

DECISION REPORT

OF THE CITY OF MEDICINE HAT

SUBDIVISION AND DEVELOPMENT APPEAL BOARD HEARING

HELD ON THURSDAY, OCTOBER 12, 2023 AT 12:00 PM

APPEAL #3-2023 – DEVELOPMENT APPLICATION

271 SOUTHLANDS BLVD S.E.

NATOSHA MASTEL (APPELLANT)

MEMBERS PRESENT: J. Taylor, Chair
A. Steinke, Vice-Chair
Councillor C. Hider
C. Acton
W. Fischer

STAFF PRESENT: L. Randle, City Clerk (Secretary to the Board)
R. Korven, Legislative Services Specialist, City Clerk Dept.
R. Sissons, Manager of Planning
B. Irwin, Planning Officer
D. Wingenbach, Municipal Engineer II
C. Collier, Municipal Engineer II

INTRODUCTORY COMMENTS

The Board Chair introduced the Board and city staff members present. He also advised that audio or video recordings of the hearing is not permitted.

At the commencement of the hearing, the Chair stated that the Board is an impartial body and that the members are not employees of the City of Medicine Hat. He noted that decisions of the Board are based strictly on the evidence presented at the hearing, taking into consideration the relevant legislation. The Chair advised that following the public hearing, the Board will review the issues, and a written decision will be rendered. The Chair further advised that all information provided is public information and was available to all interested parties prior to the public hearing, which was publicly advertised. He also stated that both sides will have the opportunity state their case and to ask questions of each other.

Prior to hearing submissions on the merits of the appeal, the Chair asked the Board members if, in their opinion, they may have a conflict of interest or bias that may prejudice their decision with regard to this appeal. There were no concerns expressed. He then asked if anyone present believes or has a concern there may be a conflict of interest or bias shown by any member of the Subdivision and Development Appeal Board which may prejudice any decision with regard to Appeal #3-2023. There were no concerns expressed at that time.

BACKGROUND TO THE APPEAL

On August 24, 2023, the Development Authority approved a development permit application for a Multiple Unit Residential Development with variance to density from the required minimum of 25 units per hectare to 22 units per hectare, subject to the following conditions:

Prior to commencement of construction, payment of off-site levies (OSL) is required, in accordance with Off-site Levy Bylaw No. 4157. Please visit <https://Forms.medicinehat.ca/Planning/Off-Site-Levy-Estimator> to calculate an estimate of OSL fees. OSL rates are based on the year in which they are paid and are subject to change at the beginning of each calendar year.

- 1 Pursuant to Section 3.2(v) of Land Use Bylaw No. 4168, a variance for the minimum density of a site of 25 UPH to 22 UPH has been granted. Prior to release of the Development Permit, payment in the amount of \$299.25 for the minimum density variance is required.
- 2 The Development must be completed in its entirety and must conform to Site Development Plans and any other application materials or reports submitted by the applicant and approved in writing by the Development Authority [or any future revision to such plans approved in writing by the Development Authority]. Unless otherwise stated, all conditions of development approval must be completed prior to the commencement of construction.
- 3 Planning & Development Services does not review utility design or related infrastructure code compliance as part of a Development Permit approval. It is the responsibility of the developer to identify and comply with the latest edition of all applicable provincial codes and regulations. As a condition of the Development Permit, it is a requirement that the developer undertake (and document) the following prior to the commencement of construction:
 - a) Contact Utility Safety Partners (utilitysafety.ca) to acquire utility locates to identify utility locations (underground, surface, or overhead) and note the required separations between the development and utilities or telecommunications;
 - b) Review registered Utility Right-of-Ways and the agreements and ensure there are no encroachments or grade changes to any part of the proposed development into any UROWs;
 - c) Contact the City of Medicine Hat Electric Utility (403-529-8262) for allowable separations for buildings, structures, construction, or activities to electrical infrastructure; and
 - d) Contact the City of Medicine Hat Gas Distribution (403-529-8190) to discuss conflicts and request infrastructure alterations. The minimum setback from gas distribution lines is 1 meter, gas transmission or high-pressure lines require additional separation.

