

REGIONAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

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403-343-3394

December 12, 2019

Ms. C. Minifie
53 Lakeview Avenue
Summer Village of Gull Lake

Mr. & Mrs. Heller
51 Lakeview Avenue
Summer Village of Gull Lake

NOTICE OF DECISION

RE: Appeal of Development Permit #19-11-501600 for a Beach Path issued on to the owners of 51 Lakeview Avenue (Lot 13A, Block 2, Plan 1622212) in the Summer Village of Gull Lake

This is the decision of the Regional Subdivision and Development Appeal Board from a November 23, 2019 Hearing, held in the office of the Summer Village of Gull Lake, with respect to an Appeal of a Development Permit issued by the Summer Village of Gull Lake.

Before:
B. Hisey, Chair
K. Pfau, Board Member
L. Petten, Board Member

Clerk:
P. Irwin

PRELIMINARY MATTERS

At the start of the Hearing, the Parties were given the opportunity to raise any objections to the Board Members assigned to the Hearing. No objections were raised.

With respect to the Request for Postponement of the Hearing, the Appellant stated that she wished to withdraw the Request. The Hearing proceeded to the Merits of the Appeal.

BACKGROUND to the DEVELOPMENT PERMIT APPLICATION

Many of the subdivided lots in the Summer Village of Gull Lake were created over 100 years ago at a time when the shoreline was defined by a survey from 1893. Since the original survey, the level of the lake has gone down, with the result that the original cottages are now several hundred feet from the water's edge. Subsequent to the water level's decline, there has been considerable growth of trees and shrubs between the cottages and the water and property owners have found it desirable to construct a beach path to get to the water. In 2015, the Summer Village enacted a Policy related to the Development of Beach Paths on Accreted Lands. This appeal is in regard to an Application for a Development Permit for a Path to the Beach.

SUMMARY of the DEVELOPMENT AUTHORITY's POSITION

On September 27, 2019, the property owner at 51 Lakeview Avenue applied for a Development Permit for a Beach Path in the "accreted land" portion of his property. The purpose was for the removal of trees, small bushes and ground vegetation to create a path to the beach.

The Application was reviewed and consideration was given to the Land Use Bylaw as well as Policy #14, Development of Beach Paths. Council Members were contacted for their review and comments and they were in favour of the development. One Member of Council made an onsite inspection. The Application was approved on October 4, 2019 in the belief that it sufficiently met the requirements, subject to the following five conditions:

1. The beach path must be no larger than 15 feet wide.
2. Should vegetation be removed in excess of 15 feet wide the applicant will remediate the beach path back to 15 feet wide by planting additional vegetation within 30 days.
3. Removal of the bushes and ground vegetation shall be carried out to create a minimum of dust or other nuisance. Work shall be performed between the hours of 8:00 am and 10:00 pm on weekdays and between the hours of 9:00 am and 10:00 pm on Saturday, Sundays or Statutory Holidays.
4. All vegetation debris will be removed offsite at the applicants cost within 7 days of having the work completed.
5. The applicant shall prevent soil erosion or debris from being spilled on public streets and lands, and shall not place soil or any other material on adjacent properties without permission in writing from adjacent owners.

Notices of the Permit Approval were sent out/ posted/ advertised as required. The Development Authority noted that Section 24 of the Environmental Open Space (EOS) was essentially not applicable to the zoning that the subject Application falls under.

The Summer Village does not approve contractors (for private property work).

With respect to setbacks, for beach pathways, there is no minimum setback from the property line (whereas there is a 1.5 m setback for buildings).

SUMMARY of the APPLICANT's POSITION

A Beach Path Development Permit was applied for on September 27, 2019, with estimated start and completion date "unknown; before end of October".

The Applicant submits that he was advised that a hand drawn plan of the proposed development would be sufficient.

The Application was approved on October 4, 2019.

The Applicant submits that he did not act too soon with the work; that he did not move the Appellant's survey fence posts; and that he did not cut down any trees on the Appellant's property.

Markers were placed along the property line to ensure that the Applicant's contractors would not trespass on the neighbour's property. These were done in the spring of 2018 by stringing lines between the legal survey stakes.

The Applicant submits that a new survey of the property line between his property and the Appellant's property needs to be done.

The Applicant submits that he was not able to be at the property at the time the work was performed by the contractor due to a family medical matter requiring him to be in Calgary.

