Subdivision and Development Appeal Board Meeting

MINUTES

Monday, January 21, 2019, 5:30 PM
Council Chambers
County Administration Building

Present

Chairperson, Laurie Johnson
Board Member, Rick Pries
Board Member, Chris Daniel
Board Member, Everett Matiko
Board Member, Tim Hoogland

Staff Present

SDAB Secretary, Rod Hawken
Recording Secretary, Amber Tripp
Recording Secretary, Erin Ballhorn
Municipal Intern, Naomi Finseth

1. **CALL TO ORDER**

Secretary Rod Hawken called the meeting to order at 5:30 p.m.

2. **APPROVAL OF AGENDA**

Resolution SD20190121.001

MOVED: by Board Member R. Pries

that the Agenda for January 21, 2019 be accepted as presented.

Carried Unanimously

3. **MINUTES APPROVAL**

December 11, 2018 Subdivision and Development Appeal Board Meeting

Resolution SD20190121.002

MOVED: by Board Member C. Daniel

that the Board approve the minutes for the Subdivision and Development Appeal Board December 11, 2018 meeting as presented.

Carried Unanimously

4. **5:30 P.M. PUBLIC HEARING**

Chairperson L. Johnson declared the Hearing open at 5:35 p.m. and a delegation consisting of Ron Fengstad, and Jarvis Grant Development Officer entered the meeting.

Chairperson L. Johnson introduced the members of the Subdivision and Development Appeal Board.

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, and if they had any conflict of Interest or objections to any of the members sitting on the Board.

No objections were presented.
Chairperson L. Johnson asked the appellant Mr. Fengstad if he objected to any board members.

Mr. Fengstad had no objections.

4.1 Refusal of Development Permit D18/040 - Ron Fengstad - 20' x 76' Modular Home with Deck, 30' x 38' x 18' Metal Shop and Enclosed Deck on Existing House - S 1/2 of NW 33-47-25-W4M

On April 2, 2018, County Administration received a development permit application from Ron Fengstad for a modular home with deck, the addition of a covered deck to an existing residence and a metal building.

On April 4, 2018, County Administration sent the following email to Mr. Fengstad regarding his Development Permit application:

"Good Morning Ron,

In reviewing your development Permit application we require a little more information before we can process with the permit.

• Please provide us with the reason for the modular home as this will not be approved as stated in the application.
• We also need to know the reason for an 18' ceiling in the new garage. What will it be used for?

Thank you,

Carmen Weiss"

Mr. Fengstad had the following response to Mrs. Weiss’ email:

• Please provide us with the reason for the modular home as this will not be approved as stated in the application.
• "It Would be used for a family member to assist in operations- most likely my sons."
• We also need to know the reason for an 18’ ceiling in the new garage. What will it be used for?
• "This is a prefab building that I have had in inventory for several years and have not been able to sell. I can’t purchase a standard garage package for what I might get for this at an auction. The 18 ft. is at the peak and would be suitable to park an RV farm equipment in."

Administration then requested further information regarding what type of operations a family member would be assisting with and if it was business related? Mr. Fengstad had the following response for Administration:

"this is a small farm which I treat as a business—we have several horses and we are looking into other livestock as well as some large scale gardening. I am 72 years old and live by myself and although is not enough income from the farm to sustain us both, the work load will be too much for just myself. This would give us the flexibility for one or the other to work out and still maintain operations here. I do some volunteer work in 3rd world countries and with the break-ins in the area as well as the work load here it would give additional security as well as hand on help when I am away.”
On April 6, 2018, another email was sent to Mr. Fengstad requiring again further clarification with his application:

“Good morning Ron,

We will require further clarification to proceed with your development permit. As per Land Use Bylaw 95/54 you must have 80 acres or more to have a secondary dwelling. Your parcel is 75.5 acres, therefore we require a thorough review of why this second dwelling is required prior to authorizing the permit.

Below is the bylaw information:

8.1 No person is allowed to construct or locate or cause to be constructed or located more than one dwelling on a lot or parcel unless otherwise authorized by this Bylaw.

8.2 Notwithstanding Section 8.1. the Development Officer may issue a development permit to:

(a) permit the construction or location of a 2nd dwelling on a parcel with a minimum area of 32.3 hectares (80 acres) where the dwelling is a permitted or discretionary use for the district

The following information is required for consideration of this permit:

What would "other" livestock be?

- Types, numbers, purpose (breeding, boarding, training)
- How many horses and what will the purpose be? (hobby, training, boarding, breeding)

Please supply more information on the large scale gardening. Is this for market gardening, or having people come in and plant their own plots?

Please clarify, will a family member (son) be living in the secondary dwelling?

