

**SUMMER VILLAGE OF NORGLLENWOLD  
SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
JUNE 22, 2023  
RECORD OF HEARING AND DECISION**

<b>PRESENT</b>	Chair:	Allan MacPherson
	Member-at-Large:	Janelle Allan
	Member-at-Large:	Cyndi Teulon
	Development Officer	Kara Hubbard
	CAO	Tanner Evans
	Recording Secretary	Teri Musseau
	SV Counsel:	Alifeyah Gulamhusein
	Appellant(s)	Robert Gibson
	Legal Counsel:	Kathleen Elhatton-Lake, K.C.
	Representative:	Scott Nanninga
	Gallery:	Cyril Gurevitch

**CALL TO ORDER** Chair MacPherson called the hearing to order at 10:00 a.m.

**PURPOSE OF HEARING** The purpose of the hearing is to hear an appeal received from Scott Nanninga, on behalf of Robert Gibson on May 15, 2023, appealing the denial of a Development Permit by the Municipal Planning Commission on April 21, 2023, for a lakeside deck on the escarpment for the property located at 139 Grand Avenue, Lot 20, Block B, Plan 5108EO, in the Summer Village of Norglenwold.

**APPEAL FILED AND NOTICE GIVEN** Pursuant to Section 686(1) of the Municipal Government Act, the appeal was filed within the 21-day appeal period and notice was given by letter to the appellant and owners of property located within a 200' radius of the proposed development. The hearing was called to order 28 days after receipt of the letter of appeal and within 30 days as outlined in Section 686(2) of the Municipal Government Act. At the request of the Summer Village of Norglenwold's legal counsel, an adjournment was granted until June 22, 2023.

**DEADLINE FOR DECISION** Pursuant to Section 687(2) of the Municipal Government Act, the Subdivision and Development Appeal Board must give its decision in writing together with reasons for the decision within 15 days of concluding the hearing.

**OBJECTIONS TO MEMBERS OF THE APPEAL BOARD** The Members of the Subdivision and Development Appeal Board are appointed in accordance with the Subdivision and Development Appeal Board Bylaw #264-22.

Members of the Subdivision and Development Appeal Board were asked if they felt they should disqualify themselves from hearing the appeal before them and no one felt they needed to disqualify themselves.

Mr. Nanninga and Mr. Gibson were asked if they had any objection to any of the members of the Subdivision and Development Appeal Board present from hearing the case. They had no objection to any of the members hearing the case.

**DISCLOSURE  
OF EVIDENCE  
FINDING OF  
FACTS**

The members of the Subdivision and Development Appeal Board were asked if they had sought, been given, or reviewed any evidence prior to the hearing.

Other than the agenda package that was sent to members a few days prior to the hearing, none of the members had sought, been given, or reviewed any evidence prior to the hearing.

**APPEAL LETTER  
READ**

Teri Musseau, Secretary, read the appeal letter received from Mr. Nanninga, on April 28, 2023, into record.

In regard to the development permit application for 139 Grand Avenue, we wish to appeal the decision of the Municipal Planning Commission (MPC) given that the reasons for rejection are felt to be unreasonable and/or unverified.

Firstly, as per the Notice of Decision, MPC states that the primary reason for denying the application is that they claim that the proposed deck is located on lakeside escarpment. MPC makes this statement without any substantiation or documentation to back up this claim. Whereas the applicant contracted a professional surveyor which concluded that the proposed deck is not located on lakeside escarpment. The documented results of this survey were provided to MPC with the development permit application. Furthermore, per the land use bylaw, an escarpment is defined as a "steep slope and significant change in elevation." Based on this description and the picture of the proposed deck shown below, it seems reasonable to suggest that the proposed deck is not located on a "steep slope." Likewise, the general surface grade of the property from the house to the location of this proposed deck maintains a relatively constant slope throughout, which does not constitute as a "significant change in slope."

Secondly, we believe it is unreasonable to consider the following land use bylaw as a means to deny this deck proposal:

"If non-conforming building is damaged or destroyed to the extent of more than 75% of the value of the building, the building may not be repaired or rebuilt..."

This land use bylaw was first put into writing in July 2022. The decision process that dictated the removal of the original deck took place before this date (decision was made in 2021). If this bylaw was available or known to the applicant at the time of decision, the applicant likely would have decided to rebuild 75% of the deck in lieu of complete removal. It should also be noted that in 2021, the applicant sent a query to the MPC regarding the repair options for this original existing deck. The response received from the MPC at this time did not include this option or a similar alternative.

