LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Mersereau v Vulcan County (Development Authority), 2023 ABLPRT 583

Date: 2023-10-30
File No. D23/VULC/CO-044
Decision No. LPRT2023/MG0583
Municipality: Vulcan County

In the matter of an appeal from a decision of Vulcan County Development Authority (DA) respecting the proposed development of Plan 9311683, Unit 7, NW4-15-21-W4 (within Little Bow Resort) under Part 17 of the *Municipal Government Act*, Chapter M-26 RSA 2000, *(Act)*.

BETWEEN:

B. Mersereau
and
P. Sorenson

Appellants

- and -

Vulcan County Development Authority

Respondent Authority

BEFORE: E. Williams, Presiding Officer
W. Jackson, Member
S. Steinke, Member
(Panel)

K. Lau, Case Manager

DECISION

APPEARANCES

See Appendix A

This is an appeal to the Land and Property Rights Tribunal (LPRT or Tribunal). The hearing was held via videoconference, on September 27, 2023, after notifying interested parties.

OVERVIEW

[1] This is an appeal of the approval of a cement block structure on the site of an upgraded sewage lift station in the Little Bow Resort community in Vulcan County (County). New facilities including a generator, an electrical kiosk and a power transformer have been installed on common property adjacent to the Appellants' residence. The structure is intended to mitigate electromagnetic radiation from the transformer. The appeal was filed by immediately adjacent residents who were concerned about noise, emissions and appearance, as well as radiation, and requested the LPRT to require the construction of a wall to shield their residence from the newly installed facilities. The area is classified as Grouped Reservoir Residential in the Land Use Bylaw (LUB) and the concrete structure is a permitted use.

[2] The approval is for a permitted use in the County's LUB and did not involve any variances. The *Act* states that no appeal lies under such circumstances; it also requires the LPRT to conform with uses in the LUB. Therefore, the LPRT denied the appeal and encouraged the parties to resolve outstanding issues which are not within the scope of a development appeal with input from County administration.

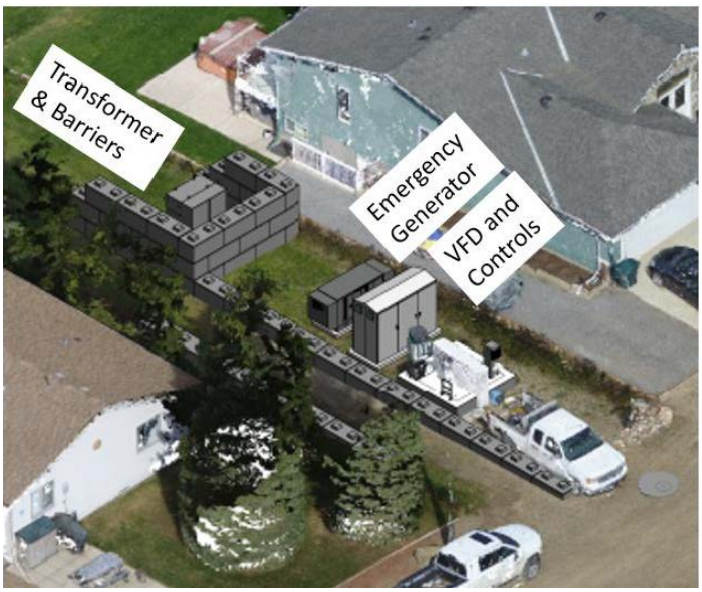
REASON APPEAL HEARD BY LPRT INSTEAD OF SDAB

[3] The appeal was filed with the LPRT instead of the Vulcan County subdivision and development appeal board (SDAB) because s. 685(2.1)(a) of the *Act* and s. 27 of the *Matters Related to Subdivision and Development Appeal Regulation* AR 84/2022 direct development appeals to the LPRT when the land that is the subject of the application is the subject of a licence, permit, approval or other authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board, Alberta Utilities Commission or the Minister of Environment and Protected Areas (AEP) and the Minister of Forestry and Parks (AFP).

