

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: B. FARR
PANEL MEMBER: R. KERBER
PANEL MEMBER: C. MAH
PANEL MEMBER: L. MULDER
PANEL MEMBER: Z. ORDMAN

BETWEEN:

ASSET BUILDERS

Represented by Gayle Langford

Appellant

and

CITY OF RED DEER
Inspections & Licensing

Represented by Martin Kvapil

Development Authority

This is an Appeal to the Red Deer Subdivision and Development Appeal Board in respect of an application for redevelopment allowing for an existing detached dwelling and also for development of a secondary suite within the primary dwelling. Both applications were refused by the Development Authority due to their location being within 300 meters of the disposal area of a non-operating landfill.

The Appeal hearing commenced on May 26, 2015, in the Council Chambers of the City of Red Deer, within the Province of Alberta.

DECISION:

The Red Deer Subdivision and Development Appeal Board reversed the decision of the Development Authority and granted approval of (1) the existing dwelling, and (2) the proposed secondary suite, subject to existing standard conditions.

JURISDICTION AND ROLE OF THE BOARD

1. The legislation governing municipalities in the Province of Alberta is the *Municipal Government Act*, RSA 2000, c M-26 [MGA]. Planning and Development is addressed in Part 17 of the MGA, and further in the *Subdivision and Development Regulation*, Alta Reg 43/2002 [SDR].
2. The Board is established by City of Red Deer, By-law No. 3487/2012, *Appeal Boards Bylaw*. The duty and purpose of the Red Deer Subdivision and Development Appeal Board (“SDAB” or “the Board”) is to hear and make decisions on appeals for which it is responsible under the MGA and City of Red Deer, By-law No. 3357/2006, *Land Use Bylaw*.

BACKGROUND

3. In section 13(3)(b), the SDR states that a Development Authority shall not issue a development permit for a residence within 300 meters of the disposal area of a non-operating landfill.
4. The detached dwelling and proposed secondary suite subject to this appeal are both within 300 meters of the disposal area of a non-operating landfill.
5. Due to a clerical error, the City initially advised the Appellant that a Development Permit was not required for the detached dwelling at the subject site, provided the proposal met the requirements of the *Land Use Bylaw*. The City issued a Building Permit and a subsequent Occupancy Permit for a detached dwelling. The detached dwelling was built in 2013.
6. The Appellant applied to the Development Authority in 2014 for a secondary suite to be located at the subject location, but did not request a Development Permit in relation to the existing detached dwelling. The Development Officer refused the secondary suite, due to its location within 300 meters of a non-operating landfill and the Appellant appealed to the SDAB.
7. At an SDAB hearing commencing on November 17, 2014 and concluding December 4, 2014, the SDAB dismissed an appeal related to the refusal of the secondary suite. The SDAB decision stated that a secondary use could not be approved where the primary use is not in compliance with regulations. Since the issue of the existing detached dwelling was not properly before the Board, it ruled that it had no jurisdiction to rule on the matter of the secondary suite.
8. The Appellant re-applied for both a Development Permit for the existing detached dwelling and the proposed secondary suite, and the Development Officer refused both applications as per the letter of refusal, dated April 28, 2015. The Appellant submitted an appeal to the SDAB on May 1, 2015.

PRELIMINARY MATTERS

9. The hearing on this matter commenced on May 26, 2015, at 5:03 p.m.
10. The Board Chair confirmed that no Board Member had raised any conflicts of interest with regard to this application, and neither party had any objection to the panel hearing the appeal.

POSITION of the PARTIES

Development Authority Position

11. At the hearing, the Development Authority, represented by Mr. Martin Kvapil, confirmed that the subject property is within Riverside Meadows in the City of Red Deer. This appeal pertains to two applications and subsequent refusals as follows:
 - i. An existing detached dwelling that was constructed in 2013 without a Development Permit.
 - ii. A proposed secondary suite contained within the detached dwelling.
12. The Development Authority provided the following exhibits:
 - i. A PowerPoint presentation, which was entered as Exhibit B.3;
 - ii. A written submission, entered as Exhibit B.1; and
 - iii. An Environmental Report, entered as Exhibit B.2.
13. Mr. Kvapil confirmed that public consultation on the subject property resulted in 52 mail-outs with four responses related to parking and density of rental properties. Mr. Kvapil advised that the issues raised in the responses are addressed within existing planning guidelines.
14. Mr. Kvapil confirmed that the existing detached dwelling is considered a permitted use and meets all requirements of relevant planning criteria within the *Land Use Bylaw*, s 4.7, as described in Exhibit B.1.
15. Mr. Kvapil confirmed that that the proposed secondary suite, which is considered a discretionary use, meets all planning requirements including: infill, parking, neighborhood density, housing mix, as well as design of neighborhood and accessibility.
16. On behalf of Development Authority, Waste Management Superintendent, Janet Whitesell, spoke to Exhibit B.2, the "Environmental Risk Management Plan: Historic Waste Disposal Site, Great West Adventure Park in The City of Red Deer" (the "Environmental Report"). Ms. Whitesell described the history of the landfill and explained that the City has recently completed site-specific studies to assist in better identifying actual risks related to the landfill.
17. Ms. Whitesell advised that the Environmental Report assessed negligible risk potential beyond a 100 meter radius of the landfill site. From an environmental perspective, there is no objection to the detached dwelling or the secondary suite that are subject to this appeal.
18. Mr. Kvapil reiterated that the subject property is within 300 meters of the disposal area of a non-operating landfill. As per s 13(3)(b) of the *SDR*, the Development Authority is not authorized to issue a Development Permit where the subject property is within 300 meters of the disposal area of a non-operating landfill. As a result, the Development Officer denied the application for a Development Permit.
19. Mr. Kvapil advised the Board that, other than the restrictions imposed by *SDR*, s 13(3)(b), the Development Authority has no objection to either (1) the detached dwelling, or (2) the proposed secondary suite subject to this appeal.