**DUTIES AND  
JURISDICTION**

Kara Hubbard, Development Officer, provided a report to the Board on duties and jurisdiction.

The MGA provides the following guidelines for an appeal to the SDAB. An appeal may be heard by the SDAB:

- where a permit is not issued within the 40 days
- if a permit was issued with or without conditions

- if a permit was refused
- if a stop order was issued

This appeal is against a decision made by the Municipal Planning Commission (MPC) to refuse a permit. No preliminary issues or questions of jurisdiction have been presented by either the appellant or the development authority.

## **HEARING PROCEDURES**

Chair MacPherson reviewed the procedures to be followed for the hearing.

## **BACKGROUND OF APPEAL**

Alifeyah Gulamhusein, Legal Counsel, provided the Subdivision and Development Appeal Board with the background of the appeal.

The history of this matter is as follows:

August 25, 2021 – The Development Authority contacted the Appellant to ask if a development was taking place on the Lands because building materials were visible on the property and the Development Authority had not received an application for a development permit.

September 2021 – Scott Nanninga of The Gear Group contacted the Development Authority on behalf of the Appellant. He advised that they were “reworking and fixing up the existing landscaping on this property, which has involved straightening and correcting existing rock borders and rock stairway.” He further clarified that they were removing the wooden stairway and platform and would add landscaping to the area noting “the removal of this stairway/platform exposed an area of bare ground.” In addition, Mr. Nanninga noted that they “hope to relocate this wooden platform to just above the existing escarpment area” and the “platform will be installed ‘floating’ on concrete deck blocks, so the structure will be considered non-permanent.”

September 27, 2021 – The Development Authority responded to Mr. Nanninga and the Appellant advising that “your explanation of much of the work does sound like repairs and improvements but just to be able to clarify a little better, can you please provide me with a site plan(s) showing a clear before and after”.

October 1, 2021 – The Appellant submitted site plans showing the Former Deck and stairs and the New Deck (called the Platform/Patio in the drawings). Both plans show the shoreline escarpment boundary in red. The New Deck is in the escarpment area in the plans.

October 13, 2021 – Based on the plans provided, the Development Authority noted the work looked like repairs but cautioned checking with the office prior to doing any work to ensure whether a development permit is required.

July 13, 2022 – Bemoco Land Surveying Ltd produced a survey of the Lands. The survey indicates there is “no visible natural escarpment” to the south of the proposed New Deck but also notes the “Proposed [New]Deck location appears to be within the SV Norglenwold Land Use Bylaws subject to final approval.”

September 29, 2022 – The Development Authority became aware that the Former Deck had been removed and a New Deck was being built on the Lands in the escarpment area. The Development Authority contacted the Appellant to advise that a new Deck required a development permit. Mr. Nanninga responded and the Development Authority, on October 6, 2022, explained that because the development is a new build on the escarpment, a development permit is required.

October 7, 2022 – Mr. Nanninga responded to the Development Authority acknowledging that some of the New Deck materials and the support structure are new and advised the work will be put on hold until they applied for a development permit.

November 30, 2022 – The Appellant submitted a development permit application package to the Development Authority.

December 22, 2022 – The Development Authority attended the Lands and took pictures of the New Deck which was under construction.

February 28, 2023 – The Appellant submitted a Letter of Intent to accompany the New Deck application. The Letter says the Former Deck was degrading and misaligned therefore “the proposed replacement deck is being requested to replace the original deck.”

March 17, 2023 – The Appellant provided plans dated March 17, 2023, for the New Deck which no longer included stairs.

April 21, 2023 - The MPC heard the matter because the application required a variance. The MPC issued a decision refusing the development permit for the New Deck on April 23, 2023.

May 25, 2023 – The Development Authority conducted an inspection and took photographs of the New Deck.

May 15, 2023 – The Appellant filed a Notice of Appeal.

Ms. Gulamhusein noted it is important to realize at some point there is a change in the messaging about the deck. Initially it appears the deck is being repaired then there are safety issues, and the deck is not in alignment with the neighbouring fence. A permitted use must conform with the standards in the Land Use Bylaw.

Ms. Gulamhusein proceeded to reference legislative background to support the development authority’s position.