[4] In this case, the relevant land is the subject of a number of licenses and permits granted by AEP.

PROPOSAL

[5] To install a cement block structure on common property (utility right of way) as part of the retrofit of an existing sewage lift station within the Little Bow Resort bare land condominium community in the County.



BACKGROUND

[6] This appeal relates to a decision by the DA to approve an application from the bare land condominium board of the Little Bow Resort Community (Applicant) to install a concrete structure around new sewage lift station facilities. The concrete block structure was installed before the development application was submitted.

[7] The cement block installation is an accessory structure on common property (utility right of way) in the Little Bow Resort Community. The subject property is within the McGregor Travers Little Bow Area Structure Plan (ASP) and is districted as Grouped Reservoir Residential (GRR) in the LUB. There

are detached dwellings on either side of the subject lot, and the Appellants are the residents/owners of an adjacent lot.

ISSUE

[8] In all cases, the legislation requires the LPRT to address whether a proposal complies with the *Act*, the *Regulation*, the LUB, any statutory plans, the Land Use Policies, and any applicable *Alberta Land Stewardship Act* (*ALSA*) regional plan – in this case the *South Saskatchewan Regional Plan*. Against this background, the parties focused on the following specific issues:

1. Should the approved development permit be upheld, revoked, or amended based on the concerns raised by the adjacent landowner/Appellants?

SUMMARY OF THE DA'S POSITION

[9] The development application was submitted by Hometime Canada, agents for Little Bow Resort (LBR), after concerns about onsite activity were brought to the municipality's attention. A sewage lift station located on common property is being upgraded; a new electrical kiosk to operate the lift station, an emergency generator to power the lift station if the grid should fail, and a 65-kW transformer to convert the power have been installed.

[10] There are residences on either side of the subject property. To alleviate the concerns of the adjacent landowner to the south (#644 Lakeside Drive) about electromagnetic radiation from the transformer, and to provide some mitigation and peace of mind, large cement blocks were placed on the east and south sides of the transformer.

[11] The DA determined that its role in permitting for the project was limited; the lift station infrastructure did not require a development permit; however, the cement block structure, being accessory to the lift station, required one. "Accessory building, structure or use" is a permitted use in the GRR land use district. The cement blocks must meet the setback requirements established in the LUB: 1.5 m from the side yard property line and 6.1 m from the front and rear yard property lines.

[12] Following discussions with the DA, LBR applied for a development permit which did not require a waiver of the setback requirement and began the removal of the cement blocks which had been installed within the 1.5 m setback. The DA understands a re-alignment of a gas line must be completed before moving and reinstalling all the blocks, and that there is limited room to place blocks between the lift station infrastructure and the setback limit. Should there be a change of design such as putting blocks alongside the generator, a new development permit would be required.

[13] The development application was approved with the following six conditions:

1. No Development authorized by this Development Permit shall commence:
    a. Until at least 21 days after the issue of the Development Permit, or
    b. If an appeal is made, until the appeal is decided on.
2. The minimum/maximum requirements for all setbacks, as established in Land Use Bylaw 2020-028 are met.
3. All outstanding taxes be paid prior to development commencement.
4. This is not a building permit; all Permits as required under the Safety Codes Act and its regulations shall be obtained and a copy of the Building Permit and any other required Safety Code Act approvals or permits shall be submitted to the County.
5. The applicant is solely responsible to obtain and comply with any other required Municipal, Provincial or Federal government permits, approvals, or licenses.

6. This Development Permit is valid for 12 months from the date of issue unless the Municipal Planning Commission has extended the term of the Development Permit in accordance with the Land Use Bylaw.

[14] A development approval notice was sent to nearby owners and an appeal was filed within the required 21 day period by the residents of #646 Lakeside Drive, the adjacent property to the north of the subject common property.

