



Municipal District of Bighorn No. 8

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DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Hearing: Tuesday, February 18, 2020

Development Permit 70/19, Stoney Nakoda Nations and Woste Igit Nabi Ltd. (Appellants)

I. Decision

The appeal before the Subdivision and Development Appeal Board (SDAB) was brought by the Stoney Nakoda Nations and Woste Igit Nabi Ltd. through their counsel, Rae and Company.

On November 22, 2019, the Development Authority issued a Notice of Decision approving Development Permit application 70/19 to Manasc Isaac Designs for a Community Building and Facility (Restoration of McDougall Church on Block A, Plan 8411089 (within Section 6, TWP. 26, RGE. 6, W5M) near Highway 1A. The subject property is in the land use district Agricultural Conservation (AC). The proposed development was identified as a discretionary use within the district.

The hearing commenced on January 16, 2020 and was then adjourned. The hearing concluded on February 18, 2020.

For the reasons outlined below, the Subdivision and Development Appeal Board (the "Board") denies the appeal. The decision of the Development Authority is upheld and Development Permit 70/19 will be issued.

II. Background

The Board heard submissions from Sara Loudon, from Rae and Company Ltd., (the Appellant) acting as legal counsel for Stoney Nakoda Nations and Woste Igit Nabi Ltd.

The appeal is against the Development Authority's November 22, 2019 Notice of Decision of Development Permit 70/19 to approve a Community Building and Facility (Restoration of McDougall Church on Block A, Plan 8411089 (within Section 6, TWP. 26, RGE. 6, W5M) near Highway 1A.

The Appellant submitted the appeal of the Development Authority's decision on December 17, 2019 to the Secretary of the Subdivision and Development Appeal Board.

The appeal hearing by the Board was held at the M.D. Administration building in the Hamlet of Exshaw. S. Loudon was present at the hearing on behalf of the Stoney Nakoda Nations and Woste Igit Nabi Ltd. The owner of the subject property, the McDougall Stoney Mission Society (MSMS), was represented at the meeting by the President of the Society, Brenda McQueen. The Board heard presentations from S. Loudon, B. McQueen, Ms. McQueen's husband Kent McQueen, and members of the Stoney Nakoda Nations. The Board also heard from the Development Authority (Development Officer Janice Thompson) on the Notice of Decision for Development Permit 79/19.

Several documents were submitted to the Board, as follows:

- Copy of the Notice of Decision for Development Permit Application 70/19 issued on November 22, 2019;
- Copy of the letter of appeal from the Appellant received December 17, 2019;
- Copy of the Appellant Presentation;
- Copy of the Landowner Presentation;
- Copy of Development Authority Presentation;
- Copy of the Development Permit Application;
- Development Permit Application Receipt Record;
- Excerpts from Land Use Bylaw 04/10 – Section 2.4 Definitions “Community Buildings and Facilities” and Section 8 Agriculture Conservation District (AC).

Issues Raised

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

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- D. Apedaile told the Appellant that matters contained in the appeal submitted by Rae and Company may be outside the Board’s scope and to please explain their position so the Board can understand the reasons for the appeal before making a ruling.
 - S. Loudon stated the December 17, 2019 appeal submission from Rae and Company, contained sixteen grounds for the appeal.
 - S. Loudon stated that in addition to the grounds of appeal noted in the December submission, the wrong land use has been used to approve the permit. She cited the definition of the “Community Buildings and Facilities” and said “Religious Assembly” was not included in the definition.
 - S. Loudon stated the definition of Religious Assembly is the appropriate use for the church and said the activities that occur at the church make it a place of religious assembly. She also noted that the Agriculture Conservation (AC) District does not have Religious Assembly as a listed use.
 - L. Rosvold asked the Development Planner how the decision was made to use “Community Building and Facility” for the application. The Development Planner said the purpose of the building is for a community facility. She said it would be more of a historical site and building, rather than as a church, which was the main reason for the decision.
 - S. Loudon said a letter was sent on February 11, 2020, on behalf of the Stoney Nakoda Nations, to the Minister of Culture, Multiculturalism and Status of Women requesting that the provincial historical designation on the property be rescinded based on the site not being used as a church.
 - L. Rosvold asked about the 2004 Certificate of Title and how it related to the 1999 Federal Government settlement with the Stoney Nakoda Nation. S. Loudon confirmed the Band owns the mines and minerals underneath the land.

The Board also heard submissions from Brenda McQueen on behalf of the landowner. She described the efforts that she had made to work with the Stoney Nakoda nation in respect of developing this parcel. She submitted that the use of the site is historical, not religious, and that it holds 2 services per year but 14 other events, such as Treaty 7 Day. She also stated that the provincial historical designation applies not just to the building, but also to the rest of the parcel where archaeological finds have been made. The new building will be an exact replica of the old one and re-use 80% of the logs. Ms. McQueen noted that the Stoney Nakoda nation received \$8.8 million dollars in exchange for, among other things, the settlement of their claim against this land. Ms. McQueen submitted a large package of materials in support of her arguments.

