

**COUNTY OF NEWELL**  
**SUBDIVISION AND DEVELOPMENT APPEAL BOARD**  
**HEARING #2017057**

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Development Application: 2017057

**BEFORE: THE COUNTY OF NEWELL SUBDIVISION AND DEVELOPMENT APPEAL BOARD (Board)**

**Members:**

**Stewart Musgrove (Chair)      Lois Schmidt      Nigel Seymour      Collin Wildschut**

In the matter of the Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26, as amended (MGA); and in the matter of the County of Newell Land Use Bylaw No. 1892-17 and amendments thereto (LUB No. 1892-17) and the County of Newell Municipal Development Plan No. 1705-10 and amendments thereto (MDP No. 1705-10);

and in the matter of an appeal by:      **Marco and Nanette Fouché**

whereby an application by WSP Inc. on behalf of Solar Krafte Inc for the development of a 22.5 Megawatt Solar Array Facility, in the Agricultural - A Land Use District in the County of Newell (the County), on lands legally known as the W ½ 4-19-15 W4M (subject parcel) was approved, subject to conditions, by the County of Newell Municipal Planning Commission (MPC).

**THE INFORMATION PART OF THE HEARING WAS DOCUMENTED**

**UPON PROVIDING THE** applicants and appellants with a copy of the exhibits referred to on a List in Appendix A attached hereto and there being no objections to the said exhibits.

**UPON WRITTEN NOTICE** of the hearing of the appeal being given in accordance with section 686 of the MGA.

**UPON HEARING** at the said hearing, held in the County of Newell on **November 2, 2017**, the evidence adduced from and submissions made by the person(s) shown in Appendix B attached hereto.


**UPON HEARING** the oral presentations of said representatives and having regard to LUB No. 1892-17 and MDP No. 1705-10 and amendments thereto; and under the authority vested in the Subdivision and Development Appeal Board pursuant to the MGA, this Board has decided that **the appeal be DENIED and the development be APPROVED subject to REVISED conditions.**

**PURSUANT TO** section 687(2) of the MGA, written reasons for this decision have been furnished in this decision.

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

Date: NOV. 15, 2017

Chairman Signature:



**COUNTY OF NEWELL**  
**SUBDIVISION AND DEVELOPMENT APPEAL BOARD**  
**HEARING #2017057**

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**Development Application: #2017057**

**UPON HAVING HEARD** what was alleged by the appellants, and **upon having heard** what was alleged by the Development Authority and **upon hearing** others listed in Appendix B of this decision and **upon having read** exhibits noted in Appendix A of this decision, the Subdivision and Development Appeal Board finds the facts to be as follows:

1. On August 16, 2017, WSP Inc. on behalf of Solar Kraft Utilities Inc. (applicant) submitted Development Permit Application 2017057 (DP 2017057) (Exhibit F) for a 22.5 megawatt utility-scale ground-mount solar photovoltaic (PV) system on lands legally known as W½ 4-19-15 W4M in the County of Newell (subject parcel). The subject parcel is located approximately 5 miles west of the City of Brooks and is adjacent to the Hamlet of Cassils.
2. The subject parcel is owned by Robert Bildersheim and is being leased by WSP Inc. and Solar Krafte Inc.
3. The subject parcel is located in the Agricultural - A land use district according to Land Use Bylaw No. 1892-17 (LUB 1892-17) for which an alternative energy industrial use application is a discretionary use.
4. As stipulated in Exhibit P, submitted prior to the hearing by the County of Newell Development Officer, and also submitted verbally at the hearing, Ms. Shanna Lee Simpson stated the following timeline of events occurred (Exhibit P):
  - August 17, 2017 - Planning and Development staff requested more information regarding DP 2017057 (Exhibit F24 -F27)
  - August 29, 2017 - the applicants requested that the County of Newell Planning and Development staff present the application to the Municipal Planning Commission (MPC) without the requested additional information (Exhibit F28 -F29).
  - August 30, 2017 - the applicants submitted updated site plans (F30 - F38).
  - August 31, 2017 - Planning and Development staff circulated the Development Permit report and maps internally. Notifications were also mailed to the adjacent landowners and referral agencies outlining the MPC meeting to be held on September 21, 2017 to decide on DP 2017057.
  - September 13 - 21, 2017 - MPC approved DP 2017057, with the following conditions:
    - *That this development is located as shown on the site plan approved in this application and submitted August 30, 2017. Any changes to that plan, including changes required through the AUC approval, shall require written approval of the Development Officer.*
    - *That the applicant shall submit the Alberta Utilities Commission Power Plant Approval, prior to construction commencing with a final site plan. Any variance may require submission of a new Development Permit.*
    - *The developer must start construction before October 10, 2018. In the event that this date cannot be met, the developer may be required to apply for a new permit.*
    - *That the setbacks on the site are retained as per the attached site plan. Minor changes to setbacks will require approval by the Development Authority. Major changes to setbacks (e.g. more than 10%) will require a new permit application and approval.*
    - *All structures brought to the site will require a separate Development Permit application and approval.*
    - *No overnight accommodation shall be permitted, even during the period of construction without a valid development permit.*

