



Municipal District of Bighorn No. 8

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DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

Hearing: **16 September 2009**
Development Permit #35/09, I. MacGregor
Lot 13, Plan 9911677, Carraig Ridge

I. Decision

For the reasons outlined below, the Board grants the 24 Aug 09 appeal of Ian MacGregor, revokes the 13 Aug 09 decision of the Planning & Development Officer, and confirms the issuance of Development Permit 35/09, for a second dwelling unit on Lot 13 Plan 9911677, Carraig Ridge, with a relaxation to the minimum floor area requirements of the Land Use Bylaw, with the following condition:

-Given that the second dwelling will be on the greater unsubdivided Lands, the Appellant cannot sell or otherwise dispose of the second dwelling unit on Lot 13 Plan 9611677, until such time as the Lands are subdivided, and the second dwelling unit sits on a parcel of land with a separate title.

II. Background and Reasons

The Subdivision and Development Appeal Board (the "Board") heard an appeal by Ian MacGregor (the "Appellant") with respect to the Planning & Development Officer's (the "Officer") 13 August 2009 decision to refuse Development Permit 35/09, for a second residential dwelling unit, with a relaxation to the minimum floor area requirements, on Lot 13 Plan 9911677, Carraig Ridge (the "Lands").

The Appellant sought a development permit for a second dwelling unit on Lot 13, with a floor area of 69 square metres: the M.D. Land Use Bylaw allows only one dwelling unit per lot, and a minimum floor area of 200 square metres, in the Transfer of Subdivision Density district.

The appeal hearing by the Board was held on September 16th, 2009, at the M.D. Administration building in the Hamlet of Exshaw. The Appellant was present at the hearing. The Board heard from the Appellant as well as a number of affected persons. The Board also heard from Planning & Development Officer Greg Birch, on his decision to refuse Development Permit 35/09. A number of documents were submitted and provided to the Board, as follows:

- 9 September 09 Subdivision/Development Appeal Board hearing agenda package
- Board Secretary's case outline /overview
- 13 Aug 09 Planning & Development Officer's decision/refusal (in agenda package)
- 16 Sept 09 Presentation to the S/DAB, from the Appellant
- Dec 2006 Groundwater Supply Assessment – Groundwater Exploration & Research Ltd.
- Map #5, Complete Viewshed Analysis (map)
- Letter in support of Appellant – W. Baldwin (14 Sept 09)
- Letter in support of Appellant – J. & G. Cassidy
- Letter in support of Appellant – K. & P. Clark (14 Sept 09)
- Letter in support of Appellant – B. Driscoll (16 Sept 09)
- Letter in support of Appellant – D. & J. Geddes (16 Sept 09)
- Letter in support of Appellant – L.J. Howard & A.A. James (15 Sept 09)

- Letter in support of Appellant - Lazy H Trail Co. (10 Sept 09)
- Letter in support of Appellant – H. MacAulay (11 Sept 09)
- Letter in support of Appellant – D. Meert (15 Sept 09)
- Letter in support of Appellant – S. Quinn (14 Sept 09)
- Letter in support of Appellant – R. & U. Reynolds (14 Sept 09)
- Letter in support of Appellant – R. & L. Thomas (16 Sept 09)
- Letter in support of Planning & Development Officer’s decision – S. Bright
- Letter in support of Planning & Development Officer’s decision – R. Keller

The aforementioned documents are attached as Exhibits to the minutes of the hearing.

The Lands are located adjacent to and north of Highway 1A, just west of the Summer Village of Ghost Lake. The Lands are within the Transfer of Subdivision Density (TSD) district of the Land Use Bylaw. The Lands are adjoined by a First Nations’ reserve parcel to the west; an Agricultural Conservation – zoned parcel to the east and south, and a Small Holdings zoned parcel to the north; some of these adjoining parcels are larger inhabited residential properties.

In 2007, a Municipal Development Plan amendment, an Area Structure Plan, and a Land Use Bylaw amendment were all approved, for the proposed “Carraig Ridge” development on the Lands. The development was to create a bareland condominium project, consisting of forty-five single family residential dwelling unit sites, each with its own 3 acre parcel surrounding the single family dwelling unit.

Issues Raised

1. Minimum Floor Area : The 2007 Area Structure Plan and Land Use Bylaw district developed for the Lands indicated that the visions for the Carraig Ridge development called for larger homes; however, it was noted that, with the recent economic downturn (since those documents were adopted) smaller houses were not unacceptable, conceptually speaking.

The Appellant submitted that the architectural controls to be imposed will control the size and style of dwelling to be built: in short, the controls will provide the full design guidelines to be used, if and when dwelling units on the subdivided (condominiumized) Lands are approved. There may not need to be expansion of any dwelling unit, but if and when expansion is proposed, it will be to the design and style specified by caveat on property title.

While the Board discussed the concept of a smaller building “footprint” being more environmentally friendly, the Board was neutral on the issue of smaller/larger buildings and the respective impacts of each style. It was noted that the Planning & Development Officer had stated the Planning & Development department didn’t have any real objections to the smaller size of the proposed dwelling unit.

2. Second Dwelling Unit: The Appellant noted that the proposed second dwelling unit would occupy future (currently-unsubdivided) Lot 36 as identified within the Carraig Ridge Area Structure Plan, that it would be set-back nearly 43.5 metres from the closest (eastern) property line, and that the type of development requested (a second dwelling unit) was permitted elsewhere in the rural parts of the M.D. The Appellant also indicated his belief that the one residence per lot limitation was not intended to apply to a quarter-section prior to the subdivision into smaller lots.

The Board also noted that it was not uncommon for first parcel out and second dwelling units on single parcels of land, within other rural areas of the M.D.; the Board also noted that, under the previous zoning of the Lands, a second dwelling unit would have been a Permitted or Discretionary Use under the Land Use Bylaw.

The Board did express concern over the possibility that the second dwelling unit could be constructed and sold without any land parcel attached: in short, the Appellant would be selling the building only.

3. Water/Water supply: The Appellant submitted that a deep well had been drilled, and analysis determined that it produced sufficient water for 14 single family dwellings. The Appellant noted that this well was not yet licensed, however, he indicated that provincial regulations did not require licensing of wells used for a single home.

The Board determined that this issue was not relevant to the Board's consideration of the appeal.

The Board has determined that Development Permit 35/09 should be approved, for the following reasons, and with an additional condition.

- a) the proposed smaller foot-print second dwelling unit will not materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and
- b) the proposed second dwelling unit is consistent with the long-range Area Structure Plan for the Carraig Ridge development, which calls for a multi-lot residential bareland condominium project, and thus will not increase the density footprint of the area.

Because of these considerations, the Board grants the appeal and adds a new condition to Development Permit 35/09: the condition is that the proposed second dwelling unit cannot be sold, by the Appellant/developer, until such time as a separate title and parcel of land is available, through subdivision, for the second dwelling unit.

21 September 09

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.