

ROCKY VIEW COUNTY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Board Order No.: 2019-SDAB-009

File No.: 04227009; PRDP20184675

Appeal by: Carlos Tejada

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 February 20

Decision Date: 2019 March 07

Board Members: D. Kochan, Chair
D. Henn, Vice-Chair
I. Galbraith
H. George
S. Hartley

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 23, 2019. In this decision the Development Authority refused a development permit for a home-based business, Type II, for a landscaping company at 272056 Inverlake Road (the Lands).

[2] Upon notice being given, this appeal was heard on February 20, 2019 in Council Chambers of Rocky View County's County Hall, located at 262075 Rocky View Point, Rocky View County, Alberta.

[3] The Board heard submissions for this appeal in conjunction with 2019-SDAB-008 and 2019-SDAB-010.

DECISION

[4] The appeal is denied and the decision of the Development Authority is upheld. A development permit shall not be issued.

BACKGROUND

[5] On November 20, 2018, Carlos Tejada (the Applicant) submitted a development permit application for a Home-Based Business, Type II, for a landscaping company, and relaxation for the dwelling site and outside storage. The Development Authority assigned this development permit application a file number of PRDP20184675. The Applicant also submitted two separate but related development permit applications for a farm dwelling, mobile home, and an accessory building (a shop), being file numbers PRDP20190080 and PRDP20190081 respectively.

[6] The Lands are located at SE-27-24-27-W04M, approximately 0.41 km (1/4 mile) west of Highway 9, on the north side of Inverlake Road. The Lands are approximately 8.35 hectares (20.63 acres) in area and are owned by Carlos Tejada.

[7] The Lands' land use designation is Agricultural Holding, which is regulated in section 46 of the Rocky View County, *Land Use Bylaw C-4841-97* [the *Land Use Bylaw*].

[8] On January 23, 2019, the Development Authority refused to grant a development permit on the following grounds:

- (1) The proposal does not meet the definition of a Farm Dwelling, Mobile Home, as specified in section 8 of the *Land Use Bylaw* as the individual occupying the residence does not engage in farm help.
- (2) The proposed Farm Dwelling, Mobile Home does not house an occupant who engages in farm help on a full-time basis for at least six months of each year, as required by section 29.1 of the *Land Use Bylaw*.

[9] On January 23, 2019, the Development Authority also refused to grant development permits for the Home-Based Business, Type II, with outside storage, and the accessory building.

[10] On February 5, 2019, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 27 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

[11] The Board heard verbal submissions from:

- (1) Paul Simon, Municipal Planner, for the Development Authority; and
- (2) Tom Lanz, representing the Appellants.

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

Development Authority's Submissions

[13] The Lands are a fragmented quarter section. A 2018 aerial image shows the lands are developed with a mobile home, an accessory building, outside storage, and a driveway with panhandle access. An inspection of the Lands was completed in September 2018 showed outdoor storage of several vehicles and equipment, as well as the mobile home. Currently, there

is no development permit for the mobile home, accessory building, or business operating on the Lands.

[14] The area surrounding the Lands is developed with a mix of country residential and small agricultural parcels. Within the quarter section, there are two nearby business related uses. One is a road maintenance company and the other is a vinyl fencing company.

[15] The Applicant's three development permit applications, being PRDP20184675, PRDP20190080 and PRDP2019081, are related to each other and therefore being presented together.

[16] In order for the Home-based Business, Type II, to be valid, there must be an employee who lives on the Lands. For a Farm Dwelling, Mobile Home, the person living in the mobile home must be involved in agricultural activities. There can be no accessory building allowed on the Lands without the approval of some type of dwelling. In this case, the dwelling would be the mobile home.

[17] The development permit application for the farm building, mobile home, was denied by the Development Authority because the proposal does not meet the definition of a Farm Dwelling, Mobile Home, as specified in section 8 of the *Land Use Bylaw*. The individual occupying the mobile home does not engage in farm help on a full-time basis for at least six months of each year, as required by section 29.1 of the *Land Use Bylaw*. The application says the Lands are hayed but the resident employee is not involved with this.

[18] The accessory building, being the existing shop on the Lands, development proposal does not meet the definition of an Accessory Building, as specified in section 8 of the *Land Use Bylaw*, as there is no approval for a principal building on the subject lands. In addition, the accessory building also does not meet the minimum setback requirement, as defined in section 46.5(c)(iv) of the *Land Use Bylaw*. The required setback is 6.00 metres and the proposed setback is 4.00 metres.

