

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

Board Order No.: 2019-SDAB-034

File No.: 06532016; PRDP20190867

Appeal by: Rob and Marla Carlson, Ian and Laurette Cockburn

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 28, 2019. In this decision the Development Authority conditionally approved a development permit for the construction of an accessory building (kennel building), and the relaxation of the maximum height requirement at 14221 Big Hill Springs 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 22, 2019, Victoria Thiessen (the Applicant) submitted a development permit application for the construction of an accessory building and the relaxation of the maximum height of the accessory building.

[5] The Lands are located at NW-32-26-01-W5M, at the southeast junction of Big Hill Springs Road and Panorama Road, approximately 3.21 kilometres (2 miles) west of the city of Airdrie. The Lands are approximately 7.67 hectares (18.96 acres) in area and are owned by Richard and Victoria Thiessen.

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

[7] On May 28, 2019, the Development Authority conditionally approved a development permit on the lands on the following grounds:

Description:

- (1) That an accessory building (kennel), approximately 178.37 square metres (2,040.00 square feet) in area, may be constructed on the subject site in accordance with the Site Plan & Elevation Plans submitted with the application.
- (2) That the maximum height requirement for the accessory building (kennel) is relaxed from 5.50 metres (18.04 feet) to 6.85 metres (22.50 feet).

Permanent:

- (3) That the proposed accessory building (kennel) shall not be used for commercial purposes at any time, except for a Home-Based Business, Type I and the Kennel, Commercial as approved under PRDP20190865.
- (4) That if PRDP20190865 is not issued, no commercial activity except for a *Home-Based Business, Type I* shall occur within the accessory building (kennel).
- (5) That the proposed accessory building (kennel) shall not be used for residential occupancy purposes at any time.
- (6) 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.

Advisory:

- (7) That a Building Permit/Farm Building Location permit, for the proposed accessory building (kennel) shall be obtained through Building Services, prior to any construction taking place.
- (8) That any other government permits, including a Roadside Development Permit, approvals, or compliances are the sole responsibility of the Applicant.

- (9) 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 Authority.

[8] On June 14, 2019, the Appellants appealed the Development Authority's decision. The Notice of Hearing was circulated to 24 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) Jessica Anderson, Municipal Planner, for the Development Authority;
- (2) Paul Simon, Planner, for the Development Authority;
- (3) Sean MacLean, Supervisor Planning and Development, for the Development Authority;
- (4) Wendy Stewart, the Appellant;
- (5) Rob Carlson, the Appellant;
- (6) Victoria Thiessen, the Applicant.

[10] The Board received one letter in support of the appeal from:

- (1) Kurt Ness

[11] The Board received no letters in opposition to the appeal.

Development Authority's Submission

[12] Subject lands contain a dwelling and attached garage.

[13] Two related applications, one to build an accessory building for the kennel and another for the kennel operations for up to 12 dogs. The adjacent areas of the property would be fenced and used for dog runs, play areas and parking for guests.

[14] This development meets the requirements stated in the Land Use Bylaw for a kennel.

[15] A condition in the approval of the accessory building notes that if the kennel permit is not approved then the accessory building can only be used as Home Based Business Type I.

[16] The proposed hours of operation of the kennel are 7 days a week 24 hours a day. There are no restrictions on when dogs can be picked up or dropped off at the facility.

- [17] The Board can include a condition that specifies hours of operation of the kennel.
- [18] Condition 7 of the approval notes when animals must be kept indoors and references the Rocky View County Noise Bylaw.
- [19] The Land Use Bylaw does not set a maximum number of employees for kennel operations.
- [20] There is an error in the staff report; Victoria Thiessen is the Applicant not an Appellant.
- [21] The address for the kennel was incorrect in both the advertisement for the approval as well as the Notice of Decision for the kennel operations. However, the advertisement and Notice of Hearing for the appeal was correct.
- [22] No specific permit is required for a dog park under the Land Use Bylaw.
- [23] A complaint based system is used if the number of dogs exceeds the number listed in the permit.
- [24] 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.
- Wendy Stewart – Appellant’s Submission*
- [25] Representative for Dewitt’s Pond residents.
- [26] The proximity of this proposed development is too close to homes. The closest Dewitts Pond neighbour is 0.1 kilometre away from the facility.
- [27] The dogs barking at the kennel will cause the neighbourhood dogs to bark, starting a chain reaction of barking in the neighbourhood.
- [28] There a reasonable expectation of noise in the neighbourhood, a kennel with barking dogs exceeds that expectation.
- [29] Noise travels a long distance with no barriers, sounds can be heard up to 2000 feet away. This will also be true for barking dogs.
- [30] There is also a safety concern if the dogs get out of the facility.
- [31] There is a concern about the smell of the facility as well.
- [32] It is also believed there is a public dog park being planned for the property, as the entire property has been fenced.
- [33] This kennel operation will affect the value of the surrounding properties.
- [34] The original Notice of Decision for the development permit had the wrong address on it, thereby not allowing neighbours to have a say on the permit.

