

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: G. MARKS
PANEL MEMBER: C. MAH
PANEL MEMBER: Z. ORDMAN

BETWEEN:

C & S LAND DEVELOPMENTS LTD.

Appellant

and

CITY OF RED DEER
Inspections & Licensing

Development Authority

This is an Appeal to the Red Deer Subdivision and Development Appeal Board in respect of an application for proposed developments allowing for a detached dwelling and for a secondary suite. The Development Authority refused both applications due to their location being within 300 meters of the disposal area of a non-operating landfill. The Appeal hearing commenced on December 2, 2015, in the Council Chambers of the City of Red Deer, within the Province of Alberta.

Hearing Attendees:

City Development Authority (Inspections & Licensing): Angie Keibel/Manager, Martyn Bell/Sr. Development Officer, Martin Kvapil/Development Officer, and City Waste Management Superintendent: Janet Whitesell

Applicant/Appellant:

Kevin Ranger, contractor for C& S Development Ltd. (also referred to as C & S Custom Homes)

Other Attendees (area residents): Cliff McLeod and Jade Fald

DECISION:

The Red Deer Subdivision and Development Appeal Board allows the appeals and overturns the decision of the Development Authority to refuse the development of a detached dwelling and secondary suite, located at 5928-52 Avenue. A detailed summary of the decision is provided herein.

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 development of a detached dwelling and proposed secondary suite, the subjects of this appeal, are located at 5928 – 52 Avenue in the Riverside Meadows neighborhood.
5. The Appellant applied to the Development Authority for development of a new detached dwelling with a secondary suite to be located at the subject location.
6. The Development Officer refused the applications, due to the location of the subject property being within 300 meters of a non-operating landfill and the Appellant appealed to the SDAB, as noted in letters dated October 26, 2015.
7. The Appellant submitted an appeal for the subject property to the SDAB on November 4, 2015. This appeal applies to development applications for both a primary detached dwelling and a secondary suite, both at the same subject location.

PRELIMINARY MATTERS

8. The Chair of the Board confirmed that no Board Member raised any conflicts of interest with regard to this application, and neither party had any objection to the panel proceeding with the appeal. Neither party raised any further preliminary issues.

POSITION of the PARTIES

Development Authority Position

9. At the hearing, Mr. Martin Kvapil presented a summary of issues on behalf of the Development Authority. This appeal pertains to the applications and subsequent development permit (DP) refusals for at the same subject location: Lot 16, Block 23, Plan 6283KS, in the matter of DP1150355 and DP1150361.

10. In his presentation, Mr. Kvapil referred the following Exhibits:
 - a) Exhibits B.1 (report) and B.2 (maps, plans, and photos) as summarized in a PowerPoint presentation; and
 - b) Exhibit B.3, email received from un-named area resident; and
11. Mr. Kvapil confirmed that the subject site is within a redevelopment area in an established neighbourhood within the Riverside Meadows area of the City of Red Deer. The proposed new development includes a detached dwelling with a secondary suite. The previous dwelling was demolished; leaving a bare site except for some trees left standing.
12. Mr. Kvapil confirmed that public consultation was undertaken within 100 meters of the subject property, and this resulted in 95 mail-outs. One response was received via email, and this related mainly to past site issues and concerns about adequate parking (Exhibit B.3). Mr. Kvapil advised that parking is addressed within existing planning guidelines.
13. Mr. Kvapil described the dwelling size, design, finishing, and parking requirements, in addition to applicable legislation and the *Land Use Bylaw*. The Development Authority considered the following planning documents in making its decision (Exhibit B.1, #15 – 26):
 - a) Municipal Development Plan
 - b) Riverside Meadows Area Redevelopment Plan
 - c) Riverside Meadows Community Plan & Residential Design Criteria
 - d) Neighbourhood Planning & Design Standards
14. Mr. Kvapil explained that the area is zoned R1: low density residential. A development permit is required for the detached dwelling (considered a “permitted” use), and for the secondary suite (considered a “discretionary” use). A Development Permit is also required, and is subject to further design criteria for any area redevelopment within Riverside Meadows and the West Park Overlay District. These planning documents encompassed within one overlay District.
15. Mr. Kvapil submits that the proposed new development of the detached dwelling meets all requirements of relevant planning criteria within the *Land Use Bylaw*, including parking requirements and internal review by City engineering and environmental departments (Exhibit B.1 at #27-30).
16. Mr. Kvapil described three areas of planning criteria when evaluating a secondary suite including:
 - a) parking spaces on and off site (including consideration of corner lot, large open spaces, adjacent to non-residential uses etc.);
 - b) surrounding neighborhood density and housing mix (zoning and location of other secondary suites and higher density residential developments);
 - c) neighbourhood design and accessibility: (multiple accesses, land access, proximity to parks and open spaces etc.).
17. Mr. Kvapil submits that the proposed secondary suite meets the requirements under the *Land Use Bylaw*, including the number of detached dwellings permitted to have a secondary suite and adequate parking spaces. The proposed suite would put the total at 12.2%, within

the allowance of up to 15%. The Development Authority does not anticipate any adverse land use impacts on the surrounding developments from the proposed secondary suite.

