
Appeal File Number:	019-STU-011
Application Number:	2020-S-012
Appeal Against:	Subdivision Authority of Sturgeon County
Appellants:	Patrick and Anita Seguin
Agent:	Gord Putnam, Putnam & Lawson
Date and Location of Hearing:	September 1, 2020 Held via Teleconference
Date of Decision:	September 14, 2020
SDAB Members:	Chair Julius Buski, Mark Garrett, Alanna Hnatiw, David Kluthe, Allan Montpellier

NOTICE OF DECISION

IN THE MATTER OF an appeal by Patrick and Anita Seguin against the Subdivision Authority's refusal of a subdivision application to create a +/- 0.29 ha parcel from a +/- 1 ha parcel on Lot 4; Block 1, Plan 0321311 (NW Cnr SE-23-55-25-W4) within Sturgeon County.

- [1] This is the decision of the Sturgeon County Subdivision and Development Appeal Board (the "SDAB" or "Board") on an appeal filed with the SDAB pursuant to section 678 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the "MGA" or "Act").
- [2] In making this decision, the Board reviewed all the evidence presented and considered provisions of the *Municipal Government Act* (MGA), Sturgeon County's Land Use Bylaw 1385/17 (Land Use Bylaw or LUB) and Sturgeon County's Municipal Development Plan (MDP), and any amendments thereto.
- [3] The following documents were received prior to the hearing and for part of the record:
- Notice of Appeal;
 - A copy of the subdivision application with attachments;
 - The Subdivision Authority's written decision;
 - Development Support Services Report; and
 - The Appellants' Agent's submission.

PRELIMINARY MATTERS

- [4] There were no preliminary matters addressed at the hearing.

PROCEDURAL MATTERS

- [5] The appeal was filed on time and in accordance with section 678 of the MGA.

- [6] There were no objections to the proposed hearing process as outlined by the Chair. The Appellants' Agent agreed to proceed with the hearing via teleconference as permitted by the Meeting Procedures (COVID-19) Suppression Regulation.
- [7] There were no objections to the composition of the Board hearing the appeal.
- [8] The Board is satisfied that it has jurisdiction to deal with this matter.

ISSUE

- [9] The Appellant raised the following grounds of appeal:
- Section 654(2) of the *Municipal Government Act* states that a subdivision authority may approve an application for subdivision notwithstanding that the proposed subdivision does not comply with the Land Use Bylaw.

RECOMMENDATION OF THE SUBDIVISION AUTHORITY

Hayley Wasylcia, representative for the Subdivision Authority, provided a presentation which includes a recommendation that the subdivision application 2020-S-012 be refused for the following reasons:

- [10] The proposal is inconsistent with the Municipal Development Plan (MDP) and the Land Use Bylaw (LUB).
- [11] The proposal may result in development restricting of an adjacent parcel, contravening Policy 2.2.2 of the County's MDP.
- [12] The proposal is in contravention of Policy 2.3.18 of the County's MDP that outlines the maximum lot density for an acreage lot shall be one per 32 hectares.
- [13] The proposal does not meet the criteria to create a second AG-Residential parcel from the same 32ha AG parcel as outlined in 11.1.3(b) of the County's LUB.
- [14] AG-Residential parcels have no further subdivision potential on their own, as per section 11.1.3(d) of the County's LUB.

SUMMARY OF APPLICANT/APELLANT'S POSITION

- [15] The Appellant does not dispute that the proposal does not comply with the MDP or LUB; however, pursuant to section 654(2) of the Act, the Board may still approve the subdivision on the basis that the use of the land is suitable for the intended purpose, which is residential and is a use prescribed for the land in section 654(2)(b) of the LUB. Further, the approval would not unduly interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [16] The Appellant made a similar application last year that was approved with conditions and this appeal is based on the same issues dealing with the MDP and LUB.

- [17] The Appellant does not agree that the proposal may result in development restrictions of an adjacent parcel and feels it would offer a future opportunity for someone to buy or build closer to an already existing development.
- [18] The lot is currently developed as a yard-site with a residence, shop, shed, and garage and there is suitable and natural drainage. The Appellants are prepared to connect to municipal services (water and sewer) and are prepared to deal with the easement to address the fact that services go across from one parcel to the other. There is road access for both the proposed and remnant lots and neither lots are suitable for agricultural purposes.
- [18] The approval would not unduly interfere with the amenities of the neighbourhood, the use and enjoyment of neighbouring lands, and would not materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The proposed subdivision conforms with the use prescribed for that land in the LUB.
- [19] The SDAB has the discretion and authority to approve the subdivision under section 654(2) of the Act and should exercise this discretion.
- [20] There have been no objections received from neighbouring landowners.