It is the responsibility of the developer to ensure any conflict or note outlined on the utility locates or through review is resolved with the affected City of Medicine Hat utility department or external service provider. Any relocation, installation, or expansion of utility services (including but not limited to utility mains, service lines, transformers, or meter locations, etc.) is at the developer's expense and must be to the satisfaction of the respective utility departments. Should the utility department require the development to be relocated or altered, new site plans must be submitted to Planning and Development Services for review and approval.

- 4 Initiation of construction of the Development or the commencement of the land use must be within 1 year from the date the Development Permit was issued by the Development

Authority. Consistent construction progress must be maintained or, at the discretion of the Development Authority, the Development Permit may be cancelled. The Development must be completed in its entirety within 2 years from the commencement of construction. At the discretion of the Development Authority, extensions to completion of construction may be granted.

- 5 The site must be graded in such a manner that all surface water will drain from the building site to the back lane or front street and not adversely affect neighbouring properties.
- 6 Prior to construction, the applicant must enter into and abide by a Development Agreement with the City of Medicine Hat pursuant to Section 650 of the Municipal Government Act.
- 7 Prior to construction, the applicant must submit a revised Site Plan and Detailed Design Drawings to the satisfaction of the Development Authority. The required revisions can be found in the Technical Coordinating Committee (TCC) consolidated comments provided to the applicant.

APPEAL HEARING

The Secretary advised the Board that Public Notice of the hearing was published in the Saturday, September 30, 2023 edition of the *Medicine Hat News*. Fifty-eight notifications were sent out to adjacent/abutting and surrounding property owners. He also advised that the procedure is that representatives from Planning, Building and Development Services will provide an introduction and overview, the appellant or their representative will be given the opportunity to speak in support of the appeal, any other interested persons will be given the opportunity to address the Appeal Board, the appellant or their representative will be given the opportunity for rebuttal. Parties will then provide their closing comments and the Board will confirm whether they have received enough evidence to make a decision. The Board will then consider the appeal in a closed session. A decision in writing will be provided within 15 days. Details of the appeal included in the appeal package were provided to the appellant and the Board members on October 10, 2023.

Robert Sissons, Manager of Planning, provided an overview of the development application.

- A map was shown of the site location. The property abuts Southlands Boulevard and Somerset Road in the Southlands neighbourhood. Aerial images were also shown.
- The site of the proposed development is known as 271 Southlands Boulevard. The lot was created in 2008 as part of the Phase 5B subdivision and is the last remaining site in this phase. It is 1.16 hectares in area and is within the land use district known as Medium-Density Residential District. Nearby zoning includes a mix of low-density and medium-density residential and Open Space district.
- The site has frontage onto Southlands Boulevard and Somerset Road and has no lane access. There is also an overland drainage swale along the south property line.
- The Municipal Development Plan and the Southlands Area Structure Plan, which was created in 2004, are statutory plans that apply to this area. As part of the subdivision plan, more detailed planning and engineering documents were created and included a Functional Servicing Report which was updated in 2008. Detailed design drawings were also created at that time.

