

**ROCKY VIEW COUNTY
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

Board Order No.: 2019-SDAB-031

File No.: 04223007; PRDP20190770

Appeal by: W. Andrew Greenslade

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 June 26

Decision Date: 2019 July 11

Board Members: D. Kochan, Chair
I. Galbraith
H. George
D. Henn
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 May 14, 2019. In this decision the Development Authority conditionally approved a Commercial Kennel (30 dogs and 30 cats) and signage at 271105 Inverlake Road (the Lands).

[2] Upon notice being given, this appeal was heard on June 26, 2019 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 March 14, 2019, Alden N & Jacqueline M Emro (the Owners) submitted a development permit application for a kennel for 30 dogs and 30 cats and signage.

[5] The Lands are located at NE-23-24-27-W4M, located approximately 0.81 kilometres (1/2 mile) east of Highway 9, on the south side of Inverlake Road. The Lands are approximately 21.60 hectares (53.38 acres) in area and are owned by Alden N & Jacqueline M Emro.

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

[7] On May 14, 2019, the Development Authority conditionally approved to grant a development permit on the following grounds:

Description:

- (1) That a commercial kennel (up to 30 dogs and 30 cats) may operate on the subject property in accordance with the approved site plan submitted with the application and the following details:
 - (a) Construction of one (1) building, approximately 22.30 square metres (240.00 square feet) in size, for the commercial kennel operations;
 - (b) Use of an existing building (Quonset), approximately 297.29 square metres (3,200.00 square feet) in size, for the commercial kennel operations;
 - (c) Outside dog enclosures/dog runs enclosed by a 1.83 metres (6.00 feet) high fence; and
 - (d) One entry sign, approximately 1.22 m (4.00 ft.) x 1.83 m (6.00 ft.), mounted on the fence line as per the application.

Prior to Issuance:

Fees & Levies:

- (2) That prior to issuance of this permit, the Applicant/Owner shall submit payment of the Transportation Offsite Levy for the 'Development Area' in accordance with the Transportation Offsite Levy Bylaw.
 - (a) A revised Site Plan shall be submitted, identifying the 'Development Area' of the proposal.

Note: the 'Development Area' shall include the driveway access, all structures (buildings), the storage and display areas directly associated with the use, the required landscaping and parking areas as defined in the Land Use Bylaw, and any other area used for development purposes.

Permanent:

Operational:

- (3) That a maximum of 30 dogs and 30 cats shall be allowed on the subject site at any one time.
- (4) That all dogs shall be kept indoors between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and 10:00 p.m. and 9:00 a.m. on weekends.
- (5) That any dogs that cause a nuisance by barking shall be kept indoors at all times.
- (6) That dogs residing on-site in the kennel operation shall not run outside at large at any time.
- (7) That the sign shall be kept in a safe, clean, and tidy condition at all times.
- (8) That there shall be no business parking on the County Road Allowance at any time.
- (9) That the site shall be maintained in a neat and orderly fashion at all times.
- (10) That any plan, technical submission, agreement, or other matter submitted and approved as part of the Development Permit application, or submitted in response to a Prior to Issuance or Occupancy condition, shall be implemented and adhered to in perpetuity.

Fencing & Enclosure:

- (11) That the kennel area containing any outside runs shall be enclosed with fencing, which shall be maintained at all times.
- (12) That any outside runs fences shall be a minimum of 1.20 metres (3.90 feet) in height.

Sound Proofing:

- (13) That the kennel building walls shall be insulated to a Sound Transmission Class minimum rating of 45 to ensure sound reduction prior to any dogs occupying the kennel building.
 - (a) That it is recommended by the County that Spray Foam Insulation is not utilized for insulation/sound proofing as it is a flammable solid which increases fire risk.
- (14) That upon request from the County, the Applicant/Operator shall engage a qualified Acoustical Engineer to monitor the sound levels at the nearest residence, not at this property. Any recommendations from that report shall be implemented by the Applicant/Operator, to the satisfaction of the County.

Servicing:

- (15) That the Kennel operation shall be serviced by use of cisterns/holding tanks, with a trucked-in/trucked-out service for water and wastewater in conjunction to use of the onsite septic system.
- (16) That all water used for cleaning of pens and washing of animals shall be collected and disposed of in accordance with Provincial Regulations.
- (17) That all waste shall be:
 - (a) stored in a dry state in metal or plastic animal proof containers;
 - (b) located within a building or adjacent to a building, adequately screened from adjacent properties; and
 - (c) disposed of off-site, or by a commercial service in a manner satisfactory to the County.

