the scheduled Hearing by Registered Mail.

PLEASE NOTE:

The County of Wetaskiwin No. 10 requires that a non-refundable fee of $150.00 for an appeal to be sent to the Secretary of the Subdivision and Development Appeal Board. The fee may be paid by debit, cash, or a cheque made payable to the County of Wetaskiwin No. 10.

With this written submission, the information that you provide may be made public subject to the provisions of the Freedom of Information and Protection of Privacy Act.

**Appeal the Refusal of Development Permit: D19/257 of NW-28-46-1-W5 Lot 15, Block 2, Plan 7921318, for 3 Miniature Horses**

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You must attach a letter stating your grounds for Appeal to this application.

Please indicate if there are any date(s) and times within 30 days of this application that you would not be able to attend a Hearing, also please indicate the best way to contact you when the a Hearing has been scheduled:

| Signature of Appellant(s): |

For Office Use Only:

| Date Received: |
| Receipt Number: |
NOTICE OF REFUSAL OF DEVELOPMENT PERMIT

You are hereby notified that your application for a development permit with regard to the following:

3 Miniature Horses
NW-28-46-1-W5
Lot 15, Block 2, Plan 7921318
EPP, JASON

has been REFUSED for the following reason:

The applicants property is 1.27 acres, which would allow for 0.56 animal units. A miniature horse is classified as a foal under 750 pounds as per Appendix A of Land Use Bylaw 2017/48 and therefore has a factor of 3.3. When this factor is multiplied by 0.56, the number of miniature horses that would be allowed is 1.8. Therefore, only one miniature horse is allowed and would not require a development permit.

As per Section of Section 9.2 of Land Use Bylaw 2017/48

9.2 Animal Restrictions

9.2.1 Including within Hamlets, Lakeshore Residential, Lakeshore Mixed Use, Recreational Resort Holding, Mixed Recreational Resort, Mobile Home, Rural Conservation, and Urban Residential districts (excluding those lots adjacent to lakeshores or County Reserve land bordering on lakeshore) there shall be allowed four (4) small livestock, but shall be subject to an approved discretionary development permit, which shall be issued solely at the discretion of the Development Officer

a) The Rural Residential, Country Residential, and Restricted Country Residential districts are subject to the following:

i. 0.44 animal units (Animal units are as outlined and defined by the AOPA in Appendix A of this Bylaw) per titled acre with no development permit required. A permit shall not be issued for any proposals above the 0.44 animal unit per acre threshold.
You are further notified that you may appeal this decision to the Development Appeal Board in accordance with the provisions of Section Four of this Bylaw. Such an appeal shall be made in writing and shall be delivered either personally or by mail so as to reach the Secretary of the Subdivision Appeal Board not later than twenty-one (21) days following the date of decision of this notice. The notice of appeal shall contain a statement of the grounds of appeal as well as $150.00 for appeal fee.

DATE OF DECISION: January 30, 2020
Appeal Deadline: February 20, 2020

[Signature]
Jarvis Grant
Development Officer
County of Wetaskiwin No. 10
County of Wetaskiwin No. 10
Development Permit Appeal Form

Upon receiving this completed Appeal Form a Hearing will be scheduled within 30 days. The Hearing will be scheduled after 5:15 p.m. Monday - Thursday. You will be notified of the scheduled Hearing by Registered Mail.

PLEASE NOTE:
The County of Wetaskiwin No. 10 requires that a non-refundable fee of $150.00 for an appeal to be sent to the Secretary of the Subdivision and Development Appeal Board. The fee may be paid by debit, cash, or a cheque made payable to the County of Wetaskiwin No. 10.

With this written submission, the information that you provide may be made public subject to the provisions of the Freedom of Information and Protection of Privacy Act.

Appeal the Refusal of Development Permit: D19/257 of NW-28-46-1-W5 Lot 15, Block 2, Plan 7921318, for 3 Miniature Horses

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You must attach a letter stating your grounds for Appeal to this application.

Please indicate if there are any date(s) and times within 30 days of this application that you would not be able to attend a Hearing, also please indicate the best way to contact you when the Hearing has been scheduled:

______________________________
Signature of Appellant(s):

For Office Use Only:

Date Received: __________
Receipt Number: __________
TO: The County of Wetaskiwin No. 10
Subdivision & Development Appeal Board
FROM: Jarvis Grant
Development Officer
REFUSAL: County of Wetaskiwin
APPELLANT: Cory Bell

BACKGROUND/CONTEXT:

The proposal for the ‘3 Miniature Horses’ is located on Plan 7921318, Block 2, Lot 15 which is approximately 1.27 acres in size and located within the subdivision of Aspen Acres. Aspen Acres is a Country Residential multi-lot subdivision located adjacent to the Summer Village of Poplar Bay and is accessed through Range Road 14.
On November 1, 2019, a Notice Letter was sent from the County’s Bylaw Enforcement Department to Jason Epp and Cory Bell. The Notice Letter indicated that a complaint had been made against their property with respect to miniature horses that were being kept on site. The Notice further outlined their ability to apply for a development permit or to remove the livestock. It should be noted that previously Cory Bell had contacted Administration about keeping two miniature horses on the property and was advised to submit a completed development permit application. Between that time and when the Notice Letter was issued, no such application had been received from Ms. Bell.

On December 2, 2019, Jason Epp submitted a development permit application to the County for the three miniature horses that were on site. During the review of the application there were a few items missing that Administration worked with the applicants to obtain. It should be noted that on December 5, 2019, County Council amended the Animal Restriction section of the County’s Land Use Bylaw with the rules that are now currently in place. The previous regulations of the Land Use Bylaw were completely at the discretion of the Development Officer and stated:

"9.2.1 With the exception of the Agricultural, and Watershed Protection districts,
  a) the number of livestock other than domestic pets on a parcel smaller than 1.2 hectares
    (3 acres) in size shall be at the discretion of the Development Officer but should not
    exceed the equivalent of 1 animal unit for properties less than 2.0 acres and 2 animal
    units for property between 2.0 and 3.0 acres; and"
b) livestock other than domestic pets on parcels larger than 1.2 hectares (3 acres) shall be at the discretion of the Development Officer who shall consider the impact to adjacent land uses.”

On January 23, 2020, the County issued a Notice of Refusal of Development Permit for the ‘3 miniature horses’.

On February 20, 2020, the County received a Letter of Appeal from Cory Bell.

DISCUSSION

For the reasons explained in detail below, the Development Authority recommends that this appeal denied.

Reason 1: Exceeds the number of livestock allowed through the Land Use Bylaw

The appellant’s property is 1.27 acres, when multiplied by 0.44 which is the number of animal units allowed per acre, the property allows for 0.56 animal units. A miniature horse is classified as a foal under 750 pounds as per Appendix A of Land Use Bylaw 2017/48 and therefore has a factor of 3.3. When this factor is multiplied by 0.56, the number of miniature horses that would be allowed is 1.8. Therefore, only one miniature horse is allowed and would not require a development permit.