- A site-specific servicing constraints and requirements document was prepared by the developer for the site, although this was not a requirement.
- The area was originally conceived as low-density residential in 2004 but was changed to medium density in 2008. A larger site combining this site and an adjacent development to the southeast was redesigned and split into two separate sites. The 2015 servicing study reviewed the site in further detail and examined utilities, traffic, grading and approved capacities.
- The Land Use Bylaw is the regulatory planning document to which the development must conform to. It sets out council-approved parameters for development to provide certainty of outcomes to the public and developers.
- The purpose of the medium-density district is to allow for the development and moderate intensification of residential neighbourhoods with low to mid-rise built forms at medium densities such as Multiple Unit Residential Developments, Attached Housing and Apartments. Therefore, in this case, Multiple Unit Residential Development is a permitted use.
- A variance for site-density was requested. The minimum density permitted is 25 units per hectare to a maximum of 75 units for a Multiple Unit Residential Development. Therefore, this site requires a minimum of 29 units to conform to the bylaw. However, a variance was granted to lower this standard to 22 units per hectare, resulting in the proposed 25 units for the site.
- For context, 247 Southlands Boulevard has 55 units per hectare, the apartments at 280 Southlands Boulevard have 95 units per hectare, the blocks to the west of the proposed development which includes a mix of housing types, has 38 units per hectare, and the block to the south which has detached residential dwellings has 24 units per hectare.
- Off-street parking shall be provided to the satisfaction of the development authority based on criteria established in section 5.4.2(ii) of the Land Use Bylaw. This proposed development contains a double garage and double driveway for each unit, in addition to four visitor stalls on site, including one accessible barrier-free stall. This works out to 4.16 parking stalls per unit, which is substantially above the typical industry standard for parking of multi-family developments.
- Public on-street parking is available adjacent to the site along Somerset Road and Southlands Boulevard.
- It is the jurisdiction of the road authority to monitor and place any restrictions on a roadway to regulate parking.
- Site access for residential medium-density sites is generally limited to one access unless additional access points are warranted in accordance with Land Use Bylaw criteria shown in section 6.3.4.7 (ii), relating to site density, site design constraints, emergency vehicle access and traffic volume.
- As part of the proposed site design there is one public all-turns access provided along the southwest side of the site onto Somerset Road and one emergency access and right-out public access along the northwest side of the site onto Somerset Road.
- The final access design was determined based on site configuration requirements and operating conditions of the adjacent roadways. Site access onto Southlands Boulevard is technically feasible, however, it was determined this was not optimal. There are no back lanes to the site.
- Some additional drone footage aerial shots were provided to help add context to the area. This concluded the presentation from Administration.

- The Chair asked if the Board had any questions for the presenter. There were no questions.
- The Chair then gave the appellant's representative, Ken Serr, the opportunity to present.

Ken Serr (For the Appellant)

- Mr. Serr had a meeting with the developer who is aware of the traffic problems in the area. The biggest concern of the neighbourhood is that 25 new residential units will complicate the existing parking, crosswalk and traffic congestion issues in the area. Over 40 signatures were collected indicating opposition to the project.
- The appellant wants the project to proceed, however, they want some improvements to the infrastructure in the area now, which would alleviate problems with the problematic flow of traffic, blocking of fire hydrants, illegal parking, parking too close to the intersection and stop signs, poor sightlines, and so on.
- He noted that the Planning Department acknowledged the existence of poor sightlines due to parked vehicles, staggered driveways to the north and horizontal curbs on Southlands Boulevard. He also stated that the presenter claims that parking restrictions may be necessary on the east side of Somerset Road and that there will be increased traffic. Therefore, he believes that parking should be restricted.
- The appellant stated that parking should be stopped altogether, not just restricted, as the area is just too dangerous. He feels the best entrance would be directly off Southlands Boulevard, rather than off Somerset Road.
- An entrance off Southlands Boulevard would allow a right-hand turn into the site and a right-hand turn out of the site onto Somerset Road thereby creating a loop, rather than forcing left-hand turns across traffic. This would likely require moving some electrical infrastructure to accommodate the change which he believes is an option that could fairly easily be done.
- A letter and map provided by the appellant was handed out to Board. He summarized the letter which reiterated the traffic and pedestrian safety issues already identified. The letter also states that more needs to be done to protect citizens. It notes that off-street parking requirements for other residential developments in the area are insufficient, and that recreation amenities in the area offer no visitor parking, which exacerbates the traffic issues in the area.
- The appellant would like to see improvements to the area whether the development proceeds or not. Having no parking on the east side of Somerset Road would be helpful. The crosswalk at the intersection is high traffic and is used heavily by school children. Flashing lights would be helpful.
- 271 Southlands Boulevard S.E. will only have an entrance from Somerset Road so it's odd that the address shows it as being on Southlands.
- Mr. Serr thanked the Board for the opportunity to present. He reiterated that they are not opposed to the development but feel this is their last chance to seek traffic and pedestrian safety improvements for the Somerset neighbourhood. Adding 25 more residences to Somerset Road is unacceptable, if the current traffic and pedestrian safety problems are not properly addressed. If this occurs, residents will be furious. The neighbourhood is willing to work with the city and the developer to find solutions.
- The Chair thanked Mr. Serr and asked if the Board had any questions of the appellant's representative. There were no questions.

