

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

Board Order No.: 2019-SDAB-040
File No.: 05325001; PRDP20190990
Appeal by: Arlene Hillier, Doug McIntosh and Glenn Duhn
Appeal Against: Development Authority of Rocky View County
Hearing Date: 2019 August 7
Decision Date: 2019 August 22
Board Members: D. Kochan, Chair
D. Henn
I. Galbraith
H. George
W. Metzger

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 June 25, 2019. In this decision, the Development Authority conditionally approved a development permit for a Cannabis Cultivation Facility and the construction of a cultivation building at 280060 Township Road 254 (the Lands).

[2] Upon notice being given, this appeal was heard on August 7, 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, Leina Blaze (Permit Masters) (the Applicant) submitted a development permit application for a Cannabis Cultivation Facility and the construction of a cultivation building.

[5] The Lands are located at SE-25-25-28-W4M, located approximately 0.41 kilometres (1/4 mile) west of Highway 791 and on the north side of Highway 564. The Lands are approximately 5.26 hectares (13.00 acres) in area and are owned by Azim & Anar Mitha.

[6] The Lands' land use designation is Farmstead, which is regulated in section 47 of the Rocky View County, *Land Use Bylaw C-4841-97* [the *Land Use Bylaw*].

[7] On June 25, 2019, the Development Authority conditionally approved to grant a development permit on the following grounds:

Description:

- (1) That Cannabis Cultivation may commence on the subject lands in general accordance with the submitted Site Plans, Elevation Drawings and Floor Plans and includes:
 - (a) Construction of a cultivation building (approximately 12,342.44 sq. ft. in area);
 - (b) Use of the existing dwelling as office space (approximately 1,239.46 sq. ft. in area);
 - (c) Construction of parking and loading areas as per the approved Site Plan;
 - (d) Perimeter fencing as per the approved Site Plan;
 - (e) Installation of one (1) freestanding sign. Drawing details shall be submitted to the County prior to installation.

Prior to Issuance:

- (2) That prior to the issuance of this permit, the Applicant/Owner shall submit a 3.2.2 Building Code analysis, prepared by a qualified professional, for the proposed development, to the satisfaction of the County.
- (3) That prior to issuance of this permit, the Applicant/Owner(s) shall contact County Road Operations to determine if a Road Use Agreement and/or any Road Data Permits are required for the importing of fill and topsoil, removal of any excess fill, and for the mobilization and demobilization of any construction equipment to and from the subject site utilizing any County Roads.
 - (a) Written confirmation shall be received from County Road Operations confirming the status of this condition. Any required agreement or permits shall be obtained unless otherwise noted by County Road Operations.
- (4) That prior to the issuance of this permit, the Applicant/Owner shall submit a Site-Specific Stormwater Implementation Plan (SSIP) conducted by a qualified professional that is consistent with the conditions set in the Co-operative Stormwater Management Initiative (CSMI). The Applicant/Owner shall be responsible for following the recommendations outlined in the SSIP.

- (5) That prior to issuance of this permit, the Applicant/Owner shall submit a wastewater and water-servicing plan, in accordance with County Servicing Standards, to the satisfaction of the County.
- (6) That prior to the issuance of this permit, the Applicant/Owner shall submit a Landscaping & Screening Plan in accordance with Section 26 of the County's Land Use Bylaw, to the satisfaction of the County, that include:
 - (a) A minimum 10.00% landscaping for the development area in accordance with Section 26.11(c);
 - (b) The minimum number of trees in accordance with Section 26.3 and 26.5 and the development area identified in (i);
 - (c) The minimum caliper for deciduous trees of 4.50 cm (1.77 in.), the minimum height for deciduous shrubs of 60.00 cm (23.60 in.) when planted, and the minimum height for coniferous shrubs of 40.00 cm (15.70 in.) when planted, in accordance with Section 26.3;
 - (d) A 4.00 m (13.12 ft.) landscaped strip along the east property line, adjacent to Highway 567, in accordance with Section 26.11(d); and,
 - (e) Acknowledgement and consideration of the Agricultural Boundary Design Guidelines, to help mitigate any adjacent conflicts with agricultural properties.
- (7) That prior to the issuance of this permit, the Applicant/Owner shall confirm how the design of the facility conforms to the intent of the Delacour Area Structure Plan with respect to exterior color and design to the satisfaction of the County.