SUMMARY of the APPELLANT's POSITION

1. The Development Permit procedure was not followed: the work was done in advance of the expiry date for appeal.
2. The plan that was submitted with the Permit Application was not readable; not to scale.
3. Seventy-six trees on the Appellant's property were taken out.

The Appellant referred to various photos showing location of survey markers, new trees that had been planted, etc. The Appellant's submission also stated that someone tampered with her 2016 legal survey markers.

The Appellant submitted that she was very clear on where her property line was located, having had it staked in 2016 and re-staked in 2018. She stated that a permit needs to be issued with a plan that the neighbour can understand and was shocked that a permit was issued with the plan that was submitted with the Application.

FINDINGS

The Summer Village of Gull Lake has a Land Use Bylaw regulating development within the Summer Village, as well as a Policy regulating the construction of Beach Paths on the accreted lands between cottages and the lakeshore,

The Applicant submitted an Application to develop a Beach Path, as well as a sketch/plan, on September 27, 2019 and this was approved by the Development Authority, with conditions, on October 4, 2019.

The Development Permit Application is for a purpose that is contemplated within the Beach Path Development Policy (#14) of the Summer Village

The sketch/plan submitted with the Development Permit Application was not to scale, but that the deficiency was insufficient to be detrimental to the intent and understanding of the Application.

The work contemplated in the Development Permit Application was carried out prior to the expiry date for filing Appeals, but the property owner carries the liability for any work completed prior to the expiry date.

Claims of trespass for this appeal fall outside of the legislation for this Board.

DECISION

The Board hereby issues a new Permit for the Beach Path Development Application #19-11-501600 for Lot 13A, Block 2, Plan 162-2212 in the Summer Village of Gull Lake, with the following conditions:

1. The beach path must be no larger than 15 feet wide (*Summer Village of Gull Lake Policy #14.00 Beach Path Development*).
2. Should vegetation be removed in excess of 15 feet, the Applicant will remediate the beach path back to 15 feet wide by planting additional vegetation (*Summer Village of Gull Lake Policy #14.00 Beach Path Development*).
3. The Board recognizes that the majority of work for the construction of this beach path has been completed, yet confirms the parties' apprehension regarding the property line

location and consequently the removal of associated vegetation. Therefore, the Applicant is required to engage a Professional Alberta Land Surveyor to locate and mark that part of the west property line of Lot 13A, Block 2, Plan 162 2212 from the North West corner (intersection of the north/(rear and west property lines) to the deflection along the west lot line. To ensure that this survey is completed during the best and most optimal time for observance of natural vegetation, the survey will be required between April and June of 2020.

4. The Applicant is required to notify the Summer Village of Gull Lake Development Authority immediately upon completion of the lot line survey for confirmation of conditions #1 and #2 of this approval.

REASONS for DECISION

The Board is mindful of the limitation of its jurisdiction to **confirm, revoke, or vary** the development permit or any condition attached, in accordance with the Municipal Government Act.

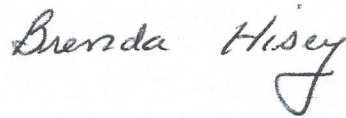
The Board finds that the Development Permit Application issued on October 4, 2019 met the requirements of the Summer Village's Land Use Bylaw and its Policy on Beach Path Development. While the sketch/ plan accompanying the Application is not "to scale", in the Board's opinion, it is sufficient for decision making purposes.

Based on the documentary evidence before the Board, as well as the testimony of the Appellant and the Applicant, the Board notes that, notwithstanding the confidence of each of the parties on the location of the property line defining their properties, a staking out of the property line by a Professional Alberta Land Surveyor, should be beneficial to resolution of the issues between the Appellant and the Applicant.

ADJOURNMENT and CONCLUSION of the HEARING

The Hearing was adjourned at 12:35 pm on Saturday, November 23, 2019 and was left open for the Board to be satisfied that it had received all materials. The Hearing was closed on Monday, December 2, 2019 when Exhibit B of submissions was posted to the website of the PCPS/ Regional SDAB.