[19] The proposal for a Home Based Business, Type II, does not meet the definition of a Home-Based Business, as specified in section 8 of the *Land Use Bylaw* because there is no approval for a principal building on the subject lands. In addition, the Home-Based Business varies the external appearance and residential character of the subject lands due to the scale of outside storage requested, in contravention of sections 21.1(c) and 21.3(d) of the *Land Use Bylaw*. Also, the Home-Based Business is not secondary to the residential use of the parcel because the scale of outside storage and number of non-resident employees requested contravenes section 21.3(c) of the *Land Use Bylaw*.

[20] The Development Authority confirmed with Appellant that the mobile home is 600 square feet in area, not 800 square feet as the County's GIS system indicated.

[21] The Development Authority has no variance discretion to relax the number of non-resident employees working with the Home-Based Business, Type II.

[22] There is a risk associated with allowing permanent development to be attached to a temporary development. In this case, the mobile home is not on a permanent foundation and is a temporary development. Therefore, if the mobile home ceased to be the primary dwelling on the Lands, the accessory building would not be an accessory to anything and then would become out of compliance.

[23] On February 1, 2017, in Board Order 14-17 the Board granted the Appellant a development permit for the existing mobile home to remain on the Lands as a temporary dwelling. This development permit expired on February 28, 2018 and no application for renewal was made. Prior to this, Development Permit 2006-DP-12285 was issued for the mobile home as a temporary residence during the construction of a principal residence. That permit expired on November 5, 2007 and no renewal application was made. No principal residence was constructed.

[24] The Development Authority may only grant a one-year duration for the first permit but may grant a five-year duration after it's renewed.

[25] The Appellant's landscaping business is a larger operation than what is allowed for this district or this use.

Appellants' Submissions

[26] The Appellant is appealing the Development Authority's decision on the grounds that:

- (1) the resident of the mobile home is engaged with the landscaping business operated on the Lands;
- (2) the current accessory building would be demolished in the future when a larger shop is built to accommodate the growing business. Moving this building would be difficult; and
- (3) more outside storage is required for the business as it expands and the area would be well screened.

[27] When the Appellant bought the Lands, he believed he could run his landscaping business on it. Given the surrounding development, he thought the landscaping business would be acceptable in the area. He did not understand the zoning was wrong for the use he intended.

[28] The Development Authority suggested to the Appellant that he should apply for a home-based business. He made an application for a home-based business in 2017 but it was ultimately denied as the size of the home-based business was more suited to a use in an industrial area.

[29] He then sought to get the Lands designation changed. Council agreed that this was an area to be looked at for commercial use but not at this time. Council denied the request to change the Land's zoning.

[30] The Appellant's landscaping business is a low-key business that includes snow removal and retaining walls. There are minimal employees and traffic on the Lands during the operation for the business.

[31] The outside yard requested is needed for future growth. Over the last 10 years, the business has grown considerably. There are plans to put shop facility plus a suite on the Lands. The Appellant could also see having a total of 10 to 12 employees in the next three to five years.

[32] The picture of the storage area in the Development Authority's report is out of date. The yard has since been cleaned up considerably.

[33] The storage area would be screened. It would be used to store landscaping equipment, such as trailers and bobcats, as well as materials to use throughout the summer and winter, like retaining wall bricks. The total amount would only be 10 percent of the Lands total area. There is approximately half an acre is being used for storage right now.

[34] No snow storage is allowed on the Lands.

[35] The Appellant believes that a 6 metre setback for a storage area with screening does not make best use of the Lands.

[36] Minor maintenance on vehicles is done in the building. The business's own employees complete this maintenance.

FINDINGS & REASONS FOR DECISION

[37] A Home-Based Business, Type II, is a discretionary use in the Agricultural Holdings District, in accordance with section 21 of the *Land Use Bylaw* and accordingly falls within the jurisdiction of the Board.

[38] Pursuant to section 8 of the *Land Use Bylaw*, a Home-Based Business, Type II, requires a dwelling on the Lands in which one or more of the dwelling's residents are involved with the business.

[39] In board order 2019-SDAB-008, the Board denied the Appellant's appeal for a development permit for a Farm Dwelling, Mobile Home. As a result, there is no approval for a dwelling on the Lands.

[40] The Board finds that without a permitted dwelling on the Lands the proposed Home-based Business, Type II fails to meet the requirements of the *Land Use Bylaw*. Therefore, the Board denies the Appellant's request for a development permit for a Home-based Business, Type II.

[41] The Board also finds that the proposed size of the Appellant's business is better suited to an industrial-zoned area.

CONCLUSION

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

Dated at Rocky View County, in the Province of Alberta on March 7, 2019.



Don Kochan, 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 (56 pages)
2.	Development Authority's PowerPoint presentation to the Board (16 Slides)