Subdivision and Development Appeal Board Meeting

MINUTES

Tuesday, August 27, 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
David Blades, Director of Planning and Development
Jarvis Grant, Development Officer
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 SD20190827.001
MOVED: by Board Member T. Hoogland that the Agenda for Tuesday, August 27, 2019 be accepted as presented.
Carried Unanimously

3. MINUTES APPROVAL
Resolution SD20190827.002
MOVED: by Board Member C. Daniel to approve the minutes for the Subdivision and Development Appeal Board, Monday, August 12, 2019 meeting as presented.
Carried Unanimously

4. PUBLIC HEARING
Chairperson L. Johnson declared the Hearing open at 5:24 p.m. and a delegation consisting of Tress Gibson, Ken D. Taylor, and Bob Riddett 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 Appeal of Stop Order for Non-Compliance with Conditions of Development Permit D15/072 and Unauthorized Developments on SW 36-46-23-W4M, Gian & Tress Gibson, Roll # 843.02

On April 20, 2015, Ken Taylor submitted a development permit application for a residence to be constructed on the lands. As a part of the application, a medical letter signed by a physician was submitted which indicated that Mr. Taylor and Mrs. Caroline Taylor would benefit residing on the same parcel as their daughter for ongoing assistance and attention while still being able to reside in an independent dwelling.

During a review of the proposed site plan it was noted that there was a five (5) metre setback proposed from the western property line. With this property line being adjacent to an undeveloped County road allowance the full setback requirement would normally be forty (40) metres with the Development Authority having the ability to relax it down 75% to ten (10) metres. Mr. Taylor was informed of the inability for the Development Authority to relax the setback to the proposed five (5) metres.

On April 30, 2015, with the hopes of creating a larger property line setback without relocating the proposed residence’s location, Mr. Gibson submitted a request for closure and sale of the adjacent undeveloped road allowance.

On July 7, 2015, Mr. Gibson’s request was presented to Council. After discussing the proposed closure and sale Council passed the following resolution:

"that Council deny the request for road closure and sale but offer Gian Gibson the opportunity to lease the undeveloped road allowance adjacent to the west boundary of his property described as SW 36-46-23-W4M as per Section 22 and 230 of the Municipal Government Act and County of Wetaskiwin Road Allowance Closure, Lease and/or Sale Policy #1205 subject to the following:

- Written confirmation is received accepting responsibility for all costs associated with the road closure including:
  - Advertising of the Public Hearing
  - Title searches required for notification of referral agencies. (Not refundable).
  - Survey costs, if applicable
  - Land Title Registration Fees if applicable
  - All other charges relating to closure of road allowances.
- No objection being received from any person who would be prejudicially affected by the proposed road closure.
- Approval of the Minister of Alberta Transportation.
- Provision of a correct and acceptable description of the closure area from an Alberta Land Surveyor, if required”

On August 25, 2015, Mr. Taylor came into the County office and indicated that they would like their site plan to be changed from the original five (5) metre setback to a ten (10) metre setback. It should be noted that on the site plan submitted a bank break setback was listed at thirty (30) metres which complied with the Land Use Bylaw in effect.

On September 3, 2015, Development Permit D15/072 was signed. Conditions #9 and #11 stated the following:

"#9. The proposed Single Storey Dwelling 40’x75’ represents a single family dwelling. The proposed dwelling will be used by a person(s) related by blood or marriage to the owner of the lot or parcel who needs to be on the same lot or parcel for reasons of health or infirmity. Therefore, the existing house must be rendered uninhabitable within one week of the proposed single storey dwelling 40’ x 75’ becoming habitable. Once kitchen, bathroom and sleeping facilities are present in the 40’x 75’ dwelling they must be removed from the existing house.”
"#11. The required setback of 40 metres (131 feet) as per Land Use By-law 95/54, has been relaxed to the proposed distance of 10 metres (32.80 feet) as it appears on the submitted plot plan."

On January 29, 2019, a letter was sent to Mr. and Mrs. Gibson outlining that their building permit with Superior Safety Codes had expired and that as a result a review of their development permit file was being conducted. In the course of the review it had been deemed prudent that a site inspection be conducted to ensure all conditions of Development Permit D15/072 were being complied with.

On February 6, 2019, a site inspection was conducted of the lands. During the inspection, the bank break setback was confirmed to be closer than the thirty (30) metres stated on the site plan as well as concerns about the proximity to the undeveloped road allowance were raised.

On February 7, 2019, due to the findings of the file review and site inspection a Stop Order was issued to Mr. Taylor as well as Mr. and Mrs. Gibson. The Stop Order required them to cease construction and to supply the Development Authority with a geotechnical report as well as a report from an Alberta Land Surveyor showing the distance from the house to the westernmost property line.

In April of 2019, Shelby Engineering completed a survey and a geotechnical report of the lands and a copy was provided to the County for review.

On May 22, 2019, Mr. Taylor confirmed with the Development Authority that the eaves of the house encroached into the undeveloped road allowance by 0.54 metres.

On July 17, 2019, County Administration held a meeting with Mr. Taylor and Mr. and Mrs. Gibson. During this meeting another Stop Order was hand delivered and discussed. The requirements of this Stop Order were to:

- submit a completed development permit application for the relocation of all existing accessory building located within the area shown in Map 1 by August 30, 2019 and;
- either relocate the house to the pre-approved location as established through D15/072 no later than October 30, 2020, OR submit a completed development permit application to structurally alter the house in its existing location to meet the minimum required setbacks from the adjacent western property line no later than August 30, 2019.

On August 2, 2019, the County received a Letter of Appeal from Gian and Tress Gibson which reads as follows:

"Dear Chairperson and Members of the Subdivision and Development Appeal Board:

Please accept this letter as notice that we wish to appeal the stop order associated with Development Permit D15/072. We request that the board grant a 100% relaxation of a road allowance that is adjacent to our property as listed above. We are appealing this so that we may continue with construction on our residence. Allowing this setback has no negative side effects to the County or any adjacent neighbors or land users.

Construction for a two-level residence began fall of 2015 with completion date anticipated for the winter of 2016. Several delays have occurred in 2016 and 2017 (material availability, weather conditions, contractor injured) but had begun again in the spring of 2018. To date, the exterior of the house is at 90% completion with the interior of the house at approximately 20% completion. See Appendix A for a detailed timeline with dates and description of interactions.

During the meeting that was set with County administration to discuss options on July 17, 2019 a second stop work order was produced. The following options were given.

1. Submitting a completed development permit application for the relocation of all existing accessory buildings located within the area shown in Map 1 by August 30, 2019.

2. Either relocating the house to the pre-approved location as established through D15/072 no
later than October 30, 2020, OR submit a completed development permit application to structurally alter the house in its existing location to meet the minimum required setbacks from the adjacent western property line no later than August 30, 2019."

A developmental permit was obtained for the residence and building began where we believed was appropriate. Please note that we did submit to purchase the road allowance in 2015 as our intent was to build the residence on the most southwestern aspect of the property. However, this was denied and we moved the site back to where we believed was in compliance with the 10m setback from the road allowance. Our intent was never to overlook the setbacks laid out by the County. The location of the residence is a result of a misunderstanding of what the metal pin represented. See Appendix B.

As part of our appeal, we would like to take this opportunity to respond to the two issues of non compliance as per the letter from the County dated July 17, 2019.

