

Appeal No.: 0262 001 2020
Hearing Date: February 12, 2020

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: K. Howley
PANEL MEMBER: M. Kartusch
PANEL MEMBER: T. Lacoste
PANEL MEMBER: C. Mah
PANEL MEMBER: G. Paradis

BETWEEN:

TRICON DEVELOPMENTS INC.
Represented by Jason Bell

Appellant

and

THE CITY OF RED DEER
Represented by Beth MacLachlan, Development Officer

Development Authority

DECISION:

The Red Deer Subdivision and Development Appeal Board varies the decision of the Development Officer which refused the Appellant's application for an addition to an existing industrial building at 4731 78A Street Close, on the lands zoned I1 Industrial (Business Service) District. The application is conditionally approved with the following conditions:

1. A Development Permit shall not be deemed completed based on this approval until all conditions except those of a continuing nature, have been fulfilled to the satisfaction of the Development Officer.
2. All Development must conform to the conditions of this Development Permit and the Approved Plans and any revisions thereto as required pursuant to this Approval. Any revisions to the Approved Plans must be approved by the Development Authority.
3. The Applicant shall repair or reinstate, or pay for the repair or reinstatement, to original condition, any public property, street furniture, curbing, boulevard landscaping and tree planting or any other property owned by the City which is damaged, destroyed or otherwise harmed by development or construction on the site. Repairs shall be done to the satisfaction of The City of Red Deer. In the event that the City undertakes the repairs the Applicant shall pay the costs incurred by the City within 30 days of being invoiced for such costs.

4. Prior to the commencement of any construction, demolition or other work associated with this approval, the Applicant shall provide the following documents, plans or drawings (the "Additional Documents") to the Development Officer, which must be consistent with the Approved Plans. The Additional Documents are:

- a) Revised drawings conforming to the requirements specified in Section 16 of The City of Red Deer Design Guidelines.

- b) An application for a water service kill, new water service, and new sanitary service. A service application requires an approved Utility Plan.

The Additional Documents shall, once provided to, and accepted by the Development Officer, be deemed to form part of the Approved Plans.

A detailed summary of the decision is provided herein.

JURISDICTION AND ROLE OF THE BOARD

1. The Subdivision and Development Appeal Board (the Board) is governed by the *Municipal Government Act*, RSA 2000, c. M-26 (the MGA) as amended. Planning and Development is addressed in Part 17 of the MGA, and also in the *Subdivision and Development Regulation*, Alta Reg 43/2002 (the SDR).
2. The Board is established by The City of Red Deer, Bylaw No. 3619/2019, *Appeal Boards Bylaw* (April 1, 2019). The duty and purpose of the Board is to hear and make decisions on appeals for which it is responsible under the MGA and The City of Red Deer, Bylaw No. 3357/2006, *Land Use Bylaw* (August 13, 2006) (the LUB).
3. None of the parties had any objection to the constitution of the Board. There were no conflicts identified by the Board Members.
4. There were no preliminary issues for the Board to decide.

BACKGROUND

5. The SDR provides the Development Authority direction in relation to Development Permit applications for a school, hospital, food establishment or residence, if the building site is within 300 meters of a non-operating landfill.
6. On January 16, 2020, the Development Officer refused the Development Permit Application from the Appellant for the warehousing and distribution of water including a 697.4 m² addition to the existing industrial building at 4731 78A Street Close, Red Deer, Alberta. The reasons given for the refusal were
 - i. The Development Authority shall not issue a development approval for a school, hospital, food establishment or residential use that is located within 300 meters of the disposal area of an operating or non-operating landfill, as per Section 13(3)(b) of the Municipal Government Act Subdivision and Development Regulation.

The proposed Development is considered a Food Establishment and is located approximately 186 m to a non-operating landfill site – “the Riverside Heavy Industrial Park Dry Waste landfill.”