I thank you for your patience.

Carmen Weiss”

On April 13, 2018, Mr. Fengstad replied with the following response:

"1. I understand that Alberta Transportation required right-of-way for Hwy. 2 so ROW was taken out for this purpose reducing the 80 acre parcels to what they are now.

2. We have worked up approx. 55 acres of old unproductive pasture and are presently growing cereal crops on it to restore the land to better condition. The intention is to put it back to pasture when the land is nurtured and prepared properly. The other option would be to grow vegetable garden for marketing which is very labor intensive.

3. I presently have 4 horses we are working with. We were boarding and working with 21 a year ago. We have pastured as many as 35-40 head of beef cattle and at other times 25 or so cow calf pairs. Goats or sheep are also an option, but I again, we need to have adequate pasture.

4. I presently have 100 open range chickens and 30 turkeys on hold at a hatchery

5. I presently have 1000 tree seedlings on hold for shelter belt or possible tree farm."
6. I am looking for ways to make this small piece of farm land into producing revenue as per zoning. What is the best use that I can make of what I have? What options exist?

7. As stated earlier, I am 72 years old and although in pretty good health, the work load for myself is getting to be a bit more than I care to handle on my own. I would like to reside on the farm for as long as possible and be able to contribute to society and my community.

8. As earlier stated, I do volunteer outreach work in 3rd world and wherever required. Having my son residing as extra help would be very beneficial.

9. With all the break-ins in the area, the addition of another residence would aid in security.

10. Meanwhile I have a modular home that is vacant. I am paying lot rent and upkeep on it in the park. Renting it out or selling it is not the preferred option for me at this time. The small piece of property to the the north of my residence is a natural for another residence and could serve as a good home for my son as we endeavor to produce some income and still work within the perimeters of the County land use. A good part of the summer would be required to set up the home, shop and utilities.

    Thanks for your consideration
    Ron Fengstad"

On April 25, 2018, Administration responded to Mr. Fengstad and indicated to him that his request for an additional dwelling did not meet the Land Use Bylaw, but that it would be possible for him to pursue a secondary suite.

On June 22, 2018, Administration sent an email to Mr. Fengstad following up on his application as no response had been received to the April 25, 2018 email.

On December 6, 2018, the Development Authority issued a Notice of Refusal of Development Permit for Development Permit D18/040.

On December 27, 2018, Mr. Fengstad submitted the following letter of Appeal which reads as follows:

"Attn: Mr. Jarvis Grant Development officer
RE: NW-33-47-25-W4 Application #: D18/040 Tax Roll: 169801

Thank you for the opportunity to appeal the County decision, "NOTICE OF REFUSAL "as attached. Following are some items I would like you to take into consideration:

1. The Land Title Certificate shows the land as being 32.4 hectares or 80 acres more or less except for 1.82 hectares [4.49 acres] for road plan 4602LZ. The 4.49 acres for road allowance was given in co-operation with provincial development. I feel allowance should be made available for this.

2. The approx. 2.5 acre location where I propose the development does not have reasonable access for connecting to other farm operation and would fit nice with existing property. The 38 Meter wide parcel sits on north side of existing home and the north boundary of the property and is separated by a tree shelter. The proposed development would fit nicely with existing landscape.

3. Even though the property is not ideally situated for current farm operation, it still needs to be maintained for weed control and curb appeal.

4. I will soon be 73 years old and although in good health, the workload is getting more difficult. The added residence would make available accommodations for
additional help. I love living here on the farm and hope to be able to do so for many years to come.

Attached:
- Cheque #361 in the amount of $150.00 appeal fee
- County appeal form
-- google map showing proposed development
- Survey map showing proposed development -- copy of Land Title certificate

Thanks for your consideration
Yours truly, Ron Fengstad”

A Subdivision and Development Appeal Board Hearing was scheduled for Monday, January 21, 2019 and a Notice of Appeal Hearing was sent to the Applicant/Appellant, adjacent landowners, the Leduc County, and the Subdivision and Development Appeal Board and the Director of Planning and Economic Development on January 3, 2019.

Administration recommended that the Board deny the appeal from Ron Fengstad for the refusal of Development Permit D18/040 for modular home with deck, the addition of a covered deck to an existing residence and a metal building located within the S1/2 NW 33-47-25-W4M.

The Board questioned if Road Plan 4620LZ was it split evenly between the two parcels. Rod Hawken, Secretary to the Subdivision and Development Appeal Board stated that both parcels were subdivided equally.

The Board questioned if the road was expropriated by the Province? Jarvis Grant, Development Officer replied that Administration is unaware of the process that was taken at that time.