Signed:



B. Hisey, Chair
Regional Subdivision and Development Appeal Board

This decision may be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal this decision, 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": EVIDENCE CONSIDERED BY THE BOARD:

Exhibit A: 4 tabs & 44 pages received as of November 14, 2019, as follows:

Tab 1: Submission from Appellant (pages 3 - 15)

Tab 2: Submission from Applicant (pages 16 - 23)

Tab 3: Submission from Development Authority (pages 24 – 38)

1. Policy #14 Beach Paths (4 pages)
2. Beach Path Application (2 pages)
3. Area Plan (1 page)
4. Cover Letter to Applicant re Permit (1 page)
5. Permit Approval (1 page)
6. Public Notice of Permit Approval (1 page)
7. Notice to Adjacent Owners of Permit Approval (1 page)
8. Development Authority Report for SDAB (2 pages)
9. Land Use Bylaw Excerpts (1 page)

Tab 4: Notices (pages 39 – 44)

1. Newspaper Ad (Lacombe Globe: November 14, 2019 issue) (1 page)
2. Letter to Appellant (1 page)
3. Letter to Applicant (1 page)
4. Notice to Development Authority (1 page)
5. Notice to Adjacent Property Owners (sample) (1 page)

Exhibit B:

Further Submissions from Appellant:

1. Trees.by.Yolanda.Oct.21.2009.Photo.E2.jpg (1 page)
2. Trees.by.Yolanda.2.Oct.21.2009.Photo.E3.jpg (1 page)
3. 2016.ENCROACHMENT.PHOTO.H.(Sept.24.Digger.Hole.by.Rodko).jpg (1 page)
4. 2016.ENCROACHMENT.PHOTO.I.(Sept.24.Digger.by.Rodko).jpg (1 page)
5. 2016.ENCROACHMENT.PHOTO.J.North(Aug.17.Survey.Markers.BtwnCabins.1.North).jpg (1 page)
6. 2016.ENCROACHMENT.PHOTO.K.South.(Aug.17.Survey.Markers.BtwnCabin (1 page)
7. Google.Earth.PHOTO.L.(Oct.9.2014.Closeup).jpg (1 page)
8. PHOTO.N.CLEARCUTTING.PROHIBITED.SVGL.Policy.jpg (1 page)
9. 2019.Rebuttal.Trees.Appeal.doc (4 pages)
10. PHOTO.G.(INCHKEITH.AERIALVIEW.SURVEYOR'S.PLOT.LOT13B.Colour.fr.Len.Jul.2017.Flagged).pdf (1 page)
11. PHOTO.M.New.West.Survey.RECEIPT.pdf (1 page)
12. 2019.Rebuttal.Trees.Appeal.edited.doc (5 pages)
13. Request for Postponement (1 page)
14. Authorization for Representative to Speak at Hearing (1 page)
15. Letter from Jack Minifie (1 page)
16. Photo.E1.enlarged.MINIFIE.png (1 page)

Further Submissions from Applicant:

1. Email (November 21) + 5 photos

Appendix "B": PARTIES WHO ATTENDED THE HEARING

<u>NAME</u>	<u>CAPACITY</u>
C. Minifie	Appellant (via teleconference)
W. Heller	Applicant (via teleconference)
T. Kleeberger	Development Authority
B. Hopkins	Appellant's Representative
S. McTavish	Observer
C. McTavish	Observer
J. Williamson	Observer
A. Homenuk	Observer
D. Francoeur	Observer
M. Kasha	Observer
M. Dahl	Observer
B. McGillivray	Observer

Development Appeals

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.

1995 c24 s95

Permit deemed refused

684 An application for a development permit is, at the option of the applicant, deemed to be refused if the decision of a development authority is not made within 40 days after receipt of the application unless the applicant has entered into an agreement with the development authority to extend the 40-day period.

1995 c24 s95

Grounds for appeal

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 to the subdivision and development appeal board.

(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 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.

1995 c24

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

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

- (i) the date on which the person is notified of the order or decision or the issuance of the development permit, or
- (ii) if no decision is made with respect to the application within the 40-day period or within any extension under section 684, the date the period or extension expires,

or

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

(2) The subdivision and development appeal board must hold an appeal hearing within 30 days after receipt of a notice of appeal.

(3) The subdivision and development appeal board 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 subdivision and development appeal board 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.

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

1995 c24 s95

Hearing and decision

687(1) At a hearing under section 686, the subdivision and development appeal board 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 subdivision and development appeal board 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 subdivision and development appeal board

(a) must act in accordance with any applicable ALSA regional plan;

(a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;

(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,

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.