

**FOOTHILLS COUNTY
SUBDIVISION AND DEVELOPMENT APPEAL BOARD
Subdivision and Development Appeal Board Decision**

HEARING DATE: NOVEMBER 23, 2023

BOARD ORDER: S02/2023

LANDOWNER/APPELLANT: JANE VANSANTEN & DOROTHY TAMBLYN

APPEAL AGAINST: APPROVAL OF SUBDIVISION APPLICATION F2128-07NE

SUBJECT PROPERTY: PLAN 9610425, LOT 2; PTN. NE 07-21-28 W4M (THE "PROPERTY")

BEFORE: CHAIRMAN, G. BEACOM; BOARD MEMBERS, P. STIER, B. ROBSON, C. STORMES, G. WILKINSON; AND CLERK K. CONRAD.

DECISION

Having been satisfied that notice of this hearing was provided in accordance with the Municipal Government Act, R.S.A. 2000, Chapter M-26;

And upon having read the materials provided, and upon having heard the representations from the Appellant and the Planning and Planning Officer for Foothills County with respect to the appeal filed by the Appellant in accordance with Sections 678, 679, 680, 681 and 682 of the Municipal Government Act against a condition of approval of subdivision application F2128-07NE for the subdivision of one 3.30 +/- acre Country Residential Sub-District "A" parcel, leaving a 7.22 +/- acre Country Residential District balance parcel on Plan 9610425, Lot 2; Ptn. NE 07-21-28 W4M (The "Property").

The Subdivision and Development Appeal Board for Foothills County (the "Board") has decided to:

DENY the appeal and UPHOLD the Subdivision Authority's decision to approve subdivision application F2128-07NE for the creation of one 3.30 +/- acre Country Residential Sub-District "A" parcel, leaving a 7.22 +/- acre Country Residential District balance parcel on Plan 9610425, Lot 2; Ptn. NE 07-21-28 W4M and confirm the conditions of approval that were imposed by the Subdivision Authority.

The application is thereby APPROVED, subject to the following conditions:

CONDITIONS:

1. Subdivision to be effected by Plan of Survey, pursuant to Section 657 of the Municipal Government Act, or such other means satisfactory to the Register of the South Alberta Land Titles District;
2. It is the applicant's responsibility to provide a Real Property Report or an 'as built' drawing signed and sealed by an Alberta Land Surveyor, certifying the locations of the adjacent municipal road(s), water well(s) within the boundaries of the appropriate parcels and that the site plan is surveyed according to municipal setback requirements;

3. Landowners to execute an Overland Drainage Easement and Right-of-Way Agreement, which is required to be registered by right-of-way plan concurrent with the plan of survey, over the full extent of the intermittent seasonal drainage course, to the satisfaction of the Public Works department;
4. Completion of all pre-release conditions as noted in the executed Municipal Development Agreement to the satisfaction of the Municipality and where applicable the appropriate external agencies. These conditions include:
 - a. Payment of the \$11,300.00 per new lot Community Sustainability Fee;
5. All accesses to be located and culverts and approaches to be installed to current Municipal subdivision road construction standards, to the satisfaction of the Public Works Department;
6. As the approved site plan illustrates a common approach between the proposed and balanced parcel, Council requires the access labelled “existing secondary access” to be removed. If the applicant instead develops a single approach to the proposed parcel, then the “existing secondary access” could remain
7. Public Reserve: to be provided by way of cash-in-lieu of land based on \$47,828 per acre on the account of 10% of the subject 10.52 +/- acre parcel;
8. Landowners are to provide all utility easements and agreements, to the satisfaction of the County and the utility companies;
9. Landowners are to pay all arrears of taxes on the existing parcel prior to finalization of the subdivision;
10. Submission of subdivision endorsement fees.

FINDINGS OF FACT

1. The subject property is a 10.52 +/- acre Country Residential District parcel located on 96 Street East, approximately 4 kilometres northeast of the Town of Okotoks.
2. On October 18, 2023, Foothills County Council granted third and final reading to Bylaw 20/2022 authorizing an amendment to the Country Residential District land use rules to allow for the future subdivision of one 3.30 +/- acre Country Residential Sub-District “A” parcel, leaving a 7.22 +/- acre Country Residential District balance parcel on Plan 9610425, Lot 2; Ptn. NE 07-21-28 W4M
3. On October 18, 2023, the Subdivision Approving Authority for Foothills County approved an application for the subdivision of one new 3.30 +/- acre lot from the subject property.
4. An appeal was received by Foothills County from J. VanSanten and D. Tamblyn on November 3, 2023 against approval condition #7, which indicated Public Reserve was to be provided by way of cash-in-lieu of land based on \$47,828 per acre on the account of 10% of the 10.52 +/- acre subject parcel.

