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Appeal File Numbers:	024-STU-011
Application Number:	2024-S-014
Appeal Against:	Subdivision Authority of Sturgeon County
Appellants:	Timothy & Myrna Tarangle
Date and Location of Hearing:	July 23, 2024 Council Chambers and Through Electronic Communications
Date of Decision:	August 6, 2024
SDAB Members:	Lili Terry (Presiding Officer), Neal Comeau, Lee Danchuk, and Don Rigney.

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#### **NOTICE OF DECISION**

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**IN THE MATTER OF** an appeal by Timothy and Myrna Tarangle against the Subdivision Authority's conditional approval to subdivide a 1.23-hectare parcel from 31.34 hectares at SE-6-55-23-W4M (1 – 23510 Highway 37) in 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
  - Written submissions from affected agencies.

#### **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 Presiding Officer.
- [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 request is to subdivide a larger parcel (4.24 hectares) for proposed Lot 1 to accommodate buildings and animals; and
- b. They want to preserve the water and natural habitat on the parcel.

## **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 conditional approval of an alternate configuration.

[11] The application seeks to subdivide a 4.24-hectare parcel from the half-quarter section parcel which is districted AG – Agriculture.

[12] Section 11.3(e) of the Land Use Bylaw provides that the maximum size of an AG – Residential parcel be 1 hectare unless a larger area is essential to:

- (i) *Encompass mature shelterbelts, existing buildings or any other related features associated with an existing farmstead; and/or*
- (ii) *Mitigate site constraints which could otherwise significantly limit the development potential of a 1-hectare 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.*

[13] At 4.24 hectares, Proposed Lot 1 would exceed the maximum size of 1 hectare without encompassing any existing site features related to a farmstead or mature shelterbelts.

[14] Furthermore, the proposed configuration does not align with Municipal Development Plan (MDP) Policy 2.3.17 which states 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.*

[15] The Sturgeon County Drainage Operation team reviewed the subject parcel and identified that most of the lands have been previously submerged in floodwaters and likely contain environmentally significant features such as wetlands. Specifically, a large portion of Proposed Lot 1 poses significant flood risk; therefore, the Subdivision Authority approved an alternate configuration that considers both a reduction in size and change in configuration away from previously identified flood lands.

[16] Policy 2.2.3 of the MDP notes that the County “*should discourage the use of panhandles as a way to provide residential subdivisions with legal and physical access to a municipal roadway.*” However, in this instance the use of a panhandle would allow the subject parcel to be situated further from known flood risk areas without fragmenting farmland as it is located at the northern boundary of the quarter section. It would also ensure any future structures are setback from a pipeline right of way that exists at the north end of the lot.

This would result in a minor increase in size that is supported by section 11.1.3(e)(ii) of the Land Use Bylaw which notes that a larger size can be accommodated to *“mitigate any site constraints which could otherwise significantly limit the development potential of a 1-hectare parcel or create land use conflicts.”*

- [17] The Subdivision Authority provided a conditional approval of the application with an alternate configuration to be consistent with the Municipal Development Plan’s Residential Type 4 policies and the Land Use Bylaw’s AG - Agriculture regulations.
- [18] Any application for proposed developments on the property would require a Roadside Development Permit from Alberta Transportation given the proximity to Highway 37.
- [19] The remnant lot features a permitted dwelling and mobile home. There is no record of approval for any of the existing accessory buildings. A site plan shall be provided confirming the location, size, and use of the existing accessory buildings to confirm if development and building permits are required. An accessory building under 10 square metres in floor area is exempt from requiring development and building permit approval. If the buildings are for farm use, a Farm Building Declaration shall be required.
- [20] The proposed lot and remnant lot may be prone to flooding due to the existing wetlands on the property, as indicated in Sturgeon County’s Master Drainage Plan. Future development shall not occur in the flood risk areas and drainage pathways shall not be altered. A portion of the lot has been identified as wetlands. Additional approvals may be required from the Province for any future development.

#### **SUMMARY OF APPELLANT’S POSITION**

- [21] The Appellant, Timothy Tarangle and his son, Lance Tarangle, stated that family has owned the subject property since 1967, and they wish to subdivide a parcel to allow for the Appellant’s son develop a home and be nearby to assist with agricultural activities on the lands.
- [22] The request is for a 4.24-hectare parcel; however, they are willing to accept a smaller parcel than what was requested in their application if approved by the Board.
- [23] The family has not experienced any flooding in the lot they proposed for subdivision since taking ownership of the property in 1967.
- [24] The Appellant would prefer a square lot that more closely resembles their proposal as there is an additional pipeline to be built along the northern border of the property which would affect the developable building pocket.
- [25] The Appellant would be satisfied if the Board approved an increase in size to the Subdivision Authority’s conditionally approved lot which would allow for a larger building pocket south of the future pipeline.