- *That the developer shall enter into a Road Approach Agreement with the County of Newell and comply with the conditions of the agreement for the installation and/or upgrade of any required road approaches to the parcel. If required, the agreement shall be registered as a caveat against the lands, at the applicant's expense.*
- *That the applicant ensure that dust be controlled through appropriate measures at all times.*
- *That the applicant shall submit an Environmental Site Assessment Report, prepared by an Alberta qualified environmental assessment firm, prior to construction commencing.*
- *That the applicant shall submit an Emergency Response Plan for approval by the County of Newell Manager of Fire and Emergency Services, prior to construction commencing. An emergency contact number shall be posted on the perimeter fencing of the entire operation as well as signage indicating an electrical hazard.*
- *That the applicant shall ensure the site and perimeter fencing shall be kept clear of garbage at all times.*
- *That the applicant shall submit the Alberta Environment and Parks Water Act Approval for the site, prior to construction commencing.*
- *That the applicant shall meet with the County of Newell Municipal Services prior to preparation of the engineered Storm Water Management Plan, final grading plan and final geotechnical report for the site; Municipal Services must provide written approval for the plan prior to construction commencing.*
- *That the applicant shall meet with the County of Newell Agricultural Services prior to preparation of a vegetation and maintenance plan in accordance with the Alberta Weed Control Act for the site; these plans must be approved by County of Newell agricultural Services, prior to construction commencing.*
- *That the applicant must submit a copy of the final reclamation plan prior to construction.*
- *That the applicant must install a temporary rural address sign at the road approach to the site as soon as construction starts. The sign must display the rural address as assigned by the County in the letter that will be mailed to the applicant after the permit has been approved. No other address may be displayed on the site. The sign must remain in place and in full view until it is replaced by a County of Newell issued rural address sign.*
- *That the applicant enter into a road use maintenance agreement for condition and maintenance during construction which may include a designation of a haul route.*
- September 21, 2017 - Notice of decision (Exhibit D & E) was mailed to the applicant, adjacent landowners and referral agencies. It was also advertised on the municipal website.
- October 3, 2017 - Letter of appeal (Exhibit C) was received by Marco & Nanette Fouché (appellants) stating in summary the following concerns:
  - The proposed development is in close proximity to the appellant's house.
  - Possible decrease in surrounding land values
  - Increased noise and dust levels, further increasing the risk of health related problems.
  - The environmental risk that solar farms can have i.e. the leaking of toxins from damaged solar panels.
  - Impact to wildlife in the area.
  - Lack of communication between the appellants, the adjacent landowners, the County of Newell and the applicants regarding the processing of DP 2017057.

5. MPC Chairman, Mr. Clarence Amulung, submitted verbally that at the September 21, 2017 MPC hearing they were of the opinion that four main concerns had been raised regarding DP 2017057.