Mr. Gulamhusein reviewed the variance powers of the Subdivision and Development appeal board and reminded the members that even though they have the power to vary or revoke a decision that doesn’t comply if it doesn’t affect the use and enjoyment of neighbouring parcels, the development still has to conform with the use.

The Land Use Bylaw #267-22 defines the escarpment as “an extended linear topographical feature of relatively steep slope and significant changes in elevation.” The bylaw also provides that a steep slope is a slope of 15% or greater and all development shall be setback a minimum of 15 m (49.2 ft.) from the toe and crest of any slope and slopes of 15% or greater, unless a lesser amount is

identified in a geotechnical study prepared by a qualified professional engineer registered in the Province of Alberta.

Section 9.1.5 of the Land Use Bylaw states and accessory building on a lot abutting Sylvan Lake or a reserve parcel abutting Sylvan Lake shall be situated so that it is located within the minimum rear yard of any parcel, and it is setback from “the top of any escarpment area or high-water mark as determined by the Development Authority.”

Section 8.11.8 of the Land Use Bylaw also states “(b) the retention, in their natural state, (iv) Land with slope areas with a gradient of 15% or greater and (v) land located below the top of the bank of the lake or any water body or water course”.

The Municipal Development Plan (MDP) is a high-level planning document that every municipality must adopt. The plan addresses the future planning for the municipality and provides general guidance. The Summer Village of Norglenwold’s MDP speaks to the desire to conserve the environment. Section 3.2 lists as a core value “conservation of natural features, including their preservation wherever possible.”

The Respect our Lakes document published by Alberta Environment and Sustainable Resource Development notes that more natural area on the lakeside is better for the lake and addresses the need for environmental protection of the lake.

Any development must have a development permit. Even a permitted use still has to conform with the Land Use Bylaw standards and regulations. The deck should be located in the rear of the parcel. The required setback from the lake should be 41.21 ft and it is only 14.5 ft from the shoreline. The side setback is only 2 ft from the parcel line on the east side which does not conform with the setbacks or standards in the Land Use Bylaw.

The new deck does affect the lake and is contrary to the Municipal Development Plan. While there was an existing deck there, the deck was not repaired but rather replaced and work was done without a development permit or approval. The submissions from the appellant talk about a safety issue with the structure but there is no evidence to support that.

Questions of clarification were asked by Board members to the Development Authority.

**APPELLANT  
PRESENTATION**

Ms. Elhatton-Lake presented her case to the board members.

Mr. Gibson appealed to the Municipal Planning Commission for a deck. There are no permanent footings in place and the deck is located in approximately the same place as the old deck. The new deck is closer to the adjacent property than what was proposed.

There was communication with the Development Officer back in 2021 regarding the deck. It was communicated by Mr. Nanninga that they wanted to relocate the deck. He explained they would not be using pilings but rather a floating deck. Initially they were told a development permit was not required but by 2022 he was told a permit was required. The appellants were not always clear on the Land Use Bylaw requirements but were always clear on what they

wanted to do. When they were informed by the Development Officer that a development permit was needed, they applied for one.

Mr. Nanninga stated the structure of the platform was the same as what was being replaced. The proposed deck was constructed on floating posts. The size of the deck is a smaller footprint than the previous stairs and deck combination. The relocation has moved the structure further from the shoreline than the original. The safety concern was deterioration from the rotting wood on the old deck. The misalignment of the deck was caused by the construction of a new fence between the neighbouring property.

Ms. Elhatton-Lake pointed out that a small deck is being proposed. The appellant did attempt to work with the Development Authority. A surveyor was brought out who stated there was no escarpment. The surveyor is aware of the Land Use Bylaw and the steep slope reference. The slope is relatively small. The Development Officer did attend the property to do an inspection and could have measured the slope but did not. The deck is over 20 feet back from the shoreline.

An accessory building is a permitted use in this district. Ms. Elhatton-Lake contacted the Development Officer to inquire why the structure is considered non-conforming and was referred to Section 8 of the Land Use Bylaw, but an explanation was not provided. It was also noted that during the appeal process concerns arose that had not previously been expressed. The Development Officer has significantly expanded her concerns about the deck. The concerns were not raised before the Municipal Planning Commission and only came to light after the appeal process began.

The Land Use Bylaw refers to leaving things in a natural state. When the old deck was removed there was no natural state present. There is nothing there but a bare patch of ground.