As per Section of Section 9.2 of Land Use Bylaw 2017/48:

“9.2 Animal Restrictions

9.2.1 Including within Hamlets; Lakeshore Residential Lakeshore Mixed Use, Recreational Resort Holding, Mixed Recreational Resort; Mobile Home, Rural Conservation, and Urban Residential districts (excluding those lots adjacent to lakeshores or County Reserve land bordering on lakeshore) there shall be allowed four (4) small livestock, but shall be subject to an approved discretionary development permit, which shall be issued solely at the discretion of the Development Officer
   a) The Rural Residential, Country Residential, and Restricted Country Residential districts are subject to the following:
      i. 0.44 animal units (Animal units are as outlined and defined by the AOPA in Appendix A of this Bylaw) per titled acre with no development permit required. A permit shall not be issued for any proposals above the 0.44 animal unit per acre threshold.

      ii. Where a lot is located within a multi-lot subdivision and section 9.2(b)(ii) would enable more than fifty (50) individual animals based on the 0.44 animal units per acre, poultry units shall be limited to a maximum of fifty (50) birds individual animals, with an additional 0.44 animal units per lot (i.e. 2 goats or 1 horse) granted.
b) Sensitive natural areas, such as naturally occurring wetlands and riparian areas should be fenced from livestock;

c) Manure shall be handled, stored and disposed of in accordance with Provincial and Federal Regulations”

<table>
<thead>
<tr>
<th>Category of Livestock</th>
<th>Type of Livestock</th>
<th>Factor to be used to determine the animal units</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Chicken – Layer-Liquid (includes associated pullets)</td>
<td>125</td>
</tr>
<tr>
<td></td>
<td>Chicken – Layers (Belt Cage)</td>
<td>150</td>
</tr>
<tr>
<td></td>
<td>Chicken – Layers (Deep Pit)</td>
<td>150</td>
</tr>
<tr>
<td></td>
<td>Chicken – Pullets/Broilers</td>
<td>500</td>
</tr>
<tr>
<td></td>
<td>Turkeys – Toma/Breeders</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td>Turkey – Hens (light)</td>
<td>75</td>
</tr>
<tr>
<td></td>
<td>Turkey – Broilers</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>Ducks</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>Geese</td>
<td>50</td>
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<tr>
<td></td>
<td>PMU</td>
<td>1</td>
</tr>
<tr>
<td>Horse</td>
<td>Feeders &gt; 750 lbs</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Foals &lt; 750 lbs</td>
<td>3.3</td>
</tr>
<tr>
<td></td>
<td>Mules</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Donkeys</td>
<td>1.5</td>
</tr>
<tr>
<td>Sheep</td>
<td>Ewes/rams</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Ewes with Lambs</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Lambs</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>Feeders</td>
<td>10</td>
</tr>
<tr>
<td>Goat</td>
<td>Meat/Milk (per Ewe)</td>
<td>6</td>
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<tr>
<td></td>
<td>Nannies/Billies</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Feeders</td>
<td>13</td>
</tr>
<tr>
<td>Bison</td>
<td>Bison</td>
<td>1</td>
</tr>
<tr>
<td>Cervid</td>
<td>Elk</td>
<td>1.7</td>
</tr>
<tr>
<td></td>
<td>Deer</td>
<td>5</td>
</tr>
<tr>
<td>Wild Boar</td>
<td>Feeders</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Sow (farrowing)</td>
<td>1.25</td>
</tr>
</tbody>
</table>
RECOMMENDATION:
It is the opinion of the Development Authority that the appeal of Refusal of Development Permit D19/257 for three miniature horses be denied.

The recommendation is made for the following reasons:
- The proposal exceeds the number of livestock allowed to be permitted by Administration through the Land Use Bylaw.

SUMMARY:
In conclusion, the Development Authority’s recommendation to the SDAB is to deny the appeal of the Refusal of Development Permit D19/257 for three miniature horses.
Appendix 1 – Applicable Legislation

Municipal Government Act

627(1) A council must by bylaw
(a) establish a subdivision and development appeal board, or
(b) authorize the municipality to enter into an agreement with one or more municipalities to establish an intermunicipal subdivision and development appeal board, or both.

638.2(1) Every municipality must compile and keep updated a list of any policies that may be considered in making decisions under this Part
(a) that have been approved by council by resolution or bylaw, or
(b) that have been made by a body or person to whom powers, duties or functions are delegated under section 203 or 209,

and that do not form part of a bylaw made under this Part.

(2) The municipality must publish the following on the municipality’s website:
(a) the list of the policies referred to in subsection (1);
(b) the policies described in subsection (1);
(c) a summary of the policies described in subsection (1) and of how they relate to each other and how they relate to any statutory plans and bylaws passed in accordance with this Part;
(d) any documents incorporated by reference in any bylaws passed in accordance with this Part.

(3) A development authority, subdivision authority, subdivision and development appeal board, the Municipal Government Board or a court shall not have regard to any policy approved by a council or by a person or body referred to in subsection (1)(b) unless the policy is set out in the list prepared and maintained under subsection (1) and published in accordance with subsection (2).

(4) This section applies on and after January 1, 2019.

639 Every municipality must pass a land use bylaw.

640(1) A land use bylaw may prohibit or regulate and control the use and development of land and buildings in a municipality.

642(1) When a person applies for a development permit in respect of a development provided for by a land use bylaw pursuant to section 640(2)(b)(i), the development authority must, if the application otherwise conforms to the land use bylaw and is complete in accordance with section 683.1, issue a development permit with or without conditions as provided for in the land use bylaw.
(2) When a person applies for a development permit in respect of a development that may, in the discretion of a development authority, be permitted pursuant to section 640(2)(b)(ii), the development authority may, if the application is complete in accordance with section 683.1, issue a development permit with or without conditions as provided for in the land use bylaw.

(3) A decision of a development authority on an application for a development permit must be in writing, and a copy of the decision, together with a written notice specifying the date on which the decision was made and containing any other information required by the regulations, must be given or sent to the applicant on the same day the decision is made.

(4) If a development authority refuses an application for a development permit, the decision must include the reasons for the refusal.

683 Except as otherwise provided in a land use bylaw, a person may not commence any development unless the person has been issued a development permit in respect of it pursuant to the land use bylaw.

684(1) The development authority must make a decision on the application for a development permit within 40 days after the receipt by the applicant of an acknowledgment under section 683.1(5) or (7) or, if applicable, in accordance with a land use bylaw made pursuant to section 640.1(b).

(2) A time period referred to in subsection (1) may be extended by an agreement in writing between the applicant and the development authority.

(3) If the development authority does not make a decision referred to in subsection (1) within the time required under subsection (1) or (2), the application is, at the option of the applicant, deemed to be refused.

685(1) If a development authority
   (a) fails or refuses to issue a development permit to a person,
   (b) issues a development permit subject to conditions, or
   (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board
   (a) in the case of an appeal made by a person referred to in section 685(1)
       (i) with respect to an application for a development permit,
(A) within 21 days after the date on which the decision is made under section 642, or
(B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires, or
(ii) with respect to an order under section 645, within 21 days after the date on which the order is made, or
(b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

(2) The subdivision and development appeal board must hold an appeal hearing within 30 days after receipt of a notice of appeal.

(3) The subdivision and development appeal board must give at least 5 days’ notice in writing of the hearing
   (a) to the appellant,
   (b) to the development authority whose order, decision or development permit is the subject of the appeal, and
   (c) to those owners required to be notified under the land use bylaw and any other person that the subdivision and development appeal board considers to be affected by the appeal and should be notified.

(4) The subdivision and development appeal board must make available for public inspection before the commencement of the hearing all relevant documents and materials respecting the appeal, including
   (a) the application for the development permit, the decision and the notice of appeal, or
   (b) the order under section 645.

(4.1) Subsections (1)(b) and (3)(c) do not apply to an appeal of a deemed refusal under section 683.1(8).

(5) In subsection (3), “owner” means the person shown as the owner of land on the assessment roll prepared under Part 9.

687(1) At a hearing under section 686, the subdivision and development appeal board must hear
   (a) the appellant or any person acting on behalf of the appellant,
   (b) the development authority from whose order, decision or development permit the appeal is made, or a person acting on behalf of the development authority,
   (c) any other person who was given notice of the hearing and who wishes to be heard, or a person acting on behalf of that person, and
   (d) any other person who claims to be affected by the order, decision or permit and that the subdivision and development appeal board agrees to hear, or a person acting on behalf of that person.
(2) The subdivision and development appeal board must give its decision in writing together with reasons for the decision within 15 days after concluding the hearing.