- Location: concerns with the view and aesthetics of the project.
  - Construction: concerns regarding dust and impact of the increase in vehicles to the neighboring community.
  - Crime: concerns regarding an increase in the presence of people to the area and therefore an increase in crime.
  - Decrease in land value: concerns that the development of a solar farm would decrease the value of the surrounding land, making it more difficult to sell any parcels that were adjacent to the subject parcel.
6. Mr. Amulung and MPC took the position that a solar farm does not create noise, does not create smell, dust is minimal compared to that of farming operations, wildlife could move around the development when completed, and there would not be farm animals that could escape the property or left over crops blowing around the subject parcel.
  7. Mr. Amulung and MPC took the position that DP 2017057 would have minimal impact to surrounding aproduction as the current use of the subject parcel was pasture land.
  8. Mr. Amulung and MPC supported the decision that crime would not be an issue, as in their opinion, the County had a strong police presence.
  9. Mr. Amulung and MPC were of the position that there was no information available regarding how the land values of the adjacent parcels would be affected.
  10. The Alberta Utilities Commission (AUC) has final approval on solar farm applications and limits the decision of the municipalities development authority.
  11. Ms. Horvath submitted verbally at the hearing, that the municipal role in solar utility farm approval is to ensure that that setbacks, road access and other planning related issues are addressed, but final approval was with AUC.
  12. Ms. Horvath was of the position that DP 2017057 was in compliance with the policies of the South Saskatchewan Regional Plan.
  13. Ms. Horvath was of the position that the subject parcel was considered to be lower quality agricultural land as it was a non-irrigated parcel.
  14. Ms. Horvath submitted verbally, that the public information pertaining to the MPC meeting held on September 21, 2017, was only released the morning of the hearing and was provided to MPC three days prior to that. This was the typical process used for all County of Newell development processing regardless of the use.
  15. At the hearing Ms. Horvath submitted verbally, that for all discretionary use applications, regardless of their size, the County of Newell used a standard practice of only notifying those adjacent to the subject parcel.
  16. Mr. Burgert took the position that the County of Newell public engagement process was minimal compared to the requirements of the AUC.
  17. The distance from the appellant's house to the closest solar module was approximately 290 m and that the modules, at their peak height, would be 8-8.5 feet tall, depending on the topography.
  18. Mr. Burgert was of the position that the visual simulation they performed (Exhibit O), depicted minimal visual intrusion from the point of view of the appellant's parcel.
  19. The area surrounding the subject parcel has transmission infrastructure already in existence.
  20. In the opinion of Mr. Burgert, moving of the site would have an increased negative impact on the viewscape, as an increasing amount of powerlines would have to be installed for the applicant's to connect to the substation.
  21. Mr. Burgert took the position that altering the location of the proposal as little as 100 m can have negative impacts on the amount of current produced.
  22. Mr. Burgert was of the position that, of the 8 solar projects that Solar Krafte was involved with in the Southern Alberta region, the subject parcel was the least intrusive to adjacent landowners, as only two dwellings existed directly adjacent to the subject parcel.

23. Mr. Burget was of the opinion that once construction was complete, there would be less impact and traffic than a typical farming operation, as the site only required minimal maintenance and 2 -3 cleanings per year.
24. Mr. Burgert submitted at the hearing, that the construction practice of Solar Krafte was not to engage in grading of the subject parcel. He was of the opinion that this would significantly reduce the amount of dust created.
25. Mr. Burgert submitted verbally at the hearing, that they were of the opinion there was two main concerns for placement of solar farm development; that the development avoid irrigated land, as well as native grassland. The subject parcel does not contain either of these.
26. Mr. Burgert was of the opinion that solar panels similar to the ones proposed to be used, have not been involved in starting any fires.
27. Mr. Burgert was of the position that the solar panels being used were made from silica wafers, similar to that of glass, and can be recycled with no toxic waste involved. The remaining parts can be collected by a scrap metal company.
28. Mr. Burgart submitted verbally at the hearing, that most of the construction staff hired would be from the local area and would not be workers being flown in from elsewhere.
29. Ms. Nanette Fouché was of the position that the viewscape from her property would be effected, as well as an increase public nuisance, increase of dust, and a reduction in the quality of the gravel road that passed between her property and the subject parcel.
30. Ms. Fouché was of the opinion, that if any of the solar panels were broken, they could release harmful chemicals.
31. Ms. Fouché was of the position that an increase in people presence during the construction phase of the development could lead to increased crime.
32. LUB 1892-17, Schedule 2 Land Use District Regulations, Agricultural - A, Section 1 (1.2) Discretionary Uses lists Alternative Energy, Industrial as a use.
33. LUB 1892-17, Section 7 (7.1) Access states:
 

