

WOODLAND COUNTY
SUBDIVISION AND DEVELOPMENT APPEAL BOARD
DECISION

RE: ALLAN AND JODI STEADMAN
DEVELOPMENT PERMIT APPLICATION – NE 21-59-12-W5M
SINGLE FAMILY DWELLING AND SHOP

A. INTRODUCTION

Allan and Jodi Steadman (the “Appellants”) applied for a Development Permit for the construction of a single family dwelling and shop on NE 21-59-12 W5M (the “Site”). The Site is zoned A1 – Agricultural One District. Single detached dwelling and accessory buildings are permitted uses in the A1 – Agricultural One District. The development authority refused the development permit on the basis that the proposed development was located in the floodway for the McLeod River. The Appellants have appealed the development authority’s decision.

B. PRELIMINARY MATTERS

1. Objections

The Chair asked whether there were any objections to any of the Board members hearing the appeal or the hearing procedure for the appeal. A Board member (Carol Timoffee) advised that she resided in the same quarter section as the Appellants on the other side of the River. In response to questions from the Appellants, the Chair advised that he resided within the vicinity of the Site. The Board adjourned the hearing to allow the Appellants to confer with their legal counsel. After conferring with their legal counsel, the Appellants’ legal counsel advised that based on the information that they had, the Appellants did not object to any of the Board members hearing the appeal. There was no objection to the hearing procedure as set out in the Board Agenda.

2. Adjournment

(a) Summary

The Appellants requested that the hearing be adjourned as their legal counsel, Yuk-Sing Cheng had only been recently retained. Mr. Cheng required additional time to prepare for the hearing. The request was for a minimum 30 day adjournment preferably to a date after May 12, 2014.

Mr. Cheng acknowledged that by starting the hearing on March 10, 2014, the Board had met its legal requirement to commence the hearing within 30 days of filing of the appeal.

(b) Decision on the Adjournment Application

The Board has granted an adjournment to April 16, 2014 at 1:00 p.m.

(c) Reasons

As the appeal is from a refused development permit, the only parties prejudiced by the adjournment are the Appellants. In the circumstances, the Board was of the view that the Appellants' legal counsel should be allowed reasonable time to prepare for the hearing. The Board notes that under the *Municipal Government Act*, hearings are to occur within 30 days. Therefore, the Board is of the view that granting an adjournment for slightly in excess of 30 days provides the Appellants' lawyer with more than adequate time to prepare for the hearing.

C. SUMMARY OF HEARING ON THE MERITS

The Board heard submissions with respect to the merits of the appeal on April 16, 2014. The Board first heard submissions from the Development Officer. The Development Officer reviewed the history of this application as well as the relevant provisions of the Land Use Bylaw. To summarize, the Site is located in the floodway for the McLeod River according to the draft Alberta Flood Hazard Map prepared by Alberta Environment. In the Development Officer's opinion, the conditions set out in the Land

Use Bylaw for development in the floodway were not met. In particular, the Development Officer pointed out that no engineering reports had been provided and that the documentation in support of the application was very limited. In response to questions from the Board, the Development Officer advised that she had referred the application to Alberta Environment and that Alberta Environment supported the decision not to approve the development. She further indicated that she had received direction from Alberta Environment not to approve any new structures in the floodway.

The Board then heard submissions from Richard Secord, legal counsel for the Appellants. Mr. Secord provided the Board with a detailed written submission, which is on the Board's file. To summarize, Mr. Secord's submission was that the Appellants purchased the site with the intention of proceeding with residential development. Based on representations from the County, the Appellants delayed their application for a development permit. By the time that the Appellants submitted their application, the County had amended the Land Use Bylaw to impose more stringent requirements with respect to development in the floodway.

Mr. Secord noted that the flood hazard map is not final, but is simply a draft. He also advised that based on aerial photographs and information from the previous owner, the proposed building site has not previously been susceptible to flooding. Mr. Secord then reviewed the elevations at the proposed building site. In his submission, these elevations were only slightly below the 1:100 year flood elevation. He indicated that in light of this, the Appellants could construct the residence and shop to comply with the requirements of Section 57 of the Land Use Bylaw.

Finally, Mr. Secord indicated that the Appellants would be agreeable to the following conditions of approval:

- (a) Provision of a liability waiver;
- (b) Requirement that the foundations of the structure be engineered so that they are at least 0.5 metres over the 1:100 year flood elevation.

In response, Charlotte St. Dennis, legal counsel for the County, submitted that although the Land Use Bylaw had changed, the wording was similar and the changes were not

substantive. She also pointed out that the Appellants had only provided very limited information with respect to the location of the building and that if the Board was considering approval, it would need more detailed information to identify the proposed location of the structures.

