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Appeal File Numbers:	023-STU-014
Application Number:	2023-S-009
Appeal Against:	Subdivision Authority of Sturgeon County
Appellants:	Mikayla Kostiw and Dylan Long
Date and Location of Hearing:	August 1, 2023 Council Chambers and Through Electronic Communications
Date of Decision:	August 16, 2023
SDAB Members:	Julius Buski, Neal Comeau, Lee Danchuk, Amanda Papadopoulos, and Lili Terry

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### NOTICE OF DECISION

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**IN THE MATTER OF** an appeal by Mikayla Kostiw and Dylan Long against the Subdivision Authority’s conditional approval to subdivide 1.29 hectares (3.19 acres) from 64.7 hectares (160 acres) at SW 31-57-23-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(1) 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*, Sturgeon County’s Land Use Bylaw 1385/17 (the “Land Use Bylaw” or “LUB”), and Sturgeon County’s Municipal Development Plan (MDP), and any amendments thereto.
- [3] The following documents were received and form part of the record:
  - a. The Notice of Appeal;
  - b. A copy of the subdivision application with attachments;
  - c. The Subdivision Authority’s written decision; and
  - d. Planning & Development Services Report.

#### 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(2) of the MGA.
- [6] There were no objections to the proposed hearing process as outlined by the Chair.
- [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.

## ISSUES

[9] The Appellants raised the following grounds of appeal:

- a. The remnant landowner has alternate access to the north agricultural land by other routes.
- b. The north agricultural land is only used every couple of years by pasturing cattle as the soil conditions are not favourable for cropping.
- c. Moving the lot up to the tree line will allow the landowner easier access for cropping with larger equipment.
- d. Extending the panhandle allows better positioning for both the proposed and remnant lots.

## RECOMMENDATION OF THE SUBDIVISION AUTHORITY

[10] Jonathan Heemskerk, representative for the Subdivision Authority, provided a presentation which included a recommendation that subdivision application 2023-S-009 be conditionally approved because it does not comply in size and configuration with the policies and regulations outlined in the MDP or LUB.

[11] This application is consistent with the MDP's density standards outlined in Residential Type 4 policies and with the LUB's AG - Agriculture regulations. However, the size and configuration of the parcel does not comply with the policies and regulations outlined in the MDP and LUB.

[12] The proposed building site would be accessed via a panhandle approach along the northern boundary allowing the home to be constructed at the highest elevation. Typically, panhandle subdivisions are not supported as identified in the MDP section 2.2.3:

*2.2.3 - Should discourage the use of panhandles as a way to provide residential subdivisions with legal and physical access to a municipal roadway.*

In this instance, the use of a panhandle allows for the build site to be at a higher elevation further away from an established drainage channel which decreases the risk of flooding and potential disruption of the channel. Furthermore, the northern boundary of the parcel is a densely treed area which provides a natural divide and ensures that no agricultural land would be fragmented to the north.

[13] The proposed configuration would also cause a portion of currently cultivated farmland to be taken out of production, becoming landlocked with no access. The MDP aims to ensure that the subdivision process minimizes the total amount of agricultural land taken out of production. This proposed configuration does not align with MDP section 2.3.17:

*2.3.17 - Shall ensure that Acreage Lots minimize the total amount of land being taken out of agricultural production. The maximum lot density for an Acreage Lot shall be one (1) unit per 32 hectares, with a lot size subject to provisions under the LUB.*

[14] The Subdivision Authority can support an alternative configuration that allows the build site to be located on higher land via a panhandle while also ensuring agricultural land is preserved and no portions become landlocked. While the inclusion of the panhandle access makes the lot slightly greater than the standard 1 hectare (2.47 acre) size prescribed in section 11.1.3(e) of the LUB, it nevertheless complies with 11.1.3(e)(ii) which provides exceptions for areas with low

lying and steep topography:

*11.1.3(e)(ii) mitigate any site constraints which could otherwise significantly limit the development potential of a 1 hectare (2.47 acre) parcel or create land use conflicts – such as but not limited to setback distances from pipelines, low-lying or steep topography, inaccessible portions of land or land fragmentation (however, additional farmland will not be compromised when a site constraint could equally be addressed by modifying the location and/or dimensions of the proposed 1 hectare (2.47acre) parcel).*

#### **SUMMARY OF APPELLANTS' POSITION**

[15] The Appellants, Mikayla Kostiw and Dylan Long stated by moving the lot further toward the tree line, would not land lock the area and the remnant landowner would still have access to the area by another route. This would also provide better access for larger equipment use.

