



Municipal District of Bighorn No. 8

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DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

Hearing: Wednesday, January 29, 2020
Development Permit 68/19 (Appellant)

I. Decision

The appeal before the Subdivision and Development Appeal Board (SDAB) was brought by David and Darla Blomme.

On September 23, 2019, the Development Authority issued a Notice of Decision for Development Permit 68/19 application by David and Darla Blomme (the “Appellants”) for an Extensive Agriculture Use (Seasonal Keeping of Calves) on Lot 6, condominium Plan 9710821, the “subject property”, (within SE Section 19, TWP. 26, RGE. 6, W5M), Coyote Creek Road within the Coyote Creek Subdivision near Jamieson Road. The property is owned by the Appellants. The subject property is in the Small Holdings District (SH). The proposed development is a discretionary use within the SH district.

The Development Authority’s Notice of Decision states that proposed Development Permit 68/19 was approved by the Municipal Planning Commission on December 18, 2019, subject to eighteen (18) conditions for the keeping of livestock.

The hearing commenced and concluded on January 29, 2020.

For the reasons outlined below, the Subdivision and Development Appeal Board (the “Board”) conditionally grants the January 29, 2020 appeal of David and Darla Blomme for Development Permit Application No. 68/19.

The Board’s conditions of approval are:

1. The Conditions contained in the Development Authority’s Notice of Decision for Development Permit 68/19 is whereby amended:

Original Condition 18 is removed and replaced with the following:

- a) Condition 18. As part of the installation of the new perimeter fencing on the north and east boundaries of the subject property, an Alberta Professional Land Surveyor shall verify the location of the fencing does not encroach onto 13MR, Plan 971 0821; and that such fencing shall be in accordance with Land Use Bylaw No. 09-z/18. A copy of the survey shall be submitted to the M.D.’s Development Officer within 60 days of the new fencing being constructed.
- b) Condition 19. The landowner shall remove the existing fencing (gates) located on 13MR, Plan 971 0821, where public access is blocked to 13MR, as shown as the two locations indicated on Schedule “B”, by May 1, 2020. Digital photographs shall be submitted by the landowner to the M.D.’s Development Officer that show the pre and post removal of the two encroaching fences (gates), no later than May 8, 2020.

II. Background

The Board heard an appeal from David and Darla Blomme with respect to Condition 18, contained in the Notice of Decision by the Municipal Planning Commission dated December 18, 2019 to approve Development Permit Application 68/19. The Notice of Decision was published in the December 26, 2019 edition of the Cochrane Eagle Newspaper.

The property owners are appealing Condition No. 18 of the Notice of Decision on Development Permit No. 68/19, which states:

18. The existing fencing of the property that has incorporated adjacent Municipal Reserve land and a portion of the Municipal Road Right-of-Way, as shown in Schedule 'B' hereto, must be removed in its entirety by May 1, 2020. Any new fencing may be reinstalled, in accordance with Land Use Bylaw No. 09-z/18, to either on, or inside the property boundary.

The Board hearing was held on January 29, 2020 at the M.D. Administration building in the Hamlet of Exshaw. The Board heard from the Appellants (David and Darla Blomme). The Board also heard from Development Officer Janice Thompson on the Notice of Decision for development application 68/19. Several documents were submitted to the Board, as follows:

- Copy of the Notice of Decision, dated December 18, 2019 for Development Permit Application 68/19;
- Copy of the Letter of Appeal from the Appellants (David and Darla Blomme) received January 7, 2020;
- Printed Email messages from neighbour Stan Aerden, dated October 14, 2019;
- Printed Email message from neighbours Marv and Heather Thielman, dated September 10, 2019;
- Printed Email message from neighbour Rick Guinn, dated October 12, 2019;
- Map showing the location of the Subject Property;
- Site Plan showing location of fencing in and around the subject property including 13MR, Plan 9710821;
- Black and White Photographs of the site;
- Excerpts from the Land Use Bylaw 09-Z/18 (Including; Section 2. 4 Definitions ("Agriculture, Extensive"); Section 4.14 Keeping of Livestock; and Section 9 Small Holdings District);
- Copy of the Certificate of Title;
- Submitted documentation for Development Permit Application 68/19;
- Development Permit Application Receipt Record.

