

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

Board Order No.: 2019-SDAB-045

File No.: 06726018; PRDP20191456

Appeal by: Samuel Ko on behalf of Georgie Alexon

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 August 28

Decision Date: 2019 September 11

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 July 9, 2019. In this decision the Development Authority conditionally approved a development permit for the keeping of livestock (one to two horses) at 61 Big Hill Springs Estate (the Lands).

[2] Upon notice being given, this appeal was heard on August 28, 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 denied and the decision of the Development Authority is upheld. A development permit shall be issued subject to the following conditions:

Description:

- (1) That a maximum of two (2) animal units may be permitted on Lot 15, Block 1, Plan 0912532 at any time.

Permanent:

- (2) That the Manure and Grazing Management Plan as submitted with the application shall be practiced at all times.
 - (a) If overgrazing becomes evident on the property, revised grazing procedures may need to be implemented or the number of animal units may need to be decreased, to the satisfaction of the County.
 - (b) That the composting of manure is allowed as part of this management plan.
- (3) That the Applicant/Owner shall ensure the property contains adequate livestock fencing, to ensure all livestock units remain on the subject property at all times.

Advisory:

- (4) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant/Owner.
- (5) That this Development Permit shall be valid until **July 31, 2029**.

BACKGROUND

[4] On May 7, 2019, Jim Hutchins and Elizabeth Whyte (the Owners) submitted a development permit application to increase the number of livestock.

[5] The Lands are located at SW-26-26-03-05, located approximately 0.21 kilometres (1/8 mile) east of Highway 766 and on the south side of Big Hill Springs Estates. The Lands are approximately 2.03 hectares (5.02 acres) in area and are owned by Jim Hutchins and Elizabeth Whyte.

[6] The Lands' land use designation is Residential Two, which is regulated in section 50 of the Rocky View County, *Land Use Bylaw C-4841-97* [the *Land Use Bylaw*].

[7] On July 9, 2019, the Development Authority conditionally approved a development permit on the following grounds:

Description:

- (1) That a maximum of two (2) animal units (horses) may be permitted on Lot 15, Block 1, Plan 0912532 at any time.

Permanent:

- (2) That the Manure and Grazing Management Plan as submitted with the application shall be practiced at all times.
 - (a) If overgrazing becomes evident on the property, revised grazing procedures may need to be implemented or the number of animal units may need to be decreased, to the satisfaction of the County.
- (3) That all manure shall be collected and disposed of off-site or worked into the fields on a continual basis at least semi-yearly.
- (4) That if there is a build-up of manure, that manure must be removed immediately.
- (5) That the Applicant/Owner shall ensure the property contains adequate livestock fencing, to ensure all livestock units (horses) remain on the subject property at all times.

Advisory:

- (6) That any other government permits, approvals, or compliances are the sole responsibility of the Applicant/Owner.
- (7) That this Development Permit shall be valid until **July 31, 2020**.

[8] On July 30, 2019, the Appellant 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) Sean MacLean, Planning and Development Supervisor, for the Development Authority;
- (3) Jeff Fleischer, Manager Agricultural and Environmental Services;
- (4) Samuel Ko, on behalf of the Appellant;

(5) Jim Hutchins and Elizabeth Whyte, the Applicants;

[10] The Board received no letters in support of the appeal.

[11] The Board received three letters in opposition to the appeal from:

(1) Steve Dallison

(2) Andreas Kimbel

(3) Joelyn Papineau

Development Authority's Submissions

[12] The Applicant submitted details on keeping extra livestock on the subject lands.

[13] Two site inspections were done, June 4, 2019 and June 14, 2019. Both inspections found no issues on the site.

[14] Conditions 3 and 4 on the development permit are standard conditions. These are part of the manure management plan and help to add responsibility for the landowner.

[15] Conditions can be amended to include compost as a method of manure management.

[16] The Land Use Bylaw allows a maximum time of five years on a livestock permit; this allows the Development Authority to evaluate if the site is being properly managed.