ISSUES

a. Land Use Redesignation and Subdivision

- (i) The Planning Officer submitted the history of the subdivision application as follows:

- a) On April 20, 2022 the land use application was given first reading.
 - b) On October 18, 2023 the land use application was approved for third and final reading.
 - c) On October 18, 2023 the subdivision application was approved subject to certain conditions, including condition #7, which indicated Public Reserve was to be provided by way of cash-in-lieu of land based on \$47,828 per acre on the account of 10% of the 10.52 +/- acre subject parcel.
- (ii) The Planning Officer submitted the quarter section was designated into rural holding 20 and subdivided throughout the 1970s and 1980s. Further subdivision has since been approved in six instances, including the new 3.3 +/- acre subject parcel.
- (iii) The Planning Officer submitted the history of the quarter section subdivision and reserves as follows:
- a) In 1992, one 9.5-acre parcel was created and with public reserve paid by cash-in-lieu of land and deferred on the balance parcel.
 - b) In 1993, one 9.34-acre parcel was created with public reserve paid by cash-in-lieu of land and deferred on the balance parcel.
 - c) In 1994, two 4.5-acre parcels were created and with public reserve paid by cash-in-lieu of land on both created parcels and deferred on the balance parcel.
 - d) In 1995, one 9-acre parcel was created with public reserve paid by cash-in-lieu of land and to be deferred on the balance parcel; however, the deferred reserve was not registered on title at the time.
 - e) In 1998, one 9.86-acre balance parcel was the subject of a public hearing proposing a new lot of 4.5 acres, and was refused based on road infrastructure not supporting traffic and potential impacts of density on the surrounding development.
 - f) In 2003, one 8-acre lot was created with public reserve cash-in-lieu of land paid and the remaining deferred on the balance parcel.
 - g) In 2023, the subject 3.3 +/- acre lot was approved for subdivision with Council's condition, as per policy, that cash-in-lieu of land reserves are to be paid for the newly-created lot and the balance.
- (iv) The Planning Officer submitted Municipal Reserves can be used for parks, buffers and school reserves, with many lands being available as public park space and many are operated and maintained by local community associations.
- (v) The Planning Officer submitted municipal or school reserves may be used by municipalities or school authorities individually or jointly for public parks, public recreation area, or schools.
- (vi) The Planning Officer submitted the amount of cash-in-lieu of land provided for public reserve on the subdivision will be equal to 10% of the title parcel, and that on lots 21 acres or less 10% cash-in-lieu of land will be required on the full original parcel where the land is being subdivided to the maximum density allowed under the Land Use Bylaw.