[15] In response to questioning, the DA advised that:

(a) The municipality has received several sets of diagrams/photos showing different configurations of the blocks - including the one presented to the DA with the development application, which shows blocks on 3 sides. Another, showing blocks on two sides of the generator, was from the Applicant's mechanical firm;

(b) A fence may be constructed directly on a property line; it could be up to 2.4 m (8 feet) high outside of the 6.1 m (20 feet) front yard setback;

(c) The DA did not consider the potential impact of noise or emissions or radiation in its decision;

(d) Two Safety Code permits for the lift station infrastructure were obtained by Hometime Canada.

[16] In summary, the DA reiterated that it had a limited role in the overall matter and advised that a variance could be provided if one was requested in a new application. The DA encouraged the parties to resolve the outstanding issues through consultation and compromise and advised that the County is willing to help the parties find an acceptable path forward such as (a) pursuing a development permit with a side yard setback variance in order to place a structure or wall between the generator and #646, and (b) placing fencing just within #646's property line.

SUMMARY OF APPLICANT'S POSITION

[17] When the condominium development opened in 1993, there was a lift station at the subject location - which is a low spot; it was needed to pump sewage from the collection point (a bunker) uphill to the treatment site. The surface installation occupied the same place as the new facility and consisted of a relatively small concrete pad with a small electrical installation and a second concrete pad. Vehicles and pedestrians use the corridor, although it is not a walkway. The Travers Reservoir lies to the west of the subject property.

[18] The project is a needed retrofit. Over time, provincial requirements changed and the number of permanent residents increased substantially. The generator will keep the lift station operating in case of a power outage; otherwise, the area would be subject to flooding and sewer back up. The new installation benefits the entire community.

[19] The homes immediately adjacent to the corridor (#644 Lakeside Drive to the south and #646 Lakeside Drive to the north) were consulted when the lift station design was proposed. LBR agreed with #644 to place "Lego blocks" to address radiation. At this time, #646 had no concerns with the proposed design, except that they did not want their hedge destroyed.

[20] The Appellants' notice of appeal raises concerns with the appearance of the concrete blocks and their location adjacent to the property line near their windows and deck. However, the Appellants also raised objections about health concerns related to noise, emissions, and radiation from the transformer in

correspondence forming part of LBR's consultation process. Except for the views from the house, these matters are not related to the concrete blocks and there is no evidence of any negative exhaust emission or radiation coming from the generator. Further, a portion of the blocks are shielded by a hedge and it is unlikely they can be seen from the Appellants bedroom.

[21] The Appellants' argument that the blocks are intended to protect the residents of #644 from radiation and do not pay the required attention to the potential impact on #646 is flawed; there is no evidence before the Tribunal related to radiation, and it is the AUC that would respond to complaints on this matter.

[22] The LBR consulted with the owners; a chronology is in evidence. The concept was presented in 2021 and again in 2022 as a 2-sided design; there was never a concept that showed the blocks on 3 sides. The Appellants did not attend several key meetings, object to the special assessment, or express any concerns with the proposed lift station design.

[23] The Appellants did raise an issue about generator noise, which occurs when the generator is flushed once a month; this process takes only 15-30 minutes. If noise from this process is troublesome, the residents can plan to be absent at that time. To address the matter further, extra insulation was placed in the generator housing. As an outcome of the Appellants' discussion with AUC, LBR also commissioned a noise impact report which is in evidence; it was prepared by Englobe (Emergency Generator Noise Impact Assessment; Aug. 31, 2023). There has been no response from the AUC to date. The AUC has established standards and seeks to determine the impact (adverse effects) on the environment and neighbours. The study concluded that a shed (muffler) could be installed over the generator as an alternative approach to reduce noise; however, it did not say the generator exceeds allowable noise levels. The AUC process has nothing to do with the County's development approval lens.

[24] The Appellants advised the generator will still be exposed next to their residence. As noted by the County, placing blocks between the generator and #646 will likely infringe on the property line and require an easement from the Appellants. Also, the purpose of the cement block installation is solely to address concerns related to electromagnetic radiation; #644 had supplied the LBR with studies showing "that concrete supposedly bends those rays and makes them go elsewhere." The concrete blocks may also improve the noise situation and the appearance of the installation, especially given its bright yellow colour.