*7.1 The municipality may, at the time of subdivision or development, require the developer to enter into an agreement for the construction of any approach(s) necessary to serve the development area in accordance with the County of Newell design guidelines.*
34. LUB 1892-17, Schedule 3 General Standards of Development, Section 1 (1.11 & 1.12) Access states:
 

*1.11 As a condition of development or subdivision approval, the Municipal Planning Commission or the Development Officer may require the construction of new approaches, upgrading of existing approaches and/or the removal of existing approaches to achieve desired access management objectives.*

*1.12 All approaches shall be constructed or upgraded to the satisfaction of the Municipal Services Department in accordance with the County of Newell Urban and/or Rural Design Guidelines. Where required, adjustment to approaches shall be at the cost of the applicant.*
35. LUB 1892-17, Schedule 3 General Standards of Development, Section 14 (14.1)(14.8)(14.9) Landscaping Standards and Guidelines states:
 

*14.1 The Development Officer or Municipal Planning Commission may impose landscaping or screening requirements on development applications for permitted and discretionary uses if, in their opinion, they would serve to improve the quality or compatibility of any proposed development.*

*14.8 In addition to any other provisions of this Bylaw, landfill sites, gravel pits, sewage lagoons, sewage treatment plants, industrial storage yards and other similar forms of development may be required to be screened from view by a vegetated buffer strip or some other form of screening.*

*14.9 The Development Officer or the Municipal Planning Commission, in considering an application, may impose conditions requiring the retention of trees or additional plantings of such a type and extent that are considered necessary.*
36. LUB 1892-17, Schedule 3 General Standards of Development, Section 25 (25.1)(25.2) Storm Water Management states:

25.1 *The Municipal Planning Commission may require the applicant of a development or subdivision to provide at their expense, a storm water drainage management plan prepared by a licensed professional engineer as part of the information requirements in considering an application or as a condition of approval.*

25.2 *All storm water drainage management plans submitted to the municipality must be prepared to the satisfaction of Municipal Planning Commission in accordance with Alberta Environment and Park's Stormwater Management Guidelines and the County Urban or Rural Design Guidelines, County Storm Water Management Master Plans, or other required municipal standards or policies as directed by the County.*

37. LUB 1892-17, Schedule 4 Use Specific Standards of Development, Section 4 Alternative Energy, Industrial states:

*This section establishes standards for the development of alternative energy projects for the purpose of producing energy for the commercial market. Typically, this use will include commercial systems for the production and sale of energy generated by the following but not limited to solar photovoltaic, solar thermal, geo-exchange, wind, micro-hydro, carbon capture and storage, bio fuel or fuel cell.*

38. LUB 1892-17, Schedule 4 Use Specific Standards of Development, Section 4 (4.2) Commercial Solar Farms states:

4.2 *In the Agricultural – “A” land use district, applicants are encouraged to consider the following when selecting sites:*

- (a) *use of the lowest productive land and dry corners is preferred;*
- (b) *to the extent possible, use of irrigated agricultural land should be avoided/minimized.*

39. SSRP, Implementation Plan, Energy, Renewable Energy strategies (1.9)(1.10)states:

1.9 *Ensure policies are in place to promote and remove barriers to new investments in renewable energy (that is, wind, biofuels, solar, hydro) production.*

1.10 *Invest in the development, demonstration and deployment of renewable and alternative energy technologies targeted to improve Alberta's overall energy efficiency. This will include support for the application of new technologies and support on-going research and development in partnership with other institutions.*

40. MGA Section 687 (3) states:

(3) *In determining an appeal, the subdivision and development appeal board*

(a) *must act in accordance with any applicable ALSA regional plan*

(a.1) *must comply with the land use policies and statutory plan and, subject to clause (d), the land use bylaw in effect;*

(b) *must have regard to but is not bound by the subdivision and development regulations;*

(c) *May confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;*

(d) *may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if in its opinion*

(i) *the proposed development would not*

(A) *unduly interfere with the amenities of the neighbourhood, or*

(B) *materially interfere with or affect the use enjoyment or value of neighbouring parcels of land,*

*And*

(ii) *the proposed development conforms with the use prescribed for that land or building in the land use bylaw.*

**HAVING REGARD TO THE FINDINGS OF FACT**; and having regard for statutory plans, Land Use Policies and Land Use Bylaw No. 1892-17 and the Subdivision and Development Regulation, the Subdivision and Development Appeal Board makes the following decision, that the **appeal be DENIED** and the **development be APPROVED subject to REVISED conditions**.