DECISION

- [21] **The Board CONFIRMS the appeal, REVOKES the decision of the Subdivision Authority made on August 6, 2020 to refuse subdivision permit application 2020-S-012 to create a +/- 0.29 ha parcel from a +/- 1 ha parcel on Lot 4; Block 1, Plan 0321311 (NW Cnr SE-23-55-25-W4) within Sturgeon County, and approves the subdivision subject to the following conditions:**
1. Pursuant to Provision 654(1)(d) of the *Municipal Government Act (MGA)*, any outstanding taxes on the subject properties shall be paid or arrangements be made, to the satisfaction of Sturgeon County, for the payment thereof.
 2. The applicant shall retain the services of a professional Alberta Land Surveyor, who survey the subdivision and submit a drawing to Sturgeon County resembling Exhibit 1, dated May 8, 2020 and submit it in a manner that is acceptable to Land Titles.
 3. All upgrades to existing culverts and/or existing approaches, as determined necessary by the Development Engineering Officer will be the responsibility of the developer and upgraded, to the satisfaction of Sturgeon County Engineering Services and/or Sturgeon County Transportation Services, before this subdivision is endorsed.
 4. The applicant, at their sole cost, is to provide municipal water and wastewater servicing to the proposed lot to the satisfaction of the County's Utilities Services.
 5. The applicant is to register an access easement on the title of the proposed lot to ensure that the current and any future owners of the remnant lot have reasonable access over and across the proposed lot, to the satisfaction of Development Services.
 6. The applicant is to register an easement on the title of the proposed lot in respect to the municipal utilities that serve the remnant lot, to the satisfaction of the County's Utilities Services.
 7. The applicant is to obtain all necessary permits, to comply with the Land Use Bylaw, to the satisfaction of the Development Officer.

8. Pursuant to section 666 of the *Municipal Government Act*, money in lieu of municipal reserve shall be provided to Sturgeon County respecting 10% of the area of the proposed lot. A payment will be made in place of reserves equal to \$208,607.43 per hectare. The money-in-lieu calculation will be based on the actual amount of land (in hectares) shown on a plan of survey.
9. Pursuant to section 669 of the *Municipal Government Act*, municipal reserves owing on the remnant lot shall be deferred by caveat (note: this caveat to be prepared by Sturgeon County).

REASONS FOR THE DECISION

- [22] The Board finds that although a similar application was approved by the Subdivision and Development Appeal Board with conditions in 2019, as this is a new application, the Board shall consider it a hearing *de novo* and make a decision based solely on the evidence before the Board in this hearing.
- [23] The Board finds that the proposed subdivision does not conform with Policy 2.2.2 of the County's Municipal Development Plan as it may result in development restrictions on an adjacent parcel and is in contravention of Policy 2.3.18 of the MDP that outlines the maximum lot density for an acreage lot. Further, the proposed subdivision does not meet the criteria to create a second AG – Residential parcel from the same 32 ha parcel as outlined in section 11.1.3(b) of the County's Land Use Bylaw.
- [24] The Board finds that, in accordance with section 680(2)(d) of the *Municipal Government Act*, the Board may make a decision even though the proposed subdivision does not comply with the Land Use Bylaw (LUB) or the Municipal Development Plan (MDP), as the Board must have regard to but is not bound by the subdivision and development regulations.
- [25] Section 687(3)(d) of the *Municipal Government Act* states that a subdivision authority may approve an application for subdivision approval even though the proposed subdivision does not comply with the Land Use Bylaw if, in its opinion, the proposed subdivision would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. Based on the evidence presented, the Board determined that the proposed subdivision would not interfere with amenities of the neighbourhood, or the use, enjoyment or value of neighbouring parcels.
- [26] The Board considered the lack of objection from neighbouring landowners as further evidence that the proposed development would not interfere with the use, enjoyment or value of neighbouring parcels.
- [27] For all of these reasons the Board has decided to grant the appeal, revoke the decision of the Subdivision Authority, and approve the subdivision application with the conditions noted above.

Dated at the Town of Morinville, in the Province of Alberta, this 14th day of September, 2020

SUBDIVISION AND DEVELOPMENT APPEAL BOARD
Sturgeon County



Julius Buski, Chair

Pursuant to Section 688(1)(a) of the Municipal Government Act (MGA), an appeal of a decision of the Subdivision and Development Appeal Board lies with the Alberta Court of Appeal on a matter of law or jurisdiction. In accordance with Section 688(2)(a), if a decision is being considered, an application for permission to appeal must be filed and served within 30 days after the issuance of the decision and, notice of the application for permission must be provided to the Subdivision and Development Appeal Board and in accordance with Section 688(2)(b), any other persons that the judge directs.

APPENDIX "A"
List of Submissions

- Notice of Appeal;
- A copy of the subdivision application with attachments;
- The Subdivision Authority's written decision;
- Development Support Services Report; and
- Appellant's submission