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Appeal File Numbers:	024-STU-002
Application Number:	2023-S-029
Appeal Against:	Subdivision Authority of Sturgeon County
Appellant:	A. Victoria Davidson
Date and Location of Hearing:	February 20, 2024 Council Chambers and Through Electronic Communications
Date of Decision:	March 4, 2024
SDAB Members:	Julius Buski (Chair), Neal Comeau, Amanda Papadopoulos, Don Rigney and Lili Terry.

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### NOTICE OF DECISION

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**IN THE MATTER OF** an appeal by A. Victoria Davidson against the Subdivision Authority's refusal to consolidate two +31.3 ha parcels and create a +5.66 ha parcel at SE 24-56-1-W5M 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;
  - Planning & Development Services Report; and
  - Appellant'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(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 Appellant raised the following grounds of appeal:

- a. The consolidation of two large agricultural parcels and creation of a second acreage parcel would maximize the agricultural production of the land, allow her to stay on the property, and preserve the future resale value of the land.

## RECOMMENDATION OF THE SUBDIVISION AUTHORITY

[10] Jonathan Heemskerk, representative for the Subdivision Authority, provided a presentation which included an issue analysis for the Appellant's proposal and reasons for the Subdivision Authority's refusal.

[11] The application seeks to subdivide a new 5.66-hectare (13.99 acre) parcel from the quarter section along with consolidating the two existing large agricultural parcels into one remnant lot. At a size of 13.99 acres, the parcel is considered AG – Minor as defined in the Agriculture District of the Land Use Bylaw which outlines that for subdivision purposes:

11.1.3(d) AG – Minor parcels shall be considered equivalent to an AG – Residential parcel and therefore have no further subdivision potential.

[12] Given the proposed configuration, this application is inconsistent with Municipal Development Plan (MDP) "Residential Type 4" policies, and with the Land Use Bylaw's "AG - Agriculture" regulations. While the configuration aligns with the maximum density requirements outlined in the MDP and the LUB, it does not align with the following policies and regulations:

MDP Policy 2.3.16, which notes a maximum of two acreage lots for every 64 hectares (quarter section):

*"Shall ensure that the maximum allowable agricultural subdivision layout for a 64 hectares (160 acres) land unit contains two (2) Agricultural Parcels and two (2) Acreage Lots, as further defined within the Land Use Bylaw. Where a proposed development exceeds the above subdivision density, the applicant must submit an application for a plan amendment and redistricting for consideration by Council."*

MDP Policy 2.3.17 which notes that the County:

*"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."*

LUB Regulation 11.1.3(a) notes that:

Unless otherwise indicated within a planning document, a quarter section in the AG district of 64.7 hectares (160 acres) shall contain a maximum combined density of four parcels, comprised of:

*(i) two AG – Major parcels of approximately 32.4ha (80ac) each or alternative sizes necessary due to land fragmentation; and*

(ii) two AG – Residential parcels (one of which may be subdivided from each AG – Major parcel having a minimum size of 32.4 hectares (80 acres) in accordance with Paragraph 11.1.3(e) of this Bylaw).

[13] Section 654(1) of the *Municipal Government Act* (MGA) 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; and

(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.

[14] As this application is inconsistent with a Sturgeon County Statutory Plan (the Municipal Development Plan) and the Land Use Bylaw, the Subdivision Authority was required to refuse this application.

#### **SUMMARY OF APPELLANT'S POSITION**

[15] The Appellant, A. Victoria Davidson, stated that she has lived at the property since 1955 and her husband and brother-in-law farmed the property. Two acreage properties were subdivided for their children with the remaining land subdivided in half.

[16] The Appellant is preparing for her future and intends to remain on the proposed acreage lot for as long as she can.

[17] The Appellant stated that the large parcel will eventually be sold, and the proposed lot would allow her to receive some value for her home. The property could support a small hobby farm providing a future family the opportunity to have a small-scale agricultural operation.

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

[18] **The Board GRANTS the appeal, REVOKES the decision of the Subdivision Authority made on January 18, 2024 to refuse subdivision application 2023-S-029 and approves the subdivision subject to the following conditions:**

- 1) Pursuant to section 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 shall submit a drawing to Sturgeon County resembling Exhibit 3 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 Proposed Lot 1 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.
- 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 \$2,823.96 (*determined at a rate of \$4,989.32 per hectare X 10% X 5.66 hectares = \$2,823.96*). 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 to be prepared by Sturgeon County).
- 8) The applicant is to obtain all necessary permits 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) As required by EQUUS, a utility right of way must be registered prior to subdivision endorsement.