Appellant Position

20. The Appellant's counsel, Gayle Langford, spoke to the matter on behalf of the Appellant. Ms. Langford stated that the Appellant built the detached dwelling in 2013 with the understanding that all necessary permit requirements were met.
21. Ms. Langford advised that the Appellant is now aware that the *SDR*, s 13(3)(b) prohibits the Development Authority from approving residential use within 300 meters of a landfill.
22. Ms. Langford advised that *MGA* s 687(3)(b) allows for an *SDAB* to consider, but is not bound by *SDR*, and that as a matter of practice, development applications within 300 meters of a landfill are routinely denied by the Development Authority and subsequently brought before the *SDAB*.
23. Ms. Langford confirmed that the Appellant met with the City and the parties agreed on a process whereby the Appellant could make an application for both the existing detached dwelling and the proposed secondary suite at the same time. The Appellant was aware that the application would be refused by the Development Authority, and that the Appellant could then appeal the refusal to the *SDAB*.
24. In reference to the Environmental Report, Ms. Langford submitted that the subject property is well beyond the 100 meter radius of concern where further testing may be required. The Environmental Report confirmed there are no significant issues for a property that is beyond the 100 meter radius. Ms. Langford confirmed that the subject property is located on the outer limit of the 300 meter radius from the landfill site in question.
25. Ms. Langford confirmed that the detached dwelling meets all planning and Land Use Bylaw requirements. Further, the secondary suite complies with all requirements including access points, parking, and density. The suite has its own entrance and is self-contained.
26. The Appellant requests that the *SDAB* approve both the Development Permit for the existing detached dwelling and the proposed secondary suite on its merits.

ISSUES and BOARD FINDINGS

27. The Board finds that the Development Authority lacks the authority to grant a Development Permit when it falls within the 300 meter radius of a non-operating landfill. Development applications that have been refused based on *SDR*, s 13(3)(b), may be appealed to an *SDAB*.
28. The Board acknowledges that the refusal of two development applications based on *SDR*, s 13(3)(b), are jointly on appeal before them:
 - i. an existing detached dwelling that was constructed in 2013 without a Development Permit.
 - ii. a proposed secondary suite contained within the detached dwelling.
29. The Board is satisfied that Ms. Whitesell is qualified to speak to the Environmental Report. Section 5 of the Environmental Report confirms that the risk for subdivision or development beyond 100 meters is viewed as negligible and not warranting special environmental considerations, and that this applies to the subject developments, which are on the outer limits of the 300 meter radius.

30. The Board is satisfied, based on the Development Authority submission, that public consultation was adequate and that all concerns raised by the public are addressed within existing guidelines.
31. Based on evidence presented and agreed to by both parties, the Board is further satisfied that the proposed redevelopment for the existing detached dwelling and the proposed secondary suite are both in compliance with the applicable Land Use Bylaw and neighborhood planning requirements.
32. For the reasons detailed above, the Board **REVERSES** the decision of the Development Authority to deny the Development Permit for the existing detached dwelling, and further allows the proposed secondary suite, subject to all existing and applicable standard conditions.

CLOSING:

Dated at the City of Red Deer, in the Province of Alberta, this 9th day of June, 2015 and signed by the Chair on behalf of all three panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



B. FARR, Chair
Subdivision & Development Appeal Board

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal, you must follow the procedure found in section 688 of the Municipal Government Act, which requires an application for leave to appeal to be filed and served **within 30 days** of this decision.

APPENDIX A

Documents presented at the Hearing and considered by the Board.

EXHIBIT LIST

- Exhibit AHearing Materials (pages 1-16)
- Exhibit B.1Development Authority submission (pages 17-43)
- Exhibit B.2.....Environmental Report (pages 44 -117)
- Exhibit B.3.....Development Authority PowerPoint (un-numbered)
- Exhibit CAppellant submission (pages 118 – 144)
- Exhibit DLetter from area resident (pages 45-46)