**Conditions:**

1. That this development is located as shown on the site plan approved in this application and submitted August 30, 2017. Any changes to that plan, including changes required through the AUC approval, shall require written approval of the Development Authority.
2. That the applicant shall submit a copy of the Alberta Utilities Commission Power Plant Approval, prior to construction commencing with a final site plan. Any variance may require submission of a new Development Permit.
3. The developer must start construction before Nov 16, 2018.
4. That the setbacks on the site are retained as per the attached site plan. Minor changes to setbacks will require approval by the Development Authority. Major changes to setbacks (e.g. more than 10%) will require a new permit application and approval.
5. All structures brought to the site will require a separate Development Permit application and approval.
6. No overnight accommodation shall be permitted, even during the period of construction, without a valid development permit.
7. That the developer shall enter into a Road Approach Agreement with the County of Newell and comply with the conditions of the agreement for the installation and/or upgrade of any required road approaches to the parcel. If required, the agreement shall be registered as a caveat against the lands, at the applicant's expense.
8. That the applicant shall ensure that dust be controlled throughout the subject parcel, through the appropriate measures at all times during site preparation and construction, including all internal access roads.
9. The applicant shall ensure that dust be controlled on the County of Newell municipal road from the intersection of TR 190 and RR 154, north to the intersection of TR 191 in accordance with the County of Newell policy 2013-PPW-052 and as approved by the Director of Municipal Services.
10. That the applicant shall submit a copy of an Environmental Site Assessment Report, prepared by an Alberta qualified environmental assessment firm, prior to construction commencing.
11. That the applicant shall submit an Emergency Response Plan for approval by the County of Newell Manager of Fire and Emergency Services, prior to construction commencing. An emergency contact number shall be posted on the perimeter fencing of the entire operation, as well as signage indicating an electrical hazard.
12. That the applicant shall submit a copy of the Alberta Environment and Parks Water Act Approval for the site, prior to construction commencing.
13. That the applicant shall meet with the County of Newell Municipal Services prior to preparation of the engineered Storm Water Management Plan, final grading plan and final geotechnical report for the site; Municipal Services must provide written approval for the plan prior to construction commencing.
14. That the applicant shall meet with the County of Newell Agricultural Services prior to preparation of a vegetation and maintenance plan in accordance with Alberta Weed Control Act for the site; these plans must be approved by the County of Newell Agricultural Services, prior to construction commencing.
15. That the applicant must submit a copy of the final reclamation/decommissioning plan, prior to construction commencing.
16. That the applicant must install a temporary rural address sign at the road approach to the site as soon as construction starts. The sign must display the rural address as assigned by the County in the letter that will be mailed to the applicant after the permit has been approved. No other address may be displayed on the site. The sign must remain in place and in full view until it is replaced by a County of Newell issued rural address sign.
17. That the applicant enter into a road use maintenance agreement for condition and maintenance during construction, which may include the designation of a haul route.
18. That the applicant shall submit an appropriate Landscape Plan that shall include the planting of trees along the north perimeter of the subject parcel and adjacent to Range Road 154, as well as a method of irrigation to be installed in ground to keep them properly watered. The landscape plan

shall be approved by the County of Newell who will determine the appropriate size and type of trees, as well as the irrigation measures that will be required.

19. That the applicant shall be responsible for the proper recycling and or disposal of any broken or replaced modules or solar panels to a facility accepting such materials.