(3) In determining an appeal, the subdivision and development appeal board

(a) must act in accordance with any applicable ALSA regional plan;
(a.1) must comply with any applicable land use policies;
(a.2) subject to section 638, must comply with any applicable statutory plans;
(a.3) subject to clause (d), must comply with any land use bylaw in effect;
(b) must have regard to but is not bound by the subdivision and development regulations;
(c) may 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;
(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or
(B) materially interfere with or affect the use, enjoyment or value of
neighbouring parcels of land, and

(ii) the proposed development conforms with the use prescribed for that land or
building in the land use bylaw

Land Use Bylaw

1.2 Definitions

Livestock, Large means, but may not be restricted to, Cattle, Swine, Horses, Bison, Cervid, and Wild
Boar.

Livestock, Medium means, but may not be restricted to Goats, Sheep, Miniature Horses, Miniature
Swine and Miniature Cattle.

Livestock, Small means, but may not be restricted to, Poultry and Meat Rabbits.

9.2 Animal Restrictions

9.2.1 Including within Hamlets; Lakeshore Residenti4 Lakeshore Mixed Use, Recreational Resort Holding,
Mixed Recreational Resort:, Mobile Home, Rural Conservation, and Urban Residential districts (excluding
those lots adjacent to lakeshores or County Reserve land bordering on lakeshore) there shall be allowed
four (4) small livestock, but shall be subject to an approved discretionary development permit, which
shall be issued solely at the discretion of the Development Officer

a) The Rural Residential, Country Residential, and Restricted Country Residential districts are subject to
the following:
i. 0.44 animal units (Animal units are as outlined and defined by the AOPA in Appendix A of this Bylaw)
per titled acre with no development permit required. A permit shall not be issued for any proposals
above the 0.44 animal unit per acre threshold.
ii. Where a lot is located within a multi-lot subdivision and section 9.2(b)(i) would enable more than fifty (50) individual animals based on the 0.44 animal units per acre, poultry units shall be limited to a maximum of fifty (50) birds individual animals, with an additional 0.44 animal units per lot (i.e. 2 goats or 1 horse) granted.

b) Sensitive natural areas, such as naturally occurring wetlands and riparian areas should be fenced from livestock;

c) Manure shall be handled, stored and disposed of in accordance with Provincial and Federal Regulations

**MDP**

**Objective 4.1 Lakes in the County are categorized according to their respective primary roles**

The lakes in the County are categorized according to the intensity of the intended use of each lake.

4.1.1 The types of lakes are established as follows:

Type 1: Development - These lakes accommodate various lakeshore recreational and residential development.

Type 2: Low-impact Development - These lakes accommodate low impact and small-scale development on the lakeshore. These lakes are suitable for wildlife habitat and wilderness conservation.

Type 3: Protection - Lakeshore development is not allowed due to various constraints such as access, size, depth, surrounding land uses.

4.1.2 County's named lakes are categorized as follows:

Type 1: Development - Buck Lake, and Pigeon Lake

Type 2: Low-impact Development - Battle Lake, Bearhills Lake, Town Lake, and Wizard Lake


7 Intermunicipal

Adjacent municipalities to the County of Wetaskiwin are:

- Urban Municipalities: City of Wetaskiwin and Town of Millet;
- Rural Municipalities: Leduc County, Camrose County, Ponoka County, Clearwater County and Brazeau County;
- Summer Villages: Argentia Beach, Crystal Springs, Ma-Me-O Beach, Grandview, Ma-Meo Beach, Norris Beach, Poplar Bay, and Silver Beach; and
- First Nation Indian Reserves: Samson, Pigeon Lake, Buck Lake (Paul), Louis Bull, and Ermineskin.

Many of the issues such as farmland protection programs, identifying areas for residential development, and lake shore development, require input from adjacent municipalities and First Nations.

7.1.2 All area structure plans, zoning bylaw amendment, subdivision, and discretionary development applications need to be referred to the adjacent municipalities and First Nations within the fringe area for their comment.
7.2.1 Development adjacent to the City of Wetaskiwin and Summer Villages at Pigeon Lake will follow the respective Intermunicipal Development Plans.

**LAND USE DEVELOPMENT**

11. Compatible development in the area will enhance the value and desirability of the area.

12. Compatible uses or development may include:
   a. Agriculture
   b. Watershed protection
   c. Rural conservation
   d. Recreational
   e. Institutional
   f. Residential
   g. Commercial

13. Each municipality is responsible for subdivision approval within its jurisdiction. In determining compatibility, each responsible subdivision authority must balance the characteristics of the proposed development with the characteristics and use of the existing development on adjacent lands and the capacity of the lake and the local infrastructure to sustain the new development.

14. If a subdivision application involves multi-lot development, each responsible subdivision authority must require that an applicant prepare an area structure plan.

15. Area structure plans must include the information set out in the Municipal Government Act.

16. Each party must provide formal notification and referrals about area structure plans, re-zoning applications and subdivision applications to all other parties to this agreement. A thirty (30) day turnaround response time following the date of notification will be required.

17. Informal notification between the parties will be encouraged on an ongoing basis about issues related to the matters set out in this agreement.
COUNTY OF WETASKIWIN NO. 10 - APPLICATION FOR DEVELOPMENT PERMIT

I hereby make an application under the provisions of the County of Wetaskiwin's Land Use Bylaw for a Development Permit, in accordance with the plans and supporting information submitted herewith and which form part of this application. Except as otherwise provided in the Land Use Bylaw, a person may not commence development unless the person has been issued a development permit; a decision will only be issued in writing.

It is the responsibility of the applicant/owner to ensure that all development carried out complies with any caveat, easement, restrictive covenant or other encumbrance noted on the back of the Certificate of Title.

APPLICANT INFORMATION:

Name of Applicant: Cory Bell & Jason Epp

Mailing Address:
Site 6 Box 9 RR2 Westerose AB T0C 2V0

Phone Number: 403-606-5055 780-586-0721

Email Address/Fax Number: bell-cory@vernon.com

Are you the Registered Owner? □ Yes □ No, If no complete the next box

If No as above, presented Registered Owner(s) according to Alberta Land Titles: I (We)(please print) _____________________________ as the registered owner(s) (as per Land Titles) of the aforementioned property, authorize (applicant(s) "as above") to develop which I have fully reviewed and fully endorse.
Address: __________________________________________ Telephone_____________________________________

Signature of Present Registered Owner(s):
✓ If owner is a corporate body, he or she must be listed on the corporate registry as authorized person(s) to sign. Proof of authority to sign MAY BE required.
✓ If additional signatures are required, attach to application as necessary.

LAND INFORMATION: Blue Sign 19464049

Does your property have a County approved approach? □ Yes □ No, If No, you will be required to have the approach built to County Standards prior to the issuance of a Development Permit. Please fill out the Approach Application on Page 12 of this application.