Advisory:

- (18) That the County's Noise Control Bylaw C-5772-2003 shall be adhered to at all times.
- (19) That any personally-owned dogs of the Applicant/Owner, shall be registered and licensed annually with the County, as per the Master Rates Bylaw.
- (20) That the Applicant/Owner shall obtain a Hobby Kennel license, for the kennel operation, through the County, as per the Master Rates Bylaw.
- (21) That the Applicant/Owner should adhere to the Canadian Veterinary Medical Association Codes of Practice for Kennel and Cattery Operations at all times, while animals are being boarded;
- (22) That a Building Permit and associated Sub-trade permits shall be obtained through Building Permits prior to any construction taking place for the remedial work to convert the existing Quonset to a Boarding Kennel, and for construction of the proposed new building using the Commercial Building checklist requirements.
- (23) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant.
- (24) That if the development authorized by this Development Permit is not commenced with reasonable diligence within 12 months from the date of issue, and completed within 24 months of the issue, the permit is deemed to be null and void, unless an extension to this permit shall first have been granted by the Development Officer.

- (25) That if this Development Permit is not issued by **December 31, 2019** or the approved extension date, then this approval is null and void and the Development Permit shall not be issued.

[8] On May 31, 2019, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 16 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) Paul Simon, Planner, for the Development Authority;
- (2) Sean MacLean, Supervisor Planning and Development, for the Development Authority;
- (3) Gurbir Nijjar, Municipal Engineer, for the Development Authority;
- (4) Walter Andrew Greenslade, the Appellant;
- (5) Neil Hamelin in support of the appeal;
- (6) Danielle Pennacchiotti in support of the appeal;
- (7) Jim Cellars in support of the appeal;
- (8) Jackie and Al Emro, the Applicants.

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

- (1) Debby Momm;
- (2) Jim Cellars;
- (3) Tricia Flaman;
- (4) Emily Green;
- (5) Robin Greenslade;
- (6) Neil Hamelin, Cheri Hamelin and Joyce McLennan;
- (7) Jim and Danielle Pennacchiotti;
- (8) Manu Sharma;
- (9) Raj Sidhu;
- (10) Bob Leslie and Arlyn Sleeman;

(11) Laurie and Brad Stephens;

(12) Clark and Cheryl Taylor.

[11] The Board received four letters in opposition to the appeal.

(1) Larry David, David's Arena;

(2) Andy Feltmate;

(3) Real Estate Council of Alberta;

(4) Lisa and Shawn Welsh.

Development Authority's Submission

[12] The existing Quonset on the property will be used for the dog kennel operations. There will be a new building built for the cat boarding.

[13] The Appellants have previously submitted a permit for a like use and this permit was also appealed and consequently revoked by the Board.

[14] The new permit notes changes from the original application. A reduction in hours of operation and increased fencing are some of the changes that have been made to the application.

[15] A commercial kennel permit generally does not state the hours of operation within the permit. The Development Authority is more concerned with the hours the dogs are outside. However, the hours of operation can be added to the Development Permit.

[16] The development area of the property requires a Transportation Offsite Levy (TOL) be paid; a new site plan would be needed to assess this fee.

[17] There is no specific time period associated with this Development Permit. The permit remains with the land in perpetuity as long as there are no changes made to the development. The Board can add a time limit for the validity of the permit within the Development Permit conditions.

[18] Fire Services recommended that spray foam insulation not be used as it has a high degree of flammability, but it is not a restriction listed on the permit. It is also noted by Fire Services that spray foam insulation is not good around animals.

[19] Transportation noted that the road will be impacted as an advisory condition, however there were no specifics provided. Engineering noted that a Transportation Impact Assessment (TIA) is not needed at this time based on their comments.

[20] The Board can add in a condition to require a TIA or a Traffic Impact Memo be completed.

[21] The number of dogs noted in the conditions are for the dogs that are being boarded and do not include the property owner's three dogs.

[22] Condition 21 includes a mention to the Canadian Veterinary Medical Association Codes; this condition is advisory, as it is not enforced by Rocky View County.

[23] Engineering notes that the TOL should be enough to offset the impact to the roads.

[24] Fencing in the runs would not provide screening and soundproofing on the North and South ends of the runs.

[25] The conditions listed in the permit are reliant on past experiences with these kind of developments.

Appellant's Submission

[26] The changes to the application are very minor in nature from what was applied for previously.

[27] The Applicants hosted an open house in February of 2019 and were met with strong opposition from neighbours.

[28] Kennels such as this are generally located in isolated locations to minimize the impacts of the noise and smell produced by the animals.

[29] The community is Ranch and Farm and is a very quiet, friendly and respectful neighbourhood. There are a lot of children in the neighbourhood as well.

