

REGIONAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

UNIT B 4730 ROSS STREET
RED DEER AB T4N 1X2
403-343-3394

January 28, 2022

NOTICE OF DECISION

RE: Appeal of Stop Order - Personal Recreational Use with Services and Fill for Drainage Improvement on Lot 13, Block 1, Plan 8020115 (7 Parkland Street), located in the Summer Village of Parkland Beach, Alberta.

SUMMARY OF APPEAL

This is an appeal of a Stop Order

The Appellants – Steve Alfaiate – appealed the Stop Order. The Appellant states that he is not in violation of Condition #1 or Condition #3 of Development 2019-11.

Notice of the appeal was provided to interested parties and a hearing was held on January 20, 2022.

Hearing Panel: Karen Howley, Chair
Jocelyn Robinson, Board Member
Kathy Pfau, Board Member

SDAB Clerk: Tracy Breese

BACKGROUND

The Summer Village of Parkland Beach Development Authority approved Development Permit No 2019-11 on June 18, 2020 for Personal Recreation Use with Services and Fill for Drainage subject to conditions. The conditions relevant to this hearing are as follows:

Condition #1: The development of the site improvements shall proceed in substantial accordance with the attached application form and approved plans and drawings. Any modification or changes from the approved plans requires written approval from the Development Authority.

Condition #3: Finished grading of the parcel must direct storm water run-off into the municipal drainage system or roadway ditch without causing ponding of water on or flow of water across abutting lands. This will be accomplished by the addition of swales as shown on the drainage plan adjacent and parallel to the north and south property lines.

On November 4, 2020, the Summer Village sent notice to the Applicant indicating that the Development Permit was not complied with. The Applicant was instructed to bring the Development and Lands within compliance of the Development Permit. In consideration of frozen ground conditions and timing for grading in Spring 2021, the Applicant was given until July 16, 2021 to ensure compliance.

On October 20, 2021, the Summer Village attended the site to inspect the Development from the two neighbouring properties abutting the Lands on the north and south and the public road allowance and took photos from off-site. It noted in particular that:

1. portions of the Drainage Plan had not been implemented in the rear portion of the Lands;
2. the elevation of the Lands along the north boundary appears higher than the elevations indicated in the Drainage Plan; and
3. the swale along the south boundary of the Lands was poorly shaped and contained obstructions that would interfere with the flow of water.

On December 9, 2021, the Summer Village issued a Stop Order pursuant to Section 645 of the Municipal Government Act, RSA 2000, c M-26 (the "MGA").

The applicant was ordered to take the following actions:

(1) Prepare a detailed survey of the Lands showing existing elevations as of the date of the survey. The survey must be prepared and signed by an Alberta Land Surveyor (ALS), be to a scale of 1:200, and must provide the elevation for each location, or a point within 30cm of each location, marked as "Design Elevation" on the Drainage Plan.

(2) Provide a hard copy and digital copy (in dwg format) of the detailed survey described in item 1 above to the Summer Village and a written statement signed by the Applicant indicating:

a. The Applicant's confirmation that it will comply with the Drainage Plan forming part of the approved Development Permit; or

b. A proposal for an alternative drainage plan that meets the requirements of condition 3 of the Development Permit for the Development Authority's consideration and the Applicant's intent to comply with the alternative plan if said plan is approved by the Development Authority;

by 4:00 pm on Thursday, March 31, 2022.

(3) Implement the approved Drainage Plan or any alternative plan approved by the Development Authority as described in item 2 above and provide a final survey prepared and signed by an accredited Alberta Land Surveyor that shows the finished grading matches the approved elevations by 4:00 pm on Thursday, June 30, 2022.

(4) If the deadline listed in item 2 above is not met or the deadline listed in item 3 above is not met, you must immediately cease the use of the Lands for Private Recreation Use, including but not limited to any daytime or overnight use of the Lands for recreation and/or accommodation purposes and further storage of items on the Lands. You continue to be required to maintain onsite vegetation and attend to the general appearance and maintenance of the Lands to ensure compliance with the Summer Village Community Standards Bylaw #2019.07.

On December 28, 2021, an appeal was filed with the Regional Subdivision and Development Appeal Board by the Applicant, Steve Alfaiate. Affected parties were notified on December 28, 2021, with public notifications being distributed on January 7, 2022 for adjacent land owners and January 10, 2022 on the Summer Village of Parkland Beach webpage and bulletin board.

MERIT HEARING

Summary of the Development Authority's Submissions

The development authority issued the development permit subject to a series of conditions and the ones that are critical to this application, this matter before the Board, are highlighted on the face of the Stop Order being condition #1 and condition #3. Condition #1 being that the development of the site improvements shall proceed in substantial accordance with the attached application form and approved plans and drawings. Any modification or changes from the approved plans requires written approval from the Development Authority.

In late Fall 2020, the Summer Village was notified of some concerns by the adjacent property owners that led to a subsequent site inspections and an investigation to determine on whether or not there was a contravention of the conditions of the approval attached to the development permit. The conclusion by the development authority at that time, was yes there did appear to be a contravention and that the drainage plan was not being properly followed and that there was some concern about ponding. That led to a written notice to the landowner to give them an opportunity to come into compliance with the approved development permit with an expectation that if compliance wasn't achieved by July 16, 2021, that further enforcement may incur.