Ms. Elhatton-Lake talks about the variance powers of the Subdivision and Development Appeal Board. The Board can vary any uses in the Land Use Bylaw. The variance test is not limited to hardship or unique situations and must always consider the impacts of the development. There was an existing deck located on the property and it did not cause any negative impacts to adjacent properties. The neighbor is in support of the development and believes it improves the look of the property.

Ms. Elhatton-Lake notes no evidence of negative impacts has been presented and believes if there were real concerns, they would have been addressed with the Municipal Planning Commission and with the appellant over the course of the 2 years of communications. There is no evidence provided to support the negative impact of this development. The Development Authority does not specify what the escarpment is, and the surveyor does not acknowledge an escarpment is present.

The deck is located in the front yard of the parcel. There are many decks located in the front yard of parcels in the Summer Village and more extensive decks have been constructed. Other properties with decks were noted that were approved developments and situated much closer to the lake.

It is agreed that protecting the lake is important. The SDAB can vary

the Land Use Bylaw to allow for decks like the neighbouring properties have and there will be no impact on neighbouring properties from this development as it has no undue impacts. The shoreline remains unchanged from the original development. The stairs and landscaping have been repaired using the same materials. The bald spot from the removal of the old deck is currently not in a natural state. Gardening has no relevance on the deck. An excavator was brought in to move patio stones but did not dig into the escarpment. The stairs are not proposed to be replaced. The deck has already been moved into alignment with the stone stairs. The property has a large fence and tree for privacy of the neighbour.

Questions were asked by the Board for classification.

**IN FAVOUR OF  
THE APPEAL**

Written submissions received in favour of the appeal were read into the record from the following:

Glenn Molnar, 141 Grand Avenue

No one spoke in favour of the appeal.

**AGAINST THE  
APPEAL**

Written submissions received in opposition of the appeal were read into the record from the following:

Cyril Gurevitch, 137 Grand Avenue

Cyril Gurevitch, neighbour, spoke in opposition to the development. He believes the new deck is larger than what was there previously. Mr. Gurevitch is the current Mayor of the Summer Village and was involved in the Land Use Bylaw rewrite. The protection of the lake is a primary concern of Council. The preservation of the shoreline for fish habitat and other animals who use the foreshore is a priority. The foreshore needs to remain in a natural state to keep silt from entering the lake. Vegetation has been torn out and replaced with limestone. Small rocks that were once there have been replaced with large ones. A big tree remains today but all other vegetation is gone.

Break at 12:04 p.m.

Reconvened at 12:30 p.m.

**DEVELOPMENT  
OFFICER  
SUMMARY**

Ms. Gulamhusein summarized her case. She had nothing further to submit but did note the effort being made to maintain and preserve the shoreline. Ms. Gulamhusein referred to an agreement made with the appellants that if the development is permitted to remain, a condition of vegetation in front of the deck be added.

**SUMMARY FROM  
APPELLANTS**

Mr. Elhatton-Lake stated there is vegetation on the neighbouring property. No additional vegetation was removed with the stairs. The part of the property that looks bare is from where the stairs were removed and no vegetation was removed for the placement of the new deck. Anything outside of the deck is not relevant.

The SDAB must consider each application on a case-by-case basis.

They have the power to grant variances. This is a floating deck and there are no environmental concerns raised. The development is consistent with the neighbourhood and is further from the shoreline than the previous deck. Based on this, the Board should approve the development and grant a variance.

**OPPORTUNITY  
FOR A FAIR  
HEARING**

Chair MacPherson asked Mr. Gibson if he felt he had an opportunity to state his case. He acknowledged he had.

**HEARING  
CLOSED**

Chair MacPherson thanked everyone for their attendance and presentations. A written decision of the Board will be made within 15 days. The hearing was declared closed at 12:36 p.m. No further submissions will be entertained by the board.

**FINDINGS  
OF THE BOARD**

**Finding of Fact:**

Upon hearing and considering the representations and the evidence of the parties concerned the Board finds the facts in the matter to be as follows:

This property is located in the R1 Shoreline District.

The proposed development occurred without a development permit.

The original structure is considered a legal non-conforming development.

The Municipal Government Act states a non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt, or structurally altered except to make it a conforming building, for routine maintenance.

The development does not duly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment, or value of the neighbouring parcels.

**Issues:**

**1. Side Yard Setback Distance**

The proposed development is located 2 ft. from the property line. The Land Use Bylaw #267-22, Section 9 (5)(c) states: "*On corner and interior parcels, a minimum of 1.0 m (3.3 ft.) from the other side boundary.*" The previous deck was approximately the same size and in the same position.

