
Appeal File Numbers:	023-STU-005
Application Number:	2023-S-004
Appeal Against:	Subdivision Authority of Sturgeon County
Appellants:	Leonard & Gisele Jubinville
Date and Location of Hearing:	May 2, 2023 Council Chambers and Through Electronic Communications
Date of Decision:	May 15, 2023
SDAB Members:	Julius Buski, Mark Garrett and Alanna Hnatiw

NOTICE OF DECISION

IN THE MATTER OF an appeal by Leonard and Gisele Jubinville against the Subdivision Authority's refusal to subdivide 2.5 hectares (6.12 acres) from 26.04 hectares (64.35 acres) at NW 26-54-26-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:
- The Notice of Appeal;
 - A copy of the subdivision application with attachments;
 - The Subdivision Authority's written decision; and
 - 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 land should be subdivided to allow their entrepreneurial son the opportunity to create a profitable, regenerative agricultural venture.
- b. The land is adjacent to an existing country residential parcel and therefore this would be a natural subdivision.

RECOMMENDATION OF THE SUBDIVISION AUTHORITY

[10] Jonathan Heemskerk, representative for the Subdivision Authority, provided a presentation which includes a recommendation that subdivision application 2023-S-004 be refused because it does not comply with the requirements of the *Municipal Government Act* or Sturgeon County's Municipal Development Plan.

[11] Section 654(1) of the *Municipal Government Act* provides that a subdivision authority must not approve an application for subdivision approval unless: (a) the land that is proposed to be subdivided is, in the opinion of the subdivision authority, suitable for the purpose for which the subdivision is intended; (b) the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan and, subject to subsection (2), any land use bylaw that affects the land proposed to be subdivided.

[12] The proposal does not conform with the Municipal Development Plan as per section 654(1) of the *Municipal Government Act*. The policies are noted below:

- a. This proposal does not align with the Residential Type 4 policies in the Municipal Development Plan. Section 2.3.15 outlines a maximum agricultural density of four (4) parcels for every quarter section (two per half quarter section). The proposal for further subdivision on this half quarter section will exceed the maximum density of two parcels and maximum size allowance for an acreage as outlined under section 11.1.3(e) of the Land Use Bylaw.
- b. No plan amendment or redistricting application has been received to support increased densities as outlined in Policy 2.3.16 of the County's Municipal Development Plan, nor would the County support such an application.
- c. The proposal does not minimize the amount of agricultural land taken out of production and does not conform to the maximum lot density for an acreage parcel, as per Policy 2.3.17 of the County's Municipal Development Plan.

[13] This application is inconsistent with the MGA, MDP, and the Land Use Bylaw; therefore, the Subdivision Authority refused the application and recommends that the Board deny the appeal and uphold the decision of the Subdivision Authority.

SUMMARY OF APPELLANTS' POSITION

[14] The parcel is deemed to be a quarter section by the County, supported by information submitted along with the Notice of Appeal.

[15] They feel hindered by the conceptual future realignment of Starkey Road, and view the parcel in question to be a natural subdivision should the road realignment project come to fruition.

- [16] They wish to consider options for the future of their property for potential residential development, regenerative farming, and preservation of the agricultural lands while maintaining ownership within their family.
- [17] Their primary goal is to provide a subdivided parcel of land to their son and get him involved to carry on the vision of self-sustained food supply and farming the land for sustenance.
- [18] They are looking to secure the future of the land and are willing to work with the County and the water utility cooperative regarding the conditions and future development plans.

SUBMISSION FROM ADJACENT LANDOWNERS

- [19] Neil McDougall, adjacent landowner, spoke in opposition of the proposed subdivision, noting that the proposal is not in compliance with the current Land Use Bylaw. Further, he expressed concerned that the nature of the intended entrepreneurial and regenerative farming plans were not disclosed in the application and that the water cooperative in the vicinity may not be designed to handle any increased draw on the water system.
- [20] Sandy Dieb, adjacent landowner, noted concerns about the uncertainty of the scope of the regenerative farming venture the Appellants seek to undertake.

DECISION OF THE BOARD

- [21] **The Board GRANTS the appeal and REVOKES the decision of the Subdivision Authority made on March 31, 2023 to refuse subdivision application 2023-S-004 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 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 2, dated March 21, 2023, and submit it in a manner that is acceptable to Land Titles.
- 3) Pursuant to section 662(1) of the MGA, 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 required by Sturgeon County Engineering Services, a 5-metre-wide area parallel and adjacent to the boundary of the Remnant Lot and the adjacent roads shall be acquired by Sturgeon County in the future via the terms and conditions of a land acquisition agreement (note: this agreement is 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.
- 6) Pursuant to section 666 of the MGA, 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 \$23,554.28 (*determined at a rate of \$9,421.71 per hectare X*

$10\% \times 2.5 \text{ hectares} = \$25,554.28$). The money-in-lieu calculation will be based on the actual amount of land (in *hectares*) shown on a plan of survey.