1. "The house approved by Development Permit D15/072 was not built in accordance with the submitted application and subsequent development permit condition. Within the application it was indicated that a thirty (30) metre setback would be maintained from the southern bank break and that the house would be located ten (10) metres from the western property line. With a 75% relaxation required to the westernmost property line the setback was formally established through condition #11 within D15/072.

We understand that condition 11 was part of the development permit. To our knowledge, we believed that we were in compliance with the development permit until it came to our attention when Jarvis Grant and David Blades visited the site in February 2019. It was at this time that we realized the 10 metre setback was measured from a point different than where the physical property line exists.

2. "Development permits were not obtained for accessory buildings associated with the lands which do not meet the required setback to the westernmost property line and encroach into and undeveloped County road allowance. The developments in question are shown in the attachment labelled 'Map 1'.

Development permit was obtained in 1977. In addition to us having the development permit, taxes has been paid on this garage since 1977 with no indication that the location of the garage was a problem. We are working to deal with this issue in another forum.

We have resided in this location for approximately seven years as a family, with one of us living at the location for majority of her life - a third generation resident. Our intent is to finish construction on the residence and live there with our three children. We also have potential for our parents to live with us should they become unable to live independently.

We respectfully request that the Board grant the maximum relaxation to the road allowance and the stop work order be removed from our residence so that we can continue building. We believe that granting this setback would not have an impact to adjacent properties or land users/uses.

We understand that the 0.54 metre eavestrough encroachment will need to be addressed. We have planned to meet with an engineer to address this issue.

Thank you for your time and consideration to the significance of this request.

Respectfully,

Gian and Tress Gibson”

A Subdivision and Development Appeal Board Hearing was scheduled for Tuesday, August 27, 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 August 9, 2019.

Administration recommends that the Board use its discretion to issue a conditional development permit for Gian and Tress Gibson within SW 36-46-23-W4M for the
relocation of the two (2) sea cans and tent structure as well as the existing house in its current location subject to the following conditions:

1. Proposed Development not to encroach on Registered Rights of Ways or Utility Service Lines. In addition to this, the applicant is advised that it is their responsibility to contact Alberta-One-Call at 1-800-242-3447 to locate buried facilities if there is a plan to excavate or disturb the ground in Alberta prior to the excavation or ground disturbance and meet these set-backs as required.

2. Location and use of proposed development shall be as specified by documents submitted by applicant.

3. The applicant shall be responsible to contact Superior Safety Codes Inc. (1-888-358-5545) for their requirements under the Safety Codes Act. The County requests that copies of the approved permits issued by Superior Safety Codes Inc. or Municipal Affairs also be provided for County file records prior to the commencement of any development.

4. All drainage must drain towards a County ditch, public utility lot, or reserve lot. No drainage shall impact adjacent lots.

5. No natural drainage courses shall be changed, entering or leaving in or out of County ditches; natural flows are to be maintained.

6. As specified in an approval to be obtained from Alberta Transportation.

7. Private Sewage Disposal Systems in the County of Wetaskiwin are regulated by Alberta Municipal Affairs through Superior Safety Codes Inc. The Developer is to contact them (either their Edmonton or Red Deer location) to carry out plumbing inspections in the County of Wetaskiwin to ensure that the Private Sewage Disposal System meets all requirements under the Safety Codes Act. The County requests that copies of the approved permits issued by Superior Safety Codes Inc. or Municipal Affairs be provided for County file records.

8. The site shall be kept in a neat and orderly fashion.

9. The two (2) sea cans and tent structure shall not be used as a residence nor contain any sleeping, kitchen, cooking, or plumbing facilities.

10. The two (2) sea cans and tent structure shall be relocated to the area indicated in the attached site plan by October 30, 2020.

11. The garage must be completely removed from the undeveloped road allowance by October 30, 2020.

12. As per the information provided by the developer, the total area covered by all Accessory Buildings on the property has a total of ______ square metres (______ square feet). Please note that the property is zoned as Rural Residential and as per the County of Wetaskiwin's Land Use Bylaw the total area of accessory buildings on an individual site shall not exceed a site coverage of 14% nor an area of 140.0 square meters (1506 square feet), unless approved by the Development Officer.

13. The required bank-break setback of 30 metres (98 feet) as per Land Use By-Law 2017/48, has been relaxed to a distance of 18 metres (59 feet) as it appears in the engineering report prepared by Shelby Engineering.

14. The Developer consents to adhere to all requirements and recommendations provided in the report from Shelby Engineering.

J. Grant, Development Officer, reviewed the Development Officer's report.

The Board questioned the recommendation from administration to issue to a permit when the issue before the board was a Stop Order. The Board believed they could either confirm, revoke or alter the Stop Order.

J. Grant verified that the Board could confirm the Stop Order which would require moving the house, revoke the Stop Order and potentially reissue the Stop Order or alter the Stop Order as per the Board's direction.

The Board requested clarity on the 18 conditions are for a potential permit.
J. Grant confirmed that is correct.

The Board questioned if the lease agreement was a part of this hearing.

J. Grant replied that the lease agreement would have to go to Council.

B. Riddett spoke on behalf of the applicant G. and T. Gibson and K. Taylor and addressed the Board:

Appeal by Gian and Tress Gibson and Ken Taylor against a stop order issued on 17 July 2019, County file 843.02

In February and July 2019 the County of Wetaskiwin issued stop orders against a development on SW 36-46-23.4, citing non-compliance with Development Permit D15/072. As both orders dealt with the same issues on the same land, it may be assumed that the earlier order has been superseded by the later one, and no longer need be considered.

The order dated 17 July 2019 deals with three issues. Two relate to a house which has been substantially completed. The other relates to some accessory buildings.

Setback from top of slope:

The land use bylaw, section 9.10.4, forbids development within 30 metres of a bank break, unless a lesser distance is approved under the variance provisions of the bylaw.

According to a real property report by Hagen Surveys dated March 2019, the closest footings of the house in question are 21.4 metres from the top of bank.

Section 3.8 of the bylaw allows the development officer (or, on appeal, the SDAB) to relax the setback if a professional engineer certifies that the proposed building site is safe.

As required by the February stop order, the applicants engaged Shelby Engineering to test the site. A copy of Shelby’s report has been given to the County and a further copy is available to the Board.

Shelby concludes that there is no risk of slope failure beyond 18 metres from the top of bank. The closest part of the house is 21.4 metres from the top of slope. This is 3.4 metres or about eleven feet inside the safe zone. In Shelby’s opinion “the development of the dwelling [should] be allowed to proceed” (Shelby, page 7).

The applicants therefore request that the Board accept Shelby’s professional expertise and use its authority under section 687 of the MGA and 3.8 of the land use bylaw to allow the house to remain a minimum of 18 metres from the top of bank.

This does not set a new precedent for the County. To quote a recent case, the Steffensen ASP (adopted by council by Bylaw 2018/41) contemplates houses being built closer than 30 metres to the top of the bank of Bigstone Creek provided that an engineer’s report certifies that the site is safe. The Von Platen subdivision approval (RW/01/57) contains a similar provision.

Setback from the undeveloped road allowance:

The land use bylaw, section 9.10.1, requires all buildings to be set back at least 40 metres from any road.