7. The Appellant filled an appeal of this decision to the SDAB on January 17, 2020

SUMMARY OF EVIDENCE AND ARGUMENT:

The Development Authority

8. The Development Authority stated that the proposed Development is located within the Northlands Industrial Park.
9. The Development Authority stated that the SDR provides direction to the Development Authority in relation to Development Permit Applications for a school, hospital, food establishment or residence, if the Building Site is within 300 m of a non-operating landfill.
10. The Development Authority explained that Building Site is defined in the SDR as “a portion of the land that is the subject of an application on which a building can or may be constructed”.
11. The Development Authority explained that the Proposed Site is approximately 186 m from the boundary of the non-operating landfill site (Riverside Heavy Industrial Park Dry Waste landfill).
12. The Development Authority stated that the proposed Development is a Food Establishment according to the definitions within the *Food Regulation* AR31/2006.

“Food Establishment” means a place where food is handled.

“Food” means any substance, including water and ice, intended for use in whole or in part for human consumption, but does not include a drug, medication or health related product regulated under the Pharmaceutical Profession Act or the Food and Drugs Act (Canada).

“Handle” means, in relation to food, the supply, sale, offering for sale, processing, preparation, packaging, providing, display, service, dispensing, storage or transportation of any food that is intended for public consumption.

13. The Development Authority confirmed that the proposed Development is a Permitted Use and in the I1 (Industrial Business Service District). It complies with the LUB with respect to zoning, setbacks, height and landscaping.
14. The Development Authority stated that it is bound by the SDR and is prohibited from issuing a Development Permit for the proposed Site due to the distance from a non-operating landfill (within 300 m).
15. The Development Authority stated that the requirements contained in Section 13, subsections (1) to (4) of the SDR may be varied by a Subdivision Authority or a Development Authority with the written consent of the Deputy Minister of Environment and Parks through Alberta Environment and Sustainable Resource Development (ESRD). The Development Officer submitted the Development Permit application and additional documents to the ESRD on January 16, 2020.

16. The Development Authority further stated that they have been advised by ESRD in accordance with their policies they will not issue a letter of consent where there is pre-existing development.
17. The proposed Development application was reviewed by the City's Environmental Services Department. The Development Authority spoke to the letter from Janet Whitesell, Waste Management Superintendent, dated January 16, 2020 (Page 71 Exhibit B.1).
18. This letter stated that the City's Environmental Services Department has no objection to the proposed Development given that the Proposed Site is 186 m from a non-operating landfill.
19. The correspondence from Ms. Whitesell confirmed her reasoning for supporting the application. Ms. Whitesell stated that the Environmental Risk Management Plan (ERMP) determined that the level of risk for subdivision or Development beyond 100 metres from the limits of waste disposal is negligible and not warranting special environmental mitigative or adaptive considerations.
20. Through the questions from the Board, Ms. Whitesell confirmed that the Riverside Industrial Park Dry Waste Landfill poses a lower risk when compared to other landfill sites throughout the City of Red Deer.
21. The Development Authority stated that the Appellant is also seeking a variance to the Minimum Parking Requirements, Section 3.1 of the LUB. The bylaw requires the Proposed Site have 21 parking stalls and 12 parking stalls are proposed. A variance of 9 parking stalls is requested.
22. The Development Authority further explained that the site was deficient in parking stalls prior to the proposed Development. Granting a variance will approve parking provided for the entire site including the existing portion of the building and proposed addition.
23. The Development Authority stated that there is on street parking adjacent to the Site. From the Development Permit application the Appellant indicated that there are 8 staff on Site and potentially 1-2 customers per day.
24. The Development Authority stated they have no objection to the requested variance to the Minimum Parking Requirements.
25. In conclusion, the Development Authority stated that this is an appropriate case for the SDAB to use its discretion to vary the setback requirements of 300 m as outlined in Section 13 of the SDR and allow the Development.
26. The Development Authority requested if the Board is prepared to revoke the decision of the Development Authority and approve the Development Permit application that the Board at minimum impose the conditions set out in Exhibit B.1 to ensure that the Development conforms to the requirements of new Development within the city.

The Appellant

27. The Appellant stated that the proposed Development is the main distribution centre for Red Deer Culligan Water which has been operating from this location since the summer of 2019 as a Permitted Use under the LUB.

