Subdivision and Development Appeal Board Meeting

MINUTES

Thursday, July 11, 2019, 5:00 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, Erin Ballhorn
Municipal Intern, Naomi Finseth
Municipal Intern, Ben Cowan

1. CALL TO ORDER
Chairperson L. Johnson called the meeting to order at 5.15 p.m.

2. APPROVAL OF AGENDA
Resolution SDAB20190711.001
MOVED: by Board Member C. Daniel
that the Agenda for Thursday, July 11, 2019 be accepted as presented.
Carried Unanimously

3. MINUTES APPROVAL
Resolution SDAB20190711.002
MOVED: by Board Member T. Hoogland
to approve the minutes for the Subdivision and Development Appeal Board meeting held Thursday, April 18, 2019 with the following amendments:

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 if they had any Conflict of Interest.
No conflict of interest was noted.
REMOVAL OF:
Chairperson L. Johnson asked if anyone had any objections to any of the members sitting on the Board.
No objections were presented.
Carried Unanimously

4. PUBLIC HEARING
Chairperson L. Johnson declared the Hearing open at 5:25 p.m. and a delegation consisting of Bonnie Kerby, Linda Wallace, Mike and Iris Doel, Elaine and Bernie Semotulik, Patti Fulton, Paul Robinson, Wayne Rodway, Brian and Adele Groves and Jarvis Grant, Development Officer 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 if they had any Conflict of Interest.

No conflict of interest was noted.

4.1 Appeal of Development Permit for Bed and Breakfast and Existing House with Attached Garage, SE 35-46-6-W5M, Plan 9922011, Lot 31, Gordon Dolynchuk

On May 4, 2005, the County issued Development Permit D05/75 for a Single Family House with Attached Garage. The permit was issued as a permitted use with no setback relaxations provided as the site plan indicated the structure would be 6.12 metres from the eastern most property line.

On June 17, 2009, a development permit application was submitted to the County for an addition to be built onto the already approved house with attached garage. The site plan that was provided indicated a 6.11 metre setback to the easternmost property line.

On July, 24, 2009, Development Permit D09/210 was issued for the addition to the house approved by Permit D05/75 with no relaxation being granted.

On February 22, 2019, County Administration received a request for a Certificate of Compliance for the lands to be completed. As a part of the request real property reports were submitted to the County for review. As a part of the review it was found that the house was in fact located 5.90 metres away from the eastern property line versus the over six (6) metre setback that was shown on the 2005 and 2009 site plans.

On March 27, 2019, an email was sent from Administration to Mr. Dolynchuk discussing the possibility of him applying for a permit to grant the necessary 0.1 metre (1.67%) relaxation for the house and the possibility of incorporating the potential purchasers desire to operate a bed and breakfast business into one permit as both would be discretionary and require advertising.

On April 23, 2019, Mr. Dolynchuk submitted a development permit application to the County for the necessary setback relaxation as well as for the operation of a bed and breakfast business within the residence.

On May 17, 2019, Development Permit D19/072 was issued for the setback relaxation and the operation of the bed and breakfast business.

On June 18, 2019, a Letter of Appeal was received from Paul Robinson against Development Permit D19/072.

The letter reads as follows:

"This letter is being submitted by the adjacent and closely neighboring property owners in opposition to a proposed development of a Bed and Breakfast applied for by Gordon Dolynchuk at Greystones on the Lake, Buck Lake Alberta. The property location is SE-35-46-W5. Lot 31, Plan 9922011.

In the restrictive covenants of the Greystones on the Lake contained in subsection 1.7 it states: No Lot or building thereon shall be used for any trade of business. Please
find enclosed for your convenience a copy of the said restrictive covenants for Greystones on the Lake, Buck Lake, Alberta.