The property flanks Range Road 231. This road allowance is undeveloped and is likely to remain so: the half mile north has been closed and added to NW 36, and the half mile to the south runs up and down the banks of Coal Lake. When the original development permit application was made, staff recognized this unusual situation, and used their authority under section 3.8 of the bylaw to relax the setback to ten metres (clause 11 of the development permit).

When trying to establish the boundary of the undeveloped road allowance, the applicants found a survey monument on the north quarter line. They assumed that this marked the east side of the road. In fact, as the later real property report later showed, the monument is set on the west side of the road. This created a 20 metre error, so instead of being built in accordance with the development permit, the footings were poured right at the property line.
The applicants freely admit this error on their part. However, they submit that the County’s demand to move the house, or “structurally alter the house in its existing location to meet the minimum required setbacks” (in other words, chop off any parts that infringe on the approved 10 metre setback) is unnecessary and unreasonable. The road will never be built, and no neighbour will be hurt if the house stays in its present location. The applicants therefore request that the Board allow the house to remain where it is.

The real property report shows the locations of the footings, not the eaves. It appears that the eaves encroach a few inches on the road allowance. The owners are willing to enter into an encroachment agreement with the County to regularize this situation.

In the long term, the best solution would be for the owners to purchase all or part of the road allowance (ten metres would be sufficient), but that is a matter for council, not this Board.

Locations of accessory buildings:

The stop order speaks of a garage built on the undeveloped road allowance, and implies that it was built recently. In fact it was built in 1977. It is beyond the SDAB’s jurisdiction to allow this on the road allowance, so the applicants will work with County staff to remedy the error.

Requested SDAB decision:

The applicants request that the Board
1. Confirm that the stop order issued on 7 February 2019 is now null and void, and this appeal deals only with the stop order dated 17 July 2019.
2. Based on the geotechnical report by Shelby Engineering, accept that the house is safely located, and exercise its discretion under section 687 of the MGA and section 3.8 of the land use bylaw to allow the house to remain a minimum of 18 metres from the top of slope.
3. Recognize that range road 231 is undeveloped, and will likely never be developed, and exercise discretion under section 687 of the MGA and section 3.8 of the land use bylaw to reduce the required setback to 0.29 metres, allowing the house to remain where it is.
4. Require the owners to enter into an encroachment agreement with the County to allow the eaves of the house to overhang the property boundary.
5. Uphold the requirement of the stop order to apply for a development permit for the accessory buildings, and to comply with any terms of the resulting development permit.

The Board asked if the applicant was ok with the ambiguity with the unauthorized garage? Would it be moved?

B. Riddett stated the applicant would move the garage if ordered by the County.

The Board asked why the applicant did not apply for the development permit as required by the Stop Order?

B. Riddett stated the applicant has no issue with the Development Permit, the challenge was with the timeline set out by the Stop Order. B. Riddett requests the Board strike out the date and confirm the location of the house.

J. Grant, Development Officer, provided closing comments:

J. Grant’s position remained the same. The Board can grant its own Development Permit through the MGA.

No closing comments from appellant.

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.

Resolution SD20190827.003
MOVED: by Board Member T. Hoogland
to defer discussion regarding the appeal of stop order for non-compliance with conditions of Development Permit D15/072 and unauthorized developments on SW 36-46-23-W4M for Gian and Tress Gibson to a later time in the meeting due to time constraints
Carried Unanimously

5. PUBLIC HEARING

Chairperson L. Johnson declared the Hearing open at 6:08 p.m. and a delegation consisting of Brian Link, Esther Link, Tanya Murphy, Darren Murphy, Richard Conrad, Jerry Royes, Jan Royes, Ron Butt, Mary Lou Butt, Henry Marchand, Kay Marchand, Lyle and Debbie Butt 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.

5.1 Appeal of Development Permit D19/139, Darren & Tanya Murphy (Appellant: Richard Conrad) Roll # 2733.96

On June 4, 2019, a Notice of Inspection letter was sent out to landowners within the Hamlet of Mulhurst Bay outlining that Recreational Vehicle complaints had been lodged and that inspections were to be conducted of the lands.

On June 19, 2019, Darren and Tanya Murphy submitted a development permit application for a mobile home, existing sheds and for RV Use during construction. When the application was submitted, the Development Authority reviewed the application and discussed aspects of the previous and newly proposed land uses with Mrs. Murphy.

Historically, there had been complaints about sheds on the property being utilized for sleeping accommodations as well as people utilizing recreational units on the property without a residence. During the application review it was outlined to Mrs. Murphy that sheds could not be utilized as guest cabins on the property as guest cabin is not a prescribed use within the Country Residential District as well as that any use of recreational units on the property was to be limited to one (1) for storage until such time as a residence was approved and located on the property, at which time one (1) could be utilized during construction if approved and then once complete one (1) could be utilized for short term camping.
On July 25, 2019, Development Permit D19/139 was issued subject to conditions. Conditions relevant to this hearing are:

"10. The existing sheds shall not be used as a residence nor contain any sleeping, kitchen, cooking, or plumbing facilities."

"14. As per Section 3.12.1 (e) of the Land Use By-law, the intent to live within an RV unit during the construction of the dwelling is recognized by the development authority.

The motor home/recreational vehicle must not be used as a dwelling once the mobile becomes habitable or October 31, 2019, dependent on which arrives first. After this date, you may store the recreational vehicle on your property and resume short term camping; however it may not be used as a dwelling or as a guest house.

"15. The mobile home shall be completely sided and finished to the satisfaction of the Development Officer."

On August 9, 2019, a Letter of Appeal was submitted by Richard Conrad, which reads as follows:

"I am appealing this development application on the grounds that it does not:

- conform to the Restrictive Covenant that is registered on my Certificate of Title
- conform to the existing permitted use as outlined in the county of Wetaskiwin Land Use Bylaw
- conform to the uses that I believed was the reason I originally purchased the property in Cameron Highlands

a and I believe that this similar to the problems of recreational vehicle bylaw enforcement that are community and council had spent the last four years in preventing from existing in our neighborhood

My name is Richard Conrad and I am a full time resident of Mulhurst Bay. I spent a total of 30 years as the manager of the EPCOR’s Technical Training Center and for the last 15 years as the CEO of Contech Safety and Training Ltd. This limited company with approximately 364 clients is based out of the County of Wetaskiwin.

From my professional experiences I am very aware of the importance of growth and safety within a community. I currently am on numerous committees (14) and groups within the county of Wetaskiwin with the primary focus of bringing business opportunities into the area by creating a much larger full time residence base, increasing the amount of business opportunities, all while providing community facilities for the residences. See Appendix A for list of committees

Mulhurst Bay currently has only 295 full time residences (2011 census). Cameron Highlands is a subdivision in the Hamlet of Mulhurst. It consists of 77 lots with 76.7 % of them being stick built residences. All these home owners have a Certificates of Title which will also have a Permitted Registrations against their Title. One of these registrations is referred to as Restrictive Covenant. This covenant will have "certain restrictions, the burden of which shall run with each of the lots". (922 216 620 on 23/07/ 1992 Restrictive Covenant) See Appendix B

Prior to moving into the Mulhurst Bay area, I conducted an extensive search and review of potential living areas to ensure that my investments would be protected. My lawyers and realtors both concluded that my home investment in which I paid over $550,000 for was protected by Land Use bylaws, Restricted Covenants, Compliance certificates, real property reports and certificate of title, all registered into my name.