- (vii) The Planning Officer submitted under Land Use Bylaw 60/2014 parcel density for Country Residential is a maximum of one lot per five acres of existing land contained under the same title, to a maximum of 32 lots per quarter section.
- (viii) The Planning Officer submitted the full subject parcel is a 10.52 +/- acre parcel with the proposed new lot being 3.30 +/- acres, leaving a 7.72 +/- acre balance.
- (ix) The Planning Officer submitted due to reserves not yet paid for the subject parcel, and that further subdivision on the subject parcel would exceed the density policy, the Subdivision Approving Authority determined reserves were to be paid on the entire 10.52 +/- acre parcel, which includes the balance 7.72 +/- acre parcel and newly proposed 3.3 +/- acre parcel, with reserve assessment based on \$47,828 per acre for a total of \$50,828.
- (x) The Planning Officer submitted the subdivision appeal was focused solely on Condition #7 of the subdivision approval, regarding payment of public reserves.
- (xi) The Council Representative submitted public reserves are added to Foothills County reserve funds and are to be used for schools, parks, and facilities for use by Foothills County and Foothills County residents.
- (xii) The Council Representative submitted cash reserves are used by Foothills County for providing schools when requested by school divisions or parks and public spaces in subdivision areas with higher density that may require a park space.
- (xiii) The Council Representative submitted when applicants do not have enough land for public reserve, cash-in-lieu of land is requested.
- (xiv) The Appellant's Agent submitted the appellants are prepared to meet all conditions of subdivision, with the exception of the requirement for cash-in-lieu of land public reserve.
- (xv) The Appellants' Agent submitted the appellants have incurred significant costs to subdivide their property, with fees, surveys, studies, and approach improvements amounting to more than \$120,000, which has depleted their life savings.
- (xvi) The Appellants' Agent submitted the 10% cash-in-lieu on the entire parcel would be \$50,828, and the appellants would prefer to pay \$15,783 on the 3.3 +/- acre parcel with the balance deferred to the 7.2 +/- acre parcel.
- (xvii) The Appellants' Agent submitted the subdivision of the 3.3 +/- acre parcel cannot be completed until cash-in-lieu of land is received on the entire 10.52 acre parcel, and the appellants would not be able to satisfy the conditions of subdivision if cash-in-lieu of land is required on the entire parcel.
- (xviii) The Appellant J. VanSanten submitted the appellants purchased the subject property 19 years ago with a plan to subdivide and sell the 3.3 +/- acre property to help pay off the mortgage on the parcel and aid in their retirement.
- (xix) The Appellant's Agent submitted he had informed the appellants there was not a deferred reserve caveat on title and reserves were paid in full, and was surprised when the subdivision approval included a condition for public reserve as cash-in-lieu of land.
- (xx) The County Representative submitted public reserve may not have been registered on older parcels and that, had the caveat for public reserve been

registered on title, it would have been clear from the onset that the deferred reserves were owed on the subject lands.

- (xxi) The Planning Officer confirmed the public reserve caveat was not registered on the subject land without indication as to the reason for the registration being missed
- (xxii) The Planning Officer submitted the Municipal Government Act does not require deferred reserve caveats to be registered on title.
- (xxiii) The County Representative submitted the subdivision of the 3.3 +/- acre parcel is the last opportunity for Foothills County to take municipal reserve from the quarter section due to the density policy.
- (xxiv) The County Representative submitted that public reserves are also used for recreational facilities such as Scott Seaman Sports Rink and the Calvary FC Regional Field House, taking the onus off the taxpayers of Foothills County.

REASONS FOR DECISION

The Board is DENYING the appeal and UPHOLDING the Subdivision Authority's decision to approve subdivision application F2128-07NE for the creation of one 3.30 +/- acre Country Residential Sub-District "A" parcel, leaving a 7.22 +/- acre Country Residential District balance parcel on Plan 9610425, Lot 2; Ptn. NE 07-21-28 W4M, confirming Condition #7: Public Reserve: to be provided by way of cash-in-lieu of land based on \$47,828 per acre on the account of 10% of the subject 10.52 +/- acre parcel.

Based on testimony heard, the Board considered the application, the testimony of the Planning Officer, Foothills County Council Representative, Appellant, and Appellant's Agent, and determined that the requirement to provide public reserve by way of cash-in-lieu of land on the subject parcel is in line with the parameters of the Foothills County Municipal Development Plan's municipal reserve policy and the density provisions of the Country Residential District land use rules as outlined within the Foothills County Land Use Bylaw.

As such, the Board determined that there was insufficient evidence to justify overturning the Subdivision Approving Authority's decision to require Public Reserve to be provided by way of cash-in-lieu of land based on \$47,828 per acre on the account of 10% of the subject 10.52 +/- acre parcel.

CLOSING

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in Section 688 of the Municipal Government Act, R.S.A. 2000 Chapter M-26 which requires an application for leave to appeal to be filed and served within 30 days of this decision.

Dated at the Town of High River, in the Province of Alberta this 23 day of November, 2023 and signed by the Chairman of the Subdivision and Development Appeal Board who

agrees that the content of this document adequately reflects the appeal hearing, deliberations and decision of the Subdivision and Development Appeal Board.

Mr. Gar Beacom, Chairman

RELEVANT LEGISLATION**FOOTHILLS COUNTY MUNICIPAL DEVELOPMENT PLAN (MDP2010)****Municipal Reserve Policy – Appendix E**

Under Section 666(1) of the Municipal Government Act the Council may require the owner of a parcel of land that is subject to a subdivision proposal, to provide land for municipal reserve or provide money in place of the municipal reserve.