QUARTER 1W SECTION 28 TOWNSHIP 46 RANGE 1 WEST OF 5 MERIDIAN 4 or 5

OR PLAN 1921318 BLOCK 2 LOT 15

Is your property located within ½ mile or 800 metres of a Highway or Secondary Highway? □ No or □ Yes

If yes, Please complete and provide Alberta transportation with a road side development application form. The application can be obtained at the County of Wetaskiwin Office or at http://www.transportation.alberta.ca/2628.htm

Roadside Development Application Sent on: __________________ Method Application sent by:
□ Mail □ Fax □ Email Sent by: __________________________

For Office Use Only:

Application No.: __________________ Roll No.: 2998.05 __________________ Land Use District:

Receipt No.: __________________ Received Date: __________________ Division:

Subdivision: __________________ Per/Dis: __________________

County of Wetaskiwin No. 10-Development Permit Application - Page 2 of 12
**PROPOSED DEVELOPMENT(S)**

**Development Proposal(s): Type of Development (Include Dimensions & Number of Storeys)**
- Any structure that is 108 sq. ft./10 m² or over requires a development permit
- Decks 2 ft./0.61 m or higher require a development permit *If this application is for a Business please go to Page 4.*

- 3 miniature horses + 800 lbs, 3' height
- manure packed up out of pens; placed in dumpster, hauled out every two weeks

**Size of Proposed Development:**
*Please note some districts within the County of Wetaskiwin have a maximum cumulative accessory building square footage of 1506 sq. ft. There is also site coverage and height restrictions.*

Please circle if Dimensions are in feet/metres:

<table>
<thead>
<tr>
<th>Building:</th>
<th>Building:</th>
<th>Building:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fenced Corral</td>
<td>1200-10</td>
<td></td>
</tr>
<tr>
<td>Length: 65</td>
<td>Width: 45</td>
<td>Height: 4F</td>
</tr>
<tr>
<td>Height: 4F</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Type of Construction: □ Conventional Construction □ Moved in, describe type:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If Moved In (check one): □ New (Direct from factory) □ Used, Year built 2019 □ pictures must be provided for all used buildings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Will there be plumbing within the proposed Structure: □ No □ Yes, if so please check that all apply</td>
<td></td>
<td></td>
</tr>
<tr>
<td>□ Sink □ Toilet □ Tap for Garden Hose □ Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Will there be kitchen facilities within the proposed structure: □ No □ Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>List all existing building(s)/structure(s) on the Property (i.e. Dwelling(s), Garage(s), shed(s), etc.) and label accordingly on the site plan to be provided with this application on Page 6.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Horse Garage Shop</td>
<td></td>
<td></td>
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<tr>
<td>Estimated Cost of Project (for statistic purpose only): $2000.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Estimated Date of Commencement: June 1, 2019</td>
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<td></td>
</tr>
<tr>
<td>Estimated Date of Completion: July 30, 2019</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**CONFINED FEEDING OPERATION:**
- Is the proposed development within 800 metres (1/2 mile) of a CFO? □ No or □ If Yes, please read the following and sign below:

I choose to build here knowing that I/we may suffer from smells, noise, flies, etc. from animals or manure; however, I realize that this is a farming area and that these nuisances are unavoidable if I choose to live here. I also understand that land cannot be subdivided if it is too close to a Confined Feeding Operation.

Applicant Signature(s):

**SECONDARY DWELLING:**
- Is this a secondary dwelling? □ No or □ If Yes, please read the following and sign below:

I understand that if I build a second residence on my land, the residence will not stand on a separate parcel. It will stand on the same parcel as the first house and as such, the 2 residences cannot be sold separately unless the parcel is subdivided and 2 separate lots are created. I further understand that I have no automatic right to have the land subdivided, and an application to subdivide may be refused if it conflicts with the regional plan or any County by-law.

Applicant Signature(s):
SITE PLAN

*Please note that by including development/building(s) solely on a drawing that this may not preclude it from the development permit application process nor does it approve its use, and it may be required to be applied for unless it is exempted according to the County of Wetaskiwin's Land Use Bylaw or is under Section 643 of the MGA. A person may not commence any development unless the person has been issued a development permit in respect of it pursuant to the Land Use Bylaw.

Except as otherwise provided in the County of Wetaskiwin No 10 Land Use Bylaw, a person may not commence any development unless the person has been issued a development in respect of it pursuant to the Land Use Bylaw. A decision will be issued in writing. I hereby make application under the provisions of the County of Wetaskiwin Land Use Bylaw for a Development Permit, in accordance with the plans and supporting information submitted herewith and which form part of this application.

By signing this application, I hereby authorize representative(s) of the County of Wetaskiwin No. 10 to enter onto the above described land for the purpose of performing inspections. The personal information on this form is collected under the authority of Section 33 (c) of the Alberta Freedom of Information and Protection of Privacy Act. The information will be used to process your application(s) and your name and address may be included on reports that are available to the public. If you have any questions on the collection and use of this information, please contact the FOIP Coordinator at (780) 352-3321.

May 16th 2019
Date of Application

Signature of Owner(s)

Signature of Owner(s)

Cory Bell
Please Print Name(s)

Jason Epp

All Development Permits are mailed out when completed, when your permit is complete would you like to also be notified by:

☐ Fax No. ☐ Email:
To Wetaskiwin County,

This letter is a supplement to the appeal of 18 Aspen Acres in regards to the decision to not allow our 2 miniature horses and pony stay on our property.

The horses Dora, Biscuit, and Oreo have been a part of our family now for a year and a half. We took on responsibility for Dora and Biscuit due to the fact that they could no longer be cared for by their previous owner. Dora used to be a therapy horse for children at the Stollery hospital in Edmonton, and Biscuit was rescued from an abusive home. Our family including 3 children fell in love with them immediately, we had been keeping them at friends of ours over the winter at their horse ranch, however this was proving to cause them problems as to the fact that their breed does not due well in open pasture (they have a tendency to founder). In the spring after we contacted the county to see if it would be a problem, and we’re told that you could not foresee any, we began to build them a dry pen which is much more suitable. We cleared a more than ample space, fenced it, and built a suitable shelter for them. We then, to the joy of our kids (especially our 3 year old daughter) moved them in along with our other pony which we had also been keeping at the ranch as they developed a great friendship, a herd within the herd you could say. They are provided with quality hay, oats and treats and are well groomed and maintained. Many of our neighbours stop to say hello and people who walk through our development always stop for a look as well. Then for some reason we were visited by an officer from your by-law department and informed that they could not stay. We contacted the county to inquire why as we were already given the impression that there would be no issue. Upon further contact we were informed that we were only zoned for 1.8 foals based on some sort of calculation (how you can have 0.8 of an animal still confuses us, and why should it be rounded down to 1, not the math I was taught in school). Furthermore we were told that the miniature horses were being judged on the same scale as a foal, a foal is significant larger than a miniature horse.

The main point of this letter is that we believe given the circumstances mentioned above, the care we provide and the smiles and happiness that these animals bring. Not to mention the costs we incurred to provide a great life for these animals and the cost it would be to re purpose their pen, why does the county simply let their decision come down to an equation. These animals have taught our children responsibilities by way of chores, and both of our boys’ grades in school have improved since the horses have arrived. We are people, our horses are beings with feelings and emotions. The passers by and well wishers are people. These animals harm no one, they do not cause noise, they do not escape their pen. Their waste is hauled away bi-weekly. We find it disappointing that a rural governing body, would not take any of this into consideration. These are the joys that made us want to move out of the city and into this community.

We hope upon reading this you think long and hard before you decide to take away a little girls mini horses, instead of just punching your data into spreadsheet and it spitting out an answer.

Sincerely the family at 18 Aspen Acres
County of Wetaskiwin No. 10
Development Permit Appeal Form

Upon receiving this completed Appeal Form a Hearing will be scheduled within 30 days. The Hearing will be scheduled after 5:15 p.m. Monday - Thursday. You will be notified of the scheduled Hearing by Registered Mail.

PLEASE NOTE:

The County of Wetaskiwin No. 10 requires that a **non-refundable** fee of $150.00 for an appeal to be sent to the Secretary of the Subdivision and Development Appeal Board. The fee may be paid by debit, cash, or a cheque made payable to the County of Wetaskiwin No. 10.

With this written submission, the information that you provide may be made public subject to the provisions of the Freedom of Information and Protection of Privacy Act.