18. Mr. Kvapil confirmed that the subject site is located within the setback area of two former landfill sites, and it is most affected by the Montfort 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 two former (non-operating) landfill. The subject property is within the setback distance, and as a result, the Development Officer denied the applications for a Development Permits.
19. Janet Whitesell, City of Red Deer Waste Management Superintendent, described the history of the landfills and related regulations. Ms. Whitesell explained that there are some risks related to landfills, including potential migration of gas in soil and water, and other health related concerns that depend on a wide variety of factors, which affect the level of risk severity (Exhibit B.1 (#11 - 14)).
20. Ms. Whitesell confirmed that the City recently completed site-specific studies to assist in better identifying actual risks related to the landfill in question. The subject site is located approximately 285 metres from the non-operational landfill, known as the Montfort landfill, formerly used for sanitary waste disposal. Phase I and II site assessments were completed in early 2014 and the resulting data was used to develop site specific environmental risk management plans for the landfills in question.
21. Ms. Whitesell explained the area of the waste imprint from the Montfort landfill was determined based on Phase II soil, vapor, and water tests. No impacts were evident from other landfills in the area. A site-specific waste management plan was developed based on a Health Canada model, resulting in risk management strategies for subdivisions within 300 meters of the Montfort Landfill (Exhibit B.1 table at #13). As a result, there are two options required to meet the recommendations at a "passive" level:
 - a) Option 1 – A sub-slab depressurization system.
 - b) Option 2 – Site specific monitoring to arrive at a recommendation for alternative.
22. Other than the restrictions imposed by *SDR*, s 13(3)(b), Mr. Kvapil confirms that the Development Authority has no objection to either (1) the detached dwelling, or (2) the proposed secondary suite subject to this appeal.
23. In summary, Mr. Kvapil submits that both the detached dwelling and the secondary suite, with recommended conditions (Exhibit B.1 at #35), meet the necessary criteria for Development Authority approval.

Appellant Position

24. Kevin Granger, contractor for C & S Land Developments Ltd. (also referred to as C&S Custom Homes) spoke on behalf of the Appellant. Mr. Granger brought forward additional submissions including a revised elevation plan and sketch entitled "passive sub-slab depressurization radon control system" (Exhibit C.2).

25. The Development Authority confirmed they have no objection to the late submissions but cannot comment or provide any approval at this time. The plans would be subject to further internal review processes. The Development Officer would consult with internal departments such as planning and environment to ensure any further requirements are addressed.
26. In response to questions from the Board, Mr. Granger confirmed that modifications to the plan would address front sidewalk issues raised by the City.
27. The Appellant submits that the proposed development meets all necessary requirements and requests that the SDAB allow for development of both the detached dwelling and the secondary suite.

Residents Opposing Development

28. One resident, Cliff McLeod, appeared in person to speak to concerns outlined in a letter submitted as Exhibit E. Mr. McLeod lives two lots down from the subject property at 5922 – 52 Ave, where he has lived for 12 years. He has experienced many past issues with the subject property including extra traffic, flooding, parking, and alley congestion (Exhibit E).
29. Mr. McLeod is not opposed to a single-family dwelling but is concerned that the secondary suite will add to existing parking issues. He claims the area already has existing parking issues due to several duplexes and a four-plex, which have no single parking in the back to accommodate parking for the tenants.
30. Another resident submitted a letter with similar concerns, which is included in the hearing materials (Exhibit D).

ISSUES and BOARD FINDINGS

31. The Board finds that the Development Authority lacks the authority to grant necessary Development Permits when a property falls within the 300-meter radius of a non-operating landfill. Development applications that have been refused by the Development Authority based on *SDR*, s 13(3)(b), may be appealed to an SDAB.
32. The Board acknowledges that the refusal of two development applications based on *SDR*, s 13(3)(b), are jointly on appeal before them:
 - a) an proposed new detached dwelling; and
 - b) a proposed secondary suite contained within the detached dwelling.
33. The Board is satisfied that Ms. Whitesell is qualified to speak to the Environmental studies and recommended options for risk management strategies pertaining to development at the subject property.
34. The Board finds the Development Authority has applied the recommended risk management strategies to the proposed developments by the requirement of specific conditions as identified in Exhibit B.1, # 35 which states:

“The Applicant to construct the detached dwelling with a sub-slab depressurization system with a minimum depressurization of 4-10 Pa, or
The Applicant shall conduct environmental monitoring of the soil gas and groundwater at the subject site and conduct a risk analysis to arrive at a recommendation for an alternative risk management strategy. The analysis and recommendation must be completed and stamped by a professional registered with APEGA and must include analysis for the chemical of concern identified in the ERMP, to the satisfaction of the Development Officer.”

