

**SUMMER VILLAGE OF BIRCHCLIFF
SUBDIVISION AND DEVELOPMENT APPEAL BOARD DECISION**

Hearing Date: February 13, 2025
SDAB File Number: SDAB-25-001
Appellants: Marjorie Brewin and Dan Brewin
Applicants: Devon Bellavance and Brian Engel (Lakeview Contracting Inc.)
Location: 113 Birchcliff Road
Legal Description: Lot 16, Block 1, Plan 0523841 (the "Site")

A. INTRODUCTION

1. This is an appeal of a development permit issued by the Municipal Planning Commission the Summer Village of Birchcliff (the "MPC") on January 8, 2025, for escarpment stabilization on the Site. The MPC is the Development Authority for the Summer Village of Birchcliff.
2. The Appellants submitted a Notice for Appeal on January 18, 2025, that raised the following grounds of appeal:
 - (a) The application information is incomplete, and the information provided does not show the end goal;
 - (b) The reference points listed in the application will move once construction begins and there is no timing or how construction will occur in the application or permit;
 - (c) The "keyway" cut at the top of the escarpment creates risk to people and the environment;
 - (d) There is no information as to how 200 cubic yards of material will be removed from the Site;

- (e) The 2:1 escarpment slope of the proposed development as the escarpment approaches neighbouring properties may create liability for landowners adjacent to the Site;
- (f) Further information and/or reports need to be provided to include the impact to surrounding properties and the environment; and,
- (g) The approved development permit will set a bad precedent.

B. PROCEDURAL MATTERS

- 3. There were no objections to the Board members and no objections regarding the hearing process.

C. RELEVANT STATUTORY AND PLANNING DOCUMENT PROVISIONS

- 4. Summer Village of Birchcliff Land Use Bylaw No. 170/13 (the “LUB”).
- 5. Summer Village of Birchcliff Municipal Development Plan 2013 (the “MDP”).
- 6. *Municipal Government Act*, RSA 2000 c. M-26 (the “MGA”).

D. SUMMARY OF EVIDENCE PRESENTED

- 7. MPC Agenda and Agenda Package dated December 12, 2024, including:
 - (a) Proposed Slope Stabilization and Stair Access to Lake Report prepared by SmithDow & Associates Ltd. dated October 29, 2024.
- 8. Written submission to the MPC from Jon Weddell and Jeremy Weddell dated December 11, 2024.
- 9. MPC Meeting Minutes dated December 12, 2024.
- 10. Development Permit #251268 dated January 8, 2025.
- 11. Notice of Appeal submitted by Marjorie Brewin and Dan Brewin dated January 18, 2025.

12. Appellants' letter accompanying Notice for Appeal dated January 18, 2025.
13. Notice of Appeal and Hearing dated January 22, 2025.
14. Written submissions of the Development Officer dated February 5, 2025.
15. Written submissions of Dan Brewin dated February 4, 2025.
16. Alberta Environment approvals for development on Appellants' lands in 2002.
17. Written submissions of Jon Weddel in support of the appeal dated January 30, 2025.
18. Email dated February 12, 2025, from Joanne Bjornson in support of the appeal.

E. SUMMARY OF THE SUMMER VILLAGE'S POSITION

19. Kara Hubbard, Development Officer for the Summer Village ("DO"), provided a written submission, which is on file.
20. The Applicants have an in-progress development permit for a dwelling on the Site. The development permit did not include escarpment work or alterations.
21. During construction, caragana was removed from the escarpment abutting Sylvan Lake due to an apparent miscommunication between the owners and their contractor.
22. A stop order was issued due to the vegetation removal. The stop order required the Applicants to submit an engineer's report and an escarpment stabilization development permit application to rectify the vegetation removal.
23. No overall site plan was submitted with the application. The Applicants will have to provide an overall site plan, which is a condition of the development authority.
24. In response to questions from the Board, the DO advised that:

- (a) The DO was satisfied with the proposed work based on the cross-section drawings provided by the contractor, Lakeview Contracting Inc. (“Lakeview”);
- (b) The DO’s understanding is that, per the SmithDow report, the escarpment as it presently exists is stable;
- (c) The 30% slope design originated with Lakeview;
- (d) The 2:1 slope reference is at the wings of the Site going towards the neighbouring lands; and,
- (e) There is no plan for the portion of the escarpment below the disturbed area as highlighted in red on page 9 of the agenda package.

