
Appeal File Numbers:	024-STU-017
Application Number:	2024-S-031
Appeal Against:	Subdivision Authority of Sturgeon County
Appellants:	Daniel and Colleen Mahé D & C Mahé Farms Ltd.
Date and Location of Hearing:	November 5, 2024 Council Chambers and Through Electronic Communications
Date of Decision:	November 20, 2024
SDAB Members:	Julius Buski (Chair), Lee Danchuk, Amanda Papadopoulos, and Don Rigney

NOTICE OF DECISION

IN THE MATTER OF an appeal by Daniel and Colleen Mahé of D & C Mahé Farms Ltd., against the Subdivision Authority's refusal to create a +3.7-hectare lot from 30.9 hectares at SE 08-57-26-W4, 26416 Township Road 571 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:

- The Board should vary the regulations of the Municipal Development Plan and Land Use Bylaw and approve the proposed subdivision.

RECOMMENDATION OF THE SUBDIVISION AUTHORITY

- [10] Jonathan Heemskerk, representative of the Subdivision Authority, provided a presentation which outlined the Subdivision Authority's reasons for refusal. In summary:
 1. The property is located in the northwest portion of the County to the east of Highway 44. There are currently 4 parcels on this quarter section with two (2) AG Major parcels and two (2) acreage or AG Residential parcels. There is an existing residence that is accessed from Township Road 571 and the remainder of the land is under cultivation.
 2. The application proposed is dealing with the farmstead in the southwestern corner of the land and seeks to create an approximate 3.7-hectare lot from 30.9-hectare lot.
 3. The proposed subdivision would result in 5 parcels located on the same quarter section, which does not conform with the Municipal Development Plan Residential Type 4 policies, specifically Policy 2.3.15 which outlines a maximum agricultural density of 4 parcels for every quarter section and Policy 2.3.16 which outlines a maximum of 2 acreages for every quarter section.
 4. The proposal also does not conform with section 11.1.3(a) of the Land Use Bylaw, which provides a maximum agricultural parcel density of 4 parcels and 2 acreages per quarter section.
 5. Section 654(1) of the *Municipal Government Act* provides that a subdivision authority must not approve an application for subdivision approval unless 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 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.
 6. As the proposed subdivision does not conform with the MDP or LUB, it was refused, and the matter appealed to the SDAB.

SUMMARY OF APPELLANTS' POSITION

- [11] The Appellants, Daniel and Colleen Mahé, attended the hearing and provided verbal submissions to supplement the written submission provided to the Board.
- [12] Along with their son, they own/operate D & C Mahé Farms Ltd. The operation is family-oriented and goes back over 100 years. They have been grain producers together for 47 years and have been leasing the subject lands for 25 years. They acquired the subject property on August 1, 2024, with an intent to continue to farm the land.

- [13] This parcel includes a home built in 1996 with a large, landscaped yard. They have no need for the acreage and do not want to be landlords or maintain the property. They will not be selling the acreage for profit but have family from St. Albert who have been looking for a rural home. This property suits their taste and budget, and they are interested in purchasing and living there long-term.

DECISION OF THE BOARD

- [14] **The Board GRANTS the appeal, REVOKES the decision of the Subdivision Authority made on October 1, 2024 to refuse subdivision application 2024-S-031, and APPROVES the request to create a +3.7-hectare lot from 30.9 hectares, with the following conditions:**

- 1) Pursuant to section 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 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 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.
- 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 \$2,743.69 (*determined at a rate of \$ \$11,337.58 per hectare X 10% X 2.42 hectares = \$2,743.69*). 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 2021 Alberta Private Sewage Systems Standard of Practice. A certificate of compliance may be required from the County's Gas & Plumbing Inspector confirming that the existing open discharge septic system either meets the Standard of Practice, the system has been replaced, relocated, or redesigned to comply, or confirmation must be provided to Sturgeon County demonstrating that all setback requirements have been achieved. 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 Sturgeon County.