Prior to Occupancy:

- (8) That prior to occupancy of the site, the Applicant/Owner shall submit as-built drawings certified by a professional engineer licensed to practice in the Province of Alberta. The as-built drawings shall include verification of as-built sanitary & water infrastructure and relevant SSIP.
 - (a) Following receiving the as-built drawings from the consulting engineer, the County shall complete an inspection of the site to verify the infrastructure has been completed as per the stamped "examined drawings".
- (9) That prior to occupancy of the site, the Applicant/Owner shall ensure that Municipal address for the building is posted.

- (10) That prior to occupancy of the site, all landscaping and final site surface completion shall be in place.
 - (a) That should permission for occupancy of the site and/or building be requested during the months of October through May inclusive, occupancy shall be allowed without landscaping and final site surface completion provided that an Irrevocable Letter of Credit in the amount of 150.00% of the total cost of completing all the landscaping and final site surfaces required is placed with Rocky View County to guarantee that the works will be completed by the 30th day of June immediately thereafter.

Permanent:

- (11) That Cannabis shall not be consumed in the Cannabis facility at any time.
- (12) That this approval does not include a *Cannabis Retail Store*.
- (13) That the hours of operation for the Cannabis facility shall be 24 hours a day, seven days a week throughout the year, with plant production occurring, 7:00 a.m. to 7:00 p.m. daily.
- (14) That the subject property shall be shaped so that the entire property drains to the on-site storage facilities and that no water is discharged off site.
- (15) That the facility shall maintain and display a distinct municipal address in accordance with the County Municipal Addressing Bylaw (Bylaw C-7562-2016), for the facility, to facilitate accurate emergency response.
- (16) That sewage disposal shall be by a pump-out holding tank that is hauled off-site to an approved sewage disposal site or by connection to a piped collection system.
- (17) That all on-site lighting shall be dark sky, and all private lighting, including site security lighting and parking area lighting, shall be designed to conserve energy, reduce glare, and reduce uplight. All development shall demonstrate lighting designs that reduces the extent of spill-over glare, and eliminates glare as viewed from nearby residential properties.
- (18) That all signage shall be installed in accordance with the approved signage details and kept in safe, clean and tidy conditions at all times.
- (19) That the signs shall not be flashing or animated at any time.
- (20) That no outdoor storage shall be allowed at any time for business use.
- (21) That 16 parking stalls shall be maintained on site at all times for staff.
- (22) That the entire site shall be maintained in a neat and orderly manner at all times, to the satisfaction of the Development Officer.

- (23) That any waste containers, garbage or recycling shall be completely screened from view from all adjacent properties and public thoroughfares.
- (24) That any plan, technical submission, agreement, matter or understanding submitted and approved as part of the application, in response to a prior to issuance or occupancy condition, shall be implemented and adhered to in perpetuity.

Advisory:

- (25) That if the Applicant/Owner wishes to use a groundwater well in the future, Alberta Environment approval shall be obtained.
- (26) That the site shall be maintained in compliance with County Bylaw No. C-7690-2017, the "Nuisance and Unsightly Property Bylaw", at all times. Any debris or garbage generated on the site shall be stored/placed in garbage bins and disposed of at an approved disposal facility.
- (27) That the County Bylaw C-5772-2003, the "Noise Bylaw", shall be adhered to at all times.
- (28) That the site shall remain free of restricted and noxious weeds and maintained in accordance with the Alberta Weed Control Act.
- (29) That any future change in use of the building, including any exterior changes or additions, or change in tenants shall require a Development Permit for the use and signage.
- (30) That a Building Permit and applicable subtrade permits shall be obtained through Building Services, prior to any construction taking place.