The amount of land or cash-in-lieu of land to be provided for municipal reserve will be equal to 10% of the titled parcel(s). The land required to be provided as environmental reserve or environmental reserve easement will not be included in the calculation of municipal reserve.

Under Section 671(2) it states that Municipal reserve, school reserve or municipal and school reserve may be used by a municipality or school authority or by them jointly only for any or all of the following purposes:

- a. a public park;
- b. a public recreation area;
- c. school authority purposes;
- d. to separate areas of land that are used for different purposes.

I. NO PUBLIC RESERVE IS REQUIRED WHEN:

- a. one lot is to be created from a quarter section;
- b. land is to be subdivided into lots of 16 hectares (39.5 acres) or more and is to be used only for agricultural purposes;
- c. the land to be subdivided is .8 hectares (1.98 acres) or less; or reserves have already been provided for the title.

Even though no public reserve is required, a Deferred Reserve Caveat may be placed on title at the discretion of Council to notify the landowner that at the time that the parcel is further subdivided, municipal reserve will be required.

II. FORM OF RESERVE – DEDICATION OF LAND OR CASH-IN-LIEU

For a redesignation or subdivision application, when the reserves to be provided are more than 1.98 acres, a separate lot must be shown on the site plan. It will be at the discretion of Council at the time of the decision as to whether land will be taken or cash-in-lieu.

On lots 21 acres or less, 10% cash-in-lieu of land will be required under the following circumstances:

- a. on the full original parcel where the land is being subdivided to the maximum density allowed under the Land Use Bylaw.
- b. on two of the lots where the proposal is to create 75% of the maximum allowable density with the reserves being deferred on the largest lot.

- c. on one of the lots where the proposal is to create 50% of the maximum allowable density with the reserves being deferred on the largest lot.

III. COUNCIL MAY REQUIRE THE RESERVES TO BE DEFERRED WHEN:

- a. it is deemed that the maximum allowable density allowed under the Land Use Bylaw has not been obtained. The balance of the reserves owing on the existing title will be deferred, by Caveat, on the largest lot.
- b. parcels are located within an urban fringe or Inter-Municipal Development area;
- c. the new lot is created under the 'Agricultural District' Land Use Rules.

A Deferred Reserve Caveat would be placed on title to notify the owner on title that at the time that this parcel is further subdivided, municipal reserve will have to be provided.

This policy will serve as a guideline and the form of Public Reserve will remain at the discretion of Council.

FOOTHILLS COUNTY LAND USE BYLAW (60/2014)

13.1 COUNTRY RESIDENTIAL DISTRICT

13.1.6 LAND USE REQUIREMENTS

13.1.6.2 In order to facilitate the purpose and intent of this district and ensure the comprehensive development of country residential uses within the District, the following applies to applications for subdivision:

- a) Parcel Density:
 - i. Maximum one lot per 2.02 ha (5 acres) of existing land contained under the same title to a maximum of 32 lots per quarter section.
- b) Minimum Parcel Size:
 - i. The area in title at the time of passage of this Bylaw; or
 - ii. A parcel of land no less than 0.81 ha (2.0 acres).
- c) Maximum Parcel size:
 - i. 8.49 ha (20.99 ac); or
 - ii. The area in title at the time of passage of this Bylaw.

APPENDIX "A"

PERSONS WHO WERE IN ATTENDANCE, MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING:

	<u>NAME</u>	<u>CAPACITY</u>
1.	B. Smith	Foothills County Planning and Planning Officer
2.	D. Miller	Foothills County Council Representative

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- 3. J. VanSanten Appellant/Landowner
- 4. R. Potrie Appellant's Agent

APPENDIX "B"

- I. DOCUMENTS RECEIVED PRIOR TO THE HEARING AND MADE AVAILABLE AT THE HEARING:

NO. ITEM

- 1. Notice of Appeal submitted by J. VanSanten and D. Tamblyn
- 2. File Documents

APPENDIX "C"

EXHIBITS MADE AVAILABLE AT THE HEARING

NO. ITEM

- 1. Presentation by the Foothills County Planning Officer B. Smith
- 2. Presentation by the Foothills County Council Representative, D. Miller
- 3. Presentation by the Appellant's Agent, R. Potrie