**Appeal the Refusal of Development Permit**: D19/257 of NW-28-46-1-W5 Lot 15, Block 2, Plan 7921318, for 3 Miniature Horses

<table>
<thead>
<tr>
<th>Date of Appeal Application:</th>
<th>Friday February 14th, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Appellant(s):</td>
<td>Cory Bell / Jason Epp</td>
</tr>
<tr>
<td>Appellant Phone Number:</td>
<td>403.606.5055</td>
</tr>
<tr>
<td>Appellant Email:</td>
<td><a href="mailto:bell-cory@hotmail.com">bell-cory@hotmail.com</a></td>
</tr>
<tr>
<td>Appellant Mailing Address:</td>
<td>812 G Box A RR2, Wiserose, AB T8G 2V8</td>
</tr>
</tbody>
</table>

You must attach a letter stating your grounds for Appeal to this application.

Please indicate if there are any date(s) and times within 30 days of this application that you would not be able to attend a Hearing, also please indicate the best way to contact you when the Hearing has been scheduled:

Wednesday evenings

Signature of Appellant(s): [Signature]

For Office Use Only:

Date Received: [Date]

Receipt Number: [Receipt Number]
### OFFICIAL RECEIPT

**Name:** DOLL, CORY  
**Address:** 11443 - 48 AVENUE  
**City:** EDMONTON  
**Province:** AB  
**Postal Code:** T6H 6B7

<table>
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<tr>
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<th>Amount Due</th>
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<td>1-1-526-6100-00</td>
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</table>

**Reg. #:** R106989528  
**Receipt #:** 0359093  
**Date:** 2020/02/20

**Payment Total:** 150.00

Telebanking  
150.00

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www.county.wetaskiwin.ab.ca

**Box 6960, Wetaskiwin, AB T9A 2G5**  
Phone: 780-352-3321  
Fax: 780-352-3486  
www.county.wetaskiwin.ab.ca

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Page 36 of 61
NOTICE OF APPEAL HEARING

This is to notify you that an appeal has been made to the SUBDIVISION AND DEVELOPMENT APPEAL BOARD regarding Refusal of Development Permit D19/257 described as follows:

BELL, CORY
3 Miniature Horses
NW-28-46-1-W5 Lot 15, Block 2, Plan 7921318

PLACE OF HEARING: Council Chambers
County of Wetaskiwin Administration Office. Approximately 1.6 kilometres west of Wetaskiwin on Highway 13 on south side of the Highway.

DATE OF HEARING: Monday, March 09, 2020

TIME OF HEARING: 5:15 p.m.

Any persons affected by the proposed development have the right to present a written brief prior to the hearing and to be present and be heard at the hearing. Persons requesting to be heard at the meeting, but are unable to attend the meeting, shall submit written briefs to the Secretary of the Subdivision and Development Appeal Board no later than 5:15 p.m., Monday, March 09, 2020.

NOTE: This notice does not require your attendance; however, if you wish to speak at the hearing, this is your opportunity. Information pertaining to this hearing can be obtained by contacting the Planning and Economic Development Department at the County of Wetaskiwin Administration Office.

Date: February 24, 2020

ROD HAWKEN
Secretary
Subdivision & Development Appeal Board
The purpose of this Subdivision and Development Appeal Board Hearing is to review the appeal of refused Development Permit Application D19/257 from BELL, CORY for 3 Miniature Horses within NW-28-46-1-W5M, Lot 15, Block 2, Plan 7921318.


On February 20, 2020, the Secretary of the Subdivision and Development Appeal Board received a letter of appeal from Cory Bell.

An Appeal Hearing was set for Monday, March 9, 2020 and the Notice of Appeal Hearing was sent to the Applicant/Appellant/Registered Owners, Adjacent Landowners, the Summer Village of Poplar Bay, and the Director of Planning and Economic Development on February 24, 2020.

On March 4, 2020, Administration sent the Board Members of the Subdivision and Development Appeal Board a copy of the Agenda Package which included the following:

- Development Officer's Report
- Development Permit Application
- Notice of Appeal Hearing
- Letter of Appeal
- Notice of Refusal
- November 1, 2019 Letter - Notice
- Country Residential (Land Use Bylaw 2017/48)
- Animal Restrictions (Land Use Bylaw 2017/48)

Other information that has been received and provided to the Board Members of the Subdivision and Development Appeal Board, prior to the hearing is as follows:

1.Relevant Facts
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RELEVANT FACTS FOR THE BOARD’S CONSIDERATION:

- On November 1, 2019, a Notice Letter was sent from the County’s Bylaw Enforcement Department to Jason Epp and Cory Bell. The Notice Letter indicated that a complaint had been made against their property with respect to miniature horses there were being kept on site. The Notice further outlined their ability to apply for a Development Permit or to remove the livestock.
- On December 2, 2019, Cory Bell and Jason Epp submitted a Development Permit Application to the County for the three miniature horses that were on site. During the review of the Application, there were a couple of items that were missing that Administration worked with the Applicants to obtain.
- On January 23, 2020, the County issued a Notice of Refusal of Development Permit for the ‘3 miniature horses’.
- On February 20, 2020, the County received an appeal form Cory Bell.
- An Appeal Hearing was set for Monday, March 9, 2020 and the Notice of Appeal Hearing was sent to the Applicant/Appellant/Registered Owners, Adjacent Landowners, the Summer Village of Poplar Bay and the Director of Planning and Economic Development on February 24, 2020.

RELEVANT LEGISLATION FOR THE BOARD’S CONSIDERATION:

4. Municipal Government Act, R.S.A. 2000, c.M-26, Sections 683 through to and including 687;
5. Municipal Government Act, R.S.A., 2000, c.M-26, Section 627;
6. County of Wetaskiwin No. 10 Land Use Bylaw 2017/48: Regulations for Land Use Districts, Section 10.5. Country Residential District and Section 9.2 Animal Restrictions

SPECIFIC CONCERNS REGARDING THE PROPOSED DEVELOPMENT:

The Applicants/Appellants would like the two miniature horses and pony to remain on the property.
PLANNING MERITS FOR THE BOARD’S CONSIDERATION:

When evaluating a development appeal, board members shall ask themselves the following:

1. How does this proposal contribute to the orderly, economic, and beneficial development, use of land or pattern or human settlement?
2. Does the proposal maintain or improve the quality of the human environment?
3. How does the proposal impact the individual rights and the public interest? Which is more important in this case and why?
4. Does the proposed development conform with the use prescribed for the land or building in the land use bylaw?
5. Have all concerns raised regarding the proposed development been adequately addressed?
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4. Does the proposed development conform with the use prescribed for the land or building in the land use bylaw?
5. Have all concerns raised regarding the proposed development been adequately addressed?
November 1, 2019

NOTICE

Roll# 2998.05

Jason EPP & Cory BELL
Site 6 Box 9
RR 2
Westerose, Alberta
T0C 2V0

Dear Property Owners:

RE: Livestock on Lot 15, Block 2, Plan 7921318

In my capacity as a Designated Officer of the County of Wetaskiwin No. 10, I am contacting you to advise that the County has received a complaint about livestock, specifically miniature horses, being kept on the property, as well as both a fence and large disposal bin that has been placed on a County Road Allowance. Currently, the property is zoned as Country Residential (CR) and is 1.27 acres in size. In accordance with the Land Use Bylaw 2017/48 of the County, a Development Permit must be obtained for the keeping of livestock and shall not be greater than the equivalent of one (1) animal unit, with approvals being at the discretion of the Development Officer. For clarification on the above, you are encouraged to contact Mr. Jarvis Grant, Development Officer, at (780) 361-6222.

However, to come into compliance with respect to the contraventions, you are required to remove all livestock, including, but not limited to miniature horses, from your property, as well as relocating the large disposal bin and fence onto your property by November 29, 2019.

Alternatively, a Development Permit could be applied for in order to potentially keep some, but not all livestock on the property. Should be an avenue you wish to take, please contact Mr. Grant and apply for a permit by November 29, 2019.

Failure to comply with the requisite actions mentioned will result in the issuance of a Warning and further enforcement action being pursued.

It is the preference of the County of Wetaskiwin No. 10 that your compliance occurs on a voluntary basis and that no formal action will be required to remedy the contraventions.