Kent McQueen questioned why the appellant was allowed to raise new issues at the hearing not included in the notice of appeal.

The Board heard from Ms. Stephens. She is a member of the Stoney Nakoda Nation and had just learned about the appeal and would like the building to be rebuilt so that it can be used to tell the stories of the Stoney Nakoda people. However, she does not oppose the decision of the nation's leaders to file this appeal.

Ms. Crawler, another member of the Stoney Nakoda Nation, opposed the rebuilding of the church and disagrees that the Stoney Nakoda people have surrendered their connection to the land.

Margaret Rider, another member of the Stoney Nakoda Nation, discussed the history between the parties and noted that the landowner has never apologized for the wrongs done to the people of the Stoney Nakoda nation. She respects the nation's leadership's decision to appeal.

The appellant's lawyer responded that the certificate of incorporation for the landowner society refers to religious purposes. The province's email, provided by Ms. McQueen, indicating that the province is not rescinding the historical designation came before her clients' request in that regard. She was not able to provide the details of the 1999 payment of \$8.8 million.

Additional details regarding the submissions made at the hearing can be found in the meeting minutes.

III Reasons for Decision / Findings of Fact

The reasons for the Board's decision to refuse the appeal:

The Board acknowledges the Appellant's submissions for the appeal of Development Permit Application 70/19, however, the majority of the grounds of appeal relate to matters which are outside of the Board's jurisdiction. There are some specific grounds of appeal raised at the hearing which the Board would like to comment:

- The Appellants own the mineral rights in respect of the subject property. The SDAB does not have jurisdiction to deal with the *Surface Rights Act*. Any matters concerning mineral rights are to be dealt with by the Surface Rights Board.
- The site has been designated by the Province as a Provincial Historic Resource, under the *Historical Resources Act*. The Stoney Nakoda Nation has applied to the

Province to remove the provincial designation from the property. The Province has its own powers to deal with the Nations' request. The SDAB only considers development matters and as such the status of the site as a provincial historical site is outside the Board's jurisdiction to deal with.

- The Option Agreement between the McDougall Stoney Mission Society and Stoney Nakoda Nation describes the terms for an option to purchase the property by the Nation if certain covenants and warranties are not fulfilled by the Society. The Option Agreement between the parties comes under Provincial Contract law and is outside the Board's jurisdiction.
- The Appellants' claim the development permit should not be issued until access to the property has been determined when the future road widening of Highway 1A occurs. This was not pursued in depth at the hearing. The Board notes that no evidence was presented that the future plans for future road widening are imminent, and as such it would not be appropriate for the Board to refuse a development permit indefinitely until access plans are resolved by the Province. No evidence was presented showing that there is a current lack of sufficient access such that the development permit should be denied. Due to the closeness of the property to the highway, the development is subject to the *Highways and Development Act* and may require permissions directly from the Province. Those permissions are outside the Board's jurisdiction.
- The Appellants argue the Development Authority relied on the discretionary use "Community Buildings and Facilities" contained in the Agricultural Conservation District for the approval and that the correct use should be "Religious Assembly" as it better describes the use of the site, and which is not listed as a permitted or discretionary use in District. The Board has reviewed this assertion and does not agree. The Board acknowledges that the building was originally developed as a church, and that historically it bears the name of a church. However, the Board is satisfied that the activities within the building fit better under the definition of "Community Buildings and Facilities" than "Religious Assembly" as Council would have intended it. Council likely intended "Religious Assembly" to refer to a site used far more regularly for religious services. If any gathering of a religious nature would make a use a Religious Assembly rather than a Community Building and Facility, then simply renting out a community building for a wedding performed by, for example, a minister, would be enough to change the use definition, which does not appear to be Council's intent. The uses described in a land use district, whether they be listed as a permitted or discretionary uses are descriptive rather than prescriptive with latitude given to a development authority to find the best fit for a proposed use within the confines of uses listed within a land use district. In the case of the "Community Buildings and Facilities" use, there was sufficient evidence presented by the McDougall Stoney Mission Society and the submitted Heritage Report prepared by Manasc Isaac Project No. 219240 McDougall

Memorial United Church, that the historic nature of the church building and archaeological features found on the property appropriately lends itself to the described use of “Community Buildings and Facilities” use rather than a place of “Religious Assembly”. Finally, while the applicant landowner may have some religious purposes set out in its incorporating documents, the Board is satisfied with Ms. McQueen’s submission that the primary purpose of the landowner is historical (i.e. cultural) in nature, not religious.

March 5, 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, RSA 2000 c. M-26, as amended. An application for leave to appeal to the Court of Appeal of Alberta shall be made within THIRTY (30) days after the issue of the order, decision, permit or approval sought to be appealed.

