

ROCKY VIEW COUNTY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Board Order No.: 2020-SDAB-004

File No.: 07119008; PRDP20194334

Appeal by: Steve Greenhough and Dani Thomas

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2020 February 19

Decision Date: 2020 March 4

Board Members: Daniel Henn, Chair
Tricia Fehr
Ian Galbraith
Morrie M. Goetjen
Pam Whitnack

DEVELOPMENT APPEAL DECISION

INTRODUCTION

[1] This is an appeal to the Rocky View County Subdivision and Development Appeal Board (the Board) from a decision of the Rocky View County Development Authority issued January 14, 2020. In this decision, the Development Authority approved a development permit application for cannabis cultivation and construction of a Quonset (the proposed development) at Lot 2 Block 2 Plan 1810775; SW-19-27-26-W4M (the Lands).

[2] Upon notice being given, this appeal was heard on February 19, 2020 in Council Chambers of Rocky View County's County Hall, located at 262075 Rocky View Point, Rocky View County, Alberta.

DECISION

[3] The appeal is allowed and the decision of the Development Authority is overturned. A development permit shall not be issued.

BACKGROUND

[4] On November 26, 2019, Brandon Emery (the Applicant) submitted a development permit application for cannabis cultivation and construction of a Quonset on the Lands.

[5] The Lands are located at Lot 2 Block 2 Plan 1810775; SW-19-27-26-W4M, are 108.73 acres in size, and owned by Tristan and Julia Jackson (the Owner).

[6] The Lands' land use designation is Ranch and Farm and is regulated in section 43 of the Rocky View County *Land Use Bylaw* C-4841-97 (the *Land Use Bylaw*).

[7] On January 14, 2020 the Development Authority approved a development permit application for cannabis cultivation and construction of a Quonset on the Lands.

[8] On February 4, 2020 Steve Greenhough and Dani Thomas submitted an affected party appeal of the Development Authority's decision to approve a development permit application for cannabis cultivation and construction of a Quonset on the Lands. The notice of hearing was circulated to 15 adjacent landowners in accordance with the *Municipal Government Act*, RSA 2000, c M-26 and Rocky View County Council policy C-327, *Circulation and Notification Standards*.

SUMMARY OF EVIDENCE

[9] The Board heard verbal submissions from:

- (1) Xin Deng, Planner, for the Development Authority;
- (2) Dominic Kazmierczak, Supervisor Planning and Development, for the Development Authority;
- (3) Steve Greenhough, Amanda Wilkinson, and Dani Thomas, the Appellants;
- (4) Tristan Jackson, the Owner;
- (5) Brandon Emery and Chris Vermeersch, the Applicants;
- (6) Marie McBean, in support of the appeal;
- (7) Brad Johnston, in support of the appeal;
- (8) Linda Wright, in support of the appeal;
- (9) Ed Wilson, in opposition of the appeal; and
- (10) Vern Bretin, in opposition of the appeal.

[10] The Board received five letters in support of the appeal from:

- (1) Daryl Chubb and Karen Schiml of 274067 Range Road 270;

- (2) James and Lynn den Beste of 274062 Range Road 265;
- (3) John Exelby of 274067 Range Road 265;
- (4) Jack and Shauna Frederick of 274130 Range Road 270; and
- (5) Brad and Trish Johnston of 273241 Range Road 271.

[11] The Appellants submitted a list of persons in support of the appeal. The following households on the list did not voice their opinions through appealing, submitting a separate letter to the Board, or speaking at the hearing:

- (1) Jeff [illegible] of 273233 Range Road 270;
- (2) Clay Wickstrom and Brenda Mason of 272197 Range Road 265;
- (3) Yelena, Igor, and Ray Paskov of 270080 Township Road 274;
- (4) Garry and Deborah A. Wise of 272242 Range Road 271;
- (5) Bradley and Selena Carroll of 273236 RR 271;
- (6) Wilmer Kobsar of 273222 Range Road 265;
- (7) Farron McCauley of 273235 Range Road 265;
- (8) Steven Bates of NE-24-27-27-W4M; and
- (9) Kenneth Heslop of 270195 Township Road 274.