D. DECISION

The Board allows the appeal and approves the development permit subject to the following conditions:

1. A maximum of one dwelling unit is permitted on the Site. Any existing dwellings on the Site shall be removed upon completion of construction of the residence approved by this decision.
2. The Appellants shall comply with all Alberta Environment requirements and obtain any required permits or approvals from Alberta Environment with respect to any changes to natural drainage on the Site to the satisfaction of the Development Officer.
3. The residence and shop shall comply with the following minimum setbacks from the property lines of the Site:
 - (a) South – 40 metres
 - (b) East – 40 metres
 - (c) West – 6 metres
 - (d) North – 10.7 metres
4. In addition, the residence and shop shall be located a minimum of:
 - (a) 30 metres from any bank with more than a 30% grade; and
 - (b) 30 metres from the top of bank of the MacLeod River and any tributaries.

5. The Appellants shall provide plans prepared by an engineer or other qualified professional confirming that the foundations for the residence and shop, the driveway access and septic system are at least 0.5 metres above an elevation of 703.44 metres to the satisfaction of the Development Officer.
6. The Appellants shall provide a plan from registered Alberta land surveyor showing the proposed location of the residence and shop, driveway access and septic system. The plan shall identify the following:
 - (a) Top of bank of the MacLeod River and any tributaries; and
 - (b) Building sites for the residence and shop, driveway access and septic system in compliance with the setback and elevation requirements set out as conditions of this approval;

all to the satisfaction of the Development Officer.

7. The Appellants shall provide a report from the engineer (or qualified professional who prepared the foundation plans) confirming that the foundations for the residence and shop are adequate to withstand a 1:100 year flood event to the satisfaction of the Development Officer.
8. The Appellants shall provide a waiver of liability in favour of the County, together with an indemnity in favour of the County for any claims for damage arising from the proposed development. The indemnity shall include a charge against the Site as security for the indemnity and further shall allow for either the indemnity or a caveat to be registered against title to the Site, all to the satisfaction of the Development Officer.
9. The Appellants shall obtain all other required permits and approvals for the development of the structure, including, but not limited to:
 - (a) Building permits;
 - (b) Plumbing and gas permit;

- (c) Septic permit and private sewage disposal permit for the septic system;
and
 - (d) Electrical permit.
10. The Appellants shall keep the Site in a clean and orderly manner and shall remove all garbage and waste at their expense.
 11. The Appellants shall obtain all required burning permits from Alberta Forest Service for any burning on the Site.
 12. The Appellants shall comply with the conditions of the Alberta Electrical Protection Act and the local power company with respect to any structures located near powerlines.
 13. The Appellants shall contact the County's Infrastructure Department regarding Road Bans and Overload and Road Use permits.

Note: There may be underground installations on or near the proposed building site. Before commencing construction, the Appellants should investigate and contact the relevant companies and/or telephone "Alberta First Call" 1-800-242-3447 (toll free).

E. REASONS

The Board heard quite a bit of evidence about the discussions between the Appellants and the County leading to application for and refusal of the development permit. In the Board's opinion, this information is irrelevant and the Board did not take it into account in reaching its decision. Rather, the Board considered the nature of the proposed development and whether it was appropriate to approve the development in light of the provisions of the Land Use Bylaw dealing with development in the floodway.

Based on the evidence before it, the Board is satisfied that the proposed development will not negatively impact surrounding properties.

The Board then considered whether it was advisable to allow the development to proceed given its location in the floodway. Based on the evidence before it, the Board

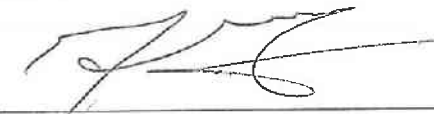
is of the opinion that with the conditions attached the concerns relating to development in the floodway will be largely mitigated. In particular, the Board is of the view that if sufficient information is provided regarding the location of the structures, their elevation and the engineering of the foundations, the matters set out in Section 57 of the Land Use Bylaw are largely addressed. The Board also notes that the Appellants are well aware of the potential risks of development in the floodway. In this regard, the Appellants provided evidence to the Board to support their contention that the proposed building site is at limited risk and that the risks can be mitigated.

In summary, based on the evidence before it, the Board is of the view that with the conditions attached, it is appropriate to allow the proposed development to proceed.

Dated 30 day of April, 2014.

WOODLANDS COUNTY

Per:



Chair, Subdivision and
Development Appeal Board