Note: That the subject development shall conform to the National Energy Code 2017, with documentation/design at Building Permit:

- (31) That any other federal, provincial or County permits, approvals, and/or compliances, are the sole responsibility of the Applicant/Owner.
 - (a) That the Applicant/Owner shall obtain a Roadside Development Permit from Alberta Transportation for the proposed Development and installation of a new approach.
 - (b) That the Applicant/Owner shall obtain any required Alberta Health Services approval(s) prior to the store opening.
 - (c) That the Applicant/Owner shall obtain any required licensing approvals through Alberta Gaming and Licensing Commission, if required.

- (32) That if the development authorized by this Development Permit is not commenced with reasonable diligence within twelve (12) months from the date of issue, and completed within twenty-four (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.
- (33) That if this Development Permit has not been issued by **February 29, 2020** then this approval is null and void and the Development Permit shall not be issued.
- (34) That this Development Permit, once issued, shall be valid until **June 25, 2022**.

Note: The Applicant/Owner shall be responsible for all Alberta Environment and Parks approvals/compensation if any wetland is impacted by the development on the said land.

[8] On July 16, 2019, the Appellants appealed the Development Authority's decision. The Notice of Hearing was circulated to 20 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) Sean MacLean, Supervisor Planning and Development, for the Development Authority;
 - (3) Bianca Duncan, Municipal Engineer, for the Development Authority;
 - (4) Doug McIntosh, the Appellant;
 - (5) Arlene Hillier, the Appellant;
 - (6) Glen Duhn, the Appellant;
 - (7) Bryan Romanesky, in opposition of the appeal;
 - (8) Chad Sherger, in opposition of the appeal.
- [10] The Board received one letter in support of the appeal:
- (1) Luzia Montens on behalf of Suzet Fernandes
- [11] The Board received no letters in opposition to the appeal.

Development Authority's Submissions

[12] The parcel is 13 acres and is in the Farmstead District, Cannabis Cultivation is listed as discretionary under this district.

[13] There are no external changes planned to the current building, as it will be used as a site office. There will be a new 12,000 square foot building constructed to grow and harvest the plants, however, all other buildings on site will remain.

[14] Lands are in located within the Delacour Community Area Structure Plan and are identified as Agricultural Transition, and may remain agricultural.

[15] The Delacour Country Village Conceptual Scheme has the subject lands designated as Farmstead in the overall proposal.

[16] The Development Permit was conditionally approved subject to various conditions dictated by the Rocky View Land Use Bylaw.

[17] Thirteen names on the petition included on the appeal from Arlene Hillier are included in the mapping area, four names could not be verified as landowners in the County, seven names were outside of the mapping area, and the remaining names were not distinct.

[18] Condition 2 of the conditional approval is a requirement from Building Services due to the commercial nature of the business.

[19] The nearest residence to the cultivation building is 340 metres, to the property line of the adjacent property it is approximately 100 metres and the next adjacent lands is 275 metres.

[20] There are no wastewater conditions in the conditional approval; the recommendation is to truck the wastewater offsite, as there is no wastewater system in the area.

[21] The cultivation building will be the primary building and due to the use of the building, there is no maximum to the number of accessory buildings on site; this is due to the land use.

[22] Condition 26 would require the applicant to seek a commercial use well permit from Alberta Environment and Parks (AEP). A servicing plan is required for water use and is noted as a conditional item on the permit.

[23] The site could be deemed Agricultural or Commercial Use, which would dictate the County service needs on the lands.

[24] The development has 5-10 employees, it was not deemed necessary to do Traffic Impact Assessment, as there will be minimal disturbance to the traffic in the area.