[30] There are 10 houses within a mile and 8 within a half mile of the proposed development.

[31] There are minimal sound barriers between the houses.

[32] In rural Alberta, the noise limits are 50dBa during the day and 40dBa at night. A third party noise consultant / engineering firm was hired. It was determined that under every scenario that was provided the noise limits are exceeded.

[33] There are very few trees on the property. New trees were planted last year but they are still very small.

[34] The property where the proposed development is used to be a horse facility.

[35] There are sheep, chickens and horses adjacent to the proposed development.

[36] The kennel is less than 75 metres from the Appellant's back door. As well, their back deck looks directly onto the operations.

[37] There is a large concern for disease transference. There is also a safety risk associated with the livestock, horse activities and the children in the neighbourhood.

[38] There is value deterioration on all surrounding properties, in excess of 30% instantly. This is an approximate decrease of \$2.7 million dollars in value for the neighbourhood.

[39] Inverlake Road is a gravel road; the average traffic on this road is 100 vehicles per day. This has a material impact on the roads. The increase in traffic from the kennel will affect the roads greatly.

[40] The property does not have a cistern for water storage for use in the kennel. Additionally there is poor ventilation in the Quonset, which would leave the windows in the kennel needing to be open thus increasing noise and smell.

[41] There are dirt floors in the dog runs, which will increase the smell. The concrete barriers surrounding the runs will not absorb sound, as concrete is not designed for sound absorption. As well, the dogs will be stimulated by the local wildlife, which will increase the noise.

[42] The Applicants do not have any experience in running a kennel. Their experience is in flipping houses, and thus there is a concern that they will start up the business and then sell it.

[43] The proposed development does not fit in the neighbourhood, as well every single person in the neighbourhood is against this development.

Neil Hamelin Submission

[44] Looked at a home in Nanton with a kennel next door. This home had been for sale for two years, it was extremely noisy. This house was twice the distance from the kennel as the Applicant's property is.

[45] Have spent more time with the Applicants since they moved into the house, however, they are still opposed to the proposed kennel operations.

[46] The neighborhood is more like a suburb than a rural location.

Danielle Pennacchietti Submission

[47] There is poor visibility on the hill on Inverlake Road and in the winter, there is drifting snow on the road.

[48] The entrance to the Applicants land was moved during the subdivision of the original parcel due to concerns with the placement on the main road.

[49] There are horse jumps on her property and she has a concern for the barking dogs scaring the horses.

[50] Horses are flight animals whereas dogs are predatory animals; these two types of animals do not mix well.

[51] Limiting the hours of business of the kennel will not change the volume of traffic to and from the kennel.

[52] Dogs can still be heard barking inside as well as outside of the kennel.

[53] The local neighbors have formed a Crime watch group; everyone knows everyone and they are contentious of watching for new vehicles in the neighborhood.

[54] There are breeding operations next door to the kennel, noise affects conception and can affect abortion rates in horses. There is an 80% higher chance of abortion due to increased noise.

Jim Cellars Submission

[55] Has been a resident in the neighborhood for 46 years and is 450 metres from the Applicants property. In agreement with appeal.

Jackie and Al Emro Submission

[56] The noise study presented by Danielle Pennacchiotti is on rats not on horses, and is not relative to horses that will be 900 to 1100 feet from where the dogs will be.

[57] The horn at railway crossing on Inverlake Road sounds four times per month, this horn used to sound daily. If this horn did not and does not currently affect the horses the random barking of dogs will not affect them either.

[58] The barking at the facility will not be constant; there is a commitment to have someone outside with the dogs at all times. Any dogs that bark will be sent back into the kennels.

[59] The dogs will be rotated outside and there will only be 5-10 dogs outside at one time. This will happen in both the morning and afternoon. The dogs will also not be let outside from 7pm to 8am.

[60] A sound meter was purchased and used on the property. On a Sunday afternoon the sound level is 37-40dBa, when three dogs were barking the sound did not register on the property. Testing done at 5pm on a Tuesday with the same results. Both times the barking was not above the ambient noise of the neighbourhood.

[61] Willingness to move the reception area to another building to prevent the dogs from barking when people come in and drop their dogs off for boarding.

[62] The Quonset has sound and fire-rated spray foam currently, but this can be coated to add more soundproofing to the building.

[63] A noise evaluation of the proposed kennel was done with a company in the United States. They noted that there are options to reduce the noise outside, and there is a willingness to do whatever it takes to reduce the sound.

[64] Two other horse riding arenas that are located adjacent to kennels and they stated that as long as the dogs are locked up the horses will only notice them for the first day or two but will ignore them after that. Other wildlife is much more dangerous to the horses.