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

- [26] **The Board GRANTS the appeal, REVOKES the decision of the Subdivision Authority made on June 14, 2024, and conditionally approves a 2.06-hectare subdivision as identified in Exhibit 3 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 Range Road 235 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 Range Road 235 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 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 Proposed Lot 1. A payment will be made in place of reserves equal to \$4,978.33 (determined at a rate of \$24,166.63 per hectare x 10% x 2.06 hectares = \$4,978.33). The money-in-lieu calculation will be based on the actual amount of land (in hectares) shown on a plan of survey.
- 7) The applicant shall complete a Hydrological Analysis for Proposed Lot 1 which will be stamped and signed by a Professional Engineer and will determine what the 1:100-year flood inundation elevation is for the parcel to help establish a basement or finish floor elevation. The analysis will also establish the lowest building opening elevation, ensuring it is a minimum of 0.5m above the 1:100-year high water level, and include any development constraints for the parcel. This analysis will be completed to the satisfaction of Sturgeon County Engineering and Transportation Services.
- 8) The surveyor shall survey and dedicate all low-lying/undevelopable land in proximity to the wetland/ lake within an 'Environmental Reserve Easement', in accordance with the *Surveys Act* and to the satisfaction of Sturgeon County – as illustrated conceptually in Exhibit 3.
- 9) The applicant is to obtain all necessary permits to comply with the Land Use Bylaw – to the satisfaction of the Development Authority.
- 10) Pursuant to section 654(1)(c) of the MGA, the proposed subdivision must result in compliance with the 2021 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.

#### **ADVISORY NOTES**

- 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.
- Pursuant to section 2.4.3 of the Land Use Bylaw, 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.
- *FireSmart* principles should be incorporated into all future construction and development. Please visit [www.firesmartcanada.ca](http://www.firesmartcanada.ca).
- 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**

- [27] The Appellant's request is to subdivide a 4.24-hectare parcel from 31.34 hectares. The property, districted AG – Agriculture District, has an existing residence, mobile home, and numerous accessory buildings.
- [28] The Subdivision Authority submitted that the proposal does not align with the subdivision regulations in the Land Use Bylaw, specifically Policy 11.1.3(e), which states that the maximum size for subdivision of farmland is 1 hectare, although a larger size may be granted to mitigate any site constraints which could otherwise significantly limit the development.
- [29] The Board heard from the Appellant that they desire a subdivision with a larger lot size to allow for the Appellant's son to develop a home and be nearby to assist with and continue agricultural activities on the lands. Further, the Appellant indicated their strong preference to situate the proposed lot at the northern boundary of the property to be as far as possible from Highway 37 to mitigate traffic noise.

- [30] In approving the 2.06-hectare alternate configuration, the Board considered the submissions from the parties, including reference to the existing pipeline along the northern border of the proposed lot and the need for an easement for a future pipeline which would significantly impact the potential building pocket.
- [31] Although the Appellant submitted that the lands to the south of the Subdivision Authority's approved subdivision have not flooded since his family acquired the property in 1976, the Subdivision Authority was persuaded by the information submitted by the Subdivision Authority, and therefore the Board did not consider it appropriate to extend the subdivision south into potentially environmentally sensitive areas.
- [32] In reaching its decision, the Board considered Policy 2.2.3 of the Municipal Development Plan (MDP), which discourages the use of panhandles as a way to provide residential subdivisions with legal and physical access to a municipal roadway. However, in this instance, the Board finds that the use of a panhandle would allow the subject parcel to be situated further from known flood risk areas without fragmenting farmland.
- [33] Pursuant to section 654(2) 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. Further, the proposed subdivision conforms with the use prescribed for that land in the Land Use Bylaw, being AG-Residential.
- [34] For all of these reasons, the Board grants the appeal, revokes the decision of the Subdivision Authority, and approves the subdivision as identified in Exhibit 3 appended to this Decision, subject to the conditions listed above.

Dated at the Town of Morinville, in the Province of Alberta, this 6<sup>th</sup> day of August, 2024.