Please contact Bylaw Enforcement at 780-352-0005 or Mr. Grant at (780) 361-6222, if you have any questions.

Regards,

[Signature]

Jeff Chiasson
Assistant Chief Administrative Officer
March 2, 2020

County of Wetaskiwin No. 10
attention: Rod Hawkins, Cao
Secretary, Economic Development Board.

RE: Development Permit D19/257
Bell Cory, EPP Jason
Lot 15, Block 2, plan 7921318 Aspen Acres.

We, Arlene & Lew Parsons, the owners of
3 Residential/recreational properties, consisting of
Lots 21, 22 and 23 Aspen Acres strongly
oppose this Permit. Our reasons are:

#1: When we purchased our property's it was
understood that we were in a Residential Zone,
not Agricultural, with a possibility of livestock,
and pay taxes accordingly.

#2: Cory Bell and Jason Epp, proceeded to
bring in 3 miniature horses with no regard
for and neighbourhood concerns; they only
applied for a permit after a complaint was made.
#3 - We live here full time and even tho it's winter, the smell is foul. We can imagine how bad it will be in the Summer, bringing flies, insects and rodents.

#4: the appearance.
the Corral is positioned in the front yard, and quite an eyesore to see these animals walking in their own fee$ with limited space which is also shared with Chickens.

Regard's,

[Alois & Luc Parson]
February 28, 2020

County of Wetaskiwin No. 10
Attention: Rod Hawkin, CAO
Secretary, Economic Development Department

Re: Development Permit D19/257
Bell Cory, Epp Jason
Lot 15, Block 2, Plan 7921318 Aspen Acres

We, the owners of a residential/recreational property of Lot 26, Block 2, number five Sir William Crescent, object to the approval of the above mentioned application. We strongly oppose the approval for the following reasons:

Aspen Acres is zoned as residential/recreational property and assessed taxes accordingly. Should there be livestock allowed, we expect a downgrade in taxes to the agricultural designation.

The application was submitted only after a complaint was made. The corral and horses were introduced in fall of 2019 without a regard for established process and without any notification to adjacent property owners.

The presence of livestock is in the contradiction to the approved land use. Notwithstanding the fact, it detracts from the overall appearance, and decreases the property values. The concentration of horse manure emanates foul odors that will only get worse in the summer. It will also breed hundreds of flies and insects.

While we are unable to attend the hearing in person March 9, 2020, we expect this letter of objection will be read for the record at the hearing.

Regards,
Otto and Carolynn Lehner
10.5 **Country Residential District (CR)**

10.5.1 **Purpose**

The purpose of the Country Residential District (CR) is to allow for the subdivision and development on non-productive agricultural land of non-farm dwellings.

10.5.2 **Permitted Uses**

a) Dwelling, Detached

b) Dwelling, Modular – New

c) Buildings and uses accessory to the above

10.5.3 **Discretionary Uses**

a) Dwelling, Moved-in

b) Dwelling, Mobile – New

c) Dwelling, Mobile – Used

d) Dwelling, Modular – Used

e) Dwelling, Secondary Suite

f) Bed and Breakfast

g) Public Utility

h) Show Home

i) Offsite Home Occupation (Type 1) *(amended by Bylaw 2019/55)*

j) Offsite Home Occupation (Type 2) *(amended by Bylaw 2019/55)*

k) Onsite Home Occupation (Type 1) *(amended by Bylaw 2019/55)*

l) Onsite Home Occupation (Type 2) *(amended by Bylaw 2019/55)*

m) Onsite Home Occupation (Type 3) * 2nd Parcel out only *(amended by Bylaw 2019/55)*

n) Market Garden (allowed only in lots not located in a subdivision) *(amended by Bylaw 2019/55)*

o) Buildings and uses accessory to the above

10.5.4 **Parcel Size**

a) Minimum: 0.40 ha (1 acre)

b) Maximum: 2.02 ha (5 acres)
10.5.5 Setbacks
   
a) Front yard: see Section 9.10.1
b) Side yard: 5.0 meters (16 feet)
c) Rear yard: 10.0 meters (33 feet)
d) No development can be located within 8.0 meters (26 feet) of the property line adjacent to an internal subdivision road;
e) Obstructions to visibility are not allowed within 3.0 meters (10 feet) of the property line adjacent to an internal subdivision road.

10.5.6 Animal Restrictions
   
See Section 9.2.

10.5.7 Subdivision Standards
   
a) Site suitability testing is required before subdivision approval and includes but is not limited to water supply, water table levels, percolation rates, environmental impact assessment, etc.

b) Density restrictions shall be at the discretion of Council, based on factors including but not limited to tests listed under Section 10.3.7(a). Density greater than 24 parcels on a quarter section shall be considered as being of a higher density and may be subject to requirements for infrastructure above the general County standard. Subdivision creating more than 2 lots per quarter section, or resubdivision of a previously developed quarter, may be subject to a requirement for the adoption of or amendment to an Area Structure Plan.

c) A proposal to subdivide an existing acreage lot(s) will be subject to County Policy 61.1.5 “Resubdivision in Multiple Lot Subdivisions” and amendments thereto and Section 7.9 of the Bylaw.

10.5.8 Building Height
   
a) The maximum building height of all buildings shall be 10.0 meters (33 feet)
b) The maximum height of an accessory building shall be 6.0 meters (20 feet).

10.5.9 Recreational Units
   
Recreational Units may be authorized as outlined in Section 3.12, Recreational Units.

10.5.10 Sewage and Wastewater
   
Sewage and wastewater systems are required as outlined in Section 3.12.1(g), Recreational Units.

10.5.11 Utility Hookups
   
Utility hookups are required as outlined in Section 3.12.1(h), Recreational Units.
10.5.12 Enforcement

Offences and fines are outlined in Section 5, Contravention.
Reginald (Reg) Karbonik

No. 18 Sir William Crescent

Wetaskiwin County

Mailing Address: 27 Brickyard Drive, Stony Plain AB. T7Z 0L1

Re: Notice of Appeal – C. Bell / J. Epp – Application for Miniature Horses (3)

Since the summer of 2019 the appellants have established a corral on their property and have maintained on the property 3 miniature ponies in contravention to established by-laws of the County. When objections to the presence of the ponies were filed with the County, an application was made for permission to keep said ponies but not all of the affected residents were informed of this application. Obviously the initial application was refused (initial ruling details unknown) and now the appeal.

There are many reasons why this application should again be refused:

1. This is a residential/recreation community not zoned for or as agriculture.
2. The facilities/corral does not contain isolation from the rest of the community; runoff after heavy rain and snow melt will run down through the common ditch along the roadway and through several properties.
3. The current corral is an eyesore that is not well maintained, has constant order that is undesirable and as a result devalues current properties especially those adjacent.

While the petitioners have made an investment in purchasing their animals and in creating their corral facility they have not presented the community an opportunity in advance to offer objection or support for this venture. While the community no longer has an active “restrictive covenant” in effect governing restriction on general development, it is my understanding that common courtesy for such a venture might have prevailed.

While I have nothing personal against Ms. Bell or Mr. Epp, this is about protecting the integrity of my investment within this community.