[12] The Board received no letters in opposition of the appeal.

Development Authority's submissions

[13] The development permit application was assessed in accordance with sections 20 and 43 of the *Land Use Bylaw* and the Development Authority determined the application met these regulations and policies.

[14] There are currently no buildings on the Lands. The Applicant intends to grow the cannabis in the newly constructed Quonset.

[15] The Applicant intends to service the cannabis cultivation with a water cistern system.

[16] Two part-time employees will attend the Lands as required based on the cannabis growing cycle.

[17] The Applicant must meet all federal and provincial regulations when it comes to security and odour elimination.

[18] There will be no retail customers visiting the Lands.

[19] The Development Authority determined that the proposed cannabis cultivation is compatible with adjacent agricultural uses.

Steve Greenhough, Amanda Wilkinson, and Dani Thomas submissions – the Appellants

[20] Steve Greenhough and Amanda Willkinson live half a mile away from the Lands, to the northwest. The proposed development would unduly interfere with the amenities of the neighbourhood and materially interfere with and affect the use, enjoyment and value of their land which is a violation of section 640.1(6)(a)(i)(ii) of the *Municipal Government Act*.

[21] The greatest concerns are with security and air quality/odour. The charcoal solution proposed by the Applicant is misleading and will not completely eliminate the cannabis odour. The mould and volatile organic compounds released into the air from cannabis gives Amanda Wilkinson headaches.

[22] Cannabis cultivation requires a lot of humidity and moisture that must be vented and the vented air can be smelled from miles away. There are high winds in the area that will carry the cannabis odour from the proposed development that will negatively impact Amanda Wilkinson both inside and outside of her dwelling.

[23] It is common for excess cannabis trimmings to be burned, which will also negatively impact Amanda Wilkinson's health and enjoyment of her land. Amanda Wilkinson understands the proposed development is a smaller operation but the odour will impact neighbouring dwellings due to their close proximity.

[24] Steve Greenhough and Amanda Wilkinson are also concerned that the proposed development will be a target for rural crime and a safety risk to the neighbourhood. Despite the legalization of cannabis there is still a black market for the drug which attracts criminals increasing the likelihood of break ins, auto thefts, and the use of weapons. Thieves could mistakenly enter the neighbours' properties or dwellings in search of the cannabis. The planned trees will not reduce the visibility of the proposed development for many years.

[25] Steve Greenhough and Amanda Wilkinson are concerned there is not yet a development permit application for a dwelling on the Lands. It is concerning that there will not be anyone living on the Lands to watch over the proposed development.

[26] The development permit application does not reflect the traffic increase that will come from running the business.

[27] There is great concern that the proposed development will deplete the area's water aquifer which is already under pressure. Adding wells jeopardizes the sustainability of the aquifer.

[28] A wetland covers 60 acres of the Lands and Steven Greenhough and Amanda Wilkinson are concerned the chemicals and odour from the proposed development will deter migratory birds.

[29] The nearest fire department is in Irricana which is not fully staffed and operations like the proposed development are 23 times more likely to catch fire than a dwelling due to chemicals,

compressed carbon dioxide, and the type of light bulb used. This statistic comes from a 2005 study out of Surrey, British Columbia.

[30] The proposed development will dramatically reduce the values of the neighbouring homes.

[31] The proposed development is surrounded by a very small community where 26-28 people have submitted their opposition to the application. A cannabis use will change the nature of the area from agricultural/residential to commercial.

[32] Dani Thomas lives approximately one half mile to the north of the Lands and shares the same concerns as Steve Greenhough and Amanda Wilkinson.

[33] The proposed development will negatively impact the community with odour. It is not possible to eliminate odour completely from a cannabis development; even larger operators who have greater access to technological resources cannot completely contain the odour. Examples of cannabis developments having difficulty with odour include operations in Olds, Gatineau, and at the Edmonton airport.