- The Chair asked if there were any other persons wishing to address the Board.

Robert Whitten (Applicant)

- Robert Whitten, one of the developer owners, addressed the Board. He recognizes there are a number of issues identified by the appellant but also that it is necessary to carefully consider only what can be controlled by this development and the subject of this hearing.
- He described the proposed development which will cater to the 55+ age group. The project hits multiple goals outlined in the Municipal Development Plan and meets the requirement of the Land Use Bylaw, excepting that there will be four fewer units than the minimum required. This variance is the reason the project is appealable, otherwise it would not be.
- The development will add to the community that already exists. Comprehensive engineering reports, an Area Structure Plan, a Functional Services update and an engineering report in 2015 prepared specifically for the site, have all been done and all of them considered traffic and transportation issues. The 2015 report stated that one all-turns access was permitted onto Southlands Boulevard and multiple all-turns accesses were permitted onto Somerset Road.
- Working with the city, it was recommended that access onto Southlands Boulevard not be provided, rather, access onto Somerset Road would be recommended.
- The City's Technical Coordinating Committee undertook three reviews during the development review process. It acknowledged concerns of the residents in the area respecting traffic and safety issues. It strongly recommended on-site parking for the development, which the developer will do as part of the development. It recommended that no parking on the east side of Somerset Road be permitted. This will make Somerset Road function as a collector road. "No Parking" signs are to be provided by the developer for this purpose.
- The developer could have submitted an application for 175 units which would not have been appealable if all the requirement in the Land Use Bylaw were met.
- This appeal is predicated on traffic concerns, on-site parking, on-street parking and the entrance onto Somerset Road. Restricting parking on the east side of the road will make it function as a collector road. The developer agrees to this and will provide the signage. The on-site parking will provide approximately 60% more stalls than similar developments.
- This development addresses the concerns that the appeals are based on. He asked the Board to consider the time, energy and expense incurred to get to this point, as well as the benefits the development will bring to the community. He asked the Board to allow the project to proceed as per the approved Development Permit.

The Chair asked if the Board had any questions for the presenter. There were no questions.

The Chair then asked if there was anyone else wishing to address the Board.

Paul Haynes came forth and addressed the Board:

- He lives in the area and stated that the issue is the curvature of the roads which creates the safety problems. He suggested lowering the speed limit in the area. He also stated that there is simply not enough parking for tournaments held at the park in the area and that some more lit pedestrian crossings would help. There is an area to the northwest of the park that could be used for additional parking.

The Chair asked if the Board had any questions for Mr. Haynes. There were no questions.

The Chair then asked if there was anyone else wishing to address the Board. No one came forth.

The Chair then provided Mr. Serr the opportunity to provide a rebuttal.

Ken Serr (For the Appellant)

- Parking for the park activities is not adequate. The city has a history of not providing enough parking.
- Are there any guarantees that there will be no parking from Southlands Boulevard to the utility right of way on Somerset Road? Someone needs to be accountable for this, he would like to see this guaranteed in writing.

The Chair asked the Board if it had any questions of Mr. Serr.

Board member Fischer asked him to clarify specifically where he would like parking to be precluded. Mr. Serr replied that he would like to see no parking allowed on the east side of Somerset Road from Southlands to the utility right of way.

The Chair asked the Board if they had any further questions. There were none.

The Chair provided the Planning Department the opportunity to provide closing comments.

Robert Sissons, Manager of Planning

- Mr. Sissons corrected the appellant, noting that an earlier appeal he referenced was actually a Public Hearing for a rezoning, not an appeal. He also stated that some of the information the appellant presented may have been from an earlier version of the Land Use Bylaw which has since been amended.
- The Planning Department and Municipal Works department are not opposed to improving safety and addressing traffic concerns in the area. However, that is a larger issue that is being rolled into this development. They are related but the development should not be held up due to issues created by previous developments in the area. Traffic and safety improvements and enhancements to the area are supported and even contemplated in the Municipal Development Plan as a future objective.
- He stated that he believes the Board does not have the authority to order the Municipal Works Department to implement the changes desired but can make suggestions. The area was designed for the use being proposed. The only aspect appealable is the variance for the lower density. The developer has complied with all other aspects of the Land Use Bylaw and has tried to mitigate impacts to the neighbouring residents.

