



Municipal District of Bighorn No. 8

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DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

Hearing: 4 May 2010

Development Permit #13/10, P. & V. Adams (Appellants)

I. Decision

For the reasons outlined below, the Board upholds the 29 March 10 decision of the Municipal Planning Commission in refusing Development Permit application 13/10 (from Paul and Velma Adams, for a small wind conversion [turbine] system), and denies the 14 April 10 appeal from the Appellants.

II. Background

The Subdivision and Development Appeal Board (the "Board") heard an appeal from Paul and Velma Adams with respect to the Municipal Planning Commission's (the "MPC") 29 March 10 refusal to issue Development Permit 13/10, for the installation of a small wind conversion system/wind turbine (referred to as the "turbine") on the Appellants property at Lot 5 Block 3 Plan 1370JK (the "Lands") in the Hamlet of Lac Des Arcs. The MPC refusal was due to:

- the MPC's belief that the proposed turbine was not suitable for a residential area, nor that it was a "similar and compatible use" to the Hamlet Single Family Residential District "Purpose and Intent" or the "Permitted" or "Discretionary" Uses outlined in the District.
- the MPC's belief that there will be an adverse visual impact on the adjacent community, north of the Bow River, in the Hamlet of Exshaw, as well as other river users.
- the MPC's uncertainty on any impact on water fowl and other migrating birds that are known to frequent the general area, given the proposed location of the turbine next to the Bow River,
- the MPC members feeling that the turbine development on the subject property is not consistent with Section 12.22.1 of the Land Use Bylaw, respecting Controlled Appearance.
- the MPC's belief that the subject turbine would not compliment the aesthetics of the neighbourhood nor compliment the natural environmental setting of the area, noting Section 3.2.1 (ii) of Bighorn's Municipal Development Plan, which outlines in the Mission Statement that the MD of Bighorn residents believe that sensitivity to the Bighorn's natural environmental setting and attention to aesthetic appeal should be applied to all developments.

The appeal hearing by the Board was held on May 4th, 2010, at the M.D. Administration building in the Hamlet of Exshaw. Paul Adams, representing the Appellants, was present at the hearing. The Board heard from the Appellant and the Appellant's consultant, Robert Falconer of Enmax Energy Corporation; the Board also heard from Development Officer Janice Thompson, and MPC members Carolyn Montgomery and Rhody Litschke, on the MPC's Notice of Refusal. A number of documents were submitted and provided to the Board, as follows:

- Board Secretary's Case Outline/Overview;

- copy of the 5 March 10 Development Permit application 13/10;
- copy of the Development Officer's report on Development Permit 13/10, which was provided to the MPC with the application;
- copy of the 5 March Letter of Application for Development Permit (P. & V. Adams);
- copy of 1 March letter supporting Development Permit application (N. Jarman);
- copy of 16 March letter supporting Development Permit application (J. Harris);
- copy of 19 Nov 97 Curtis Engineering report re slope stability/soils evaluation;
- promotional and technical information on Skystream residential power appliances;
- copy of 29 March 10 MPC refusal on Development Permit 13/10;
- 14 April 10 letter of appeal from Appellants, with color photos;
- copy of Section 3.0, Municipal Mission Statement and Goals from the Municipal Development Plan;
- relevant sections from the M.D.'s Land Use Bylaw 19/96;
- excerpt from the 17 March 10 MPC minutes, on the discussion around Development Permit application 13/10;
- submission to the S/DAB, from the MPC, on suggested Conditions for Approval (should the S/DAB consider granting the Appellants' appeal);
- submissions in support of the Appellants:

- J. Harris
- N. Jarman
- J. Harris/N. Gordon

-submissions in support of the MPC decision:

- | | |
|---|-----------------------|
| -D. & J. Cooper | -D. Coombs/L. Ralston |
| -B. Lock/E. Sharp | -K. Cloutier |
| -K.&J. Duke | -F. Sepandji |
| -L.Latour/L. Demarais | -K.&D. Warkentine |
| -G.&M. Lock | -C. Gray |
| -G.Lock/M.Lock/D.Knight | |
| -Lac Des Arcs Community Association | |
| -Petition from Lac Des Arcs homeowners (15 signatories) | |

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

There was one oral presentation in support of the MPC's decision, from Dene Cooper, who resides across the Bow River from the Appellants' residence; Mr. Cooper noted that the Appellant's property was visible from his (Cooper's) property. Other than Mr. Falconer's submission for the Appellant, there were no presentations from anyone speaking in support of the Appellant.