[25] In summary, the LBR has met all the permit requirements except the required setback, and it has 12 months to complete the project and resolve that matter. As such, it is difficult to understand what is being appealed – it may only be aesthetics. The Appellants complain about their view, yet they propose an even bigger wall. The consultation process conducted by the LBR provided substantial opportunity for the Appellants to participate; they chose not to. The Appellants knew a common utility right of way exists next to their property and they have no special rights to its use. LBR has jurisdiction over the uses of all common right of way property in this development and common property is to be used for the good of the entire condominium. It cannot remain the same forever.

SUMMARY OF AFFECTED PARTIES' POSITIONS

[26] The owners of the residence south of the lift station (#644) provided a written submission advising of their understanding that:

> (a) In the preliminary layout the transformer was located between our house and the lake; we raised a concern and the plan was revised.

(b) After we expressed the concern that some type of (re)mediation was required to address the radiation from the transformer, the project engineers/LBR proposed a concrete wall to protect us and the public.

(c) During recent testing we could hear the stand-by generator, but only for a short time. The sewer pumps do create noise continuously and a start/stop operation should be considered.

SUMMARY OF APPELLANTS' POSITION

[27] The Appellants are concerned the new surface equipment, underground pumps and related piping and control systems, are only a few feet from their residence and bedroom windows; they block the view and contribute to noise and exhaust emissions from the generator. Further, radiation from the transformer be directed toward the bedroom window. The common area was supposed to be a walkway and an opening to the lake that could be used by emergency vehicles, but the new facilities occupy a large portion of the common property.

[28] The Appellants understand the cement blocks are intended to protect a concerned neighbor from fugitive radiation. They share their neighbour's concerns about radiation, and the installation is much closer to the Appellants. The blocks are installed on only two sides of the transformer - not around the generator or on the Appellants' side. The protection should be for #646 as well as for #644 which has more protection and has its view of the installation blocked by a row of trees.

[29] The new installation is not just for emergencies – it is a big change and a major piece of infrastructure. The Appellants are concerned about noise, radiation, emissions, and aesthetics and had hoped the appeal would address the whole project rather than just the cement blocks already installed. With no cooperation from the LBR or ability to appeal to the AUC, the Appellants felt a development appeal was their sole option and could result in discussion with LBR and AUC.

[30] Noise levels are higher than recorded in the report - almost 80 decibels, exceeding AUC standards. Consultation on noise alone should have taken place, and the impacts of both the generator and the transformer need consideration. The small size of the generator does not mean it should be installed outside a bedroom window.

[31] The Appellants stated they had little or no consultation and disagree with the Applicant's description of the process. There were no visits from LBR until Christmas week, 2022 when the President came by. They suggested an interlocking block wall along the property line to address concerns about noise and radiation and were told this would be looked into even though it may not be a good idea. There was no follow-up.

[32] In summary, the overall design of the current installation is flawed. What is needed is an 8 to 10 foot wall that is graduated so as not to block views and designed to mitigate noise, radiation and emissions, and be more aesthetically pleasing than the existing blocks. The Appellants requested the development permit be cancelled and re-issued with the a condition requiring LBR to pay for a concrete wall high and long enough to protect the occupants of #646 from all noise, emissions, and radiation from all the installed facilities. The design should also be acceptable to #646, acting reasonably.

FINDINGS

1. The approved accessory use (concrete blocks) is a permitted use and the development permit was issued with no variances. Provided that the concrete blocks are repositioned outside of the 1.5 m property line setback, and the other approval conditions are met, there are no further grounds for appeal.
2. In this case, the potential impact of lift station infrastructure (noise, emissions, and radiation), and the potential effectiveness of the concrete blocks in addressing any potential impacts, are matters to be addressed by other provincial authorities and not within the scope of a development approval or appeal.
3. No evidence has been submitted which would suggest that the appearance of the concrete blocks merits further consideration.