[35] An impact Statement from Randy and Jody Wollman, who live closest to the proposed development, was presented. This statement includes area safety and barking of dogs.

[36] The proposed dog runs will be 350 feet from Panorama Road.

Rob Carlson – Appellant’s Submission

[37] There was previously an illegal kennel on the site.

[38] Approximately 10 acres of the entirety of the property is being fenced, how will sound be kept in on that 10-acre area.

[39] A question was raised as to if the approval was based on the actual address or the address published on the advertisement and Notice of Decision.

[40] Evan Neilsen of Rocky View County noted that if people are being charged to use the space for their dogs then a development permit would be needed. However if people are not being charged a fee to use the space the land would have to be re-designated to municipal lands.

[41] What kind of recourse does the neighbourhood have if the dogs are barking incessantly.

Victoria Thiessen Submission

[42] Within the kennel building there will be both noise and visual barriers to allow the dogs a stress free environment.

[43] The proposed kennel will be a luxury kennel modelled after various kennels in the United States, not a traditional kennel. Each kennel will be a solid room to allow visual barriers for the dogs. The kennels located in the United States were collaborated with to design the building and the operations.

[44] The outside runs will be 30 feet long with a 6 foot fence, they will run in intervals to allow no overlap of runs. As well the dogs will be rotated outside to avoid any overlap of dogs and causing visual stimulation and barking.

[45] The dogs will only be outside during the times allowed as per the Bylaws, as well the billeting doors will only be open during those hours as well. There will be no access to the outside of those Bylaw times.

[46] There are two windows that can be opened in the building, however neither of them will be open as the building will be climate controlled.

[47] A larger number of staff allows for a more one on one time with the dogs, allowing for a quieter environment for all. A loud kennel is counterproductive to business.

[48] The applicant is willing to work with an acoustical engineer.

[49] Outside runs will be cleaned several times throughout the day; all waste will be stored in plastic and compost bins accordingly.

[50] The concern over loose dogs will be alleviated by the installation of a chain link fence, to provide a safety net. The property will also be double fenced, to allow for an extra layer of protection.

[51] The park area was included in the development permit; the park will allow for agility training and play time to keep the dogs occupied.

[52] The perimeter fencing was moved to allow for employee traffic and to provide access off Big Hill Springs Road. This was done to help the traffic on and off the secondary highway and increase safety.

[53] The standard of care is what will mitigate the noise in the kennel not the number of dogs being kennelled.

[54] There is no public dog park being proposed on this site.

[55] The second floor of the proposed kennel building will be used for indoor playtime and agility training in the winter months.

[56] There is no intention of opening a daycare onsite.

[57] The average stay will be over a weekend or a week or more in length.

[58] If the kennel is not approved, the applicant will not need the building.

Wendy Stewart – Appellant’s Rebuttal

[59] Concern over how the number of dogs on site will be counted. Additional concern over the number of dogs increasing with the success of the kennel.

[60] Will there be sound barriers on each dog run.

[61] As a 24 hour a day business, how will dogs who bark at each other when arriving and departing be mitigated?

[62] As the noise Bylaw allows dogs to be outside during the day, will the dogs be outside barking all day. Trees provide limited noise reduction.

Rob Carlson – Appellant’s Rebuttal

[63] Play area is not shown in the development permit, and the area appears to be bigger than needed for the outside runs. How will sound in an area this large be mitigated?

Development Authority’s Closing Comments

[64] The Land Use Bylaw does not have a specific use for a dog park; there are two uses that would be the most appropriate for a dog park. They are Government Services i.e. the County would run and maintain a dog park on Municipal Reserve Lands, or a Public Park that would be run on County or private lands. A dog park would be more than likely run under a Public Park designation. A Public Park is not listed as a description in the Agricultural Holdings land use designation, and the park would have to be part of the kennel.

Wendy Stewart – Closing Comments

[65] None.

Rob Carlson – Closing Comments

[66] None.

FINDINGS & REASONS FOR DECISION

[67] The Commercial Kennel is a discretionary use in the Agricultural Holdings District, in accordance with section 46 of the *Land Use Bylaw*.

[68] 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*.

[69] 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.

[70] The Board acknowledges that several adjacent neighbours are strongly opposed to the kennel because of noise, smell, increased traffic and increased security risk from traffic and dogs escaping from and running at large from the proposed kennel.

[71] The Board finds that this business is not consistent with the surrounding neighbourhood.

[72] The Board acknowledges that the applicant stated that the building would not be needed if the kennel permit was denied.

[73] 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

[74] 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.

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 (51 pages)
2.	Development Authority's Presentation to the Board (11 pages)
3.	Presentation by Wendy Stewart et al (38 pages)
4.	Property photos submitted by the Appellant (4 photos)
5.	Applicant Presentation to the Board (14 pages)