[16] The Appellants stated that the north land is only used for pasturing cattle every couple of years because the soil conditions are not favourable for cropping as it consists of mostly sandy soil.

#### **SUBMISSION FROM ADJACENT LANDOWNERS**

[17] Gary Kostiw, remnant landowner, spoke in favour of the proposed subdivision, noting that he discovered approximately 20 years ago that the north land is mostly sand and nothing has ever grown there. He stated that the area will not be land locked and he will have access along the east fence line. The request is to move the proposed lot as far east as possible to avoid water pooling due to spring runoff and he would suggest that it would be easier for a surveyor to work with a configuration that is squarer in shape.

#### **DECISION OF THE BOARD**

[18] **The Board GRANTS the appeal and REVOKES the decision of the Subdivision Authority made on June 29, 2023 to conditionally approve subdivision application 2023-S-009 and approves the subdivision subject to the following conditions:**

- 1) Pursuant to section 654(1)(d) of the MGA, any outstanding taxes on the subject property 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 shall submit a drawing to Sturgeon County resembling Exhibit 3, dated August 16, 2023, and submit it in a manner that is acceptable to Land Titles.
- 3) Pursuant to section 662(1) of the MGA, as illustrated in Exhibit 3 and as required by Sturgeon County Engineering Services, a 5-metre-wide area parallel and adjacent to the boundary of the Proposed Lot and the adjacent road shall be dedicated as road allowance via plan of survey at no cost to Sturgeon County.
- 4) Pursuant to section 662(1) of the MGA, as illustrated in Exhibit 3 and as required by Sturgeon County Engineering Services, a 5-metre-wide area parallel and adjacent to the boundary of the Remnant Lot and the adjacent road shall be acquired by Sturgeon County in the future via the terms and conditions of a land acquisition agreement (note: this agreement to be prepared by Sturgeon County).
- 5) All upgrades to *existing* culverts and/or *existing* approaches, and construction/removal of 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.

#### **ADVISORY NOTES**

- 1) Natural Gas servicing to any new subdivision is the responsibility of the applicant. The applicant will be required to provide the required easements across existing lots or subdivided lots for natural gas servicing, if service is approved by the natural gas provider. Sturgeon County does not allow natural gas servicing lines to be located within the road right of way. Setbacks from the road right of way are required. Easements of private property must be obtained by the applicants or service providers. Any service lines which cross Sturgeon County property will require a crossing agreement with conditions.
- 2) Pursuant to section 2.4.3 of the LUB, at the development permit stage on any property, it is highly recommended that the developer retain the services of a qualified engineering professional to prepare and submit a geotechnical investigation confirming that the proposed building site on is suitable for development and prescribing any preventative engineering measures to be taken to make the building site suitable for future development or future development suitable for the building site.
- 3) Pursuant to the *Water Act* and the Alberta Wetland Policy, any future development or site grading which might alter or disturb a wetland may require additional approvals from Alberta Environment and Parks.
- 4) The subject properties shall not be used in any manner or way that impedes or will impede the use of adjacent lands for agricultural purposes or agricultural operations, as defined in the *Agricultural Operation Practices Act*, RSA 2000 c.A-7.
- 5) The internal driveway should be constructed at a higher elevation and have an adequately sized culvert to ensure the flow of water can be maintained and drainage in the area is not altered.

