



Municipal District of Bighorn No. 8

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DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Hearing: Tuesday, August 17, 2021

Development Permit No. 05/21, Pat Deegan (Appellant)

I. Decision

The appeal before the Subdivision and Development Appeal Board (SDAB) was brought by Pat Deegan.

On June 8, 2021, the Development Authority approved Development Permit Application No. 05/21, with conditions, for an application submitted by SBL Contractors Ltd. (on behalf of the landowner I-Place Group Inc.) for the development of two General Industrial Buildings and associated bays.

The General Industrial Buildings (Building A and Building B) are located on the “subject property” identified as Lot 12, Block 9, Plan 1413399 (1 Limestone Valley Road) in the hamlet of Dead Man’s Flats. The subject property is located in the Hamlet Industrial District (HI). General Industrial Buildings is listed as a permitted use within the HI District.

The hearing commenced on July 26, 2021. It was adjourned to August 17, 2021 and was concluded that day.

For the reasons outlined below, the Subdivision and Development Appeal Board (the “Board”) denies the appeal and the decision of the Development Authority is upheld and a development permit shall be issued.

II. Background

The Board heard an appeal from Pat Deegan (the Appellant) against the Development Authority’s decision to approved Development Permit No. 05/21 issued on June 8, 2021 for two General Industrial Buildings (Building A and Building B) on the subject property that is located in the HI District, noted as Section 19 in the M.D.’s Land Use Bylaw 09-Z/18. General Industrial Buildings is listed as a permitted use under Section 19.2. of the Land Use Bylaw.

Based on above noted facts, the Development Authority issued Development Permit No. 05/21 with conditions. The Appellant submitted the appeal of the Development Officer’s decision on June 28, 2021 to the Secretary of the Subdivision and Development Appeal Board.

The appeal hearing by the Board was held on July 26, 2021 and August 17, 2021. It was conducted virtually pursuant to the *Meeting Procedures (COVID-19 Suppression) Regulation*. The Appellant (P. Deegan) was present at the Virtual Hearing. The Board heard from the Appellant and also heard from Development Authority (Development Officer Jenny Kasprovicz) on the Officer’s development permit approval, Christopher Richardson, a nearby landowner and Chris Long in favour of the appeal.

J. Kehler on behalf of the applicant/landowner and Brian Fanson, the MD's engineering advisor. Several documents were submitted to the Board, as follows:

- Copy of the Development Permit No. 05/21, date of issue, June 8, 2021;
- Copy of the letter of appeal from the Appellant received June 29, 2021;
- Copy of the Development Permit Application;
- Copy of the Certificate of Title;
- Map showing the location of the Subject Property;
- Site Plan showing massing views and building layout for the Storage Buildings;
- Floor Plans and Building Elevations for the Storage Buildings;
- Site Servicing, Grading Plans and Stormwater Management Plans for the Subject Property;
- Development Permit Application No. 05/21;
- Excerpts from Land Use Bylaw 09-Z/18 - Section 19 Hamlet Industrial District (HI);
- Appellant's Appeal Documentation received by the Secretary of the SDAB on August 11, 2021; and
- Additional written submissions from those in favour of the appeal as described below.

Issues Raised

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

- P. Deegan told the Board he was the owner of the adjacent property located at 9 Limestone Valley Road.
- P. Deegan advised that when the subdivision was first introduced, the subject site was Lots 1 and 2, he owns Lot 3.
- P. Deegan presented a summary of the appeal to the Board:
 1. Drainage – as designed the stormwater will flow into the neighbouring properties.
 2. The grading of the property does not follow the intended grading of the industrial park.
 3. The project does not fit the neighbourhood, the developer across the street has worked with the neighbourhood and landscape design within the guidelines provided, where the project as designed will have negative impacts to the community.
- P. Deegan stated the drainage would flow east to west, half to front and half to the back of the property, none (stormwater) retained on the property. All drained onto sidewalk and to his property.
- The height of the building will impact nearby residents because of height of slab plus building on top of it.
- Board member, E. Butters, asked if there was an approved drainage plan. The Development Officer said there was an approved site grading plan and stormwater plan for the subdivision.