Respectfully submitted (by email),

Reg Karbonik

(780) 975-4425
9.2 Animal Restrictions

9.2.1 Including within Hamlets, Lakeshore Residential, Lakeshore Mixed Use, Recreational Resort Holding, Mixed Recreational Resort, Mobile Home, Rural Conservation, and Urban Residential districts (excluding those lots adjacent to lakeshores or County Reserve land bordering on lakeshore) there shall be allowed four (4) small livestock, but shall be subject to an approved discretionary development permit, which shall be issued solely at the discretion of the Development Officer.

a) The Rural Residential, Country Residential, and Restricted Country Residential districts are subject to the following:

i. 0.44 animal units (Animal units are as outlined and defined by the AOPA in Appendix A of this Bylaw) per titled acre with no development permit required. A permit shall not be issued for any proposals above the 0.44 animal unit per acre threshold.

ii. Where a lot is located within a multi-lot subdivision and section 9.2(b)(i) would enable more than fifty (50) individual animals based on the 0.44 animal units per acre, poultry units shall be limited to a maximum of fifty (50) birds individual animals, with an additional 0.44 animal units per lot (i.e. 2 goats or 1 horse) granted.

b) Sensitive natural areas, such as naturally occurring wetlands and riparian areas should be fenced from livestock;

c) Manure shall be handled, stored and disposed of in accordance with Provincial and Federal Regulations

(AMENDED BY BYLAW 2019/55)
Legal Opinion - Report

Meeting Date (Report Reference Only): 20200309

Meeting (Report Reference Only): SDAB

Background

A legal opinion was received regarding conditions that the SDAB imposes on Development Permits.

Please Type your Recommendations Here

Recommended Resolution

That pursuant to Section 27 Privileged Information (legal opinion) the Board close the meeting to the public.
December 10, 2018

County of Wetaskiwin No. 10
PO Box 6960
Wetaskiwin, AB T9A 2G5

Attention: Rod Hawken, CAO

Dear Sir:

RE: Conditions that the SDAB Imposes on Development Permits

Further to our discussions, we are pleased to provide this opinion on the scope of conditions the County of Wetaskiwin’s Subdivision and Development Appeal Board (the “SDAB”) can impose on development permits.

As discussed, the purpose of this opinion is to help inform the County of Wetaskiwin (the “County”) in both its submissions to the SDAB and in determining how to address situations where the County may have concerns about development permit conditions imposed by the SDAB.

A. Executive Summary

The County confirmed it wanted our office to consider the following questions. We have considered each in brief here and provided a more fulsome consideration below.

(1) Does the SDAB have the ability to impose conditions on a development permit?

Yes, the SDAB can issue a development permit and revise conditions or impose new conditions.

(2) Is a condition to enter into an agreement to remove a development that has been allowed enforceable?

No, in our opinion neither the Development Authority nor the SDAB can impose a condition on a development that effectively revokes the permission that was granted, unless the permission is for a discretionary use and the development permit is time limited.
(3) What other options does the County have to address development in the setbacks adjacent to roads?

*If the County does not want development in the setback adjacent to a road, it must impose standards in its LUB and may draft guidelines or factors that should be considered in granting a variance. If a setback is relaxed and the County wants to remove a development, the County can try to negotiate a resolution and if unsuccessful, the County can expropriate the land and remove the development.*

(4) What options does the County have if the SDAB imposes a condition that is unenforceable?

*If the SDAB imposes a condition that is unenforceable, the County can choose not to enforce or the County can appeal the decision of the SDAB.*

B. Background

We understand this request arises from a specific matter that was before the SDAB in August 2018 (the “Kosik Matter”) but concerns the general imposition of a condition both in that specific matter and in future similar matters. Our opinion is based on the facts as outlined below. If the facts as summarized are inaccurate, please advise as this may impact our opinion.

- On August 16, 2018, the SDAB heard the appeal of Brian and Florence Kosik (the “Landowners”) in relation to their already developed lands located at Plan 0024368, Block D, Lot 41 (the “Lands”). The Lands are near Buck Lake and located in the Lakeshore Residential District (the “LR District”) adjacent to the east side of the undeveloped road allowance for Range Road 60.

- The SDAB reviewed the history of the Lands and noted the previous owners had, on June 2, 2015, entered into a development agreement that provides that “in the event the existing Road Allowance and Public Utility Lot which are allowing the owner of the land to use the existing laneway is developed, the owners of lot 41 must create a new approach that enters directly onto the land from Willow Park Drive...to Lot 41” (SDAB Minutes, p 10).

- The development on the Lands includes a single detached house, a garage, a covered carport, and two sheds. There was a development permit for the house and garage but not for the covered carport and sheds. The Landowners applied for a development permit for the covered carport and sheds (the “Developments”) but the development permit was refused by the Development Authority because the necessary variance to the front yard setback exceeded the 75% variance power of the Development Authority (LUB, s 3.8.1).

- The County’s Land Use Bylaw 2017/48 (the “LUB”) requires a front yard setback of at least 40m from the property line abutting roads that are not highways or internal subdivision roads (LUB, s 9.10.1(b)).

- The Developments are located at the following distances and required following setback relaxations:
  - Covered carport – 3.85m from property line – 90% variance
  - Big Shed – 6.98m from property line – 83% variance
  - Small Shed – 22.25m from property line – 45% variance
• According to the Development Officer’s report, the reason for the setback from roads is safety. Section 9.12 provides that a Development Officer may refuse to issue a permit for a permitted or discretionary use if, in the Officer’s opinion, the “site of the proposed building or use is not safe or suitable for the proposed building or use”.

• At the SDAB, the Development Officer’s position was that the appeal should be allowed and a development permit should be issued for the Developments with the necessary variances. The SDAB has the authority to vary setbacks “up to 100% provided there are no objections from the affected road authority or from the adjacent landowners” (LUB, s 3.8.4). The Development Officer’s written report to the SDAB relayed the following comments from the Director of Public Works:

(1) there are no short or long term capital plans to develop Range Road 60;

(2) the terrain to the north of the Developments is not favourable to road development;

(3) the property has access to Willow Park Drive; and

(4) if there is a need to develop Range Road 60 in the future the Developments can be addressed through a condition in the development permit speaking to the need to relocate the Developments.

• It appears, that based on this information, the Development Officer drafted the following condition #13 which the SDAB adopted in approving the development permit:

13. The developer is to enter into an agreement with the County, which is to be registered on the Title of the lands by way of caveat, requiring the removal of any development located five (5) metres from the property line adjacent to the undeveloped portion of Range Road 60, if required to do so to enable any potential development of the road in the future.

• The SDAB issued its decision on August 27, 2018 allowing the appeal and issuing a development permit for the Developments with conditions, including condition #13 cited above. The SDAB’s reasons for approval were (1) it had the authority to relax the front yard setback for the Developments and (2) Public Works had no objections (SDAB Decision, p 2).

C. Legislative and Planning Framework

Part 17 of the Municipal Government Act (the “MGA”) addresses development. The purpose of Part 17 is to “achieve the orderly, economical and beneficial development, use of land and patterns of human settlement...without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest” (MGA, s. 617).

The MGA provides for statutory plans to guide future development, most relevantly the municipal development plan and possibly an area structure plan. Both plans require transportation systems to be addressed (MGA, ss. 632 and 633). Additionally, the MGA requires all municipalities to have a land use bylaw that prohibits or regulates and controls use and development and must divide land into districts, identify permitted and discretionary uses, and identify the conditions that are to be attached or that may be attached to different permits (MGA, s. 640). With respect to a permitted use, if the development conforms to the land use bylaw, a permit must be given “with or without conditions as provided in the land use bylaw” (MGA, s. 642).
With respect to development, the *MGA* authorizes three types of agreements that may be registered on title:

1. **section 650 development agreements** with the municipality that require a developer to do things listed in section 650 and allow the municipality to register a caveat in respect of the agreement, which must be discharged upon satisfaction of the agreement;

2. **section 651.1 restrictive covenants** which are conditions on land that restrict the use or development of the land in a particular manner for the benefit of land that is under the direction, control and management of the municipality and which may only be discharged by the municipality or court order; and

3. **section 651.2 encroachment agreements** which a municipality uses to allow an encroachment onto a road that is under the direction, control and management of the municipality and which may only be discharged by the municipality or court order.