DECISION

[33] The appeal is denied, and the conditional approval of the DA is confirmed as issued.

Development Permit 5802023 for an Accessory Structure in Grouped Reservoir Residential on Plan 9311683, Unit 7 as applied for by Tim Stewart, has been approved subject to the following conditions:

1. No Development authorized by this Development Permit shall commence:
   a. Until at least 21 days after the issue of the Development Permit, or
   b. If an appeal is made, until the appeal is decided on.
2. The minimum/maximum requirements for all setbacks, as established in Land Use Bylaw 2020-028 are met.
3. All outstanding taxes be paid prior to development commencement.
4. This is not a building permit; all Permits as required under the Safety Codes Act and its regulations shall be obtained and a copy of the Building Permit and any other required Safety Code Act approvals or permits shall be submitted to the County.
5. The applicant is solely responsible to obtain and comply with any other required Municipal, Provincial or Federal government permits, approvals, or licenses.
6. This Development Permit is valid for 12 months from the date of issue unless the Municipal Planning Commission has extended the term of the Development Permit in accordance with the Land Use Bylaw.

REASONS

Introduction

[34] This appeal is related solely to the DA's approval of the concrete block installation. The LPRT notes the approval relates to the development "as applied for by Tim Stewart", which is important given that there was conflicting evidence as to where the blocks are currently situated and where they are eventually to be placed. While not unique, this appeal differs from the standard development appeal in that the concrete block structure under appeal has already been built, and by the fact that the Applicant has been re-positioning some concrete blocks prior to the hearing. The DA will wish to ensure the eventual configuration of the concrete block structure is in keeping with the details of the development application as well as the approval conditions.

LPRT Jurisdiction

Permitted Use Appeals

[35] As noted in the background section of this order, the development is a permitted use; s. 685 of the *Act* limits the scope of an appeal board's jurisdiction for appeals relating to this type of use*:*

> 685(3) Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under subsection 683.1 (8).

The LPRT neither heard nor found evidence that LUB provisions were relaxed, varied or misinterpreted in the DA decision; therefore, it must uphold the development permit approval and deny the appeal.

[36] The LPRT heard substantial evidence from both the Applicant and the Appellants on the merits of the consultation that took place leading up to the lift station upgrade and the installation of the concrete blocks. While information is useful as background, it does not impact the LPRT's jurisdiction or decision.

AUC Authorizations

[37] A number of important matters within the jurisdiction of other Provincial authorities (AUC) appear to be outstanding. The LPRT observes s. 619 gives priority to decisions by such authorities over decisions of the DA and appeal boards:

> **619(1)** A licence, permit, approval or other authorization granted by the NRCB, ERCB, AER, AEUB or AUC prevails, in accordance with this section, over any statutory plan, land use bylaw, subdivision decision or development decision by a subdivision authority, development authority, subdivision and development appeal board, or the Land and Property Rights Tribunal or any other authorization under this Part.

These matters include the possible impact of the lift station infrastructure with regards to noise, emissions, and radiation, and the ability of the concrete blocks to mitigate any potential impact. Each party noted the possibility of further appeals pursuant to other legislation. In the LPRT's opinion, it is in both parties' interest to resolve these matters in a collaborative manner as soon as possible, and the LPRT commends Vulcan County's offer of assistance.

[38] For example, the LPRT notes the DA's suggestion that construction of a fence along the Appellants' property line be explored. The consultant's report made recommendations to address the impact of noise on both adjoining dwellings, and noted wood can successfully mitigate sound. Of course, none of the LPRT's comments should be interpreted as intended to detract from requirements or obligations that may be imposed by the AUC or other applicable regulatory regime.

