

Appeal File Numbers:	023-STU-006
Application Number:	2023-S-003
Appeal Against:	Subdivision Authority of Sturgeon County
Appellants:	Joe Hartl, Hartl Water Well Drilling & Service Ltd.
Date and Location of Hearing:	May 10, 2023 and June 20, 2023 Council Chambers and Through Electronic Communications
Date of Decision:	July 4, 2023
SDAB Members:	Julius Buski, Amanda Papadopoulos, Don Rigney and Lili Terry

NOTICE OF DECISION

IN THE MATTER OF an appeal by Joe Hartl, Hartl Water Well Drilling & Service Ltd. against condition #6 of the Subdivision Authority’s approval of Subdivision application number 2023-S-003 at NE-13-54-28-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:
1. The Notice of Appeal;
 2. A copy of the subdivision application with attachments;
 3. The Subdivision Authority’s written decision; and
 4. 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. The Board is satisfied that it has jurisdiction to deal with this matter.

ISSUES

- [8] The Appellant raised the following grounds of appeal:
 - 1. The portion of the road in question is just as wide as the south portion and a reinspection is warranted as the road is no longer snow covered.

RECOMMENDATION OF THE SUBDIVISION AUTHORITY

- [9] Jonathan Heemskerk, representative of the Subdivision Authority, provided a presentation which outlined the Subdivision Authority's approval of Subdivision 2023-S-003. In summary:
 - 1. The subject parcel is districted as AG - Agriculture and there are currently no developments on the land. It is located in the far southwest corner of the County.
 - 2. The lot is approximately 155 acres, and the proposal is for subdivisions of 2.0 hectare (4.94 acre) and 30.6 hectare (75.61 acre) parcels from a 62.4 hectare (154.19 acre) parcel. There was a previous subdivision of 4.8 acres off the southeast corner.
 - 3. This application is consistent with the Municipal Development Plan's Residential Type 4 policies and with the Land Use Bylaw's AG - Agriculture regulations.
 - 4. Although the proposed acreage lot exceeds the default maximum size of 1 hectare (2.47 acres), it complies with Policies 2.3.18 and 2.3.19 of the Municipal Development Plan and with Part 11.1.3(e) of the Land Use Bylaw.
 - 5. While this is an unconventional configuration, there is no policy or regulation that prohibits a diagonal split of agricultural land where there is rationale to address site characteristics. There is an undeveloped road right of way north on Range Road 280 that is deeply treed and sloped, making it extremely challenging to clear and subsequently develop. The development of this road right of way would not be cost-effective, especially for accessing a large AG Major parcel. Furthermore, as noted by the County's Agriculture Services department, the land on this quarter section is not considered to be high quality and is used as pastureland. As such, the Subdivision Authority can support the proposed configuration.

6. Adjacent to the existing acreage on the quarter section, Range Road 280 is an underdeveloped roadway that will require upgrades to current General Municipal Servicing Standards if a new acreage parcel is developed. It is approximately 165 metres of area to be improved likely with widening,
7. Ditching, and other works at the cost of the developer.
8. If only the parcel split occurs, minor upgrades (brush trimming, gravel resurfacing) will be necessary. To provide legal access to both Proposed Lot 1 and Proposed Lot 2, an access easement is required.
9. There is a defined drainage course that exists in the southwest corner of the quarter section. To ensure this environmentally significant area is protected in line with Section 4.2.2 and 4.2.3 of the Municipal Development Plan, an environmental reserve easement will be registered.

SUMMARY OF APPELLANT'S POSITION

[10] Joe Hartl, provided a verbal presentation regarding his reasons for appeal. To summarize:

1. His goal is to develop all three requested parcels with minimum interruption to himself and his neighbours.
2. He understands that additional parcels could potentially increase the traffic but believes the road in its current condition is sufficient.
3. The County resurfaced the entire road with gravel on April 20, 2023 and it is still in near perfect condition.
4. He agrees that there is overgrowth, but he finds it to be more attractive than a wide-open road. He is willing to remove the brush on the west side but would prefer not to as this provides privacy.
5. The ditch, including the portion in question, is in the same condition from Highway 633 to the north turn around on Range Road 280.
6. The inspection was done over the winter when there was snow cover. He would like a second inspection now that the road and ditch are more visible, and he believes the inspector would agree with him and Condition #6 could be removed from his subdivision approval.

ADJOURNMENT & CONTINUATION OF HEARING

[11] The Board granted the Appellant's adjournment request, and the hearing was adjourned sine die pending County Administration's consideration of the Appellant's request for a reinspection.

[12] The hearing was reconvened on June 20, 2023. All those members of the Board and Administration as previously listed were in attendance.