The Board questioned what does inadvertently taken away mean? Mr. Grant stated that due to the Highway Right of Way, it may have taken away the split of 80/80 acres.

The Board questioned if there was an Area Structure Plan for this parcel? Mr. Grant advised the Board that there was an application for Area Structure Plan, but was denied by Council.

The Board questioned the specifics Agricultural use outlined within the Municipal Development Plan. Mr. Grant went over that the Municipal Development Plan outlines the protection of farmland, fragmentation of farmland, number of parcels allowed and size of parcels allowed.

The Board questioned if another application was applied for a Second Residence on a 78 acre parcel would Administration refuse the second dwelling? Mr. Grant replied it should be denied as per our Land Use Bylaw.

The Board discussed Section 9.8 of the Land Use Bylaw.
The Board requested clarification of Section 1.5.1 of Land Use Bylaw 2017/48. Mr. Grant advised the Board that the Land Use Bylaw is permissive, the section states uses listed must be included or it not allowed.

The Board questioned Section 9.8.2 (b) and what are Intensive Livestock Operation (ILO) and Confined Feeding Operation (CFO). Mr. Grant advised the Board that ILO are still under County Jurisdiction, and CFO's require Provincial approval.

The Board asked Mr. Grant to elaborate on what could happen if the residence is allowed. Mr. Grant stated that under County Policy there is provision for second yard site after 10 years, but this should have no bearing on the decision made today.

The Board questioned the Agricultural zoning and if Extensive Agricultural Use could be implied. Mr. Grant replied yes, until such time the use is intensified.

The Board questioned Section 10.1.4 of Land Use Bylaw 2017/48 and how does parcel size apply to this application. Mr. Grant stated that Section 10.1.4 C would apply as Alberta Transportation had taken out the Road Right of Way.

Mr. Fengstad addressed the Board with the following:

- Stated the land north of the trees is not easily farmed, and he has been only cutting weeds on it.
- Discussed the layout of the property where the mobile would be placed. The property is not being used for much, there is an existing approach but it would be need to be brought to County Standards.
- Stated that he has Alberta Transportation approval for the Second Residence, which was required during the Development Permit application.
- Stated that he is requesting a mobile home, not a stick built home.
- Stated that he is in good health.
- Stated that he agreed with Mr. Grant and in the future the plan is to subdivide.

The Board questioned Mr. Fengstad the location of the approach. Mr. Fengstad showed the Board the location of the approach on a map provided.

The Board questioned if Mr. Fengstad had considered Intensive Agricultural Use on the property? Mr. Fengstad stated to the Board that he would not want to start that type of business at this point in time.

The Board questioned when did Mr. Fengstad purchase the property. Mr. Fengstad stated he purchased the property (80 acres, minus the Road Plan) in 2011.

The Board questioned if the entire parcel is fenced? Mr. Fengstad stated that it was not, there are various fence lines to pasture horses in. There is approximately 18 acres of pasture land, and approximately 50 acres of farmland.

The Board questioned if the 4 horses were the only livestock on the property? Mr. Fengstad stated yes, except for his dogs.

The Board questioned if Mr. Fengstad farms the 50 acres with his personal equipment? Mr. Fengstad replied that some is rented and some is his personal equipment.
The Board questioned if the deck is going to be built to be an additional room? Mr. Fengstad stated that it would be more like a sun room (30 ft. x 18 ft.) then with the addition of a deck(12 ft. by 12 ft.) for a BBQ.

The Board discussed that in the application there was mention of open range chickens and questioned Mr. Fengstad if he was still going to proceed with them. Mr. Fengstad stated that it has not happened, he has had no time to manage them.

The Board questioned if the residence is for someone to help manage the land? Mr. Fengstad replied yes.

The Board questioned if the intention for the new residence is to be on new or existing services? Mr. Fengstad stated that the new residence would be hooked up to new services.

Mr. Grant stated that Administration would recommend denial based on the three (3) reasons outlined in his Development Officers Report. Mr. Grant also stated that if Mr. Fengstad wanted to look into other options if the appeal is denied Administration would like to work with him.

The Board questioned if the application includes the dwelling, shop and the addition to the existing home, and if they Board could issue a partial approval for just the deck and shed? Mr. Grant stated that application includes everything but could be applied for separately, and said that the Board could do a partial approval for just the deck and shed.

The Board questioned Mr. Grant if he thinks current sections of the Land Use Bylaw contradict each other. Mr. Grant informed the Board that Administration is currently doing a review of the Land Use Bylaw.

The Board questioned how often these type of applications happen? Mr. Grant stated these applications do not happen very often.

Mr. Fengstad stated that Road Right of Way was out his control and the it is considered by the Board in their decision.