Other Approvals

[39] The landowner/developer is responsible for all other applicable permits or approvals required by other enactments (for example, *Water Act*, *Nuisance and General Sanitation Regulation*, building permit, etc.) from the appropriate authority. The LPRT is neither granting nor implying any approvals other than that of the development permit. Any other approvals are beyond the LPRT's scope of a development appeal. Satisfaction of such requirements is the responsibility of the landowner/developer.

Dated at the City of Edmonton in the Province of Alberta this 30th day of October, 2023.

LAND AND PROPERTY RIGHTS TRIBUNAL

E. Williams, Member

APPENDIX A

PARTIES WHO ATTENDED, MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING

NAME	CAPACITY
B. Mersereau	Appellant
P. Sorensen	Appellant
A. Matlock	Development Authority Representative
A. Erickson	Development Authority Representative
T. Harvey	Development Authority, Observer
C. Dickie	Development Authority, Observer
K. Nelson	Development Authority, Observer
D. Logan	Development Authority, Observer
M. Kwiatkowski	Counsel for the Applicant
T. Stewart	Applicant
T. J. Taylor	Affected Person, Resident and Vice President of Condominium Board

APPENDIX B

DOCUMENTS RECEIVED PRIOR TO THE HEARING

NO.	ITEM
1A	Notice of Appeal (3 pp)
2R	Information Package D23-044 (76 pp)
3R	Agency response ATCO auto reply acknowledgement (1 pp)
4A	Appellant Submission Supplemental Information (3 pp)
5AP	20230831 Little Bow Resort Generator Noise Impact Assessment (41 pp)
6AP	Little Bow Resort 2022-02-02 BOM 2 Emergency Generator and ATS (112 pp)
7AP	Little Bow Resort Backup to Consultation History July 2023 (47 pp)
8R	Land Use Bylaw (300 pp)
9R	Municipal Development Plan (44 pp)
10AP	Lift Station Consultation History (8 pp)
11AP	Letter to the Appeal of lift station location Uhrich (1 pp)

APPENDIX C

DOCUMENTS RECEIVED AT THE HEARING

NO.	ITEM
12R	Notice from DA
13A	Video Clip from Appellant

APPENDIX D

LEGISLATION

The *Act* and associated regulations contain criteria that apply to appeals of planning decisions. While the following list may not be exhaustive, some key provisions are reproduced below.

Municipal Government Act

Purpose of this Part

Section 617 is the main guideline from which all other provincial and municipal planning documents are derived. Therefore, in reviewing development appeals, every proposal must comply with the philosophy expressed in 617.

617 The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted

(a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and

(b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,

without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

Permitted and discretionary uses

Section 642 deals with the authority that a Development Authority has respecting permitted and discretionary uses

642(1) When a person applies for a development permit in respect of a development provided for by a land use bylaw pursuant to section 640(2)(b)(i), the development authority must, if the application otherwise conforms to the land use bylaw and is complete in accordance with section 683.1, issue a development permit with or without conditions as provided for in the land use bylaw.

(2) When a person applies for a development permit in respect of a development that may, in the discretion of a development authority, be permitted pursuant to section 640(2)(b)(ii), the development authority may, if the application is complete in accordance with section 683.1, issue a development permit with or without conditions as provided for in the land use bylaw.

(3) A decision of a development authority on an application for a development permit must be in writing, and a copy of the decision, together with a written notice specifying the date on which the written decision was given and containing any other information required by the regulations, must be given or sent to the applicant on the same day the written decision is given.

(4) If a development authority refuses an application for a development permit, the development authority must issue to the applicant a notice, in the form and manner provided for in the land use bylaw, that the application has been refused and provide the reasons for the refusal.

…

Section 683 deals with the responsibilities of a municipality regarding issuance of a development permit.

Permit

683 Except as otherwise provided in a land use bylaw, a person may not commence any development unless the person has been issued a development permit in respect of it pursuant to the land use bylaw.