Due to the extreme size and height of the main structures on all of Mr. Dolynchuk's developed properties the neighboring properties have already been substantially negatively impacted. In addition to the sizable structures the property the property setbacks have been infringed on and the County of Wetaskiwin bylaw of maintaining 40% of the natural vegetation on the property has not be complied with. Any and all sight or sound barriers between Mr. Dolynchuck's properties and the neighboring ones have been required to be constructed by the way of fencing or maintained in the way of vegetation at the sole responsibility and expense of the neighboring property owners. Although the property mentioned above began construction in 2005 and the exterior front finish was completed several years ago the exterior side facing the adjacent property was not completed until May of 2019 leaving the neighbors on that side with a consistent view of unfinished deteriorating Styrofoam for approximately the past 14 years. In our opinion developments have diminished the property values for the neighbors in close proximately to them and we agree that opening up the structures to the public as a business will have even greater negative impact in regards to privacy, noise, traffic, security, impact on the lake, sewer disposal, and again have even more negative impact on neighboring property values.

We realize that it's not possible for each of you in this decision making process to actually drive out to the above mentioned property in order to make the final decision. Although all of the developed properties currently listed for sale by Mr. Dolynchuk are and do look extremely impressive from the front also in the real estate listing they seem to be a natural fit for a Bed & Breakfast situation the look of them and the impact on the neighbors shows a much different view. Please see the attached photos of the properties taken from not only front views but rear and side views as well. We the following, kindly ask that you will consider our concerns when making your decision in regards to final approval for a Bed and Breakfast on the above mentioned property."

On June 19, 2019, a Letter of Appeal was received from Bonnie Kerby against Development Permit D19/072.

The letter reads as follows:

"The purpose of this letter is to object to the proposed development of a Bed and Breakfast at Greystones on the Lake located on Buck Lake. The applicant is Gordon Dolynchuk who currently has property on SE-35-46-6-W5 Lot 31, Plan 9922011. When originally purchased, this land was zoned as lakeshore residential. This parcel of land is located beside an emergency access road to the lake and must be kept clear at all times. The possibility of this road becoming congested due to patrons of the Bed and Breakfast is a concern for all residents of both Heighington Estates and Greystones Estates who are dependent on this roadway for emergency services such as fire.

The residence is composed of 9 or more bedrooms and would create an increase in traffic on existing roadways. Also a concern to be noted is the increase of persons using various vehicles such as ATVs and overuse of the existing roadways which are not in adequate condition for the existing traffic currently. These subdivisions were not constructed for multi-family use at the time of zoning and were clearly allocated as single family dwellings.

The approval of the Bed and Breakfast could permanently change the numbers of foot traffic, create parking issues and potentially diminish the safety of the residents. Furthermore, this business could negatively impact the value of all the properties in the subdivision. Please note signatures below strongly support disapproval for the development of a Bed and Breakfast."

Administration recommends that the Board deny the appeal from Paul Robinson within SE 35-46-06-W5M, Plan 9922011, Lot 31 for the Bed and Breakfast Business and Existing House with Attached Garage, based on the following reasons:

- The restrictive covenant registered on the Title of the lands is not applicable to County planning decisions;
• As per Section 9.2.1 and Section 10.7.4(h) in the discretion of the Development Officer, there will be no impact to adjacent properties or land uses due to the 0.1 metre (1.67%) relaxation and operation of the bed and breakfast business;

• The County's Dangerous and Nuisance Property Bylaw 2018/52 is not a planning document and there is an established and official process in place to deal with unsightly properties;

• Over clearing of vegetation on private land and development of County environmental reserve land are not planning considerations applicable to application D19/072 and are matters for the County's Bylaw Enforcement Department;

• Use of Buck Lake itself is outside the jurisdiction of the County of Wetaskiwin.

Mr. Grant, Development Officer reviewed the Development Officer's Report.

The Board questioned if the County enforces restrictive covenants, the lots listed on the restrictive covenant and whose jurisdiction the waters of Buck Lake fall within.

Mr. Grant verified the County does not enforce restrictive covenants registered by developers and they must be determined and enforced privately through the court system. Also, the County's jurisdiction is limited to land parcels and lakes.

The Board verified a 0.1 metre relaxation is not an issue for Administration.

Mr. Grant confirmed the 0.1 metre relaxation was not an issue.

The Board reviewed the Lakeshore Residential District, including site coverage, environmental protection and height restrictions.

Mr. Grant reviewed the changes to the Land Use Bylaw from 1995/54 to 2017/48 including the addition of a height restriction in the current Bylaw.

The Board questioned the height of Mr. Dolychnuk's building.

Mr. Grant stated the building height is 54 feet as provided by the developer.

The Board questioned if the development would have been in compliance as of the 2005 application.