28. The Appellant stated that they intend to increase production capacity to better serve the surrounding area and therefore are requesting approval of the Proposed Addition to the existing building.
29. The Appellant stated that the proposed Development is located 186 m from the property line of a non-operating landfill site. Therefore, it does not require any special environmental mitigative measures outside the 100 m of the non-operating landfill.
30. The Appellant further explained that the proposed Development will have a soil gas membrane complete with sealing and monitoring pipe installed in accordance with the required building code practices.
31. When the Board questioned the Appellant about the requested variance to the Minimum Parking Requirements the Appellant spoke on behalf of the owner and stated that the site was already deficient prior to this application.
32. The Appellant explained that he believes the parking is sufficient given they expect to have no more than 1-2 customers on site at any one time, given the come and go nature of the water fill station.

FINDINGS AND REASONS

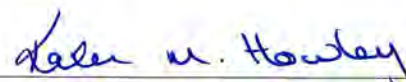
33. The Development Authority is prohibited from issuing a Development Permit approval for a school, hospital, food establishment or residence, nor may a school, hospital, food establishment or residence be constructed if the building site is within 300 meters of the disposal area of an operating landfill as per Section 13(3)(b) of the SDR.
34. The Development Authority is also prohibited from issuing a Development Permit approval for a school, hospital, food establishment or residential use, if the application would result in a property for any of those uses being located within 300 metres of the disposal area of an operating or non-operating landfill, as per Section 13(2)(b) of the SDR.
35. The Board must have regard to but is not bound by the regulation as per Section 687 (3) of the MGA, nor is it bound by the SDR.
36. The Site is zoned I1, a warehousing and distribution of water (Food Establishment) as well an addition to existing industrial building are allowed as Permitted Use within the LUB Section 6.1.1(a)(viii) and (x).
37. In correspondence from Ms. Whitesell with the Development Authority (Exhibit B.1) dated January 16, 2020, as well as the testimonial evidence provided to the Board through questioning with Ms. Whitesell confirmed that the level of risk for the proposed Development is negligible and does not warrant special environmental mitigative or adaptive considerations.
38. The Appellant stated that the proposed Development is located 186 m from a non-operating landfill therefore does not require any special environmental mitigative measures. The Appellant further explained the proposed Development will have a soil gas membrane complete with sealing and monitoring pipe installed in accordance with the required building code practices.
39. The Board acknowledges that the Development Authority was bound by the SDR in refusing the application.

40. The Board is persuaded by the information provided by both the Development Authority and the Appellant, as well as the testimonial evidence provided by Ms. Whitesell that the risk in this case is negligible.
41. The Board is satisfied that the proposed Development conforms to the LUB with respect to the zoning requirements except for parking.
42. The Development Authority stated the Minimum Parking Requirement in the LUB requires 21 parking stalls however the proposed Development is requesting 12 parking stalls. They also confirmed the site was deficient prior to this application, approving the requested variance will approve parking for the entire site (existing portion as well as the Proposed Addition).
43. The Development Authority stated they have no objections to granting the variance request given the information provided by the Appellant, as well as the availability of on-street parking.
44. The Appellant agreed with the Development Authority's position regarding the parking, adding that given the nature of this type of business they would expect 1-2 customers on-site at any one time (come and go water fill station).
45. Given there were no objections to the requested variance to the Minimum Parking Requirements, as well as the potential on-street parking availability the Board finds that the variance is appropriate in this particular instance.
46. The Board finds that it should exercise its discretion under Section 687(3)(b) of the MGA to vary the Development Authority's refusal of the Development Permit Application for an addition to the existing industrial building at 4731 78A Street Close.

CLOSING:

47. For these reasons, the decision of the Development Authority is varied, and the application is approved with conditions as stated above.

Dated at the City of Red Deer, in the Province of Alberta, this 26 day of February 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.



K. Howley, Chair
Subdivision & Development Appeal Board

APPENDIX A

Exhibits Accepted and Entered as Evidence

Exhibit A.1:	Hearing Materials	12 pages
Exhibit B.1:	Development Authority Report	76 pages
Exhibit C.1:	Appellant Submission	1 page