

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

PRESIDING OFFICER: Michael Kartusch

PANEL MEMBER: Richard Boerger

PANEL MEMBER: Don Wielinga

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BETWEEN:

Red Deer Public Schools  
Represented by Peter Farmakis

Appellant

And

Berry Architecture & Associates Ltd.  
Represented by Tracy Evans

Applicant

and

The City of Red Deer  
Represented by Debbie Hill, Development Officer

Development Authority

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**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 the existing Gateway Christian School at 4210 59 Street (Lot 1, Block 1, Plan 152 2489). 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

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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. The Appellant shall ensure that the materials and finish of the proposed development complement the existing school.
5. 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 site plan which shows the two modular additions, including access ramps, to be wholly located outside the City owned Utility Right of Way, along with bicycle racks and seating near the new modular classrooms.
6. 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*, R.S.A. 2000, c. M-26 as amended (the MGA). Planning and Development is addressed in Part 17 of the MGA, and in the *Subdivision and Development Regulation*, Alberta Regulation 43/2002 as amended (the SDR).
2. The Board is established by The City of Red Deer, Bylaw No. 3680/2022, *The Tribunals Bylaw* (April 11, 2022). 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. Section 13(2)(b) of the SDR prohibits the Development Authority from approving a Development Permit for a school, hospital, food establishment or residence if the building site is within 300 meters of a non-operating landfill.
6. On May 31, 2022, the Development Authority refused the Development Permit Application from the Appellant for an Addition (two modular classrooms) to an existing Institutional Service Facility

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(Gateway Christian School) located at 4210 59 Street (legally described as Lot 1, Block 1, Plan 1522489). 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 a school and is proposed to be located approximately 167.88 metres from a non-operating landfill – the Lindsay Thurber non-operating landfill site.

7. The Appellant filed an appeal of this decision to the Board on June 15, 2022.
8. The Board entered into evidence the documents found in Appendix A of this decision.

**SUMMARY OF EVIDENCE AND ARGUMENT:***The Development Authority*

9. The Development Authority stated that the Proposed Development is zoned PS (Public Service – Institutional or Government) District under the LUB. The Proposed Site has an existing single storey building for the Gateway Christian School which will remain intact on the proposed site.
10. The Development Authority stated that Institutional Service Facilities (schools) in the PS District are Discretionary Uses and that this proposed development complies with the LUB with respect to zoning, size, setbacks, building coverage, height, landscaping and parking. No variances to the LUB were requested.
11. 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 metres of a non-operating landfill.
12. The Development Authority stated that it is bound by the regulations contained in the SDR and is prohibited from issuing a Development Permit for the Proposed Development as it is located approximately 167.88 metres from the Lindsay Thurber non-operating landfill.
13. The Development Authority explained that the requirements contained in subsections (1) and (4) of the SDR may be varied by a Development Authority with the written consent of the Deputy Minister of Environment and Parks. The Development Authority would be required to apply for a waiver through Alberta Environment and Sustainable Resource Development (ESRD).
14. The Development Authority submitted the Development Permit application and additional documents to the ESRD on June 27, 2022. As of July 11, 2022, no response had been received from the ESRD.

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15. The Development Authority stated that in her experience, these applications/requests do not receive a response from the ESRD and that she is aware of an ESRD policy not to approve such waiver applications where there is an existing development on the site, as is the case in this appeal.
16. The Proposed Development was reviewed by The City's Environmental Services Department. The Development Authority spoke to the letter received from Janet Whitesell, Waste Management Superintendent, dated May 30, 2022, and contained in Exhibit B1. This letter stated that since there is a low level of risk that did not require mitigation and that the proposed modular classrooms were approximately 150 metres from the non-operating landfill, the Waste Management Section of Utility Services had no objection to the Proposed Development.
17. The City's Engineering Services Department did not support the Proposed Development as the location of the proposed modulators was over a City of Red Deer waterline and within a City owned Utility Right of Way.

*The Appellant*

18. The Appellant stated that biannual environmental monitoring has occurred at the location since 2006 and that there has been no change in monitoring results since 2006.
19. The Appellant stated that the proposed modulators will be surface mounted at an alternative location in close proximity to the proposed original location until the issue of the waterline and Utility Right of Way can be resolved. Once those two issues are resolved the modulators will be moved back to the originally planned location next to the school and will include a pedestrian link.
20. The Appellant stated that Gateway Christian School is full and the modulators will accommodate students currently taking classes in the hallways and the library. Further, the Appellant stated being awarded modulators is a 'big win' for the school.
21. The Appellant stated that Gateway School without the modulators capacity is 811, however, capacity could increase to 861 with the additional modulators.
22. The Appellant stated the enrolment projections for Gateway Christian School would be similar to two to three years ago. There was little growth during this time period due to the COVID 19 Pandemic. At the present time, there is a waitlist for the school.

*While the basis for refusal of the addition of modulators was the proximity to the non-operating landfill, the area landowners advanced a second issue regarding traffic and congestion.*

23. The Appellant stated that in regard to traffic flow, older schools generally do not have traffic loops which create a smooth flow of traffic to and from the school. The Appellant and the School Board recognized the need for such a traffic loop.
24. The Appellant stated the high volume of traffic is also due to traffic due to the two other schools, Parkland School, and the Kerry Wood Nature Centre; there is also a possible housing development for a portion of the school grounds which would impact traffic.