Issues Raised

The Board and Appellants discussed the following reasons for the appeal:

- The Appellants told the Board that the fences on the north and east sides of the property were existing when they purchased the property. He said the fence is not on his property and he would not be able to remove it without trespassing.
- The Appellants stated they were unaware of Condition 18 and wished they could have discussed the fencing with the Municipal Planning Commission at the meeting and explained that the issue of the fencing before the decision was made to approve the permit. The Appellants stated that not until they read the written decision did they realize the issue with Condition 18.

- The Appellants said they believe the Municipal Planning Commission was not aware the fence was not on their property and it was not their fence.
- R. Anderson asked the Appellants if the map provided in the package was a Real Property Report (RPR) and if the fence in dispute was included in the survey. The Appellants said the RPR was provided to him by his realtor and said he did not realize the fence was located on Municipal Reserve (MR) land.
- L. Rosvold asked the Development Officer to indicate on the site plan where the Appellants property line and the MR lot was located.
- R. Anderson asked where the adjacent landowners property lines were and if there were municipal records of the width of the MR. The Secretary said that 13MR Plan 971 0821 was ten meters wide.
- L. Rosvold asked the Appellants if there was fencing crossing the MR that prevented public access. The Appellants stated there were two locations along MR property line where a fence (gate) crossed the MR.
- R. Anderson asked if the fence, as it exists, ties into the fence surrounding the property. The Appellants stated there is an old fence that encompasses the property and added the north fence line ends at the east and west corners and the east fence continues south and borders the north property and road to the west property. The Appellants said the fence is on the original north-south fence line.
- L. Hogarth asked if the Appellants only contention was that the fence be removed and asked them to confirm that they will construct proper cattle fencing. The Appellants agreed and said they would like to apply for a caretaker agreement for the MR or make an offer to purchase the MR.
- R. Anderson asked if the M.D. had any correspondence regarding the requirement for installing fence from the developer as part of the subdivision approval. The Development Officer said the developer built an equestrian trail around all eight parcels in the subdivision but she didn't believe fencing was a requirement.
- R. Anderson asked to see a copy of the Coyote Creek subdivision approval. The Development Officer located a copy of the subdivision approval for the Board to review. The Notice of Decision – Subdivision Application No. 66/10, did not reference fencing in the conditions of approval.

III Reasons for Decision / Findings of Fact

The reasons for the Board's decision to grant the appeal are:

- The Board is satisfied the existing fence line located on the northern most and eastern most boundary of 13MR Plan 971 0821 can remain as the fencing does not materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land.
- The Board acknowledges the Applicants' submission that the subject property is not currently fenced adjacent to 13MR Plan 971 082. However, there is fencing (gates) within 13MR at two locations that limit public access to the municipal reserve.

- The Board was satisfied the removal of Condition 18 does not materially affect the other conditions approved by the Municipal Planning Commission, noted in the Notice of Decision for Development Permit 68/19 dated December 18, 2019.

The findings of facts are as follows:

- The subject property has a land use designation of Small Holdings District (SH) in the Land Use Bylaw.
- The Notice of Decision for Subdivision Application No. 6610 did not reference fencing in the conditions of approval.