[34] Approximately 500 people know about the proposed development and this number will grow. The neighbourhood is concerned the proposed development will make the area a soft target for crime. There are many news articles that demonstrate that crime, some of which is violent, that comes with cannabis operations and the area is 40 minutes away from a police response. The neighbours are worried that thieves will come to their properties instead of the Lands.

[35] It is unsafe to have the cannabis on the Lands without someone living there to watch over the property.

[36] Dani Thomas is concerned that the Applicants' product advertising on its social media accounts will inform thieves on when the product is ready and most valuable to be stolen.

[37] Both Steve Greenhough and Amanda Wilkinson have many years of experience in policing which contributes to their knowledge about cannabis developments.

Marie McBean Submissions – In support of the appeal

[38] Marie McBean lives approximately half a mile east of the Lands and supports the appeal.

[39] Marie McBean has lived on her property for 16 years and is concerned people will drive down her dead end road to try to get to the proposed development and it will negatively impact her view of the mountains.

[40] Marie McBean is concerned the proposed development will negatively impact her and her family's enjoyment of their land and is concerned about security.

Brad Johnston submissions – In support of the appeal

[41] Brad Johnston lives approximately 1.5 miles to the west of the Lands and supports the points made by Amanda Wilkinson and Dani Thomas.

[42] Brad Johnston believes cannabis developments should be located in commercial areas where they have police and fire services.

Linda Wright submissions - In support of the appeal

[43] Linda Wright lives to the west of the Lands, on the west side of Range Road 271 and supports the appeal. She is concerned that no one will be living on the Lands and that there is no application for a dwelling.

[44] Linda Wright is concerned about the negative impact any development will have on the area's water. There is also concern about increased traffic and crime.

Tristan Jackson submissions – The Owner in opposition of the appeal

[45] Tristan Jackson's family has owned the Lands for 70 years. The plan is to sell the Lands to the Applicants. Tristan Jackson will continue to live on his property which is to the north of the Lands.

[46] Tristan Jackson and the Applicants have the same concerns as the neighbours; it is a priority to ensure the land and water are protected. These concerns are addressed in the proposed development and it is important to ensure that solutions are implemented to address neighbour concerns.

[47] A cistern system will be used for the proposed development, not a new well as originally proposed in the development permit application.

[48] Tristan Jackson discussed the proposed development with four environmental groups and their only small concern was potential impact on bird nests in the wetland.

[49] The proposed development's impact on traffic will be negligible as supported by the County's review of the development permit application.

[50] It is a condition of sale that the Applicants must have a residence on the Lands. It is understood that a dwelling is needed to help promote the safety of the Lands. Once the proposed development is approved, a development permit application for a house will be made.

[51] Tristan Jackson and the Applicants welcome any conditions required by the Board.

[52] Tristan Jackson and the Applicants tried to communicate with the Appellants and neighbours as a part of the development permit process. Initial discussions with neighbours about the proposed development were positive but some misinformation has spread causing rifts in the community.

[53] The Lands need to be cared for and are very special. Tristan Jackson and his family have refused multiple potential buyers and are confident the Applicants will care for the Lands and will be good neighbours.

Brandon Emery and Chris Vermeersche submissions – The Applicants in opposition of the appeal

[54] Brandon Emery and Chris Vermeersche would like to get to know the neighbours and address any concerns. There is a lot of misconception and misinformation in the neighbourhood about the proposed development. Brandon Emery and Chris Vermeersche are a father/son team that would like to start a small business to support their families and create a legacy.

[55] Brandon Emery lives in Airdrie and is starting the cannabis business to have a slower lifestyle in a rural setting. Taking care of the Lands and the neighbourhood is a priority.

[56] Chris Vermeersche has military experience and worked as an officer for both the RCMP and Calgary police.

[57] The proposed development will be good for the economy and local business.

[58] Neighbour concerns are addressed as supported by the evidence.

[59] The submitted report on the Quonset built by Sprung demonstrates that the light from inside the building will not be seen on the outside.

[60] Traffic impact will be minimal because:

- (1) there will be no tours or onsite sales;
- (2) construction of the Quonset will only take seven days;
- (3) product will be transported from the Lands in unmarked white vans, not large trucks;
- (4) the only regular traffic will be from the homeowner and a couple of part-time employees; and
- (5) a water truck will attend the Lands which is very common in the area.