F. SUMMARY OF APPELLANTS’ POSITION

- 25. The Appellants provided various written submissions, which are on file. Dan Brewin made a presentation on behalf of the Appellants and responded to questions.
- 26. The Appellants are the owners of 111 Birchcliff Road, which is immediately adjacent to and southeast of the Site. Their family has owned their property for 80 years.
- 27. Their main concern is to prevent erosion of the escarpment, protect future structures and prevent future problems.
- 28. They are concerned about protecting the bottom of the escarpment, as they have witnessed erosion of this area over time.
- 29. There is a lack of information and fixed reference points in the application and development permit. It is vague and allows for the project to be self-directed.
- 30. The proposed 2:1 slope of the escarpment as it approaches their property will result in their property being artificially higher than the Site, which exposes the

Appellants to liability from water that may be diverted onto the Site. They need an understanding of how they can be protected from liability.

31. The silt fence and “keyway” cut will weaken the escarpment. By removing material and replacing it with a different material, the lip of the escarpment will be weakened.
32. The development permit and application do not explain how the 200 cubic yards of material will be removed from the Site.
33. They believe the deficiencies they have outlined warrant further evaluation and/or information. Allowing the proposed development could set a bad precedent around the lake for people to take their own initiative
34. In response to questions from the Board, the Appellants advised that:
 - (a) The picture on page 110 of the agenda package was taken in 2002. There has been erosion at the base of the escarpment since that time;
 - (b) Water from their property currently drains towards the lake. If the proposed development results in water from their property draining onto the Site, they may have to build walls;
 - (c) There were trees along the top of the escarpment.
35. In their concluding statements, the Appellants advised that:
 - (a) They do not want to impede their neighbours from enjoying their property;
 - (b) The 2:1 slope may be wider than the actual Site;
 - (c) The SmithDow report states that the safety factor presently is met;
 - (d) The development permit needs to be postponed until some items and/or information is completed.

G. SUMMARY OF THE APPLICANT'S POSITION

36. Devon Bellavance (owner) and Brian Engel (Lakeview Contracting) made a presentation on behalf of the Applicant and responded to questions.
37. Their priority is to ensure the slope is safe.
38. The vegetation removal was not intentional. The word "miscommunication" was used with the best intentions.
39. The contractor was given plans, and other trees on the Site that they wanted to keep were marked, but the escarpment was not.
40. Upon discovering the vegetation removal, they immediately contacted the contractor to discuss remediation options and installed a silt screen fence that night.
41. There were no trees on the escarpment, and there was no movement after the removal.
42. The proposed development is intended to stabilize the escarpment. There is nothing to gain as the Site is actually losing yard space.
43. In response to questions from the Board, the Applicant advised that:
 - (a) They do plan to put stairs in, but wanted to get the escarpment stabilized first;
 - (b) They wanted to get a scope of what the bank would look like, and will have a better idea once the remediation is complete;
 - (c) Installing stairs after remediation would require installing anchors. This could be done with minimal disturbance to the erosion control matting;
 - (d) The stairs will not be carved into the escarpment;

- (e) Only caragana and minimal soil were removed. A subsequent RPR showed a marginal difference following the removal;
- (f) The 2:1 slope is slightly flatter than the 30% slope. This was as steep as the engineer wanted to go;
- (g) The remediation plan may work at more than 30% for the coconut matting, but 30% was as steep as the engineer wanted to go;
- (h) The 30% slope is better for revegetation and erosion control than the present state;
- (i) The removed 200 cubic yards of material will be transferred by skid steer on the Site; and,
- (j) They considered drainage, but the water starts to run south on the neighbouring property, and in their opinion not much will come down the escarpment.

44. In their concluding statements, the Applicants advised that:

- (a) There is a drainage plan that was included in the application; and,
- (b) The remediation plan is not what they wanted to do. They are working on plans to try to address the vegetation removal with minimal disturbance to the escarpment.