Mr. Grant verified that the 2005 application was in compliance at that time.

The Board questioned if more than 50% of the natural vegetation has been cleared.

Mr. Grant stated comparison of historical aerial photos would be required for accurate verification if 50% of natural vegetation has been cleared.

The Board questioned if there is sufficient parking.

Mr. Grant stated there is sufficient parking in front of the garage.

The applicant was called upon to provide comment, but was not in attendance.

A Letter of Appeal was received from Wayne Rodway against Development Permit D19/072.

The letter reads as follows:

"1 — How is it that the County of Wetaskiwin # 10 can blatantly disrespect and ignore the Land Titles Registered: Restrictive Covenant # 992 081 476, dated the 6th of April, 1999 and approve a Development Permit for a Bed and Breakfast Business. By the terms of this Development Permit's own admission, Item 4, Pg.2/5, reads: This issuance of This Development Permit does not SUPERSEDE or suggest violation of any caveat, easement, restrictive covenant or other encumbrances shown on the back of the Certificate of Title. - Attachment

2 — The referenced Restrictive Covenant sets out sum (10) Specific Restrictions referenced as (1.1 through to 1.10) governing the general character of each lot by restricting the use, occupation and improvements of the lots. Paragraph two of the Restrictive Covenant go on to say that the burden of the restrictive Covenants be annexed to and bind each of the lots as servient lands and bind every owner and all subsequent owners thereof from time to time."
3 — Covenant Restriction # 1.7 reads as follows: No lot or building thereon shall be used for any Trade or business. Attachment

OUR CONCERNS and OBJECTIONS: of this specific Development Permit — D19/072
1 If this Development permit for a "Bed and Breakfast Business ", which clearly Contravenes Restrictive Covenant # 1.7. If allowed to stand it would open the flood gate for all land owners to apply for and receive permission to establish similar types of businesses to help subsidize the high cost of property taxes and limited services such as looking after one’s own sewage removal and garbage disposal.
2 Item # 8, states that the number of employees for the Bed & Breakfast be limited to the landowner(s) of the property.
Q— If one is to sell this property to another, is this development permit D19/072 transferable in perpetuity.
Item # 14, Maximum of three (3) rooms occupied at any given time.
Q— Given that there will be seven (7) bedrooms when fully developed, how is the County going to monitor and enforce the permitted occupancy of - only three (3) bedroom?
Item # 15, Guest rooms shall not be occupied by same tenant for more than seven (7) consecutive days.
Q— Again how is the County going to monitor and enforce the seven (7) consecutive day rule? What is preventing a different member of a family or group being recorded as the registered guest? Or one could arrange to book a room every Friday through Sunday or Monday for the entire summer months of May through to October and beyond.
Q— What limitations are there in place to prevent regular rotating tenants from erecting individual boat lifts and docks lake side, creating additional infringement on the protected environmental lake front?

Item # 9, Pg. 2/5, - This permit is issued and valid for a period of one (1) year from date of issue bring May17, 2019. If development has not commenced or carried out with due diligence, this permit is null and void.
Q: What constitutes due diligence? Mr. Dolynchuk has been working on this (3) three storey above grade dwelling contrary the County’s own Land Use Bylaw No.2017/48,Pg.58, for some (15) fifteen years.

Is it our collective understanding that this dwelling has to be 100% complete (all drywall, painting, flooring, kitchen cabinets, final heating & electrical) and the required final Occupancy Certificate within the stipulated one year time frame ( Dev. Permit - Item 9, pg.2/5, will nullify and void this Development Permit D19/072.

How the permitted development of the two (3) story homes undertaken by Mr. Dolynchuk were allowed to proceed without taking into account the impact on adjoining properties is beyond comprehension and supports why other Urban Municipalities have adopted builder Design Control guidelines.

In this instance, The Negative Impact as to Shadowing on Adjacent Properties was obviously not taken into account by the County Development Officer. The adjoining residence to the East are unable to enjoy the evening sunset and the residence to the West are unable to enjoy morning sunrise, as a direct result of the permitted height oversight.

Given that Mr. Dolynchuk has this property as well as all other property’s listed for sale with Moores Realty, It is our belief that after being under construction for past (15) years, Mr. Dolynchuk has no intention of completing nor residing at this property; which comprises of 8,691 square feet, (7) seven bedrooms and (9) bathrooms when complete.