25. The Appellant stated the school monitors traffic flow by having supervisors outside at the traffic areas.

*The Applicant*

26. The Applicant indicated that traffic assessments usually take place with The City of Red Deer. The Applicant acknowledged that traffic flow patterns are difficult to monitor around existing schools, particularly older schools such as Gateway Christian School, formerly known as Riverglen School.

27. The Applicant stated that at the present time buses pick up and drop off students at the front of the school. In the past, the school has tried different locations for student drop-off and pick-up. The City of Red Deer transit has changed so that the buses do a loop in conjunction with the two other schools which are in close proximity in the Waskasoo neighborhood.

*Waskasoo Area Landowners*

28. A landowner stated the traffic has tripled since the original school, Riverglen School was there and stated that buses which drop off and pick up students at Gateway Christian School are never full. The landowner does not believe that Lindsay Thurber High School is causing traffic congestion. The school has tried pylons and no parking signs, which in the landowner's opinion, has not been working.

29. The Waskasoo Community's biggest concern is traffic, the area is very busy with schools and businesses. The school has one way in and one way out.

## **FINDINGS AND REASONS**

***Landfill Setback***

30. 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.

31. 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.

32. The Board must have regard to but is not bound by the s. 13 of the SDR as per Section 687(3) of the MGA. Nor is it bound by the SDR, which requires the consent of the ESRD to vary the 300-meter landfill setback.

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33. In correspondence from Ms. Whitesell with the Development Authority (Exhibit B.1) dated May 30, 2022, the level of risk for the proposed modulars is negligible and does not warrant special environmental mitigation or adaptive considerations.
34. The Appellant stated that the Development is located approximately 186 m from a non-operating landfill and therefore does not require any special environmental measures.
35. The Board acknowledges that the Development Authority was bound by the SDR in refusing the application.
36. The Board believes waiving the school setback is appropriate for the following reasons:
  - i. The City of Red Deer Environmental Services Department has no objections, as professionals, they are subject matter experts who state that there is low risk, and no mitigation is required.
  - ii. No evidence or argument was given to indicate that the setback is a concern.
  - iii. ESRD raised no concerns.
  - iv. The City of Red Deer Environmental Services Department indicated it has monitored amounts of methane and has since 2009 and that the risk, in this case, is negligible.
37. The Board is persuaded by the information provided by both the Development Authority and the evidence provided by Ms. Whitesell, that the risk, in this case, is negligible.

***Traffic and Parking Concerns***

38. The proposed development is a discretionary use under the LUB. The Board heard from area landowners who believe that the proposed development will aggravate existing traffic and parking concerns.
39. The proposed development is a discretionary use in the LUB. Therefore, the Board turned its mind to the compatibility of the proposed development with the area. The area consists of public use facilities (e.g., Kerry Wood Nature Centre, Lindsay Thurber Comprehensive High School, Ecole Camille J. Rouge School, Parkland School) and residential development. The Board believes modular additions to a school is compatible with the area.
40. The Board was not provided with evidence that confirms that traffic/parking issues can be attributed to only Gateway Christian School. Gateway Christian School is approximately 25% of the area's school population, therefore logically traffic issues cannot be attributed to only Gateway Christian School.
41. Further, the Board was not provided with evidence that would indicate the proposed development would significantly impact the existing traffic and parking issues.
42. The Board recognizes the concerns of the area landowners given through public testimony and written letters. However, there are multiple factors that contribute to the traffic congestion such as Lindsay Thurber Comprehensive High School, Ecole Camille J. Lerouge School, Parkland School, Mackenzie Trails and the Kerry Wood Nature Centre.

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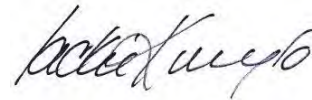
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43. The Board believes that the proposed development will not have a significant impact on an existing problem and believes collaboration among the Appellant, the two other Waskasoo area schools, the Waskasoo Community Association and the City of Red Deer could find ways to alleviate traffic congestion in the area of Gateway Christian School which impacts the entire Waskasoo neighborhood.
44. 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 of two modulars at 4210-59 Street, Red Deer, Alberta.
45. The Board is satisfied that the proposed Development conforms to the LUB with respect to the zoning.

**CLOSING:**

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

Dated at the City of Red Deer, in the Province of Alberta, this 03<sup>rd</sup> day of August 2022 and signed by the Presiding Officer on behalf of all panel members who agree that the content of this document adequately reflects the hearing, deliberations, and decision of the Board.



on behalf of: Michael Kartusch, Presiding Officer  
Subdivision & Development Appeal Board

This decision can be appealed to the Court of Appeal on the 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**

Exhibit A.1:	Hearing Materials	16 pages
Exhibit B.1:	Development Authority Report	49 pages
Exhibit C.1:	Appellant Submission	1 page
Exhibit D.1:	Additional Area Landowner Submission	2 pages