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Lili Terry, Presiding Officer

*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.*

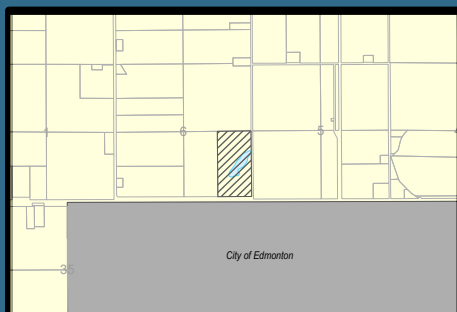
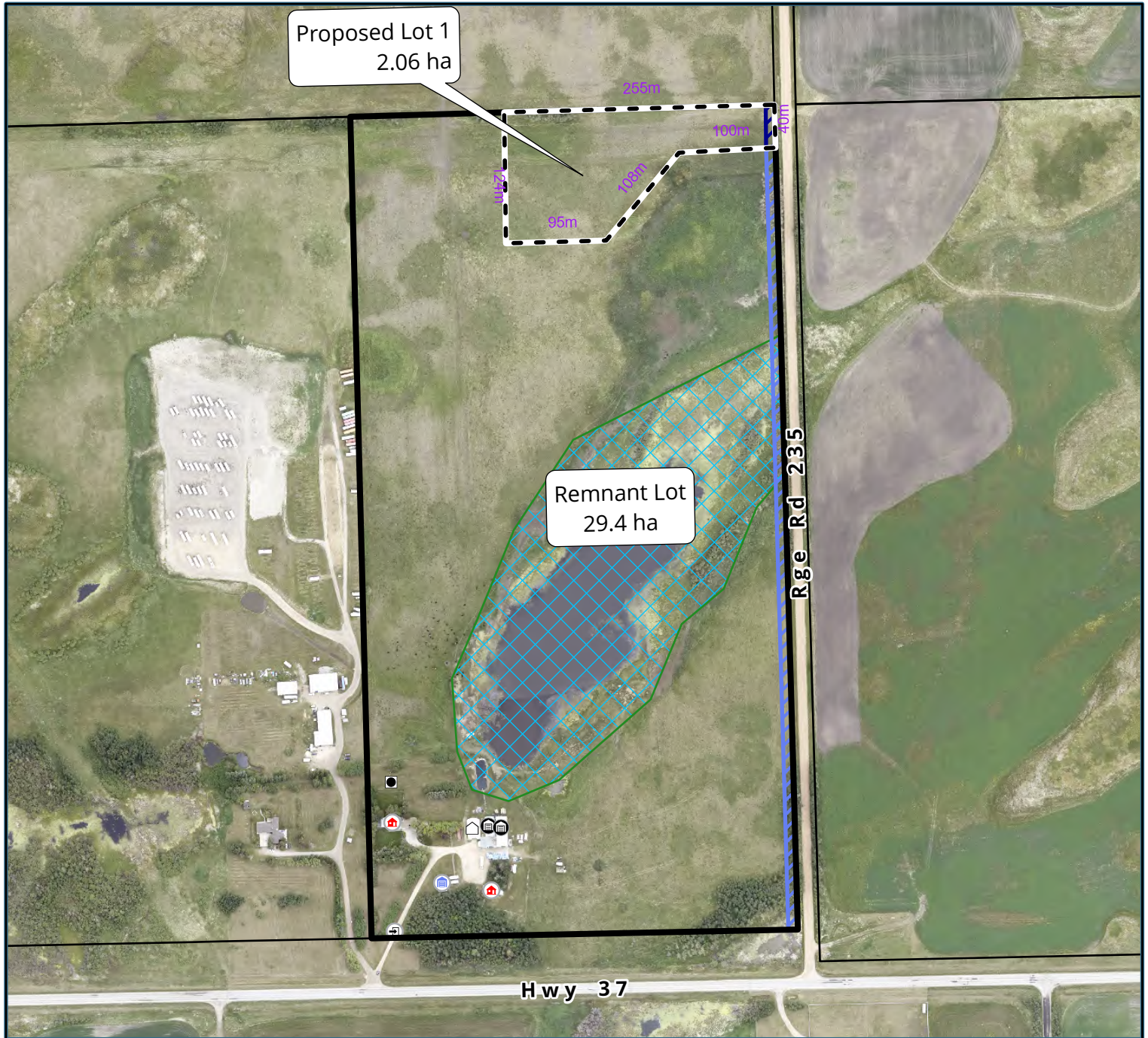
**APPENDIX "A"**  
**List of Submissions**

- The Notice of Appeal;
- A copy of the subdivision application with attachments;
- The Subdivision Authority's written decision;
- Planning & Development Services Report; and
- Written submissions from affected agencies.



# Exhibit 3 [SDAB Decision]

File Number: 2024-S-014



Legal Description: 6153NY;2 - SE-6-55-23-W4

Roll Number: 993000










Total Acres/Hectares: 77.70ac / 31.39ha

Land Use: AG - Agriculture

Municipal Address: 1 23510 Hwy 37

Date: 7/25/2024

## Legend

-  Dwelling
-  Existing Approach
-  Pole Shed
-  Pump Out
-  Quonset
-  Shop
-  Environmental Reserve Easement
-  Road Widening By Caveat
-  Road Widening By Survey