



Decision No. 01-11  
Permit No. 004-11

## **SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

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# **NOTICE OF DECISION**

DEVELOPMENT INVOLVING: **A.B.S. TRUCKING LTD.**

ON THE LAND: - - - W4 PLAN **VICTORI** BLOCK 1 LOT 2 (**VICTORIA DISTRICT**)

PLANNING AUTHORITY DECISION: **APPROVAL RESOURCE EXTRACTION**

HEARING DATE: **FRIDAY, MARCH 11, 2011 @ 10:00 A.M.**

## **SDAB DECISION:**

That the Appeal be **ALLOWED** and the Decision of the Development Authority be **REFUSED**.

## **REASONS FOR DECISION:**

### **1. Planning Framework**

In coming to this decision, the Board is mindful of the planning framework, including the following excerpts:

- a. **Land Use Bylaw – pursuant to the County's Land Use Bylaw No. 1102-02, the Lands are within the Victoria (V) District.** The general purpose of the district is:

"to recognize the historic importance of the area near the Victoria Trail in the County. Regulations in this District are the same as within the Agricultural (A) District, however, development proposals are to be reviewed in light of the special need of the District – to preserve the historical values of the Victoria Trail."

The proposed use (natural resource extraction industries) is discretionary within the Victoria District. Further, the District contains the following additional provision:

1. Decisions on all applications for development permits will be made by the development authority, bearing in mind the historical nature of the area and of the

Victoria Trail within the District. Tourist oriented developments, which maintain and enhance the historic nature and historic interpretation of the District, will be encouraged. Conditions of approval for developments which may increase the use of the Trail by heavy equipment or trucks will be designed to limit use of the Trail by the equipment or trucks, if possible.

- b. **Municipal Development Plan** - Under the County's Municipal Development Plan (Bylaw No. 1101-02), the relevant provisions include the following:

**Policy 1.5**

Within the Agricultural Use Area, a wide range of resource utilization uses may also occur provided that such uses do not negatively impact other surrounding areas.

**Policy 1.12**

Within the Victoria District Area, all the policies of the Agricultural Use Area shall apply, except that those policies in this Plan specifically applied to the Victoria District Area shall override any otherwise conflicting policy.

**Policy 3.10**

Sand and gravel extraction will be substantially limited in the Victoria District Area to only those areas which are set off from both the Trail itself and the North Saskatchewan River. If such development takes place in proximity to the trail, appropriate buffers will be established to limit visibility of the workings from both the Trail and River, and appropriate guarantees will be provided that, after the extraction use is completed, the site will be rehabilitated and returned to as near its original state as possible.

- c. **Municipal Government Act** -The Board notes that under the *Municipal Government Act*, it must perform a balancing function, as set out in section 617:

**Purpose of this Part**

1. The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted
  - a. to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and
  - b. to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,

without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

In essence, section 617 of the MGA requires the Board to balance the private interests of the landowner to use the land for the uses that the landowner deems appropriate, on the one hand, and the interests of the public, including other neighbouring landowners to use their lands, on the other hand.

While other provisions in the Land Use Bylaw, Municipal Development Plan and *Municipal Government Act* ("MGA") are germane, the Board found foregoing provisions to be the most influential in reaching its decision.

## 2. Proposed Development

The proposed gravel operation is for a 4.98 hectare area within River Lot 2 of the Victoria Settlement. The Lands are currently used as hay land and pasture. The configuration of the Lands is such that the proposed extraction area is only on a portion of the Lands, namely the most southeasterly area. There is a proposed 30 metre setback from Road Plan 1357 CL, which is the Road Plan registered in relation to the Victoria Trail. The developer had proposed a 30 metre buffer between the development and adjacent property, essentially a berm (see Development Permit Application, Figure No. 3). The berm would consist of soil stockpiles adjacent to the property boundary, but within the subject Lands.

## 3. Factors Considered

The Board is of the view that it must consider each application on its own merits. No two applications are alike, given the nature of the proposed use, the nature of the Lands on which the proposed operation is to occur, and the nature of the adjacent lands and area (and use of the same).

The Board considered, at length, the development permit and conditions authorized by the Municipal Planning Commission ("MPC"). Obviously, the MPC tried to balance the various competing considerations, and determined that in the MPC's view, the conditions contained appropriate mitigative effects on the impact on the neighbouring lands and uses.