Registered against my Certificate of Title (922 216 620) as of the 23rd of July 1992 was a restrictive covenant (922 216 620 on 23/07/ 1992 Restrictive Covenant) and placed onto my certificate on the 25th of September 2013 by Land titles. It states that this document was intended to be binding upon and to ensure to the benefit of the respective heirs, executors, administrators, successors, and assigns of the lands as set out in the document. Researching numerous home owners lots including the
Murphy’s, concluded that everyone has the same documents registered against their title. See Appendix B

Land Use Bylaw, see link below, on county’s website

Another important document that we need to be aware and follow would be the County of Wetaskiwin’s land use bylaw. This Land Use Bylaw 2017/48 (PDF) regulates the use, conservation, and development of land, habitat, buildings and signs in pursuit of the objectives of County of Wetaskiwin’s statutory plans.

- To maintain and enhance the quality of life by providing opportunities to attain individual and community aspirations
- To conserve and enhance the environmental quality in County of Wetaskiwin
- To foster planned, efficient, economical and beneficial development that provides a diversity of choice, lifestyle and environment

Restrictive Covenant, Refer to Appendix B for full document

Once signed, the covenant or caveat is registered with the Alberta Land Titles Office. It stays with the land, no matter who owns it.

(922 216 620 on 23/07/ 1992 Restrictive Covenant) Select Points

1. The lands shall be used for private residential purposes only, and no attached or semi-detached house, duplex or apartment, or any house, or cottage designed for more than one family, shall be erected on the Lands, and not more than one detached dwelling/house with or without attached garage may be erected on any lot.

7. No house-trailer or mobile home shall be parked or placed on the Lands for the purposes of living accommodations

From the Development Permit D19/139 provided by the county Refer to Appendix H page 3 of 5 Item 4

4. This issuance of this development permit does not supersede or suggest violation of any caveat, easement, restrictive covenant or other encumbrance shown on the back of the Certificate of Title. It is the responsibility of the applicant/owner to research the Certificate of Title for the existence of any encumbrance.

From the Development Permit Application... see Appendix D Top Quarter of Page 2/11

I hereby make 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.

Top Quarter of Page 2/11... see Appendix D

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.

Important Definitions are found on Appendix C

Dwelling, Mobile means a dwelling that is a building or structure that may be a ‘single-wide” or “double-wide’ that is designed to be transported as a complete single unit or in two parts on wheels to a building site on which it is placed at grade and meets the requirements for a residence under the Canadian Standards Association. A mobile dwelling is also called a manufactured home but does not include a Recreational Vehicle or Recreational Unit, Park Model.

Dwelling means a building or a part of a building containing one or more habitable rooms in which the primary use is human habitation and is self-contained for that use with facilities containing bathroom(s), and may include a washroom, a kitchen, and sleeping areas for a single household for year-round residential accommodation. Dwelling does not include Recreational Vehicle or Guest Cabin.
• Requirement for well, sewer, power, gas/propane, as per safety code council and fully functioning habitable rooms; have not seen those on development permit

Important notes: Restrictive Covenants

A restrictive covenant can be registered as a caveat. (Under Alberta law, a restrictive covenant can be registered as a caveat or as a restrictive covenant on its own right. Either way has the same effect.)

Restrictive covenants are “building schemes” that operate outside of — and in addition to — municipal zoning bylaws. The obligations associated with restrictive covenants “run with the land” and are binding on any future buyer of the property. See restrictive document Appendix B

Once signed, the covenant or caveat is registered with the Alberta Land Titles Office. It stays with the land, no matter who owns it.


Appendix E... Edmonton Law Information

Historically, restrictive covenants have been used when a single person owned adjacent properties and wanted to control their use. As a condition on the sale to a new purchaser, the owner required the purchaser to promise the property would not be developed in a way that would diminish the value of the adjacent property. If the purchaser breached the covenant, the original owner was entitled to a remedy, often in the form of an injunction requiring the purchaser to bring the property back into compliance with the covenant.

In some instances, these restrictive covenants are stricter than the obligations set out under the existing zoning bylaws. Since municipalities are only concerned with their own regulations, it is entirely possible for a home or garage to be built in compliance with municipal regulations but in contravention of the restrictive covenant on the title. The property might even have a real property report with evidence of municipal compliance.

There is renewed interest in restrictive covenants given Edmonton’s new focus on infills. Neighbourhoods and their residents can make restrictive covenants on their properties to prevent lot splitting, impose height or setback restrictions, or state that only single-family homes can exist on the property. We see this occurring in Edmonton neighbourhoods, like Hardisty and Rio Terrace, where residents are putting restrictive covenants on their lots. These residents are requesting that their neighbours also adopt a restrictive covenant on their lot so that no significant change can occur within the area.

Once a restrictive covenant is registered against a title, it is difficult to remove. It requires all of the owners of every lot affected to agree, in writing, to remove it, or it requires a court order. In order to obtain a court order to discharge a restrictive Covenant, a Judge would need to be satisfied that the restrictive covenant is no longer relevant in the neighbourhood. In Cameron Highlands over 760/0 of the existing lots conform to the restrictive covenants

Restrictive covenants dovetail conventional land use bylaws by further limiting land use possibilities.

The legal controversies pitting restrictive covenants against zoning bylaws are arising when covenants are challenged by property owners or developers seeking to introduce land uses that are permitted by zoning regulations but prohibited by restrictive covenants.

In such situations, courts will generally rule in favour of restrictive covenants. This is because, stricter obligations placed on an area by restrictive covenants do not contravene zoning regulations, since zoning prohibits and regulates but does not prescribe.
Restrictive covenants, once attached to a Land Title, provide little leniency.

We have seen that whereas in the past restrictive covenants converged with zoning to protect certain land uses from the negative externalities of other activities, such covenants may well foil emerging planning objectives. As the number of developments they burden increases, restrictive covenants make it increasingly more difficult to reach planning goals. For a city, like Edmonton, that is changing and evolving, this is shaping up to be a growing issue moving forward.

- A restrictive covenant is a document that a developer, landowner or a municipality may register against a land title under the encumbrances, liens and interests.
- A restrictive covenant serves as a notice to future landowners, and generally outlines an interest in land to control use, development or to indicate concerns or issues or to ensure consistency related to a parcel.
- A restrictive covenant can operate outside of and in some cases in addition to municipal policies and land use planning documents (i.e. a municipalities Land Use Bylaw).
- A registered restrictive covenant runs with the land and is binding on future buyers/owners of a property.
- A restrictive covenant must have four aspects written into the document to be enforceable:
  - Dominant and Servient Tenement must be identified (in other words there must be a parcel of land which is subject to a restriction and a parcel of land which benefits from the restriction).
  - Negative obligation must be present (in other words it must be an item that is prohibiting something as opposed to a positive act).
  - Touch and Concern Land The restrictive covenant must identify concern or benefit to the land that is it must be a restriction that enhances the use or value of the land. (I.e. building schemes, no mobile homes or manufactured homes allowed or a minimum square footage allowed, etc.)
  - Annexed to Lands means that the restrictive covenant binds the land and all subsequent owners by implication of an agreement or by express words.
- A restrictive covenant is only enforceable by the parties to the restrictive covenant, namely the owners of the land affected by obtaining a court order to stop a use or development that goes against the restrictive covenant.
- A restrictive covenant and the outlined obligation and/or benefit cannot be enforced by persons that do not have a registered interest in the land subject to the covenant.
- For a municipality to have authority to enforce a restrictive covenant they need to be identified in the covenant and need to be an owner of lands identified within the covenant or be the party that has registered the covenant and benefits by the restriction.
- Potential purchasers should be aware that in some instances restrictive covenants are more restrictive than a municipality’s bylaws. It should be noted that if a covenant conflicts with a municipalities land use bylaw or statutory plan, that the Courts could set aside a requirement of the restrictive covenant.
- Note; When purchasing a property review and verify any encumbrances, liens and interests on a property with your solicitor to ensure your intended use of the property won’t have unpleasant complications.