[25] The ASP identifies a Public Service district, and does not identify future school sites. The Delacour Country Village Conceptual Scheme notes fire and civic services on it, it was adopted in 2009, and there would be expected changes to the plan due to when the plan was adopted.

[26] The required setback from a school is 150m; however, there are no school sites designated in the Hamlet currently.

[27] Agricultural transition area refers to section 5.2 in the ASP.

[28] The Development Permit shall not extend longer than 3 years, as the approval time is limited in the Land Use Bylaw. There is the ability to reconsider the development with the renewal.

[29] Cannabis retail store is not listed as a use in the District and Condition 13 states it cannot be used as that or applied for.

[30] Condition 18 requires all on site lighting needs to be dark sky; it is possible that Health Canada has additional conditions regarding lighting on site. Federal approval in general takes into account the conditions and requirements of the Municipality.

[31] Condition 4 states that a Site Specific Storm water Management Plan must be submitted prior to issuance.

[32] There is no maximum to the number of plants that can be grown within the building; Health Canada stipulates this within the license that is issued.

[33] All growing will be done indoors; there will be no growing outdoors as noted in the proposal. An additional permit would be needed to grow plants outdoors.

[34] The Land Use Bylaw does not contemplate or provide regulation with regards to odor from these facilities. However, Health Canada does include rules and regulations with regards to this. A call to enforcement would be required to manage this complaint. Enforcement would work with the appropriate agency to deal with this issue.

[35] Any complaints would be noted as a consideration for the renewal of the permit. Additionally a condition can be added for odor.

Appellant's Submissions – Doug McIntosh

[36] This development will negatively impact the selling price of lots on the Fairways at Delacour Residential Development as well as property values in the Delacour area.

[37] Schools will be present in the area at some time in the future.

[38] With this potential development, there will be an increase in traffic, crime and odor in the community.

[39] Many people did not receive notice of the approval due to ongoing postal issues with theft from community mailboxes.

[40] This development is in contravention of the Area Structure Plan (ASP). The ASP states that any commercial or industrial developments must have piped water and wastewater.

[41] The ASP states that any commercial development outside of the Hamlet expansion areas two or three, require piped water and wastewater services.

Appellant's Submissions – Arlene Hillier

[42] She spoke with people who work in a cultivation facility to ensure that there would indeed be an odor associated with the facility, and it was confirmed there is indeed an odor that would be emitted from the facility.

[43] There will be increased lighting on the lands due to the requirements for security of the facility, this will affect the quality of life of the surrounding landowners.

[44] All mail must be picked up in Calgary due to mailbox theft in the community; therefore, residents did not receive the notices.

[45] There is a concern regarding property values in the area with the development as well as increased crime in the area.

[46] There is a concern there will be a storefront on site.

Appellant's Submissions – Glen Duhn

[47] The property is the highest point of the quarter section and there is a concern that the run off from the facility will contaminate the appellant's land.

[48] There is a house within 350 feet of the development as well as two wells; there is a concern concerning the water supply if the well is tapped into by the development. The wells that would be used are on the Duhn property there is one south of the house and one east of the facility.

[49] Traffic to and from the site must also include the sewer and water trucks that will be visiting the site.

Bryan Romanesky and Chad Sherger Submissions

[50] There will be one building on the site removed and replaced. The existing house will be used for administration and office purposes. The other buildings will not be used unless they are leased by others, in which case a development permit would need to be applied for.

[51] This is a small-scale facility and is dedicated for Medical Cannabis. The facility can accommodate eight tickets; one ticket is 50-150 plants. Each ticket takes 90 days to produce a crop.

[52] There will be approximately eight trips every three months by the ticket holder, once the crop is ready it will be harvested and picked up by the ticket holder.

[53] All cultivation will be done indoors there will be no outdoor cultivation. Additionally, this is a year round facility.

[54] There will be five parking stalls on site for staff and visitors to the site.