The turbine is proposed to be installed on the north-east side of the residential dwelling unit on the Appellants' land. The Lands are within the Hamlet of Lac Des Arcs: the hamlet is zoned Hamlet Single Family Residential (R-1) in the Land Use Bylaw. The Lands are bounded by residential parcels to the east and west; by Municipal Reserve lot to the north, and by Des Arcs Road to the south. The residential parcels are also zoned Hamlet Single Family Residential; the Bow River lies to the north of the Municipal Reserve lot.

Issues Raised

The Appellant raised the following issues, in his appeal:

1. Height: The Appellant indicated that the turbine tower's height would be a maximum of 11.93 metres, but advised that a lower tower (7.0 metres plus 1.8 metres for the blades, totaling 8.8 metres) could be installed. He also indicated that the turbine tower location could not be seen by either adjacent neighbor.

The height issue was a point of considerable discussion with the Board: there was concern that the actual height was not being clarified, noting that the MPC had the height at 12.2 metres, which would be above the height of the existing Adams' house on site.

After discussion, the Board was satisfied that the turbine tower could be installed in a fashion that would eliminate or drastically reduce visibility to adjoining properties, and that sight-lines would not be an issue.

2. "Fairness and Equity": The Appellant submitted that the MPC issue of "adverse visual impact" on the adjacent community (Hamlet of Exshaw) did not take into account the adverse visual impact of the adjacent community on his property. He provided photos showing the view from his property, with a major heavy industrial plant (Lafarge Canada) and buildings in the Exshaw Industrial Park visible. In his 14 April letter of Appeal, Dr Adams cites Section 3.2.1 (iv) of the Municipal Development Plan, which refers to the "fairness and equity "principle, also proposing that a small wind turbine would not be controversial in Exshaw on the basis of it being an "adverse impact on the community", given the aforementioned Lafarge plant/Exshaw Industrial Park and other visible features affecting the view-shed.

The Board did not take a position on the fairness and equity argument put forward.

3. Bird Mortality: The Appellant submitted that wind turbines kill relatively few birds, when compared to other factors/structures, and provided data to that effect. There were further comments regarding the method of bird mortality with respect to wind turbines (the larger turbines create a barometric trauma, which kills birds; smaller turbines do not create the same pressure differential, and therefore do not kill birds as readily). The Appellant further noted the proposed placement of the turbine on the property (in front of a large spruce tree, and that the tree is higher than the turbine tower, thus preventing waterfowl from flying too low, when coming in to land on the river/lake.

The Board was satisfied that Bird Mortality would not be an issue..

4. Advantages/Carbon Footprint: The Appellant noted that the turbine would "reduce [their] carbon footprint, conserve energy and have economic advantages, feeling that alternative sources of energy should be encouraged.

The Board did not take a position on the advantages/carbon footprint argument put forward.

5. Hamlet needs and Natural Environment Protection: The Appellant indicated the Municipal Development Plan goal 3.3.1 (ii) – (iv):

ii) To encourage and support a grass roots approach to decision-making; and to recognize and respond accordingly to the differing identities and needs of the various hamlets and areas throughout the MD of Bighorn.

iii) To make public facility and service expenditure decisions based on maintaining a sound long-term financial position for the MD of Bighorn.

iv) To protect the natural environment. Those areas deemed to be environmentally significant will be given particular recognition.

The Appellant submitted that the M.D. should be encouraging alternative energy sources, in the same fashion as other Alberta municipalities do.

The Board noted that there were a considerable number of submissions in support of the MPC refusal of Development Permit 13/10, including a letter from the Lac Des Arcs Community Association, and a 15 signature petition, as well as a single oral presentation; the Board further noted the submissions in support of the appeal/Appellant were limited, and that no one had spoken in support of the Appellant at the Hearing.

III Reasons for Decision / Findings of Fact

The reasons for the Board's decision to uphold the MPC decision and deny the appeal are:

- the Board felt there was insufficient community support for the proposed turbine, given the number of submissions in support of the MPC decision, and the lack of submissions in favour of the Appellant, from the Hamlet residents.

The findings of fact are as follows:

- The Appellant is prepared to take steps to ensure the turbine will not be visible to adjacent properties.
- The Appellant did show support from his immediate neighbours, but he failed to enlist similar support from the larger community.

7 May 2010
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.