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 approval from Alberta Environment and Parks.
- Any parcel without an existing approach must collaborate with Planning & Development Services to submit an Approach Application and determine access requirements prior to any construction in the future. No development permits shall be issued until a suitable approach has been constructed to General Municipal Servicing Standards and inspected. For assistance with access issues and inspections, please telephone 780-939-8275.
- 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 on all lots. Please visit 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

- [15] The Appellants' request is to subdivide an approximate 3.7-hectare lot from the existing 30.9 hectares. The land is districted AG – Agriculture.
- [16] The Subdivision Authority submitted that the Appellants' application is inconsistent with the Municipal Development Plan Residential Type 4 policies, specifically Policy 2.3.15 which outlines a maximum agricultural density of 4 parcels for every quarter section and Policy 2.3.16 which outlines a maximum of 2 acreages for every quarter section. Further, the application does not conform with section 11.1.3(a) of the Land Use Bylaw, which provides a maximum agricultural parcel density of 4 parcels and 2 acreages per quarter section. Section 654(1) of the *Municipal Government Act* provides that a subdivision authority must not approve an application for subdivision approval unless 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 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. Therefore, the application was refused.

- [17] The Board considered Council's intent in developing the MDP Residential Type 4 policies. The Board referred to the purpose statement of Residential Type 4 in the MDP, which is "[To provide] Sturgeon County's rural population with options that support Primary Industry viability while maintaining a rural character." The restrictions on the number of subdivisions and acreage lots on a quarter section takes a forward-looking view, intending to prevent land fragmentation, ensure the sustainability of the agricultural sector, and maintain the rural character of communities.
- [18] The Appellants submitted that they wish to subdivide and sell the existing acreage lot, with a priority to continue farming the agricultural land. Therefore, a decision to grant or not grant the subdivision has no impact on land fragmentation or the rural character of the community as the residential portion of the parcel has been developed with a house and landscaping. Based on the Appellants' submission, approval of the subdivision would provide greater certainty that the agricultural land would remain in production as it would be farmed along with the adjacent agricultural parcels owned by the Appellants.
- [19] The Board notes that, although the Appellants submitted that the land would continue to be farmed by their son as part of the family farm and accessed as it is now through the adjacent parcel they own, the Board must make decisions based on use, and not the user, and therefore approval of the subdivision must contemplate a scenario where the subject parcel changes ownership in the future. The Board notes that condition #5 requires the Appellants to construct access to the agricultural parcel, avoiding potential future land use conflicts as it relates to parcel access.
- [20] Having received no evidence from adjacent landowners or other parties opposing 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.
- [21] For all of these reasons, the Board grants the appeal, revokes the decision of the Subdivision Authority to refuse the application, and approves the subdivision subject to the conditions listed above.

Dated at the Town of Morinville, in the Province of Alberta, this 20th day of November, 2024.



Julius Buski, Chair

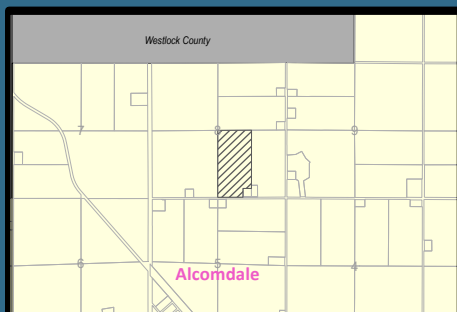
Pursuant to Section 688(1)(a) of the Municipal Government Act (MGA), an appeal of a decision of the Subdivision and Development Appeal Board lies with the Alberta Court of Appeal on a matter of law or jurisdiction. In accordance with Section 688(2)(a), if a decision is being considered, an application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

Exhibit 3 [SDAB Approval]

File Number: 2024-S-031



Legal Description: SE-8-57-26-4

Roll Number: 4234001








Total Acres/Hectares: 76.40ac / 30.87ha

Land Use: AG - Agriculture

Municipal Address: 26416 TWP RD 571

Date: 11/05/2024

Legend

-  Dwelling
-  Well
-  Existing Approach
-  Garage
-  Pump Out
-  Shed
-  Shipping Container