RECOMMENDATION OF THE SUBDIVISION AUTHORITY

- [13] A reinspection occurred and it was determined that the Appellant would not be required to do significant widening and reconstruction of the road.
- [14] An amendment to Condition #6 is proposed, which includes constructing a full turnaround at the very end of Range Road 280 with a 12 metre radius to ensure vehicles can be accommodated and can continue in a forward motion; brushing and grubbing the area to make sure the site is clean and there are improved sight lines; and construction or improvement of the ditching to accommodate surface runoff and drainage.
- [15] To ensure the 12 metre portion can be constructed, the 5 metres required for road widening will be taken by Plan of Survey.
- [16] The Appellant consented to the amendment to Condition #6.

SUBMISSIONS FROM OTHER AFFECTED PERSONS

- [17] Philip Elder, adjacent landowner was present to speak in opposition of the appeal, submitting procedural concerns that he was not provided sufficient notice of the hearing, that information regarding the hearing was not made easily available on the Board's website. With respect to the merits of the subdivision application, he noted that the application is in the name of a limited company implying that the subdivision is for business purposes, not personal purposes. Finally, he advised that Range Road 280 is in poor condition due to heavy equipment being hauled on the road.

DECISION OF THE BOARD

- [18] **The Board GRANTS the appeal, and approves the subdivision with the original conditions approved by the Subdivision Authority with the exception of Condition #6, which is amended to read as follows:**

The applicant shall enter into and perform a Development Agreement for the following upgrades within the Range Road 280 right of way to the satisfaction of Sturgeon County Transportation and Engineering Services:

- a. Construct a turnaround (12m radius) at the north end to accommodate truck turning and ensure vehicle movements are in a forward motion.**
- b. Brushing and grubbing to the road property line to provide a clear zone and improve sightlines.**
- c. Construct / improve roadway ditching to accommodate surface runoff from the carriageway.**

REASONS FOR THE DECISION

- [19] The Appellant's request is to subdivide 2.0 hectare (4.94 acre) and 30.6 hectare (75.61 acre) parcels from a 62.4 hectare (154.19 acre) parcel. There was a previous subdivision of 4.8 acres off the southeast corner.

- [20] The Subdivision Authority submitted that the proposal is consistent with the Municipal Development Plan's Residential Type 4 policies and with the Land Use Bylaw's AG - Agriculture regulations. Although the proposed acreage lot exceeds the default maximum size of 1 hectare (2.47 acres), it complies with Policies 2.3.18 and 2.3.19 of the Municipal Development Plan and with Part 11.1.3(e) of the Land Use Bylaw.
- [21] The Appellant submitted that the initial inspection of the road condition was done during the winter months when there was snow cover; however, believes the road in its current condition is sufficient and would not require widening. The Appellant requested a reinspection of the road and consideration to amend Condition #6 of the subdivision approval.
- [22] The Board granted the Appellant's request for an adjournment to allow Administration to consider reinspecting Range Road 280 in drier conditions. The hearing was adjourned sine die. Once advised that the reinspection was granted and completed by Administration, the hearing was continued on June 20, 2023.
- [23] Following the reinspection, Administration recommended an amended Condition #6 of the subdivision approval, being the performance of a Development Agreement for upgrades within the Range Road 280 right of way, including the construction of a turnaround (12m radius) at the north end to accommodate truck turning and ensure vehicle movements are in a forward motion; brushing and grubbing to the road property line to provide a clear zone and improve sightlines; and roadway ditching to accommodate surface runoff from the carriageway.
- [24] The Appellant agreed to the proposed amended Condition #6 and advised that he is prepared to make the required improvements.
- [25] The Board considered a submission from an adjacent landowner raising concerns of procedural fairness, raising that proper notification of the hearing was not provided and that information regarding the appeal was not made available on the Board's website. During its deliberations, the Board confirmed that adjacent landowners were provided sufficient notification of the hearing pursuant to the requirements of the MGA and Sturgeon County's Subdivision and Development Appeal Board Bylaw, and that information regarding the appeal was posted to the Board's website in advance of the hearing, allowing affected persons to sufficiently prepare for the hearing.
- [26] The adjacent landowner also raised concerns regarding the merits of the application, including that the subdivision application was in the name of a limited company, and that although Range Road 280 was recently upgraded, it is deteriorating due to the high volume of traffic on the road.
- [27] The Board heard from the Appellant that, although the subdivision application was made in the name of a limited company, all company equipment has been sold and there will not be large trucks on the road. The acreage development will be for personal use only. The Board is satisfied that the additional subdivision for personal use would not have an extensive negative impact on the condition of Range Road 280. Therefore, the Board finds that 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.

[28] For all of these reasons, the Board grants the appeal, and approves the subdivision subject to the conditions proposed by the Subdivision Authority with amended Condition #6 listed above.

Dated at the Town of Morinville, in the Province of Alberta, this 4th day of July, 2023.



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