H. SUBMISSIONS FROM OTHER PARTIES

45. The Board received an email from Joanne Bjornson, dated February 12, 2025, in support of the appeal. The email indicates that Ms. Bjornson has property in the Summer Village, but it is some distance from the Site. The email does not explain how the proposed development affects Ms. Bjornson's property. Therefore, the Board did not put any weight on this email in reaching its decision.

I. CONCLUSION OF THE HEARING

46. In response to a question from the Chair, all parties agreed that they had sufficient opportunity to present their submissions. No procedural complaints were raised.

J. DECISION

47. The appeal is allowed in part. The Board approves development permit, but varies the conditions as follows:

- (a) Condition 7 is replaced with the following:

A completions deposit of \$5,000.00 or 150% of the estimated cost to complete the development, whichever is greater, shall be required to ensure development is completed in accordance with the approved development permit.

- (b) Condition 9 is replaced with the following:

Land located below the top of the bank/land with slope areas of gradient 15% or more shall be retained in a natural state with all areas to remain as-is. There shall be no regrading of the escarpment area.

- (c) Condition 11 is removed.

- (d) Condition 12 is removed.

- (e) Condition 14 is removed.

- (f) Condition 15 is replaced with the following:

At all times, proper erosion measures shall be undertaken, under the supervision of and as recommended by the geotechnical engineer, to the satisfaction of the Development Officer.

- (g) Condition 17 is removed.

48. In all other respects, the conditions set out in the development permit approved by the MPC shall remain in effect.

K. REASONS

49. The stop order issued to the Applicant required them to obtain an engineering report and to apply for a development permit for escarpment stabilization following the removal of vegetation from the escarpment.
50. The SmithDow report defines a long-term stable slope as requiring a calculated safety factor of at least 1.5 for structures at or near the slope. The slope stability assessments at this property, per the SmithDow report, indicate that the minimum safety factor of 1.5 is exceeded in all samples.
51. As such, the long-term stability of the escarpment can be maintained in its present condition, provided that it is revegetated, and adequate erosion control measures are implemented.
52. Section 6.3.4 of the MDP provides that:

While recognizing that remedial actions may be necessary from time to time, the Summer Village still strongly desires that banks abutting the shoreline remain as natural as possible to retain natural ecosystems....

53. Section 4(1)(5) of the LUB provides that:

Landscaping, Environmental Conservation and Development

The following standard of landscaping shall be required for all areas of a parcel not covered by buildings, driveways, storage and display areas:

- (a) The conservation of existing trees and/or shrubs to the maximum extent possible;
- (b) The retention, in their natural state, of: ...
 - (iv) Escarpment or slope areas with a gradient of fifteen (15) percent or greater; and
 - (v) Land located below the top of the bank of any water body or water course.

54. Section 4(5)(2)(a) of the LUB provides that:

When remedial actions are required on the escarpment, an engineered report shall be required to provide evidence that such actions are necessary. Remedial actions must preserve the natural surroundings while improving bank stability.
(emphasis added)

55. The stated goals and objectives of the MDP and the LUB are to preserve the natural surroundings and retain escarpment areas in their natural state to the extent possible. Remedial actions may be approved where necessary.

56. Based on the evidence, the Board is not convinced that regrading of the escarpment is necessary. The report prepared by SmithDow considered the regrading and proposed stair design, which is not part of this application. Remediation of the vegetation removal does not require alternations to the grade of the escarpment.

57. Further, the Board is of the view that there is insufficient information in the application and the development permit approved by the MPC to support granting a variance to allow for regrading of the escarpment area. The Board does not have sufficient information to determine whether regrading of the escarpment area would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. In particular, the information relating to the proposed development does not adequately address the impacts on the adjacent properties.

L. CONCLUSION

58. The Board allows the appeal in part. The development permit is approved, subject to the revised conditions set out above.

Dated this 21st day of February 2025.

Per: 

Chair,
Subdivision and Development Appeal
Board

IMPORTANT INFORMATION

This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c. M-26.