Read Restrictive Covenant Case Study Appendix E and F

Restrictive covenants, once attached to a Land Title, provide little leniency.

The development of an older mobile home is not in the new land use bylaw or even the older version of the land use bylaw permitted use?

Land Use Bylaw 95/54
Permitted Uses
(a) Detached dwelling
(b) Accessory building or use
(c) New modular dwelling of a standard similar to a dwelling of conventional construction.

3.3 Discretionary Uses
(a) Mobile or moved-in dwelling
(b) Used modular dwelling
(c) Home occupation
(d) Bed and breakfast business
(e) Public utility
(f) Public park
(g) Accessory building or use

Land Use Bylaw 2017/08

10. COUNTRY RESIDENTIAL DISTRICT (CR) (newest)

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) Detached dwelling
(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) Home Occupation
(g) Bed and Breakfast
(h) Show home

10.5.4 Parcel Size
Maximum parcel size is 2.02 ha (5 acres). Minimum parcel size is 0.40 ha (1 acre).

Important notes: Mobile Homes Refer to Item 4 on Appendix G

One reason mobile homes depreciate in value is because they are personal property, not real property. "Real property" is defined as land and anything attached to it permanently.

Conclusion
I am appealing this development application on the grounds that it does not:
• conform to the Restrictive Covenant that is registered on my Certificate of Title
• conform to the existing permitted use as outlined in the county of Wetaskiwin

Land Use Bylaw
conform to the uses that I believed was the reason I originally purchased the property in Cameron Highlands

negate the problems of recreational vehicle bylaw enforcement that our community and council had spent the last four years in preventing from existing in our neighbourhood

Prior to moving into the Pigeon Lake, Mulhurst Bay area, I conducted an extensive search and review of potential living areas to ensure that my investments would be protected. My lawyers, realtors and I concluded that my home investment was protected. The Land Use bylaws, Restricted Covenants as well as Compliance certificates, real property reports and certificate of title, registered into my name, should protect me from someone placing a mobile home near my home due to the fact that it is not permitted by anyone. Even the county of Wetaskiwin states that it’s not permitted in the current Land Use Bylaw but it is listed under discretionary use only.

Currently 76.7% of the residences here in Cameron Highlands have a Certificate of Title with the identical Restrictive Covenant. This document contains "certain restrictions, the burden of which shall run with each of the lots" and is to provide insurance that no one will develop a property that could negatively affect mine or any others residences.

This mobile home is not permitted by the restrictive covenant. It is not designed to look like all the 57 other homes currently in the area. It in my opinion will affect the property values as it has a negative stigma attached to it as outlined by numerous land developers and real-estate brokers and lawyers.

This mobile home is could be well passed it life expectancy since it is 33 years of age, and I am concerned about its current safety and insurability. I am not sure if the mobile home will ever be connected to water, sewer, power or heat, or if it is only going to be used as an excuse to live in their recreational vehicle or if it is only going to be used as an excuse so they can have additional recreational vehicles on their property.

We have worked with the county of Wetaskiwin for the last 4 years plus to prevent the use of recreational type vehicles and after extensive talks, public forums and conflicts, the removal of these types of dwellings were now finally being enforced by the county bylaw department. This older, mobile home is not much better that the recreational vehicles in which we tried to remove from our neighbourhood. We believe that if this mobile home is permitted, then the door will be wide open for additional units to be brought into the area, changing our footprint and our investments forever.

My goals are to assist making the Pigeon Lake area including Mulhurst Bay a viable, sociable and prosperous; thus the reason I am on 14 different committees working diligently towards that goal. I feel that finally that we were on the road to recovery. Building permits have been submitted and approved, houses finally being built, then this...? Please think of the businesses, playgrounds, families and potentials of this area. Please do not allow this mobile home as it will open the door to failure, as I know and you know that may happen,

Closing remark from real-estate lawyer

Covenants are contracts shared by neighboring property owners. If you break that contract, they can get a court injunction to stop you from making changes. When you’re halfway through building a $250,000 home that could be a big problem. Even if your neighbors don't object, Bardsley says that banks and potential purchasers frown on covenant violations. When it comes time to finance the purchase or close a real estate deal, they don't want to deal with a "shadow" on the property's title. By ignoring a covenant, Bardsley says, "You're risking, risking, risking all the way through."

On August 9, 2019 a Letter of Appeal was submitted by Ron and Mary Lou Butt, which reads as follows:

"Dear Secretary of the Subdivision and Development Appeal Board:

We are writing to appeal the approval of the above-noted development Permit Number D19/139.

We are Ron and Mary Lou Butt and we are full time residents of Cameron Highlands, Mulhurst Bay, AB. We have resided in Cameron Highlands full time for over 16 years. We are appealing this permit based upon the following:

a) There is a Restrictive Covenant registered with Alberta Land Titles on every lot in Cameron Highlands. Section (7) states "No house-trailer or mobile home shall be parked or placed on the Lands for the purposes of living accommodations". This proposed development is non-compliant with this Restrictive Covenant.

b) Used Mobile is not a "Permitted Use" in accordance with County of Wetaskiwin No. 10 By-Law 2017/48, Section 10.5.2

c) Negative impact by economic loss and depreciation of our property

Mobile Homes belong in Mobile Home Parks. Allowing Mobile Homes in an established "Residential" community will negatively impact our community.

Property law gives a landowner the right to the full use and enjoyment of their property. The right to the use and enjoyment of land includes interference that causes economic loss and depreciation of our property. If the county approves this development permit, we will be negatively impacted by economic loss and depreciation of our property.

When we built our home, we abided by the County rules and were fully aware of the importance of compliance with the rules stated in the Restrictive Covenant. We fully expected owners of lots in Cameron Highlands who wished to develop their property to also comply with the rules and regulations in place to protect all property owners in our subdivision.

Respectfully submitted,

Ron Butt
Mary Lou Butt"

On August 9, 2019 a Letter of Appeal was submitted by Ed and Rita Alspach, which reads as follows:

"I am appealing this Development Permit for the following reasons:

Our subdivision of Cameron Highlands consists of 77 lots which is made up of 52 homes and 25 empty lots and is not conducive to mobile homes. The homes in this subdivision are valued at hundreds of thousands of dollars and are maintained very well.

Considering the age of the unit and condition I am shocked that it was even considered for placement in Cameron Highlands.

This lot already has an RV and several large sheds on it! How many sheds are allowed on one lot?

In my many years of selling reals estate in numerous cities, towns and villages I never witnessed any type of mobile home being allowed in where existing stick built homes were.

I also object to the 2 year time frame stated on this permit! When our home was build the time frame from digging a basement to occupancy was 59 days!

Respectfully submitted
Ed, Rita Alspach"
On August 9, 2019 a Letter of Appeal was submitted by Jerry and Jan Royer, which reads as follows:

"We would like to bring forward our concerns in regards to the application to bring a mobile home and 3 additional sheds on the property located at NW-14-47-28-W4 Lot 22, Block 8, Plan 922637.