It is therefore our belief Mr. Dolynchuk has only applied for this Bed & Breakfast Business Development Permit and Certification for the sole purpose of marketing, promoting and enhancing the commercial value of this property.
It is therefore our collective belief that this Development Permit # D19/072 should be rescinded as it does not comply with the registered Land Titles Restrictive Covenant # 992 081 476, dated the 6th day of April, 1999.
In closing, the said Development Permit D19/072 should not be allowed to supersede the registered Restrictive Covenants that all lot owners are governed to uphold."

Mr. Wayne Rodway spoke on behalf of the appellant Mr. Paul Robinson and addressed the Board:

- Reviewed the Restrictive Covenant registered on title and believes that a permit cannot supersede the restrictive covenant;
- And questioned if the Bed & Breakfast permit requires a new permit annually.

Mr. Grant stated the permit does not expire and will stay with the property provided the new owners operate within the same conditions.

Mr. Rodway questioned if each renter can erect a boat launch.

The Board advised this Board only has jurisdiction on the lot in question, not the lake or the Environmental reserve.

Mr. Rodway addressed the board as follows:

- Questioned how the County will enforce and monitor the conditions of the permit;
- Different concerning scenarios including boat launches and increased unknown traffic;
- The residence is currently incomplete;
- The County disrespecting and ignoring Restrictive Covenant #992 081 476 dated April 6, 1999;
- The applicant does not intend to operate the business and does not reside there;
- The property is currently listed on MLS;
- And concerned the number of bedrooms rented will exceed the three as listed in the permit conditions.

The Board stated the exterior appears to be complete in the photos provided.

Mr. Rodway confirmed the exterior is approximately 95% complete and the siding was recently installed and the structure is three stories above grade with a walk out basement.

The Board questioned if the Environmental Reserve in front of the property is accessible.

Mr. Rodway stated the Environmental Reserve is accessible.

Ms. Bonnie Kerby, an adjacent landowner in Heighington Estates, addressed the Board:

- The access to the lake next to the property should not be used as parking;
- Security and safety are dependent of the closeness of the community;
- How will the County ensure Bed & Breakfast residents follow the rules and who will enforce the issues;
- The Restrictive Covenant is registered on all properties and believes prior to approving the County must meet the terms of the Restrictive Covenants;
- And the Queens Bench enforces Restrictive Covenants.

The Board questioned if the Restrictive Covenant has a definition of the word business and if there any other Bed & Breakfasts within the subdivision.

Ms. Kerby stated the definition states only business and there are no other Bed & Breakfasts in the subdivision.

Mr. Doug Carson, an adjacent landowner, addressed the Board:

- Safety concerns introducing new people to the community throughout the different seasons;
- Concerns of fire safety;
• Concerns that the building safety codes have changed since the original permit approval;
• There was not a complete set of drawings included for review;
• And details of the structure, including size and number of bedrooms.

Ms. Patti Fulton, an adjacent landowner, addressed the Board:
• Building height is a concern;
• Increased use will increase noise;
• There are no barriers provided by Mr. Dolynchuk between properties;
• And Mr. Dolynchuk has colonized the road right of way and planted trees along the road allowance.

Mr. Robert Doel stated a firetruck cannot turn around on the access road to the lake. The residents of the subdivision had fought hard to have the road installed for emergency access.

The Board asked if the residence has property access from the range road.

Ms. Fulton verified the property does have access from the range road.

The Board reviewed pictures submitted by the appellants.

Mr. Grant, Development Officer, provided closing comments:
• The following issues are outside of the scope of the Subdivision and Appeal Boards jurisdiction:
  o Addressed County road development;
  o Lake use and jurisdiction;
  o Dog control;
  o Noise complaints;
  o Enforcement;
• Reviewed the Development Officer's report and the recommendation that the appeal be denied.

The Board questioned if a final inspection was held on the property.

Mr. Grant stated final inspections are not common practice due to a lack of County resources.

The Board questioned if the building is habitable.

Mr. Grant was unsure, however, Building Codes must be met to obtain occupancy.

The Board questioned if Safety Codes has additional requirements for a Bed & Breakfast.