**REASONS:**

THAT the Subdivision and Development Appeal Board encompasses the findings of fact within these reasons, and as a result:

1. The Board is of the opinion that as per the SSRP, specifically as it relates to policy 1.9 and 1.10 of the Implementation Section, that the proposed development is in compliance and alignment with that Plan. The Board finds that the conditions placed on the development support the policies of the SSRP, while ensuring that it also meets the goals and objectives of the municipality.
2. In the opinion of the Board, they find that in consideration of the information presented in Exhibit O, and with the additional requirement of a landscape plan to be submitted, that this will support in the mitigation of visual intrusion of the subject parcel from the surrounding parcels.
3. The Board finds that in consideration of the previous use of the subject parcel as pasture land, that the subject parcel is not an irrigated parcel and is also located near existing transmission infrastructure, that the impacts to agricultural land will be minimal. The Board is also of the opinion that there remains the potential for the proposed development to continue to be used as pasture land and grazing in combination with the solar panels once developed.
4. The Board finds that the requirement for dust suppression, as well as a landscape plan and road use maintenance agreement will help alleviate the issue of increased dust during construction.
5. In the opinion of the Board, the condition regarding the requirement of the applicants to dispose of/recycle any broken or replaced modules or solar panels will help protect the land from possible impacts.

**Informative:**

1. When considering the criteria for the Emergency Response Plan, the County of Newell should take into consideration the requirement for the applicant to implement a Ultraviolet/Infrared (UV/IR) Flame Detection system, or similar type thereto, as part of their on-site system to help in detecting and mitigating the presence of vegetation/ground fire in or around the solar array facility.
2. With the increasing trend towards alternative energy, the County of Newell should consider investigating the development of a plan or document that would highlight areas of the municipality which they, based on specific criteria, deem to be more or less acceptable for Industrial Alternative Energy projects.
3. The County of Newell should consider a review of the notification process regarding large scale Industrial Alternative Energy projects. Consideration should be given to reviewing, and possibly expanding, the scope of who is notified of these developments. Consideration should also be given to expanding the timelines of the release of public information prior to the Municipal Planning Commission meeting regarding these developments.



## APPENDIX A

### Exhibits presented at Hearing:

#### Exhibit Description

- A. Notice of hearing and subject parcel map.
- B. List of persons notified.
- C. Letter of appeal.
- D. Notice of Decision.
- E. Notice of Decision and Development Permit to Applicants.
- F. Development Permit Application.
- G. Notice of Application to adjacent landowners.
- H. Development Officer's report to the Municipal Planning Commission.
- I. Powerpoint Presentation to the Municipal Planning Commission by Applicants.
- J. Approved Minutes of the September 21, 2017, County of Newell Municipal Planning Commission Meeting.
- K. Letters in response to application circulation.
- L. Letter from residents of Cassils & Antelope Creek to the Subdivision and Development Appeal Board.
- M. Excerpts from the County of Newell Land Use Bylaw No. 1892-17.
- N. Copies of the land title certificates relating to the subject parcel.
- O. Additional information from the applicant, including e-mail correspondence and photographs, submitted October, 20, 2017.
- P. County of Newell Development Officer Timeline for Development Permit 2017057.
- Q. Letter of concern regarding Development Permit 2017057, submitted by Mr. Todd Beasley
- R. Response from the Cassils Community regarding Development Permit 2017057, submitted by Mr. Mac Anderson.
- S. Presentation notes from the appellant, submitted by Ms. Nanette Fouché.
- T. Presentation notes from the Municipal Planning Commission Chair, Mr. Clarence Amulung.

**APPENDIX B**

**Persons who gave evidence or made submissions at the Hearing:**

<b>CAPACITY</b>	<b>NAME</b>
<b>Applicant:</b>	WSP Inc. on behalf of Solar Krafte Inc. being represented by Mark Burgert and Jeff Thachuk
<b>Appellants:</b>	Marco & Nanette Fouché
<b>County of Newell Representatives:</b>	Development Officer - Shanna Lee Simpson Manager of Planning and Development - Alyce Wickert Municipal Planning Commission Chair - Clarence Amulung Senior Planning Advisor from ORRSC - Diane Horvath
<b>Public Gallery</b>	Todd Beasley Mac Anderson Cheryl Hyland Peggy Springer Rick Irwin Dan Boss