Development applications

683.1(1) A development authority must, within 20 days after the receipt of an application for a development permit, determine whether the application is complete.
(2) An application is complete if, in the opinion of the development authority, the application contains the documents and other information necessary to review the application.
(3) The time period referred to in subsection (1) may be extended by an agreement in writing between the applicant and the development authority or, if applicable, in accordance with a land use bylaw made pursuant to section 640.1(a).
(4) If the development authority does not make a determination referred to in subsection (1) within the time required under subsection (1) or (3), the application is deemed to be complete.
(5) If a development authority determines that the application is complete, the development authority must issue to the applicant an acknowledgment in the form and manner provided for in the land use bylaw that the application is complete.
(6) If the development authority determines that the application is incomplete, the development authority must issue to the applicant a notice in the form and manner provided for in the land use bylaw that the application is incomplete and that any outstanding documents and information referred to in the notice must be submitted by a date set out in the notice or a later date agreed on between the applicant and the development authority in order for the application to be considered complete.
(7) If the development authority determines that the information and documents submitted under subsection (6) are complete, the development authority must issue to the applicant an acknowledgment in the form and manner provided for in the land use bylaw that the application is complete.
(8) If the applicant fails to submit all the outstanding information and documents on or before the date referred to in subsection (6), the application is deemed to be refused.
(9) If an application is deemed to be refused under subsection (8), the development authority must issue to the applicant a notice in the form and manner provided for in the land use bylaw that the application has been refused and the reason for the refusal.
(10) Despite that the development authority has issued an acknowledgment under subsection (5) or (7), in the course of reviewing the application, the development authority may request additional information or documentation from the applicant that the development authority considers necessary to review the application.

Grounds for appeal

Section 685 addresses grounds for appeal by an Applicant of a decision by the Development Authority

685(1) If a development authority
(a) fails or refuses to issue a development permit to a person,
(b) issues a development permit subject to conditions, or
(c) issues an order under section 645,
the person applying for the permit or affected by the order under section 645 may appeal the decision in accordance with subsection (2.1).
(1.1) A decision of a development authority must state whether an appeal lies to a subdivision and development appeal board or to the Land and Property Rights Tribunal.

(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal the decision in accordance with subsection (2.1).

(2.1) An appeal referred to in subsection (1) or (2) may be made

(a) to the Land and Property Rights Tribunal

(i) unless otherwise provided in the regulations under section 694(1)(h.2)(i), where the land that is the subject of the application

(A) is within the Green Area as classified by the Minister responsible for the Public Lands Act,

(B) contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site,

(C) is the subject of a licence, permit, approval or other authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board or Alberta Utilities Commission,

or

(D) is the subject of a licence, permit, approval or other authorization granted by the Minister of Environment and Parks,

or

(ii) in any other circumstances described in the regulations under section 694(1)(h.2)(ii), or

(b) in all other cases, to the subdivision and development appeal board.

(3) Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under section 683.1(8).

(4) Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

(a) is made by a council, there is no appeal to the subdivision and development appeal board, or

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

Appeals

Section 686 identifies procedures that a board hearing an appeal must follow

686(1) A development appeal is commenced by filing a notice of the appeal, containing reasons, with the board hearing the appeal

(a) in the case of an appeal made by a person referred to in section 685(1)

(i) with respect to an application for a development permit,

(A) within 21 days after the date on which the written decision is given under section 642, or

(B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,

or

(ii) with respect to an order under section 645, within 21 days after the date on which the order is made,

or

(b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

(1.1) Where a person files a notice of appeal with the wrong board, that board must refer the appeal to the appropriate board and the appropriate board must hear the appeal as if the notice of appeal had been filed with it and it is deemed to have received the notice of appeal from the applicant on the date it receives the notice of appeal from the first board, if

(a) in the case of a person referred to in subsection (1), the person files the notice with the wrong board within 21 days after receipt of the written decision or the deemed refusal, or

(b) in the case of a person referred to in subsection (2), the person files the notice with the wrong board within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

(2) The board hearing an appeal referred to in subsection (1) must hold an appeal hearing within 30 days after receipt of a notice of appeal.