[55] The only access to the property is from the front of the property, a perimeter fence will surround the facility.

- [56] There will be a mechanical engineer evaluating the airflow and odor being emitted from the facility.
- [57] There will be a carbon filter system used to filter the air, this is sufficient for a small-scale operation such as this.
- [58] The facility will be operated to minimize the water that is required for cultivation. Up to 1500 plants at the same stage would need approximately 250 gallons of water per day.
- [59] There is existing water supply on site, however all excess water that would be required would be trucked in, if need be. Approximately one large water truck would be needed each week.
- [60] There will be minimal impact on the existing storm water conditions on the site.
- [61] There will be no contamination of the water by the site; all water with potential contaminants will be contained within the site.
- [62] The facility will be staffed from 12pm to 10pm, there will be 2-3 employees per day and the facility will operate 7 days per week to manage the operations.
- [63] In addition there will be approximately one customer trip per week, one delivery trip per week, and if required one water truck per week to the site.
- [64] The lighting and security requirements set out by the Federal Government are much lower based on the small scale of the facility. Dark sky lighting will be used along with motion sensors will be used.
- [65] The facility will be highly secure and will be used exclusively by the employees. An employee will accompany all contractors at all times. No customers will need to access the facility and will only visit the administration building.
- [66] All security cameras will be monitored 24/7 and will be directed towards the site to avoid any privacy concerns. As well, landscaping and screening will be added to the site, as per the prior to issuance conditions of the permit.
- [67] There is no evidence that property values will be impacted.
- [68] There is no signage on site for the facility; if signage were required, a development permit would be applied for. Additionally, signage is highly regulated by both the Provincial and Federal Governments.
- [69] There was no requirement for an open house for the community with regards to the use.
- [70] The owner and operator of the facility lives in Calgary.
- [71] The use of the facility will be for medical purposes only; it will be for people who possess a medical ticket who cannot grow in their home or on their property.
- [72] The applicant is here to be a good neighbour.

[73] This investment will go out the window if the facility and applicant does not abide by the rules set out for the development.

[74] The medical cannabis tickets are contracted out; the owners do not come to the site to tend to the plants.

[75] The RCMP and the operators of the facility will handle any security breeches to the facility.

[76] Lights used for the growth of the plants will be contained within the building.

[77] There will be an additional 16 parking stalls within the perimeter of the fence on the site. The five stalls will be outside of the fenced area.

[78] All existing trees will remain and additional trees will be added to the site.

Appellant's Rebuttal – Doug McIntosh

[79] None.

Appellant's Rebuttal – Arlene Hillier

[80] None.

Appellant's Rebuttal – Glen Duhn

[81] None.

Development Authority's Closing Comments

[82] None.

Appellant's Closing Comments

[83] None.

FINDINGS & REASONS FOR DECISION

[84] Cannabis Cultivation and the construction of a cultivation building is a discretionary use in the Farmstead, in accordance with section 47 of the *Land Use Bylaw*.

[85] 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*.

[86] 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.

[87] The Board finds that the evidence submitted was insufficient to address the details required for security, water and wastewater servicing on the site.

[88] The Board acknowledges that the immediate and affected neighbours presented that there is general neighbourhood opposition to the proposed development.

[89] The Board finds that the Delacour Area Structure Plan indicates residential and small holdings are projected for the immediate area surrounding the subject lands.

[90] The Board finds that the proposed development, in accordance with applicable sections of the *Land Use Bylaw* and section 687 of the Municipal Government Act, does not comply with the land use policies of the current *Land Use Bylaw* and, 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

[91] 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 22 August 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 (38 pages)
2.	Development Authority's Presentation to the Board (12 pages)
3.	Applicant Presentation to the Board (29 pages)
4.	Applicant Letter from IncrediGrow (1 page)
5.	Delacour Area Structure Plan Section 5 (11 pages)