The *MGA* provides that if a Development Authority refuses a development permit, the person applying or a person affected may appeal to the SDAB (*MGA*, s. 685). The SDAB must hear the appeal and give its decision together with reasons (*MGA*, s. 687(3)). The SDAB has the authority to do the following:

687(3)(c) may confirm, revoke, or vary the order, decision or development permit of any condition attached to any of them or make or substitute an order, decision or permit of its own;

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw, if in its opinion;

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood; or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land;

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

With respect to the planning framework, in addition to the *MGA*, the County’s LUB, municipal development plan, any relevant area structure plan, and planning policies, including engineering standards may be relevant to the legislative framework that should be considered in reviewing this matter. Because the scope of our review is general, we have not undertaken a comprehensive review of these other planning documents for the purpose of this opinion. However, these documents should be considered when the Development Authority makes a decision and should be considered as part of any report of the Development Officer to the SDAB.
D. Issues and Analysis

(1) **Does the SDAB have the ability to impose conditions on a development permit?**

Section 687(3) provides the SDAB with broad latitude to confirm, revoke or vary a development permit or any condition attached to it. The Courts have confirmed that the SDAB steps into the shoes of the Development Authority when it hears a matter before it and in fact the SDAB’s variance power is broader as it is not narrowed or limited like it may be for the development officer.

With respect to a development standard, the Courts have held the SDAB can relax the standard but in doing so they should give sound reasons for the relaxation in light of section 687(3)(d)(i), cited above.¹

(2) **Is a condition to enter into an agreement to remove a development that has been allowed enforceable?**

In our opinion, once the SDAB has granted a development permit for a permitted use or development, the SDAB cannot, by way of a condition, revoke that authorization. Further, the MGA provides no mechanism to capture or enforce such an agreement or register such an agreement on title, as noted above.

Both the Development Authority and the SDAB can authorize a temporary or time-limited development permit if such a permit is provided for in the land use bylaw. In our opinion, a temporary or time-limited development permit is only applicable to discretionary uses. In such a case, the Development Authority or SDAB could issue a temporary or time-limited development permit thereby allowing the Development Authority to reassess the use or development after a certain period of time. This type of permit is usually issued for developments that have significant off-site impacts that need continual monitoring before re-approval (i.e. gravel pit or shooting range) or for placeholder development while awaiting permanent development (i.e. storage lots or surface parking).

In our opinion, once the Development Authority or the SDAB has issued a development permit for a permitted use or development, even if it includes a relaxation to a development standard, the permit authorizes the use or development and any subsequent attempt to revoke the authorization would be unenforceable.

None of the registerable agreements outlined in sections 650, 651.1, or 651.2 allow for a revocation of a right after the granting of such a right. Although an encroachment agreement appears to allow for a revocation, it actually allows an improper use, namely an improper encroachment of a development onto municipally controlled lands contrary to the land use bylaw or a development permit or both which the municipality may allow but usually on the provision that the unauthorized development may be removed without compensation to the landowner. This differs from revocation because there was no authorization of the development in its given location (i.e. encroaching upon a road allowance or public utility lot) in the first instance.

In addition, the MGA specifically provides that even when a use or development is authorized by the issuance of a development permit and the land use bylaw changes, the use or development is still valid, or legal, despite its non-conformance, because a permit was granted. This only further supports the unenforceability of a condition in a permit that attempts to revoke that same permission.

Furthermore, the use of contracts is limited by the privity of contract. Privity of contract means that a contract is only enforceable against the parties to that contract. In the case of the June 2015 development agreement to build a new approach noted above or the agreement imposed by condition #13 in the Kosik Matter, the agreements are only enforceable against the signatories to the agreements, namely the previous owner for the June 2015 agreement and the Kosiks for the most recent agreement. As a result of the privity of contract limitation, we do not advocate agreements as an affective long term planning tool. There may be other options regarding using agreements to create a binding requirement for development purposes by use of an encumbrance agreement. Should the County wish to explore such an option and to see if it may achieve the County’s objectives, please do not hesitate to contact our office to discuss.

(3) What other options does the County have to address development in the setbacks adjacent to roads?

The most significant way for the County to control developments in setbacks is through the LUB and other statutory plans and policies. The more clearly the County outlines the reason for a setback, the more consideration the Development Authority or the SDAB must give to those policy reasons in order to justify a relaxation.

If development is authorized in a setback and the County needs to use that land or remove the development to undertake road development, as may be the case in the Kosik Matter, the County’s options are that it can either (1) negotiate a deal with the Landowners who have a right to use the land as authorized by their development permit to remove the developments, or (2) expropriate the land and compensate the Landowners as outlined in the Expropriation Act.

As discussed above, there is no form of agreement in the MGA that allows the County to require the Landowner to waive a right granted by a properly issued development permit.

(4) What options does the County have if the SDAB imposes a condition that is unenforceable?

If the SDAB imposes a condition that the County believes is unenforceable, the County can either chose not to enforce or it can appeal the decision of the SDAB. The Courts have made it clear that municipal enforcement is at the discretion of the municipality. Therefore, in the Kosik Matter, the County could simply never ask the Landowners or any future landowner to remove the Developments. Alternatively, if the County is concerned about the relaxation to the front yard setback, it could seek permission to appeal the decision of the SDAB provided such an appeal is filed in time and in accordance with the MGA.

We note in the Kosik Matter, the decision of the SDAB would have very likely been liable to a successful permission to appeal application (an appeal is no longer available as the timeline to appeal, 30 days after the issuance of the SDAB decision, has expired (MGA, s 688(2))). The reason the decision is liable to a successful application for permission to appeal is the lack of reasons, particularly any reasons explaining the significant setback relaxation. The decision simply provides in its reasons that the SDAB had the authority to relax the setback and Public Works had no objections. The SDAB does not consider any of the following:

- the safety impacts, although the Development Officer’s report says the reason for the setback is safety; or
the municipal development plan, any area structure plans, or any planning policies including any engineering standards which might speak to (a) the requirement for the setback or (b) future development.

This lack of reasons and the lack of analysis (the reasons are conclusions rather than an analysis and weighing of the facts) is a commonly successful ground for permission to appeal the decision of an SDAB.

Another option the County may want to consider in the future if the SDAB continues to impose unenforceable conditions or relaxes standards without considering the planning impacts and providing clear justification is to have legal counsel review Development Officer’s report in advance of a hearing and have legal counsel attend the hearing. In the Kosik Matter, having legal counsel in attendance for the County may have helped to prevent the imposition of condition #13.

A further option for the County is to ensure the members of the SDAB are trained and, if necessary, the SDAB is given access to legal counsel to ask questions, should they arise, about enforceability. SDAB legal counsel can attend the hearing in person, attend by phone or just be available by phone for the deliberations of the SDA3. Such access to legal counsel can help ensure SDAB decisions are well drafted and less liable to appeal.

E. Conclusion

In conclusion, although the SDAB has a broad authority with respect to its decision making powers, and it can impose conditions on development permits, the SDAB’s decision must justify its decision, particularly a variance.

Further, in our opinion, neither the Development Authority nor the SDAB can impose a condition on a development permit for a permitted use that proposes to revoke the permission that has been granted. This type of condition is unenforceable and leaves the County with the choice to either not enforce the condition or to seek permission to appeal the decision of the SDAB. If the County wants to remove developments that have been allowed, the County’s options may be limited. The County may be able to negotiate with the landowners to remove the developments or if the lands where the development is located are required by the County, the County could take steps to acquire or expropriate the lands and subsequently remove the development once it has acquired title to the lands.

We trust this opinion is of assistance. Should you have any questions or concerns, please contact the writer or the associate who assisted with this matter, Ms. Alifeyah Gulamhusein at 780.497.4877 or agulamhusein@brownleelaw.com.

Sincerely,

BROWNLEE LLP
PER:

LORNE I. RANDA
AG/am

cc. Alifeyah Gulamhusein (via email)