It is the decision of the Subdivision and Development Appeal Board to grant this variance.

**2. Front Yard Setback Distance**

The proposed development distance from the property line/lake is approximately 14.6 ft. The Land Use Bylaw #267-22, Section 9 (5)(B) states: "*A minimum of 15.0 m (49.21 ft.) or parallel to the front wall of the principal building, whichever is the lesser setback.*" The previous deck was in approximately the same position.

It is the decision of the Subdivision and Development Appeal Board to grant this variance.

### 3. Escarpment

Bemoco Land Surveying Ltd. provided a survey of the lands that indicates there is no visible natural escarpment and noted the proposed deck appears to be within the Summer Village of Norglenwold's Land Use Bylaws.

The Development Officer conducted a site inspection and took photographs on May 25, 2023, but did not take measurements of the location of the deck nor was the calculation for the slope defined. The figure shown under definition 62, Escarpment, in the Land Use Bylaw #267-22, which depicts the escarpment, is dissimilar to the actual slope.

Based on the above, the Subdivision and Development Appeal Board finds this to be not applicable.

### 4. Permit Process

In September 2021, the appellant inquired about the permit process and was advised that a permit was not required. The appellant mentioned at that time that the deck would be repaired and slightly relocated. When the appellant realized the entire deck would have to be replaced, he inquired again with the Summer Village and was provided unclear direction.

The Land Use Bylaw #267-22 came into effect in July 2022 requiring a development permit. Section 4.2 (1) (a) states *"the following development shall not require a development permit provided that the development otherwise complies with all other regulations of this Bylaw (a) the carrying out of works or improvement, maintenance, repairs or renovation to any, but not limited to, building, deck and/or driveway provided the works do not include structural alterations, additions, or drainage alterations and that the works comply with the regulations of the Land Use Bylaw."*

A development permit was required when the *Municipal Government Act*, RSA 2000, Section 643 (6) states *"If a non-conforming build is damaged or destroyed to the extent of more than seventy-five (75%) of the value of the building above its foundation, the building may not be repaired or rebuilt except in accordance with this Bylaw."* The appellant stopped work and applied for a development permit which was denied by the Municipal Planning Commission.

The Board determined the Appellant was transparent and was attempting to follow the requirements as identified in the Land Use Bylaw. When the Land Use Bylaw #267-22 came into effect, the permit process was well underway.

Based on the above, the Subdivision and Development Appeal Board finds this to be not applicable.

### 5. Vegetation/Environmental Considerations

There was a concern from the adjacent neighbour regarding vegetative and environmental considerations such as erosion. It is

the objective of the Summer Village of Norglenwold for environmental protection and erosion control. The “Respect Our Lakes” document issued by the Government of Alberta was referenced by the opposing adjacent landowner.

The Municipal Development Plan Section 6.2 Goals states, “*the conservation of the environment goals is (1) to protect the water quality, aquatic life, habitat and ecosystems of Sylvan Lake” and (3) to preserve lake escarpments and riparian areas.*”

The Board acknowledges there is minimal vegetation along the shoreline and potentially a risk of erosion. It is recognized that vegetation was not present at these locations with the previous deck and steps that were existing on this property. The Board recognizes that the new installation impacts on the environment less due to the smaller sized deck, further setback distance from the water and the design of the deck.

Based on the above and in light of the front yard setback distance variance, native shrubs need to be planted in front of the deck which will cover 80% of the deck width at shrub maturity.

## **DECISION**

Based on the evidence presented at the hearing and with consideration for the presentations made by both the Appellant and the Development Officer, it is the decision of the Subdivision and Development Appeal Board to overturn the decision of the Municipal Planning Commission and approve the development permit for a lakeside deck at 139 Grand Avenue. In addition to the standard development permit conditions, the Subdivision and Development Appeal Board imposes the following to the satisfaction of the Development Officer:

- Native shrub installation in the front of the deck to cover 80% of the width of the deck at shrub maturity (minimum three shrubs) within one year.
- Completions deposit of \$500.00.

**DATED AT THE TOWN OF SYLVAN LAKE THIS 22<sup>ND</sup> DAY OF JULY 2023.**

**THE SUMMER VILLAGE OF  
NORGLNWOLD SUBDIVISION AND  
DEVELOPMENT APPEAL BOARD**

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**Allan MacPherson  
SDAB Chair**