Below are some of our concerns:

- Mobile homes are considered personal property not real property, where as stick built or prefab homes are considered part of the real property. Once a new mobile home leaves the factory it quickly depreciates.

Where in most cases a stick built home appreciates over time. The older the mobile home is the more it is susceptible to damage from wind, rain and any other severe weather event, We have seen many mobile homes that are leaning because they are not built on a proper foundation.

- Real property is defined as land and anything attached to it, on the other hand anything that is movable is not real property and we feel that all dwellings in a Country Residential community should be real property not personal property.

- There is a reason that Cities and Towns have mobile home parks, they are not appropriate in residential areas whether you have single family homes, duplexes, apartment's, or condos. There is a place for Mobile homes but it is Not in a residential community.

We would ask everyone involved in the decision making in this application to please be honest and ask yourselves, would I want a mobile home next door to me or across the street.

You can be sure if one is allowed there will be more and they will in most cases be old and run down because those are the ones that go for cheap.

Cameron Highlands is a Country Residential community and we feel that by allowing Mobile homes to move into the area it would adversely affect property values. We made the financial commitment to build a proper home with the Thought that when the time comes that we are no longer able to look after our property we could sell and get our investment back, but if Mobile homes are allowed to come here we feel that we will not get back what we put in."

Sincerely Jerry and Jan Royer"

On August 9, 2019 a Letter of Appeal was submitted by Henry and Kathleen Marchand, which reads as follows:

"In response to your approval of the development permit #19/139 we wish to appeal.

One of our main concerns is the loss of property values in our area of Cameron Highlands.

The tax base on a mobile home is much lower than that of a stick built home. Mobile homes depreciate much faster so taxes would remain low.

We fail to understand why the County was at one time allowing multi trailers in our area, and now want to allow and approve mobile trailers. We question the difference.

It is our believe with the approval of this permit many more are waiting to take advantage of the lower property tax.

Sincerely

Henry & Kathleen Marchand”

On August 9, 2019 a Letter of Appeal was submitted by Ester Link, which reads as follows:

"With Prejudice
I — Individual landowner over long term greater public interest Municipal Development Plan — Statement of Purpose

"Land use planning requires a balancing between the rights of an individual landowner and the long term greater public interest."

It is the view of this submission that the rights of one are impinging on the greater public interest for the Cameron Highland Country Residential community in Mulhurst which is in contravention of the County of Wetaskiwin's Municipal Development Plan (MDP) statement of purpose

II — Leading indicator of 73% detached dwellings in Cameron Highlands

It is apparent within the County's MDP that the council and administration is being called to make decisions that reflects the development and support of safe and progressive communities. It is our desire to support this by encouraging the council and administration to decline the application to have mobile homes moved into a community that is clearly populated with detached dwellings.

"Cameron Highlands has 77 lots. Of the existing lots there are 56 detached dwellings. 14 lots are vacant or had trailers so are open for future development. With 73% of this community being detached dwelling this is a clear indicator that this is the direction existing homeowners envisioned for Cameron Highlands. Single Detached homes is the clear precedent for this area.

III — Existing Restrictive Covenants

It is the view of many homeowners in this area that the introduction of a mobile home — new or used would degrade the vision of the original developer. The established restrictive covenant that is attached to the land clearly states that mobile homes are not acceptable.

Certificate of Title Restrictive Covenant Cameron Highlands Mulhurst Bay Point 7 — No house, trailer, mobile home shall be parked or placed on the land for the purpose of living accommodations,

Please note: On the County of Wetaskiwin No 10. — Application for Development Permit clearly states that "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. The land title on this property has the restrictive covenant attached.

IV — Neighbouring Counties do not allow mobile homes in Country Residential

Neighbouring County of Leduc, County of Ponoka, and Brazeau County DO NOT have mobile homes, new or used within the Permitted or Discretionary use (see attached). This is an established best practise for the success of community planning and development. The administration in these counties have been guided by the council that mixing mobile and detached dwellings in the same area is not strategically sound land use planning. Detached dwellings are an appreciating asset creating a solid tax base to support area services impacted by increasing wage and inflation factors. Mobile homes are a depreciating asset that will create a declining tax base and with that decrease tax revenue. Mixing these in one community requiring year round services is not a fiscally sound practise.

In closing it is my professional opinion that this administration be charged with declining the afore mentioned development permit D19/139 through this appeal process based on this compelling evidence set forth on this submission.

Respectfully,

Esther Link FCMA, FCPA, CSP”

A Subdivision and Development Appeal Board Hearing was scheduled for Tuesday, August 27, 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 August 9, 2019.
Administration recommends that the appeal of Development Permit D19/139 for the 'Used Mobile, two (2) sheds and RV Use during construction' within NW 14-47-289-W4M, Plan 9222637, Block 8, Lot 22 be refused and Development Permit D19/139 be upheld with an amendment to the wording of condition #14 to the following:

14. At the discretion of the Development Authority the ability to occupy a recreational unit in accordance with the terms of recreational unit use during the placement of the mobile home is recognized as compatible with the intent of Section 3.12.1.(e) of the County's Land Use Bylaw 2017/48. The recreational unit must not be utilized for recreational unit use once the mobile becomes habitable or October 31, 2019, dependent on which arrives first. After this date, the recreational unit on your property may be stored. Once the mobile home becomes habitable short-term camping as defined by the County's Land Use Bylaw 2017/48 may occur along with recreational unit storage.

• The restrictive covenant registered on the Title of the lands is not applicable to County planning decisions;
• The use of the lands for a mobile home is a use provided within the Country Residential District;
• In the opinion of the Development Officer, there will be no impact to adjacent properties and is compatible with adjacent land uses.
• The use of a recreational unit during the process of placing the mobile home on site is included in the intent of Section 3.12.1(e) and should be required for less time than that of the construction of a whole house. Further, it is consistent with the end us of the land in which once the mobile is habitable, short term camping would be permitted.

J. Grant, Development Officer, reviewed the Development officer's report. The Board confirmed that they do not have jurisdiction of restrictive covenant.

J. Grant stated that is correct.

The Board questioned if the County of Wetaskiwin has land in this area and if the County is party to the restrictive covenant.

J. Grant replied the County has Municipal and Environmental Reserve lands in the area that could have a restrictive covenant.

The Board asked if the Mobile was to be placed on site or if it was already there.

J. Grant stated he inspected last week and it was not on site.

The Board asked if the Used Mobile needs to meet safety codes.

J. Grant stated yes.

The Board questioned if anything in Municipal Government Act or Land Use Bylaw to preclude a permit.

J. Grant replied not aware of any.

Applicant (T. and D. Murphy) addressed the Board:

T. and D. Murphy stated the facts speak for themselves, decision is the boards. We are meeting Wednesday next week to apply to remove the restrictive covenant from the property.

The Board asked the Murphy's how long they have had the property.

T. and D. Murphy replied eight (8) years.

The Board questioned if the Murphy's knew about the restrictive covenant.