The Chair asked if the Board had any questions for Mr. Sissons.

Board member Hider asked if the electrical infrastructure referred to previously could be moved. Mr. Sissons responded that yes, it could be moved.

Board member Hider then asked if 401 Southlands Boulevard has an entrance directly off Southlands. Mr. Sissons explained that the access is as far to the east as possible to keep it away from the nearby intersection.

The Chair asked if there were any other questions.

Board member Fischer asked if the Municipal Works Department is the road authority for the City of Medicine Hat. Mr. Sissons confirmed that this is correct.

He also asked if there will be a Development Agreement with the developer that will provide the opportunity for ensuring the developer has some responsibility for the perimeter of his property? Mr. Sissons explained that the City can enter into a Development Agreement authorized through the Municipal Government Act for sidewalks, signage, and other upgrades needed for the area.

Board member Fischer then asked if there were any other access options for 401 Southlands Boulevard. Mr. Sissons responded that other than a lane way which is not feasible as an access to a development of this magnitude, no there is not.

The Chair asked if there any other questions. There were none.

The Chair asked the Board if it has enough information to render a decision. The Board indicated that it has enough information.

The Chair declared the hearing closed at 1:15 p.m. and restated that a written decision would be rendered within 15 days.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

The Board denies the appeal.

FINDINGS OF FACT

- The lands are located at 271 SOUTHLANDS BLVD SE
(Lot 26, Block 11, Plan 0812753)
- The lands are in the Medium Density Residential District
- On August 24, 2023 a Development Permit was issued for 25 residential units with a variance to the density from 25 units per hectare to 22 units per hectare
- The appellant states the grounds for their appeal as follows:

Currently, it has been approved that the main entrance to this development is on Somerset Road. Somerset Road is a very narrow road and is already a safety concern when drivers have to stop in the middle of the road let another vehicle pass by as the road is not wide

enough to confidently and safely get two vehicles past the parked vehicles. We are proposing that the main entrance be on Southlands Boulevard which is a much wider road. The similar development on the next block does have its entrance on Southlands Boulevard so it makes sense and is much safer to have both entrances on the wider road.

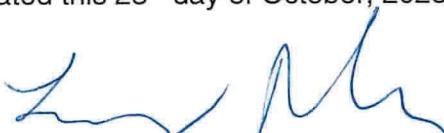
REASONS FOR THE DECISION

The Board reviewed all the evidence and arguments, written and oral, submitted by the parties and focused on key evidence and arguments.

In making this decision, the Board considered the MGA, the Land Use Bylaw, and the oral and written submissions provided by the Development Authority, the Appellant, the Applicant and those who spoke at the Hearing.

- Impact on adjacent properties. The Board considered s. 687 (3)(d) of the *Municipal Government Act* which states a board may make an order or decision or issue or confirm the issue of a development permit if, in its opinion, the proposed development would not materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and the proposed development conforms with the use prescribed for that land or building in the land use bylaw.
- The Board acknowledges the concerns of the appellant and others heard from at the hearing with respect to traffic and parking concerns. The Board has no authority to make the changes the appellant is seeking on these issues, but we suggest that Municipal Works seek to work with community to alleviate these concerns as per their mandate.
- The Board is satisfied that the applicant has met all the requirements of the Land Use Bylaw, with the exception of the density variance which is well below the maximum permitted. The variance reduces the minimum density required and therefore, any corresponding traffic issues that the development may create. It is recognized that were it not for this reduction in density, this development application would not have been appealable.
- The Board is satisfied that that providing 4.16 off-street parking spaces per residential unit is very generous and will not have a negative impact on parking in the area.

Dated this 23rd day of October, 2023



Larry Randle, SDAB Clerk, on behalf of
Jim Taylor, Chair
SUBDIVISION AND DEVELOPMENT APPEAL BOARD

cc. Natosha Mastel and Ken Serr (Appellant)
New Rock (Applicant)
Robert Sissons, City Planner and Director of Development Services