#### **REASONS FOR THE DECISION**

- [19] The Appellants' request is to subdivide 1.74 hectares (4.30 acres) from 64.7 hectares (160 acres) at SW 31-57-23-W4 within Sturgeon County. The property is a full quarter section with no developments.
- [20] The Subdivision Authority submitted that the proposed subdivision is consistent with the MDP's density standards outlined in Residential Type 4 policies and with the LUB's AG - Agriculture regulations. However, the size and configuration of the parcel does not comply with policy 2.3.17 of the Municipal Development Plan and Land Use Bylaw section 11.1.3.
- [21] The Subdivision Authority submitted that the proposal for a subdivision out of this quarter section would be the first acreage on this site and there were no concerns with complying with MDP Residential Type 4 policies in this regard.
- [22] The Board heard from the Appellants that permitting this request and extending the panhandle along with relocating the proposed lot further to the east would help to alleviate issues with water pooling while at the same time still allowing access to the north part of the land to the remnant landowner.
- [23] The Board heard a submission from the remnant landowner who expressed no concerns about access to the north and if needed, it is still available along the east fence line. The area

has not been in use and has not been able to produce any crop in over 20 years due to poor soil conditions.

- [24] The Board recognizes that it is within their jurisdiction to alter the proposed lot configuration and while the panhandle access is not optimum it does fit the scheme of the proposal. With the panhandle along the far north of the parcel, there is not a significant amount of fragmentation that will occur as a result of the panhandle.
- [25] The Board finds that with the land along the north being only sand and not able to produce a crop, the lot configuration should be squared off and the proposed lot should be moved further to the east as indicated on Exhibit 3. This will place the building site at the highest elevation and farther away from the drainage course and any flood risk. While this configuration adds an additional approximate 2.3 acres to the proposed development and is slightly larger than the standard 1-hectare acreage it nevertheless complies with section 11.1.3(e)(ii) of the LUB which provides exceptions for areas with low lying and steep topography.
- [26] The Board heard that section 2.3.17 of the MDP seeks to reduce the amount of agricultural land taken out of production. The Board heard from the remnant property owner that the land is generally unsuitable for major agricultural production, and therefore supports a subdivision larger than that prescribed by section 11.1.3 of the LUB.
- [27] The Board finds that although all current parties would be satisfied with the original proposal, it is incumbent on the Board to consider future landowners. It is reasonable to assume that future landowners may not be of the same family and the original proposed configuration could cause potential issues for land survey. The altered lot configuration provides clearer lot lines and ease of understanding.
- [28] The Board did not receive any submissions from adjacent landowners in opposition to the subdivision.
- [29] For all of these reasons, the Board grants the appeal, revokes the decision of the Subdivision Authority to conditionally approve the subdivision, and approves the subdivision subject to the conditions listed above.

Dated at the Town of Morinville, in the Province of Alberta, this 16<sup>th</sup> day of August, 2023.