- 7) Pursuant to section 669 of the MGA, municipal reserves owing on the Remnant Lot shall be deferred by caveat (note: this caveat is to be prepared by Sturgeon County).
- 8) The applicant is to obtain all necessary permits or farm building declarations to comply with the Land Use Bylaw to the satisfaction of the Development Authority.
- 9) Pursuant to section 654(1)(c) of the MGA, the proposed subdivision must result in compliance with the 2015 Alberta Private Sewage Systems Standard of Practice. A certificate of compliance will be required from the County's Gas & Plumbing Inspector, confirming that the existing open discharge septic system either meets the Standard of Practice as-is, or has either been replaced, relocated or redesigned to comply. Note: An Alberta Land Surveyor may be required to confirm distances from the septic system to property lines, buildings or other features to the satisfaction of the Gas & Plumbing Inspector.
- 10) The applicant shall enter into a right-of-way agreement with Telus prior to subdivision endorsement.
- 11) The applicant shall enter into an agreement with respect to access to water to the satisfaction of all parties.

REASONS FOR THE DECISION

- [22] The Appellants' request is to subdivide 2.5 hectares (6.12 acres) from 26.04 hectares (64.35 acres) at NW 26-54-26-W4 within Sturgeon County.
- [23] In recommending refusal of the subdivision application, the Subdivision Authority submitted that, pursuant to section 654(1) of the *Municipal Government Act* (MGA), a subdivision authority must not approve an application for subdivision approval unless: (a) the land that is proposed to be subdivided is, in the opinion of the subdivision authority, suitable for the purpose for which the subdivision is intended; (b) the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan and, subject to subsection (2), any land use bylaw that affects the land proposed to be subdivided.
- [24] The Subdivision Authority submitted that the proposal does not conform with the Municipal Development Plan, specifically Policy 2.3.15 which prescribes a maximum agricultural density of 4 parcels for every quarter section, Policy 2.3.16 which outlines a maximum of 2 acreages for every quarter section, and section 2.3.17 which states that Acreage Lots shall minimize the total amount of land being taken out of agricultural production. The proposal for further subdivision on this half quarter section would exceed the maximum density of 2 parcels, and maximum size allowed for an acreage as outlined under section 11.1.3(a) of the LUB.
- [25] The Appellants submitted that permitting this request and subdividing the property would create a residential hobby farm which would benefit the County by contributing to the local tax base. This is not a relevant consideration for the Board as its jurisdiction is limited to the appropriateness of subdivision and development matters in the context of conformance to land use policies while considering the impacts of proposed subdivision and development on adjacent property owners and the community. Therefore, the Board placed no weight on this submission.
- [26] In reaching its decision to grant this appeal, the Board considered the exceptional characteristics of this parcel of land, including:
- a. The history of the parcel as a riverlot, with title originally created by the Province of

Alberta in 1904.

- b. The conceptual future realignment of Starkey Road is an anomaly on this parcel. The planning and development scheme in Alberta is intended to allow landowners certainty over how land can be used. The conceptual future realignment of Starkey Road does not provide the Appellants with this necessary certainty.
- c. One adjacent land parcel was subdivided to allow for the also anomalous development of a Sturgeon County fire station.

[27] In considering this appeal, the Board did not weigh the anonymous submissions to the subdivision application provided as part of the Planning & Development Services Report as it is necessary to consider how people making submissions are affected by an application. The redaction of names and addresses prevents the Board from properly weighing how these individuals would be impacted by the proposed subdivision.

[28] In weighing the merits of Appellant's application against the consistent application of land use policies that seek to promote the orderly development of the community as a whole, the Board finds that the parcel is not a typical agricultural parcel, and the Board is satisfied that the Appellants intend to maintain the agricultural look and feel of the area.

[29] The Board heard submissions from adjacent landowners that the water cooperative may not be able to accommodate the additional draw from this subdivision; however, the parties did not demonstrate evidence to support this assertion. The Board is satisfied that condition #11 will address concerns regarding the capacity of the water cooperative to service this additional lot.

[30] For all of these reasons, the Board grants the appeal, revokes the decision of the Subdivision Authority to refuse the subdivision application, and approves the subdivision subject to the conditions listed above.

Dated at the Town of Morinville, in the Province of Alberta, this 15th day of May, 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