The Board questioned if the shop is accessory to the modular, and would it be used strictly for agricultural use? Mr. Fengstad stated he is not sure would have to consider options depending on the decision from the Board, but it would be used solely for Agricultural use.

Mr. Grant advised the Board and Mr. Fengstad that if the shop is used solely for Agricultural use it would not require a Development Permit.

Chairperson L. Johnson questioned Mr. Fengstad if he felt he had a fair hearing. Mr. Fengstad stated that he felt absolutely had a fair hearing.

Chairperson L. Johnson declared the hearing closed at 6:29 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:

- Stated there were no overarching Area Structure Plans
- Went over how Secondary Dwelling is not listed as a permitted or discretionary use in the Agricultural District
- Discussed Section 1.5.1 of Land Use Bylaw 2017/48:
  - Except as otherwise permitted in this Bylaw, development and subdivision in each district shall be in accordance with the uses listed in the district for the site on which it is proposed and the regulations and the guidelines of this Bylaw. Appendices are included for information only and are not part of this Bylaw.
- Discussed Section 9.8.2 of Land Use Bylaw 2017/48:
  - 9.8.2 Notwithstanding Section 9.8.1, the Development Officer may issue a development permit to:
    a) permit the construction or location of a secondary dwelling on a parcel with a minimum area of 32.3 hectares (80 acres) where the dwelling is a permitted or discretionary use for the district; The Board was in the opinion that the application is not 80 acres.
    b) permit the placement of a second dwelling, being solely a mobile dwelling, on an agricultural parcel less than 32.3 hectares (80 acres) for the purpose of accommodating a person hired by the operator of an intensive agricultural operation, an intensive livestock operation or confined feeding operation, for a minimum period of six consecutive months (183 consecutive days). The mobile dwelling shall be removed when it is no longer being used for the purpose stated herein or upon the expiry of any associated development permit authorizing said use; The Board was in the opinion the application is not 80 acres.
    c) permit the placement of a second or third dwelling, being solely a mobile dwelling, on an agricultural parcel with a minimum area of 32.3 hectares (80 acres) for the purpose of accommodating one or two persons (one per dwelling) hired by the operator of an intensive agricultural operation, intensive livestock operation or confined livestock operation, for a minimum period of six consecutive months (183 consecutive days). The mobile dwelling(s) shall be removed when it is no longer being used for the purpose stated herein or upon the expiry of any associated development permit authorizing said use; The Board was in the opinion that the land is not used for intensive agricultural operation.
    e) in accordance with Sections 9.8.2 a), b) and c), permit the placement of a second dwelling, being solely a mobile dwelling, on a lot not designated as Lakeshore Residential District, Lakeshore Mixed Use District, Recreational Resort Holdings District, Mixed Recreational Residential District, Urban Residential District, or Country Residential District, in a Multi-Lot Residential Subdivision only, if the second mobile dwelling is a permitted or discretionary use and shall be used by a person(s) who require full-time care being provided by the primary resident of the parcel. Such person must provide detailed written reasons from a physician. The mobile dwelling(s) shall be removed when it is no longer being used for the purpose stated herein or upon the expiry of any associated development permit authorizing said use; The Board was in the opinion that since Mr. Fengstad stated he was in good health, he would not require full time care.
- The Board stated that if the shop was used for Agricultural use, Mr. Fengstad would not require a Development Permit, and Mr. Fengstad did state it would be used for Agricultural use.
- The Board interpreted when the Land Use Bylaw states 80 acres, the 80 acres is a hard number
- The Board reviewed the Municipal Development Plan to see if there was a clear definition of fragmentation of farmland, and there was no definition listed. The Board felt this application would lead to further fragmentation of farmland.
- Evidence for the possibility of subdivision was discussed, but was not considered as part of the final decision.
• The Board discussed that Mr. Fengstad still has the option of the Secondary Suite
• The Board discussed that there are no provisions in the Land Use Bylaw to approve a Secondary Dwelling for Security Reasons.
• The Board discussed that the Mr. Fengstad indicated he has no intention of expanding the farming operations to include Intensive Livestock Operation.

**Resolution SD20190121.003**

MOVED: by Board Member C. Daniel

That the Board give partial denial for the appeal from Ron Fengstad. The Board denies the appeal for the refusal of the modular home with deck.

The Board only grants approval of Development Permit D18/040 for an addition of a covered sun room (30 ft. x 18 ft.) with the addition of a deck (12 ft. by 12 ft.) to the existing residence located on the S ½ of NW 33-47-25-W4M.

Carried Unanimously

8. **ADJOURN**

**Resolution SD20190121.004**

MOVED: by Board Member R. Pries

that the meeting adjourn at 7:35 p.m.

Carried Unanimously