(3) The board hearing an appeal referred to in subsection (1) must give at least 5 days' notice in writing of the hearing

(a) to the appellant,

(b) to the development authority whose order, decision or development permit is the subject of the appeal, and

(c) to those owners required to be notified under the land use bylaw and any other person that the subdivision and development appeal board considers to be affected by the appeal and should be notified.

(4) The board hearing an appeal referred to in subsection (1) must make available for public inspection before the commencement of the hearing all relevant documents and materials respecting the appeal, including

(a) the application for the development permit, the decision and the notice of appeal, or

(b) the order under section 645.

(4.1) Subsections (1)(b) and (3)(c) do not apply to an appeal of a deemed refusal under section 683.1(8).

(5) In subsection (3), "owner" means the person shown as the owner of land on the assessment roll prepared under Part 9.

Hearing and Decision

Section 687 identified procedures to be followed at a hearing for a development permit appeal

687(1) At a hearing under section 686, the board hearing the appeal must hear

(a) the appellant or any person acting on behalf of the appellant,

(b) the development authority from whose order, decision or development permit the appeal is made, or a person acting on behalf of the development authority,

(c) any other person who was given notice of the hearing and who wishes to be heard, or a person acting on behalf of that person, and

(d) any other person who claims to be affected by the order, decision or permit and that the subdivision and development appeal board agrees to hear, or a person acting on behalf of that person.

(2) The board hearing the appeal referred to in subsection (1) must give its decision in writing together with reasons for the decision within 15 days after concluding the hearing.

(3) In determining an appeal, the board hearing the appeal referred to in subsection (1)

(a) repealed 2020 c39 s10(52);

(a.1) must comply with any applicable land use policies;

(a.2) subject to section 638, must comply with any applicable statutory plans;

(a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;

(a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;

(b) must have regard to but is not bound by the subdivision and development regulations;

(c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

(4) In the case of an appeal of the deemed refusal of an application under section 683.1(8), the board must determine whether the documents and information that the applicant provided met the requirements of section 683.1(2).

Matters Related to Subdivision and Development Regulation - Alberta Regulation 84/2022

Appeals removed from list

27(1) The following are removed from the list of circumstances where a notice of appeal of a decision of a development authority may be filed with the Land and Property Rights Tribunal:

(a) an appeal where the land that is the subject of the application is within the Green Area as classified by the Minister responsible for the Public Lands Act, as referred to in section 685(2.1)(a)(i)(A) of the Act;

(b) an appeal where the land that is the subject of the application contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site, as referred to in section 685(2.1)(a)(i)(B) of the Act.

(2) Subject to subsections (3) and (4), the appeals referred to in subsection (1) may be commenced by filing a notice of appeal with the subdivision and development appeal board.

(3) If the land that is the subject of an appeal referred to in subsection (1) is subject to a licence, permit, approval or other authorization referred to in section 685(2.1)(a)(i)(C) or (D) of the Act, then, despite subsection (1), the appeal may be commenced by filing a notice of appeal with the Land and Property Rights Tribunal.

(4) Subsection (1) does not apply to an appeal if the notice of appeal was filed with the Land and Property Rights Tribunal before May 12, 2021.

MUNICIPAL BYLAWS

Vulcan County Land Use Bylaw

GROUPED RESERVOIR RESIDENTIAL – GRR (Schedule 2)

PURPOSE: To provide for the urban-style subdivision and/or development, with the provision of communal water and sewer systems, of residential and resort communities within Vulcan County.

SECTION 1
USES 1.1

Permitted Uses
Accessory building, structure or use
Additions to existing buildings
Home occupation 1
Manufactured dwelling 1 (located in approved Manufactured Dwelling Park/Community) Modular dwelling 1
Ready-to-move dwelling
Show home
Sign, Category 1 (e)
Single detached dwelling
Utilities (e)

(e) means "Exempt" and development will not require a development permit if it meets all the provisions of this Bylaw and is in accordance with any applicable requirements in Schedule 3.