In October of 2021, the Summer Village along with Craig Teal, inspected the site to see if anything had changed from the November 4, 2020 timeframe and the conclusion was no that there were a couple points that noted that the drainage plan had not been fully implemented and that the development permit conditions had not been met. In particular, portions of the drainage plan had not been implemented in the rear of the property where the more Easterly part of the parcel. In some locations, in particular the North boundary, the elevation that what has actually been achieved appears to be higher than the elevations suggested on the drainage plan and on the South boundary, the swale does not seem to be properly shaped. Based on those three major points, the Development Authority concluded that the drainage plan which was part of the approved development permit had not been fully complied with and

implemented and subsequently, issued the Stop Order. The Stop Order instructed the Appellant to confirm the elevations by having an Alberta Land Surveyor prepare a detailed survey by March 31, 2022 and then implement the rest of the drainage plan or propose an alternative plan with a deadline to achieve this of June 30, 2022.

In the Development Authorities view, the development approval Conditions #1, has not been fully implemented and aspects of Condition #3, regarding the increased ponding on adjacent properties have also not been satisfied and those constitute the breach which the Stop Order is seeking to remedy.

Summary of the Appellants' Submissions

The appellant stated that he worked closely with the previous CAO of the Summer Village, with multiple emails between them. He thought the project was finished in mid-September 2020. The new CAO (Cyril Fortney) started in December 2020. The Appellant stated that the neighbor has been flooding his property out. As per the drainage plan, the swales are on our property. There are no shared swales. Our property is higher and that is how we were going to get the water to move to the front into the Municipal drainage system. Any of the storm water on the abutting lands is not from our property as we are higher, and we manage all of our water on our property. As per page 5 of the agenda package, we emailed the previous CAO and she replied stating that the property looks good and that she would be in touch if any further concerns arose. At that point, we thought we were complete. For the month of September, we seeded and planted trees. I do not agree that the new CAO can overturn what the previous CAO has said. On August 18, 2020, page 5 of the package the previous CAO sent us an email stating that there were no concerns as long as the drainage plan works, and no future run-off flows onto the neighboring lots. As per Condition #3, we feel that we have met that condition. Our property does not cause ponding on adjacent lands.

Adjacent Landowner – Jim Price

We watched them bring in truckload after truckload after truckload of fill and we never saw a surveyor there checking out any elevations. The problem he has I figure is self-inflicted. All he has to do is hire a surveyor to check elevations to confirm whether he is adhering to the drainage plan, plain and simple and if he's planted tree and has to take them out, then so be it.

KEY FINDINGS OF FACT

This appeal concerns the issuance of a Stop Order by the Development Authority in relation to the subject lands.

In order for the Board to uphold the Stop Order, it must determine if the Development Authority has established a breach of the approved Development Permit.

The Development Authority maintains that the three points it listed on the Stop Order on page 25 of the Agenda Package, in addition to the evidence it produced at the hearing, are sufficient for the Board to find a breach of the development permit conditions.

The Appellant argued that the Stop Order should not have been issued as he was not violating Condition #1 or Condition #3 of Development Permit 2019-11.

DECISION

For the reasons detailed below, this appeal is upheld and the Stop Order is hereby revoked.

REASONS FOR DECISION

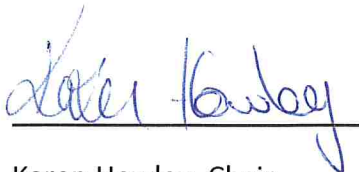
The Board finds that the process of issuing the Stop Order was correct.

On considering the issue of a breach of conditions of the Development Permit, the Board was not persuaded by the Development Authority's evidence that a breach of either condition had occurred.

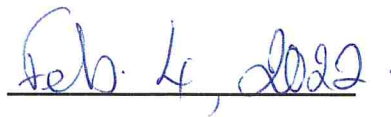
Condition #1 has been satisfied and, based on the evidence presented, the Board finds that the Appellant had proceeded in substantial accordance with the approved development permit and approved drainage plans.

Condition #3 has also been satisfied. The evidence provided by the Appellant was persuasive in confirming that the water from lot 13 flows to the municipal ditch and not in or through the adjacent properties, as required under the development permit. The evidence provided by the Development Authority did not contradict that finding. The Board therefore agrees with the Appellant that the grading of the lot does not cause ponding or flow of water onto abutting lands.

Dated at City of Red Deer, in the Province of Alberta this 4th day of February, 2022 and signed by the Chair on behalf of all three panel members who agree that the content of this decision adequately reflects the hearing, deliberations and decision of the Board.



Karen Howley, Chair



Date

APPENDIX "A"

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

<u>Name</u>	<u>Capacity</u>
Steve Alfaiate	Appellant
Cyril Fortney	Development Authority
Craig Teal	PCPS
Jim Price	Adjacent Neighbour
Suzanne Goodwin	Observer

APPENDIX "B"

DOCUMENTS RECEIVED PRIOR TO THE HEARING:

<u>Reference Tab</u>	<u>Item</u>
TAB A	Notice of Appeal
TAB B	Development Permit Application
TAB C	Notice of Decision
TAB D	Information Provided by Development Authority
TAB E	Notices of Hearing