[61] There is a lot of misinformation that spreads a lot of unnecessary fear about cannabis operations. It is not true that thieves target micro cannabis operations. The examples provided by the Appellants are not fair comparables as those operations were illegal or related to medical cannabis which operate under different regulations.

[62] Illegal operations will have cash, lots of finished product, and weapons on site which will not occur with the proposed development. The proposed development only grows plants that will be shipped to the Alberta Game and Liquour Commission for processing and selling.

[63] Health Canada's strict regulations in regards to moisture, HVAC systems, venting, etc. must be followed. Neighbours usually do not know cannabis developments are in their area when regulations are followed and development is done properly. Illegal operations are usually detected for many reasons that are not related to odour.

[64] There will be no dangerous chemicals involved with the proposed development; even bleach is not permitted by Health Canada.

[65] It became clear at the beginning of the application process that there are concerns about the water aquifer in the area. The proposed development will use a water cistern system and will not include the digging of new well.

[66] The proposed Quonset and future dwelling will blend in with what already exists in the neighbourhood.

[67] It is important to Brandon Emery and Chris Vermeersche that they be good neighbours and shepherds of the Lands. The proposed development will be taken care of as it represents a serious financial investment.

[68] Brandon Emery and Chris Vermeersche are waiting for the cannabis cultivation development permit approval before making application for a dwelling on the Lands. The approval of the proposed development is required in order to finalize the sale of the Lands.

[69] Each cannabis plant needs 750 ml of water a day and a maximum of 100 litres of intake of water happens each day. This amount of water is the equivalent of a ten minute shower.

[70] An eight foot fence with a straight wire with barb will be erected as required by Health Canada. Fencing and security cameras will be installed in accordance with Health Canada.

[71] The plan is to have Brandon Emery and his family live on the Lands long term. The residence on the Lands will be occupied at all times once it is built.

[72] The Lands are currently used for hay cultivation which will continue on the remainder of the Lands once the proposed development is built.

[73] There are no plans to expand the business, Brandon Emery and Chris Vermeersche do not have the capital to expand into the next level of licensing.

[74] There are only a few grow cycles in a year resulting in approximately 300-500 kg of product. All the processing of the product will happen off site.

[75] The area of the proposed Quonset not used for cannabis cultivation will be occupied by storage, mechanical equipment, a bathroom, and a drying room.

Ed Wilson submissions – in opposition of the appeal

[76] Ed Wilson is one of the owners of Stigma and Stamen and they are partnering with the Applicants for this proposed development.

[77] There will be very little water waste as a result of the proposed development.

[78] Health Canada has approved the methodology for destroying the cannabis trimmings, also known as “shake.” Shake is a valuable commodity and will be composted not burned.

[79] It is better for the proposed development to draw its water from a cistern system as opposed to a well. A cistern system gives the company more control over the quality of water.

[80] Air will not be vented daily because Alberta has such a dry climate. The proposed development will use a system replicating one used by a Calgary company and this company is one of the few businesses not to receive an odour complaint from Health Canada.

[81] The 2005 statistic about fire hazards submitted by the Appellants is from before cannabis was legalized and is not relevant to the proposed development. The Quonset will be purpose built so the type of wiring and lighting used can be controlled to mitigate fire concerns. There is no heating involved with drying cannabis and therefore drying is not a fire hazard.

[82] The marketing of product is very regulated and the business follows all regulations on their social media accounts. For example, no geotags are used and no discernable landmarks are visible in pictures.

[83] The chemicals used to grow cannabis are nutrients and are used in any normal flower growing. Butane is used in processing cannabis which will not be done in the proposed development.

Vern Bretin submissions - in opposition of the appeal

[84] Vern Bretin is a cannabis grower in the County and has a degree in agriculture.

[85] The proposed development is a simple agricultural activity and supported by the County's Agricultural Master Plan that promotes diversification and growth of the agricultural industry.