T. and D. Murphy replied no, and that's our fault.

R. Hawken, Secretary to the Board, read in the letter from T. and D. Murphy.

"Development Permit 019/139"
Proposed Development: Used mobile (42’ x 16’), shed (12’ x 8’), 2-shed (10’ x 10’) and use of RV during construction Location: NW-14-47-28-W4 Lot 22, Block 8, Plan 9222637 Municipal Address: 202 Highland Brae Drive

To the appeal committee,

We wanted to address the committee in writing, in the event we don’t make it to Wetaskiwin in time tonight.

We have printed a Map of Cameron Highlands and count 73 lots (not the 77 or 75 as quoted in some of the appeal letters). Of these lots, 6 lots are currently listed for sale, 5 appear abandoned or unkempt, and 4 currently have mobile homes on them. In the last 4 years much frustration has been harbored in Cameron Highlands. We feel targeted.

Last year a great deal of time was spent talking with property owners in the community and canvassing for public opinion regarding a rezoning application. 74% of Cameron Highlands property owners were in favour of that rezoning. I am certain that same 74% are not opposed to us having a mobile home as Discretionary Use.

We have read comments such as:

"I don't know if this mobile home will ever be hooked up to services" - of course it is! You can clearly see the power and water from the road, as well we paid the off-site levy.

"Insurance wise this mobile is not real property but personal property" - We have contacted our insurance company and If insured as a cabin it will be insured as real property.

"Allowing this mobile home will set precedence..." — we are not setting precedence. There are currently 5 mobile homes in Cameron Highlands (that we can see from the road). One is directly behind us and two are across the road. Please find attached a map indicating the mobile homes.

"Leduc and Ponoka don't allow mobile homes" — These are towns not lake communities. Please find attached Land Use By-laws from St. Paul County (Garner Lake) and Parkland County (Wabuman Lake) where they also have Discretionary Use of Mobile/Manufactured Homes.

"This mobile home will depreciate the value of our home" — Please find attached What Causes Homes Values To Depreciate — from Real Estate Weekly. We are certain our property 6+ acres away from any of the appellants does not depreciate their value. We do believe the only reason the properties are not worth what they were 6 years ago is the recession. Also please refer to Mr. Hawkens email regarding Market Areas and Cameron Highlands in the last 10 years. Properties in Cameron Highlands decreased 10.19% from 2013 to 2014 (when this recession began).

We knew that this mobile home fell under Discretionary Use when we applied. We have no intention of it being our "home". It is progressional development. We fully intend to build a home on our property in the next 10 years but at this time it is unfeasible. As well, this is our weekend retreat during the spring and summer. We love the tranquility and calm of Mulhurst. We hate that we are being harassed on a regular basis with the drive-bys and the mean comments in some of the letters. We support local, we shop at the Farmers Markets and the Village. We by all our building, weeding and gasoline needs in Falun. We want to feel like we belong in this community, which is why we chose to apply for this mobile home and not put up a for sale sign like so many in our subdivision.

We are including a picture (for reference) of our vision for the look of the mobile home for the time we own It. Also, we are aware the biggest issue is the restrictive covenant, and we have a meeting with our lawyer to apply for the covenant to be removed. We understand that can be a process in it’s own

Thank you for your time.

With great sincerity,
Darren and Tanya Murphy"
The Board asked for clarification on the date of the restrictive covenant. T. and D. Murphy stated the restrictive covenant is from 1992.

R. Conrad spoke as the Appellant and addressed the Board:

R. Conrad presented the Letter of Appeal that was received on August 9, 2019 with some minor amendments.

The Board questioned if other mobile or modular homes in the area are being challenged.

R. Conrad stated if they exist, yes.

The Board questioned if a mobile/modular home is anchored, does it become real property?

R. Conrad replied I am not a real estate lawyer.

The Board questioned the current number of vacant lots, does that not affect property values?

R. Conrad stated they are working with the County to upgrade public facilities at Mulhurst Bay to help with growth.

Chairperson L. Johnson asked if any others would like to speak in support of the Appeal.

J. Royer addressed the Board in support of the Appeal:

J. Royer presented the Letter of Appeal that was received on August 9, 2019.

J. Royer discussed the definition of real property, concern with neighbours bringing in used mobile homes, and protecting investments.

The Board asked for mobile home picture to be shown.

The Board asked how do you distinguish between mobile, modular and prefabricated homes.

J. Royer stated modular and mobile are the same and prefabricated are not mobile.

E. Link addressed the Board in support of the Appeal:

E. Link presented the Letter of Appeal that was received on August 9, 2019.

E. Link discussed the rights of one are impeding on the greater interest of the majority, restrictive covenant, County's role in enforcing restrictive covenant, and referenced neighbouring municipalities Land Use Bylaws.

B. Link addressed the Board in support of the Appeal:

B. Link presented the Letter of Appeal that was received on August 9, 2019.

B. Link discussed that he invested dollars based on restrictive covenant and Land Use Bylaw regulations, mobile home placement in strictly mobile home areas, and new construction of permitted is currently happening in Cameron Highlands.

J. Grant, Development Officer, provided concluding comments:
- Restrictive covenant is not applicable to County planning decisions. Not the responsibility of the Board to enforce a RC.
- Use of Mobile home is a Discretionary use in the Land Use Bylaw.
- Recommendation remains the same - deny the appeal and uphold the permit.

Questions:
The Board inquired regarding Section 3.12.9 (d) of the Land Use Bylaw, is a restrictive covenant considered a statue?
J. Grant stated that restrictive covenant is not something the County can enforce and is therefore, not a statue.
The Board questioned if it is fair to compare a RC to safety code in that development must compile with a body outside the County and up to another party to enforce?
J. Grant stated yes, a third party outside of County responsible for that.
The Board questioned if there are any areas in the Land Use Bylaw with other restrictions other than restrictive covenants.
J. Grant sates yes, those restrictions are based on zoning. For example, Restricted County Residential in the County's Land Use Bylaw restricts type of dwellings build in that areas.
The Board inquired how that is applied?
J. Grant stated the developer applies for that through ASP, zoning and other bylaws.
The Board inquired if the community could apply for rezoning?
J. Grant stated yes rezoning could be applied for but the current Area Structure Plan must be amended first.
The Board inquired about the other mobile homes in the areas. Were there development permits for them?
J. Grant stated he did not research that before this hearing.
The Board inquired if there were development permits, what is the process for a discretionary permit.
J. Grants stated advertising and notification would have been done.
The Board inquired if restrictive convents are used today.
J. Grant stated yes, newer multi lot subdivisions in the County do place restrictive covenant on lots.

No closing comments from Applicant (T. and D. Murphy).

Appellant (R. Conrad) addressed the Board with closing comments:
R. Conrad - emails from realtors, remax, listing guarantees restrictive covenant will be followed.
R. Conrad also stated that Land Use Bylaw 6.1.4 Council may initiate amendments to Bylaw at any time.
The Board asked what process started?
R. Conrad stated that restrictive covenant are recognized by the County.
The Board asked if R. Conrad indicated action against other mobile homes.
R. Conrad stated he is unaware of other mobile homes.
B. Link address the Board with closing comments:
B. Link stated he is confused with Planning and Development Department, he doesn't want the department to enforce restrictive covenants but wants them to respect it. County may be liable for issuing a permit that goes against a restrictive covenant.

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 persons 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 7:27 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:

- Have we had a legal opinion on approving discretionary use when we know there is a restrictive covenant? Not aware of any but had comments when RV issue was ongoing. Restrictive covenant is listed in application to make applicants aware of it.
- The County is listed as a property on the restrictive covenant - are we signing member? Not sure. But does not require the County to enforce restrictive covenant.
- Development Permit - does not supersede restrictive covenant. It is strictly on land owner to enforce restrictive covenants.
- Denying the appeal and upholding the development permit and change condition 14 as recommended by the Development Officer.