#### **ADVISORY NOTES**

- Pursuant to section 2.4.3 of the Land Use Bylaw (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.
- 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.
- 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.

- It is recommended that a plot plan be completed by an Alberta Land Surveyor to determine setback distances for all buildings, structures, and septic systems from property lines and other site features.

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

- [19] The Appellant's request is to subdivide a 5.66-hectare (13.99 acre) parcel from the quarter section and consolidate the two existing large agricultural parcels into one remnant lot. The property, districted AG – Agriculture District, has an existing residence and numerous accessory buildings.
- [20] 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; and (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.
- [21] The Subdivision Authority submitted that the proposal does not align with the subdivision regulations in the Land Use Bylaw, specifically Policy 11.1.3(3) which states that unless otherwise indicated within a planning document, a quarter section in the AG district of 64.7 hectares (160 acres) shall contain a maximum combined density of four parcels, comprised of:
- (i) two AG – Major parcels of approximately 32.4 hectares (80 acres) each or alternative sizes necessary due to land fragmentation; and
  - (ii) two AG – Residential parcels (one of which may be subdivided from each AG – Major parcel having a minimum size of 32.4 hectares (80 acres)).
- [22] The Subdivision Authority submitted that the proposal does not conform with the Municipal Development Plan (MDP) (a statutory plan), specifically Policy 2.3.16, which notes a maximum of two acreage lots for every 64 hectares (quarter section) and Policy 2.3.17 which states that acreage lots shall minimize the total amount of agricultural land taken out of production.
- [23] The Board heard from the Appellant that the consolidation of the large agricultural parcels would contribute to the long-term viability of agricultural production as it would enable the land to be sold or rented to a farmer who would maximize its agricultural value. Further, the creation of the proposed new acreage lot would not take the land out of production but enable diversified agricultural options such as a small-scale hobby farm. The Board finds that this is consistent with the overall intent of the MDP, which is to preserve agricultural land.
- [24] The Board heard from the Subdivision Authority that at least one of the existing approaches to the property may need to be upgraded or removed for traffic safety purposes. Condition #5 noted above ensures that the County's Engineering Department and the Appellant can meet together at the property and determine options that balance traffic safety with the need to access the property in an efficient manner.
- [25] The Subdivision Authority recommend that, should the Board grant the appeal and approve the proposed subdivision, a condition of the approval be that a survey be completed and that all

low-lying / undevelopable land on the remnant lot in proximity to the wetland / slough be dedicated within an “Environmental Reserve Easement” in accordance with the *Surveys Act* and to the satisfaction of Sturgeon County. The Board heard from the Subdivision Authority that this recommendation is based off historical aerial imagery of the property. The Appellant submitted that Ducks Unlimited came out to the property in 2019 and since she has not heard from them. The Board finds this to be an unnecessary condition and therefore decided not to impose it.

- [26] Pursuant to section 654(2)(a)(i) of the MGA, the Board finds that it 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, and the proposed subdivision conforms with the use prescribed for that land in the Land Use Bylaw. Having received no evidence from adjacent landowners indicating opposition to the application, 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.
- [27] 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 4<sup>th</sup> day of March, 2024.