Mr. Grant stated a development permit must be issued first and safety codes must then be contacted. If operation begins prior to Safety Codes approval, enforcement actions can be taken to ensure compliance.

The Board questioned if there was a timeline to complete the project.

Mr. Grant stated the applicant has one year to commence with no restrictions on completion.

Mr. Rodway questioned how a Bed & Breakfast permit may be approved prior to structure completion and if decks are build at a later date, how will encroachment be address.

The Board stated a permit would require a separate application.
Ms. Kerby stated a Bed and Breakfast permit is premature as the residence is not complete.

Ms. Fulton stated there are pictures on the realtors listing showing no interior development, which was reviewed by the Board.

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 6:33 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:

- Relaxation of residence 0.1 metre towards Range Road 60;
- The following are enforced by other avenues:
  - Encroachment of the the environmental reserve;
  - Unsightly premises;
  - Restrictive Covenants;
- Privacy of the neighbours;
- Safety Code approvals;
- And increased Traffic.

Reasons:

- The Board was of the opinion that a relaxation of 0.1 metre toward Range Road 61 can be approved as it would not negatively impact the road allowance of adjacent landowners.

- In accordance with the County No. 10 Land Use Bylaw 2017/48, Bed and Breakfast means an accessory use of a dwelling to provide commercial accommodation in guest-rooms and where breakfast may be provided to registered guests in a common room.

- The Board was of the opinion that the Bed and Breakfast cannot be approved on this lot because the current structure does not meet the definition of a dwelling. In accordance with the County of Wetaskiwin No. 10 Land Use Bylaw 2017/48, Dwelling is defined as a building containing one or more habitable rooms in which the primary use is habitation and is self-contained for that use within facilities containing bathroom(s), and may include a washroom, a kitchen, and sleeping areas for a single household for year-round residential accommodation. The structure is currently not habitable.

- The Board was also of the opinion that a Bed and Breakfast would negatively affect neighbouring parcels. In accordance with the Municipal Government Act Section 387 (3) In determining an appeal, the subdivision and development and appeal board (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, (i) in its opinion, (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.
The Board was of the opinion that a Bed and Breakfast would materially interfere with or affect the enjoyment of neighbouring properties.

Resolution SDAB20190711.003
MOVED: by Board Member T. Hoogland

That the Board give partial approval for the appeal from Paul Robinson. The Board upholds the appeal for the Bed and Breakfast.

The Board only grants approval of Development Permit D19/072 for the Existing House with Attached Garage within SE 35-46-06-W5M, Plan 9922011 with the following conditions:

1. Location and use of proposed development shall be as specified by documents submitted by applicant.
2. The required front yard setback of 6 metres (20 feet) as per Land Use Bylaw 2017/48, has been relaxed to the proposed distance of 5.9 metres (19.36 feet) as it appears on the submitted plot plan.

Carried Unanimously

Reason's for the Board's Decision:

- The Board was of the opinion that a relaxation of 0.1 metre toward Range Road 61 can be approved as it would not negatively impact the road allowance of adjacent landowners.
- In accordance with the County No. 10 Land Use Bylaw 2017/48, Bed and Breakfast means an accessory use of a dwelling to provide commercial accommodation in guest-rooms and where breakfast may be provided to registered guests in a common room.
- The Board was of the opinion that the Bed and Breakfast cannot be approved on this lot because the current structure does not meet the definition of a dwelling. In accordance with the County of Wetaskiwin No. 10 Land Use Bylaw 2017/48, Dwelling is defined as a building containing one or more habitable rooms in which the primary use is habitation and is self-contained for that use within facilities containing bathroom(s), and may include a washroom, a kitchen, and sleeping areas for a single household for year-round residential accommodation. The structure is currently not habitable.
- The Board was also of the opinion that a Bed and Breakfast would negatively affect neighbouring parcels. In accordance with the Municipal Government Act Section 387 (3) In determining an appeal, the subdivision and development and appeal board (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, (i) in its opinion, (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.
- The Board was of the opinion that a Bed and Breakfast would materially interfere with or affect the enjoyment of neighbouring properties.

6. ADJOURN
MOVED: by Board Member R. Pries
that the meeting adjourn at 7:23 p.m.

Carried Unanimously