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Julius Buski, Chair

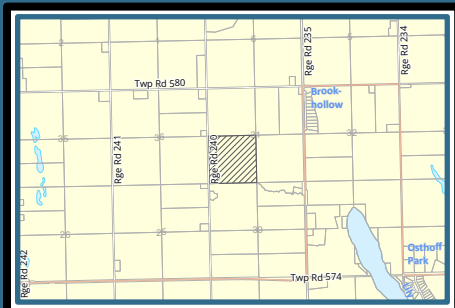
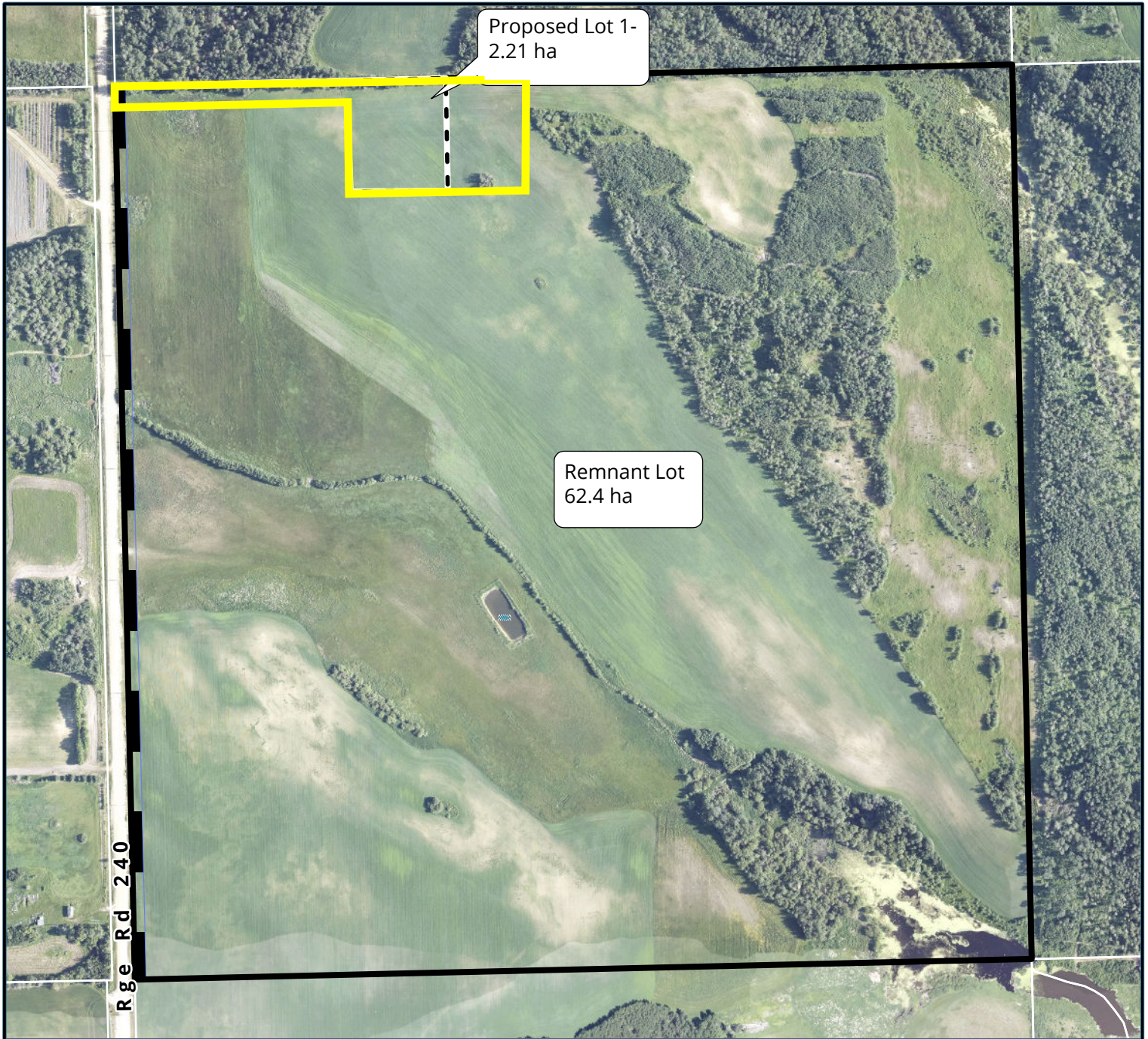
*Pursuant to Section 688(1)(a) of the Municipal Government Act (MGA), an appeal of a decision of the Subdivision and Development Appeal Board lies with the Alberta Court of Appeal on a matter of law or jurisdiction. In accordance with Section 688(2)(a), if a decision is being considered, an application 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**

- The Notice of Appeal;
- A copy of the subdivision application with attachments;
- The Subdivision Authority's written decision;
- Planning & Development Services Report

# Exhibit 3 [SDAB]

File Number: 2023-S-009



Legal Description: 4;23;57;31;SW

Roll Number: 1508000





Total Acres/Hectares: 160.00ac / 64.64ha

Municipal Address: N/A

Land Use: AG - Agriculture

Date: 8/16/2023

## Legend

-  Dugout
-  Road Widening By Caveat
-  Road Widening By Survey
-  Parcel Boundaries