February 10, 2020

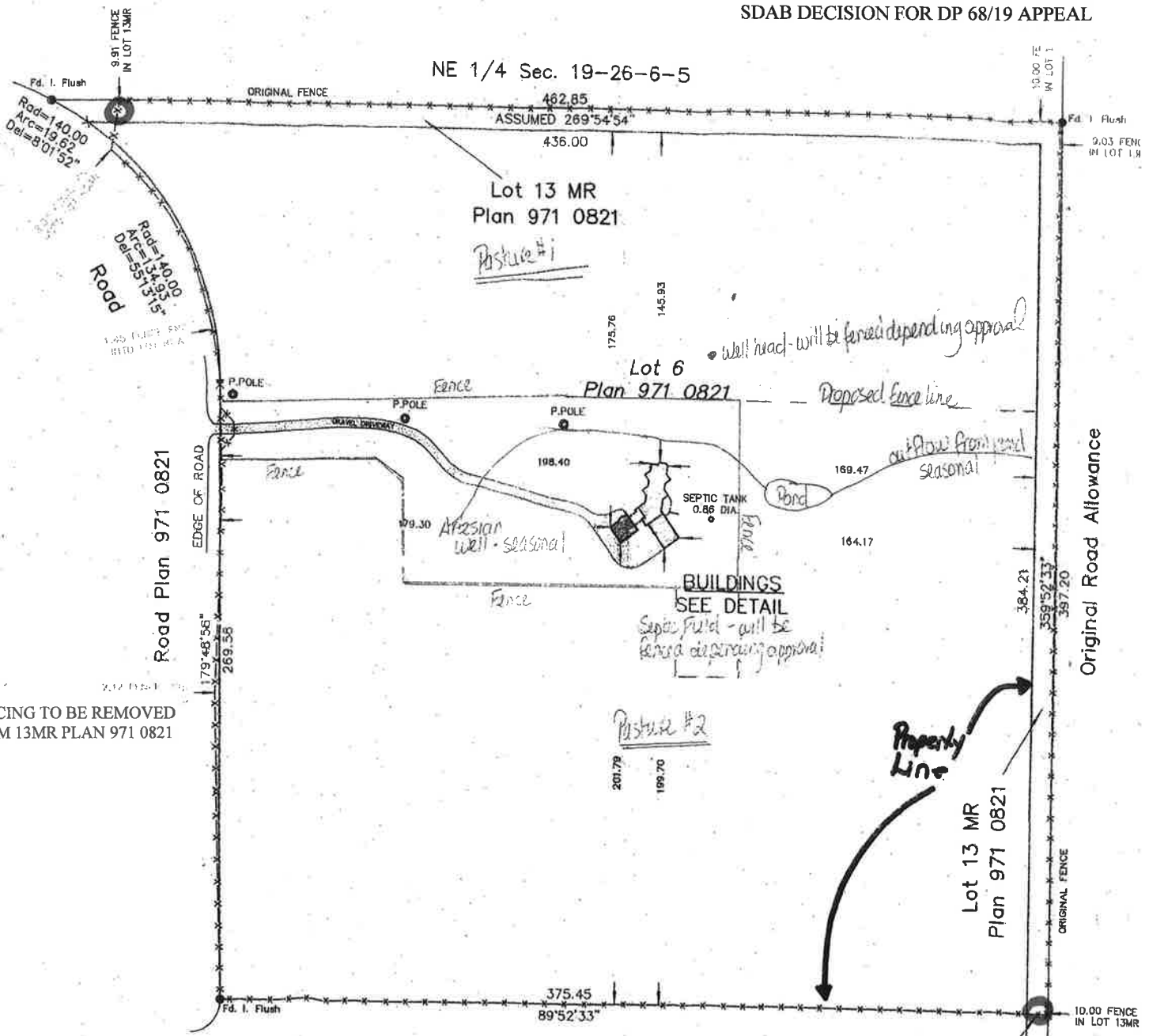
DATE



CHAIRMAN,
SUBDIVISION/DEVELOPMENT APPEAL BOARD

A decision of the Subdivision/Development Appeal Board is final and binding on all parties and persons subject only to an appeal upon, or questions of jurisdiction or law pursuant to, Section 688 of The Municipal Government Act, SA 2000, as amended. An application for leave to appeal to the Appellate Division of the Court of Alberta shall be made to a judge of the Appellate Division within THIRTY (30) days after the issue of the order, decision, permit or approval sought to be appealed.

NE 1/4 Sec. 19-26-6-5



○ FENCING TO BE REMOVED FROM 13MR PLAN 971 0821

Property Line

Lot 13 MR Plan 971 0821

Original Road Allowance