- E. Butters asked where would the water go? The M.D.'s engineering consultant, B. Fanson, replied the original building grade plan showed the lot as split drainage property. Drainage directed mostly through a pipe system and storage system to meet required release rates that go into the drainage ditch to west of the property through municipal reserve (MR) to an existing storage pond. B. Fanson reviewed the developer's engineer's materials, agreed with them, and approved the stormwater management plan as it met the original plan of subdivision.
- Board Member, L. Hogarth, asked how water was retained on site? The developer's engineer, J. Kehler, responded that water was retained in part in the parking lots and in a storage device under the pavement that retains excess water from roof tops and paving.
- Board Chair Apedaile asked if there was a standard for how the 1:100 year storm is calculated? B. Fanson replied they standard used is from the City of Calgary stormwater curve.
- E. Butters noted the building heights complies with the Land Use Bylaw and asked why the grade on the lot was raised and if the grade could be reduced. On behalf of the applicant, J. Kehler stated the grade was higher to accommodate drainage facilities and the overall site is built to contain water at releases rate in the approved plan.
- E. Butters asked if the building could be lowered to mitigate sightline concern from residents? J. Kehler, replied it was not possible to make the building shorter to mitigate the sightline issue as the change to the building height would not meet the intended use of what the building is meant for. The proposed building is under the allowable height and no variances are being requested.

The Board heard a number of other submissions which are set out in the minutes of the hearing. These reasons will focus on the key evidence and arguments which were determinative for the outcome of the appeal.

III Reasons for Decision / Findings of Fact

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

- The Board is satisfied that proposed development is a permitted use in Section 9 Hamlet Industrial District of the Land Use Bylaw. Section 9.2 lists General Industrial Buildings as a permitted use in this district. This means that if the applicant complies with the Land Use Bylaw, the application must be approved.
- No variances to the Land Use Bylaw were applied for or approved as part of issuance of Development Permit Application No. 05/21.
- Despite the concerns raised by the appellant, the Board is satisfied that Section 3.9 of the Land Use Bylaw dealing with site grading and stormwater management on the subject property has been addressed. The Board accepts the information and responses provided by the M.D.'s consulting engineer and the developer's engineer that

stormwater runoff is adequately dealt with by the retention, release and conveyance of stormwater through a piping system to the MR ditching to the existing storage pond north of the subject property. The Board also notes this issue was also addressed by condition 24 of Development Permit No. 05/21 which requires that the site be developed according to the Standards for Site Servicing and the plans which were provided by the applicant.

- The Board acknowledges the Appellant’s submission and the concerns from adjacent property owners about the height of the two General Industrial Buildings. The Board notes that “Height, Building (Building Height) is defined under Section 2.4 Definitions in the Land Use Bylaw as the: “maximum vertical distance as measured from the elevation of the finished ground level at the base of each exterior wall to the highest point of the building on that particular side [...] unless otherwise stated in the district regulations.” The Board notes that the Hamlet Industrial District regulations only lists the Maximum Building height as 10.0 metres. The building heights for the two General Industrial Buildings have been calculated from the finished grade on the subject property and are under the Maximum Building height regulation in the HI district. The Board acknowledges the Appellant’s submissions that building height should be measured differently, but the Board must apply the directions in the Land Use Bylaw regarding the methodology for measuring building height.
- The Board acknowledges the Appellant’s submission that the buildings would be over-height if the plan were brought back to the original developer’s design. However, the Board makes no ruling on this point as the Board must consider the application and Land Use Bylaw as they stand today.

The Board acknowledges the following additional submissions:

- Five letters submitted at the Hearing in support Appellant’s appeal of the Development Authority’s decision to approve the application, submitted by Daniella Rubeling and Al Tinholt, Christopher and Jill Long, Jason Clace and Rita Barry, Dave and Jackie Bowes, and Karen Tewnion.
- Verbal support for the appeal was made at the hearing by Christopher Richardson.

August 30, 2021
DATE

M. D. Apedaile
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 on questions of jurisdiction or law pursuant to Section 688 of the Municipal Government Act, RSA 2000 c. M-26, as amended. An application for permission to appeal to the Court of Appeal of Alberta must be filed and served within THIRTY (30) days after the issue of the decision sought to be appealed.