Reasons:

- Mobile homes falls within discretionary use Section 10.5.3 of the Land Use Bylaw 2017/48. The Board was of the opinion the Mobile Home is consistent with the other dwellings within the subdivision;
- The Board was of the opinion that evidence was not provided that property values would be reduced as a result of a mobile home. Evidence was provided that property values may have decreased as a result of the recession;
- The Board reviewed Section 3.7.2 of the Land Use Bylaw 2017/48 and was of the opinion that the mobile home did not unduly interfere with the amenities of the neighbourhood; or materially interfere with or affect the use, enjoyment or value of neighbouring properties as the lot is treed and there are other mobile homes in the subdivision.
- The Board was of the opinion that condition #15 of the Development Permit where the mobile home shall be completely sided and finished to the satisfaction of the Development Officer” addresses concerns with possible unsightly premises;
- The board was of the opinion that the onus is on the land owners to comply with Restrictive Covenants;
- Decisions made by the Subdivision and Development Appeal Board does not preclude landowners from enforcing the Restrictive Covenant. Evidence was provided by the appellant that a court order may be sought to enforce the Restrictive Covenant;
- The Board is of the opinion that property tax implications are not a planning consideration; and
- The Board is of the opinion that the use of a Recreational Unit is addressed through Section 3.121(e) and condition 14 of the Development Permit.
Resolution SD20190827.004
MOVED: by Board Member E. Matiko

that the Board refuse the appeal of Development Permit D19/139 for the 'Used Mobile, two (2) sheds and RV Use during construction' within NW 14-47-289-W4M, Plan 9222637, Block 8, Lot 22 and Development Permit D19/139 be upheld with an amendment to the wording of condition #14 to the following:

14. At the discretion of the Development Authority the ability to occupy a recreational unit in accordance with the terms of recreational unit use during the placement of the mobile home is recognized as compatible with the intent of Section 3.12.1.(e) of the County's Land Use Bylaw 2017/48. The recreational unit must not be utilized for recreational unit use once the mobile becomes habitable or October 31, 2019, dependent on which arrives first. After this date, the recreational unit on your property may be stored. Once the mobile home becomes habitable short-term camping as defined by the County’s Land Use Bylaw 2017/48 may occur along with recreational unit storage.

Carried Unanimously

Reason’s for the Board’s Decision:

- The Board was of the opinion that evidence was not provided that property values would be reduced as a result of a mobile home. Evidence was provided that property values decreased as a result of the recession;
- The Board was of the opinion that evidence was provided that Mobile Homes are consistent with the other dwellings within the subdivision;
- The Board was of the opinion that the onus is on the land owners to comply with Restrictive Covenants;
- Evidence was provided by the appellant that a court order may be sought to enforce the Restrictive Covenant;
- The Board reviewed Section 3.7.2 of the Land Use Bylaw 2017/48 and was of the opinion that the mobile home did not unduly interfere with the amenities of the neighbourhood; or materially interfere with or affect the use, enjoyment or value of neighbouring properties;
- The Board reviewed Section 9.12.2 of the Land Use Bylaw 2017/48 and was of the opinion that the use is allowed as discretionary, therefore it is possible to build on the property;
- The Board was of the opinion that condition 15 of the development permit: “The mobile home shall be completely sided and finished to the satisfaction of the Development Officer” addresses concerns with possible unsightly premises;
- Decisions made by the Subdivision and Development Appeal Board does not preclude landowners from enforcing the Restrictive Covenant;
- The Board is of the opinion that evidence was provided the use of an Recreational Unit is addressed through Section 3.12.1 (e) and Condition 14 of the Development permit;
- The Board is of the opinion that property tax implications are not a planning consideration;
- The Board is of the opinion that statement from the Municipal Development which refers the balancing of individual land owner rights and long term public interest is being met;
- The Board is of the opinion that regulations of other municipalities are not relevant to this application; and
- The Board is of the opinion that evidence was provide that mobile homes falls within discretionary use Section 10.5.3 of the Land Use Bylaw 2017/48.

4. PUBLIC HEARING
4.2 Resumed - Appeal of Stop Order for Non-Compliance with Conditions of Development Permit D15/072 and Unauthorized Developments on SW 36-46-23-W4M, Gian & Tress Gibson, Roll # 843.02

Discussion resumed regarding the appeal of stop order for non-compliance with conditions of Development Permit D15/072 and unauthorized developments on SW 36-46-23-W4M for Gian and Tress Gibson which was deferred earlier in the meeting due to time constraints (Ref Resolution #SD20190827.003).

The Board discussed the following to come to a decision:

- Legal opinion on issuing a development permit from an appeal on a Stop Order. The Board discussed upholding, refusing or altering a Stop Order.
- February 7 Stop Order is null and void because they complied with requirement of that Stop Order - geo-technical report and Real Property Report.
- Amending the Stop Order.
- The closure the road allowance bordering the west boundary is not with in the authority of the Subdivision and Appeal Board.

Reasons:

- The Board did not issue a Development permit and was of the opinion that a Stop Order must be upheld, refused or altered.
- The Board was of the opinion that the February 7, 2019 Stop Order is null and void because they complied with the requirement of that Stop Order.
- The Board was of the opinion that the County shall attempt to resolve the encroachment and therefore extended the timelines given to the Applicant in the Stop Order.

Resolution SD20190827.005
MOVED: by Chairperson L. Johnson

that the Board requests a legal opinion on the Boards responsibility with regards to stop orders, can they issue a development permit or can they only uphold, refuse or alter a Stop Order and risk associated with it.

Carried Unanimously

Resolution SD20190827.006
MOVED: by Board Member C. Daniel

that the Subdivision and Development Appeal Board deny the appeal and amend the Stop Order with the following conditions:

Immediately cease the construction of the dwelling subject of Development Permit 15/072 AND
- submit a completed development permit by February 28, 2020 to leave as sited the dwelling and accessory buildings as identified on the attached Real Property Report dated March 2019 should the County approve the lease, purchase or encroachment of the undeveloped road allowance;

OR
- submit a completed development permit by February 28, 2020 to structurally alter the dwelling to meet the minimum required setbacks from the undeveloped road allowance and to leave as sited the accessory buildings (other than the garage) identified on the attached Real Property Report dated March 2019; and remove the accessory building (garage) from the undeveloped road allowance as identified on the attached Real Property Report dated March 2019 to the satisfaction of the County of Wetaskiwin by July 1st, 2020.

Carried Unanimously

Reasons for the Board's Decision:
• The Board did not issue a Development permit and was of the opinion that a Stop Order must be upheld, refused or altered.

• The Board was of the opinion that the February 7, 2019 Stop Order is null and void because they complied with the requirement of that Stop Order.

• The Board was of the opinion that the County shall attempt to resolve the encroachment and therefore extended the timelines given to the Applicant in the Stop Order.

7. **ADJOURN**

Resolution SD20190827.007

MOVED: by Board Member R. Pries

that the meeting adjourn at 9:30 p.m.

Carried Unanimously

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CHAIRPERSON

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SECRETARY

**MINUTES APPROVED:**

Ref: Resolution #