The Board is of the view that, on balance, the proposed development is not appropriate, given a number of factors, namely the following:

- a. **Historical and Cultural Significance of Area** – The Lands (River Lot 2) are part of the Victoria District, and close in proximity to the Victoria Settlement Provincial Historic Site located on River Lot 6, where the museum operates on a seasonal basis. The Lands are adjacent to Lot 3, on which the Free Traders House is located. Indeed, the Victoria Settlement and area's significance has been demonstrated by the specific provisions that County Council has referenced in the Land Use Bylaw and the Municipal Development Plan, as referred to above.

According to the Listing of Historic Resources identified by the province, and managed by Alberta Culture and Community Spirit, the subject Land is identified with a rating of Heritage Resource Value (HRV) of 1, which is the most significant rating (between 1-5), with the primary historic resource category of concern being for the historic period. The Board respects the value placed on the subject Land by the province.

**Victoria District National Historic Site of Canada** – Parks Canada completed the Commemorative Integrity Statement in June 2008, which identifies what is most important about the Site relative to the national historic designation. Uses of the document that can be applied:

- Ensuring there is a focus on the 'whole' and not just the individual resources.
- Enunciating a set of heritage values and objectives, which can be used in analyzing and evaluating the impact of development and adaptive re-use proposals on a site or nearby property.
- Providing the basis for design guidelines for development which may take place within or nearby and which may have an impact on the national historic site.

Looking at the Victoria Settlement area as a whole, it has significance for a number of reasons, and was designated a National Historic Site in 2001 due to:

*"its cultural landscape, through highly visible and intact physical attributes, represents an exceptional illustration in one concentrated area of major themes in Prairie settlement including the development of the fur trade, the establishment of the Métis river lot system, the arrival of missions, Prairie agricultural development and the establishment of eastern European immigrants at the beginning of the 20<sup>th</sup> century."*

The Board is of the view that development in this area should endeavour to preserve, and ideally enhance the historical and cultural significance of the area. While the Board recognizes that a gravel operation will discontinue when the gravel in the pit is exhausted, the Board is of the view that even the temporary operation of a gravel pit of the proposed nature at this location, at this time, is inappropriate.

- b. **Proximity to Trail** - The proposed operation is very close to the Victoria Trail (30 metres) and at a location of the Trail that is sometimes frequented by individuals traveling by foot from the Pakan (Fort Victoria) Museum.

The pedestrians traveling along the path can walk near the McGillivray Free Traders House on River Lot 3, then onto Victoria Rapids, then onto the location of the old Hudson's Bay Grist Mill.

The Board is of the view that there will be a direct and severe negative impact of noise, dust and unsightliness, to the public travelling on that path which cannot be eliminated by any means. Although these impacts may be temporary, the Board believes that inadequate evidence was presented relating to noise, dust and visual mitigation.

- c. **Impact on Neighbouring Lands** – Although the developer has agreed to various mitigative measures, including the berming along the northerly and southerly property lines, there will definitely be an off site impact caused by this gravel operation. There is one full time residence located to the west 1,000 feet of the proposed development and another cabin one km away to the northeast. Both landowners will suffer severe noise, dust and visual impacts if this development were to be approved.
- d. **Environmental Significance** - The area for the proposed gravel operation has environmental significance as well as environmental sensitivity (i.e: river, shallow groundwater resources and erosion potential). Although some of the Lands within River Lot 2 are above the top of the river valley, the proposed location of the gravel pit is 50 meters from river bank edge, in context is fairly close to the water's edge. Information was presented by adjacent landowners, expressing concern of the current instability of the river bank located south of River Lot 2.

Although the Applicant committed to retaining a wildlife biologist to help protect the multitude of

wildlife nearby (deer, pelicans, grouse, etc), the board is of the opinion that those actions would have minimum mitigative effect.

Gravel operations, by their very nature, are dusty, noisy and unsightly. The mining of the gravel will have an off site impact not only through the operations of the pit itself, but also through the trucking of the gravel off site. Although with most operations of this nature there can be mitigative measures imposed, the Board is of the opinion that gravel mining is not appropriate on River Lot 2 largely due to its historical integrity and environmental sensitivity.

Given the foregoing, the Board is of the view that the Appeal must be upheld and the Development Permit Application rejected.

Date of Decision: **MARCH 16, 2011**      Date of Notice: **MARCH 16, 2011**

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RON BOBOCEL

Chair, Subdivision and Development Appeal Board