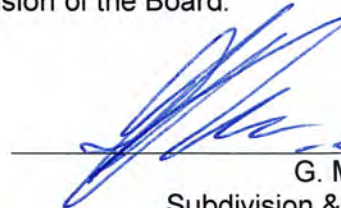
Mr. Grainger, on behalf of the Appellant, has responded to the recommended risk management with his submission identified in Exhibit C2.

35. The Board is satisfied, based on the Development Authority submission, that public consultation was adequate and that relevant concerns raised by the public are addressed within existing guidelines.
36. The Board acknowledges the concerns of the residents, and is satisfied that Development Authority considered the issues brought forward. The Board further finds that concerns related to density of secondary suites and parking are addressed in planning guidelines and through conditions that are applied to the development permits.
37. Based on evidence presented and agreed to by both parties, the Board is further satisfied that the proposed new development for both the detached dwelling and secondary suite are in compliance with applicable *Land Use Bylaw* and other neighborhood planning requirements.
38. For the reasons detailed above, the Board allows the appeals of the detached dwelling and secondary suite located at the subject property. The development permits are subject to all necessary review processes and conditions imposed by the Development Authority, including those submitted at the hearing as described below.
39. The development permit of the detached dwelling, referred to as DP1 150355 by the Development Authority, shall be issued including the following conditions of approval:
 - 1) The Development must conform to the plans, or any required revisions thereof, approved by the Subdivision and Development Appeal Board on December 2, 2015.
 - 2) The Applicant to provide a landscaping plan, or revised site plan, identifying any existing trees on site that are to be removed or retained and the location, size (min. 65 mm CAL) and type (common and botanical names) of any trees proposed, and including any existing or proposed walkways, to the satisfaction of the Development Officer.
 - 3) The Applicant to provide a revised north building elevation plan to include architectural features and design details to provide visual interest and disrupt the massing of the north side of the Detached Dwelling, to the satisfaction of the Development Officer.
 - 4) The Applicant to provide a Site Grading Plan that identifies the existing and proposed grades for the site and adjacent roadways and properties, to the satisfaction of the Development Officer.

- 5) The Applicant to make application, and pay for, new service connections (water, sanitary and storm) through the Engineering Customer Service Section. New services to match the service life of the proposed development.
 - 6) The Applicant is required to enter into an Indemnity Agreement with the City of Red Deer with respect to escarpment proximity as provided in the Land Use Bylaw.
 - 7) The Applicant to construct the Detached Dwelling with a sub-slab depressurization system with a minimum depressurization of 4-10 Pa, or
The Applicant shall conduct environmental monitoring of the soil gas and groundwater at the subject site and conduct a risk analysis to arrive at a recommendation for an alternative risk management strategy. The analysis and recommendation must be completed and stamped by a professional registered with APEGA and must include analysis for the chemical of concern identified in the ERMP, to the satisfaction of the Development Officer
 - 8) The parking area to be constructed so that it is physically separated from the landscaped area, either by use of curb stops, privacy fencing, or other means satisfactory to the Development Officer.”
40. The conditions of the approval for the secondary suite referred to as DP1150361 by the Development Authority, shall be issued including the following conditions of approval:
- 1) The development must conform to the plans, or any required revisions thereof, approved by the Subdivision and Development Appeal Board on December 2, 2015.
 - 2) The floor area of the Secondary Suite shall not exceed the floor area of the primary dwelling.
 - 3) The Applicant must maintain a minimum of three on-site parking stalls, one (1) of which must be for the exclusive and unrestricted use of the Secondary Suite resident(s) and cannot be used in tandem with the resident(s) of the primary dwelling. All parking stalls must comply with the Land Use Bylaw.”

CLOSING:

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



G. MARKS, 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

- A.1 Hearing Materials with Agenda, Appeal Form and attachments, letter from area land owner
(22 pages)
- B.1 Development Authority Submission
(10 un-numbered pages)
- B.2 Figures and aerial photos
(11 un-numbered pages)
- B.3 Email received at Inspections and Licensing Mailbox
(email from un-named resident)
- C.1 Appellant Submission
(one page letter)
- C.2 Additional submission – new elevation plan & information on sub-slab modifications
(submitted at time of presentation)
- D Resident submission of Kandiece and Leslie Parkin
(1 page written submission only - resident did not appear at the hearing)
- E Resident submission of Cliff McLeod and Jade Fald
(submitted at time of presentation)