[86] Health Canada is very thorough when it comes to security and chemicals for the legal growing of cannabis. All legal cannabis cultivation operations are essentially organic.

[87] The Applicants should be allowed to have more than three years for their development permit. Three years is not a reasonable time for people investing in an agricultural operation.

Steve Greenhough, Amanda Wilkinson, and Dani Thomas rebuttal – the Appellants

[88] Amanda Wilkinson believes that the Owner's statements indicate that the proposed development will in fact have negative impact on nesting birds.

[89] There are 26 people in the neighbouring area opposed to the proposed development.

[90] Amanda Willkinson is speaking as a private citizen but does have a lot of experience related to drugs and homicides as a part of her profession. In Amanda Wilkinson's experience,

cannabis operations are regularly detected by their odour and both legal and illegal operations are targets for crime.

[91] The neighbours are concerned that the Applicants' plans will change and that no dwelling will be built on the Lands and that the proposed development will be expanded in the future.

[92] The proposed development will increase crime, traffic, odour, and negative environmental impacts on the land and will therefore affect the use and enjoyment of the neighbours' properties.

Development Authority's Final Comments

[93] The Development Authority had no final comments.

Owner Final Comments

[94] The proposed development will have no impact on nests on the Lands.

[95] Tristan Jackson has had the Lands for sale for two years and has had discussions with up to 50 potential purchasers. The Applicants will not drill a well or use pesticides and will be good stewards of the Lands.

[96] Tristan Jackson and the Applicants share the same concerns as the neighbours and tried address them in for the proposed development.

Appellants' Final Comments

[97] Steve Greenhough, Amanda Wilkinson, and Dani Thomas felt they had fair opportunity to present their evidence to the Board.

FINDINGS & REASONS FOR DECISION

[98] The Board finds that cannabis cultivation and construction of a Quonset is a discretionary use in the Ranch and Farm District in accordance with section 43 of the *Land Use Bylaw*.

[99] The Board finds it has the authority to make a decision on this matter pursuant to section 687(3)(d) of the *Municipal Government Act*.

[100] The Board reviewed all evidence and arguments, written and oral, submitted by the parties and focused on the most relevant evidence and arguments in outlining its reasons. The Board also considered the context of the development, sound planning considerations, the merits of the application, and all applicable legislation, plans, and policies.

[101] The Board finds that the proposed development on the Lands is in close proximity to dwellings whose residents have expressed overwhelming opposition to the proposed

development. The Board is satisfied that the proposed development is a discretionary use and that the overwhelming community opposition indicates that the proposed development is not the right fit for the existing residential/agricultural community.

[102] The Board heard evidence that there is currently no residence on the Lands and that the nearest police detachment has an approximate 40 minute response time to the area which exacerbates the security risk for the surrounding residential/agricultural properties. In the Board's opinion, the proposed development would unduly interfere with amenities of the neighbourhood and would materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

CONCLUSION

[103] For the reasons set out above, the appeal is allowed and the decision of the Development Authority is overturned. A development permit shall not be issued.

Dated at Rocky View County, in the Province of Alberta on March 4, 2020.



Daniel Henn, Chair
Subdivision and Development Appeal Board

EXHIBIT LIST

Documents presented at the hearing and considered by the Board

NO.	ITEM
1.	Development Authority's Report to the Board (35 pages)
2.	PowerPoint presentation submitted by the Development Authority (9 pages)
3.	Letter submitted by S. Greenhough and A. Wilkinson (7 pages)
4.	News articles submitted by D. Thomas (21 pages)
5.	Images submitted by D. Thomas (3 pages)
6.	List of appeal supporters submitted by D. Thomas (3 pages)
7.	Package submitted by T. Jackson (83 pages)
8.	Sprung structure information submitted by T. Jackson (8 pages)
9.	Communications between neighbours submitted by T. Jackson (5 pages)
10.	Letters in support of the appeal submitted by: Daryl Chubb and Karen Schiml (1 page) James and Lynn den Beste (2 pages) John Exelby (1 page) Jack and Shauna Frederick (2 pages) Brad and Trish Johnston (3 pages)