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Julius Buski, Chair

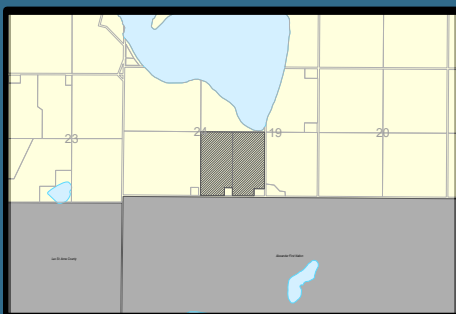
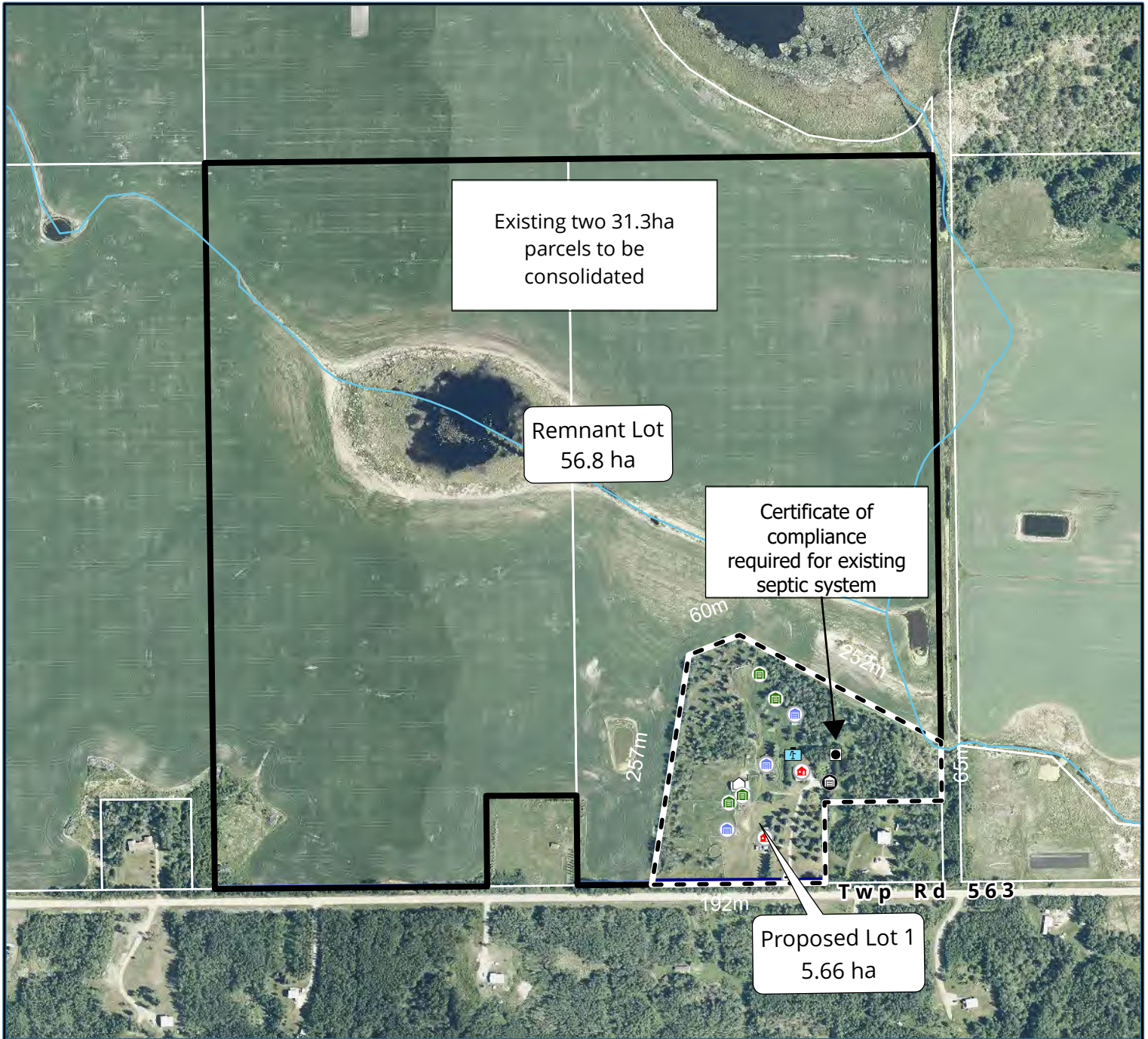
*Pursuant to Section 688(1)(a) of the Municipal Government Act (MGA), an appeal of a decision of the Subdivision and Development Appeal Board lies with the Alberta Court of Appeal on a matter of law or jurisdiction. In accordance with Section 688(2)(a), if a decision is being considered, an application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

# Exhibit 3 [SDAB Decision]

File Number: 2023-S-029



Legal Description: 5;1;56;24;SE

Roll Number: 4926000











Total Acres/Hectares: 154.80ac / 62.54ha

Land Use: AG - Agriculture

Municipal Address: 1004 Twp Rd 563

Date: 3/1/2024

### Legend

-  Dwelling
-  Existing Approach
-  Farm Building
-  Pole Shed
-  Pump Out
-  Quonset
-  Shop
-  Well
-  Road Widening By Caveat
-  Road Widening By Survey