[65] The Real Estate Council of Alberta was contacted with regards to the appraisal that was done on the adjacent properties, they noted that a realtor was not qualified to provide an appraisal on property. A complaint was submitted with regards to the realtor that provided the appraisal.

[66] An appraisal was completed on another kennel and it was found to have no monetary effect on the surrounding parcels. The proposed development will increase property values in the area.

[67] There is a willingness to adjust the hours of operation as the Applicant does not want to be a bother.

[68] There will be no single day stays as there is no daycare on the application, the length of stay will typically be a week or more. This means increased cars and traffic on Inverlake Road will be minimal.

[69] Inverlake Road is plowed and the sightlines are good from both the road and the entrance to the parcel. The speed limit on the road is 60-80 km/h and is a good speed with good visibility.

[70] The land is zoned Ranch and Farm and a kennel is a discretionary use. Mr Greenslade was originally the only one opposed, now the whole area is against the development.

[71] The length of time people have resided in the area does not make the area residential in nature.

[72] A privacy fence will be constructed, this is the only feature that is not existing currently.

[73] The west and east sides of the runs will be concrete blocks, there can additionally be a wooden fence added. The runs will also be grassed and not dirt and there will be a gravel path leading from the Quonset to the runs.

[74] The Applicants have grown up around animals, as both grew up on a farm.

[75] A denial of this kennel will be denying the use of the land as per the Land Use Bylaw.

[76] The Quonset remains cool in the summer months due to the insulation and an Air Conditioning system is being looked at to provide increased cooling.

[77] Sound blankets will be installed in the kennels to reduce outside noise. As well there can also be sound absorbing materials hung from the ceiling to absorb noise.

[78] The amount of staff on site will be determined by the amount of cats and dogs being boarded at the facility. The Country Club Pet Resort has a staff of 30 for 300 dogs at their facility.

[79] Cameras will be installed in the Quonset to monitor the dogs.

[80] A Risk Assessment was completed by the brother of one of the Applicants, who was employed at Transport Canada for a number of years.

Appellant's Rebuttal

- [81] Property valuation is very subjective and contains many factors.
- [82] The removal of the approach from across the road set a precedent for the area.
- [83] The train and horn for the crossing on Inverlake Road is predictable unlike barking dogs.
- [84] Dogs are not only visual creatures they are also dependent on smell and other senses, limiting their view will not deter barking.
- [85] Sound walls on the hill would have to be 40 metres in height to prevent noise from travelling to adjacent land.

Development Authority's Closing Comments

- [86] The Board is not bound by previous decisions on this property.
- [87] The test for this is to evaluate the land not the user.
- [88] Land value is not something the Board can consider when making their decision.

Appellants Closing Comments

- [89] None.

FINDINGS & REASONS FOR DECISION

- [90] The proposed Commercial Kennel is a discretionary use in the Ranch and Farm District, in accordance with section 43 of the *Land Use Bylaw*.
- [91] 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*.
- [92] 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 proposed development, sound planning considerations, the merits of the application, and all applicable legislation, plans, and policies.
- [93] The Board noted that several immediate neighbours are strongly opposed to a kennel; sighting access to kennel, noise, increased traffic, smell, and hours of operation. The access to the kennel will be via Inverlake Road which is a gravel surface. Added traffic will increase dust issues for immediate neighbours.
- [94] The Board notes that the site has little natural screening by landscaping/hedge/trees to buffer sound and sight.
- [95] The Board acknowledges that the kennel is proposed to be at the top of a rise on the subject property, the noise abatement from a fence would have little sound-deadening effect to the immediate neighbours.

[96] The Board did not hear strong evidence from the applicant that sound, smell, traffic, and animal security issues had been mitigated for the surrounding community.

[97] The Board finds that the proposed development, in accordance with applicable sections of the *Land Use Bylaw* and the section 687 of Municipal Government Act, if approved, would unduly interfere with the amenities of the neighbourhood, and would materially interfere with or affect the use, enjoyment or value of the neighbouring parcels of land.

CONCLUSION

[98] For the reasons set out above, the appeal is allowed and the decision of the Development Authority is revoked. A development permit shall not be issued subject to the above-noted conditions.

Dated at Rocky View County, in the Province of Alberta on July 11, 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 (45 pages)
2.	Development Authority's Presentation to the Board (12 pages)
3.	Appellant's Presentation to the Board (22 pages)
4.	Appellant's Property Appraisal (5 pages)
5.	Danielle Pennacchietti Noise Study (1 page)
6.	Applicant's Video of dogs going into a kennel