[17] The Board can amend the time period on the time limit of the permit.

[18] Dogs are not considered part of the animal unit count.

[19] Both properties are designated Residential Two, this allows for a three metre side yard setback. The Development Permit issues for the house on the Appellants property was issued in 2006. This was brought before the Subdivision and Development Appeal Board due to the house being over height. In the Board Order decision from this appeal, no side yard setback was listed. There are no landscaping requirements for landscaping on a property with regards to setbacks.

[20] The trees on the property would provide adequate shelter to the animals from the elements and inclement weather.

[21] Agriculture services did an inspection of the property and there was no manure build up on the property.

Appellant's Submissions

[22] The Applicant took two horses onto their lands without a valid development permit, which is in breach of the Land Use Bylaw.

[23] It is simply too early to determine if the pasture management plan the Applicants have in place will be effective.

[24] The Appellant has a concrete patio that abuts the fence line of the Applicants property. As well, the Appellant's house is right against the property line of the Applicant's property.

[25] The Applicant's fence is six metres from the Appellant's home.

[26] The Applicant's are negligent in cleaning up the manure from the animals.

[27] The Appellant has horses but they are kept at nearby stables rather than keeping them on residential property.

[28] The horses residing on the Applicant's lands affect the peaceful and quiet character of the community.

[29] The Appellant's can see the manure when they walk out of the house and it is aesthetically displeasing. This manure will cause disease and parasites and the Appellant has dogs and children. There is also concern that during the spring melts and in any excessive rain events the contaminated water could run onto the Appellant's property.

[30] The Appellant has two dogs and they will bark at the horses, the dogs have been sent to a kennel to be trained to be around horses. It is unfair the Appellant has had to do this.

[31] The Applicant's also have dogs, there has been a tarp placed to visually separate the Applicant's dogs from the horses.

[32] The Applicant's have built a buffer fence in the pasture to separate the horses from their house.

[33] The Appellant reached out to Kerry Marit, the owner of the stables where the Appellant's horses are boarded. She provided a general letter with regards to the general requirements for the care and maintenance of horses living in the area.

[34] The Appellant is in opposition to approving the development permit in perpetuity, the Appellant feels there is a need to do a yearly checkup to ensure they are abiding by the development permit and bylaws.

[35] The Appellant feels that the Board should order the two horses to be removed from the property.

[36] If this development permit is approved the Appellant would like additional conditions included into the permit. Including the addition of a buffer fence of 40 metres between the Appellant's home and the pasture. Additionally that the manure clean up is done quarterly.

[37] The Applicants have cleaned up the manure after the appeal was filed by the Appellant's.

[38] Despite filing the appeal, the Appellant deeply cares about the horses and is concerned for their wellbeing, care and maintenance. There is concern about the shelter provided to the horses, as well as adequate food and water. Receipts are being requested to prove such.

Jim Hutchins and Elizabeth Whyte Submission

[39] The property was ideal for the Applicant's, as it is a geothermal house. There are two dogs on the property in addition to the two rescue horses.

[40] The two horses were rescued from an auction where they were going to be slaughtered. The Applicant's went to get one horse and came home with two; one of the two horses is a pony.

[41] Laser measurements were done, by the Applicant's, from the property line to the Appellant's house.

[42] A Manure Management plan was submitted to the Development Authority on August 2, 2019.

[43] When the horses arrived at the Applicant's lands, the Appellant questioned why they could have horses and she could not. The Appellant did not think it was fair that the Applicant could have horses and if she could not have horses, they could not either.

[44] The Appellant's dogs were away for training in April when the horses arrived on the Appellant's property.

[45] There are dogs on the lands to the east of the Applicant's property, these dogs barked at the horses when they first arrived but no longer bark at the horses.

[46] There are deer, moose, cows and other animals and wildlife around the property, as it is grazing land.

[47] Manure management must be completed twice yearly, the horses had not resided at the property for over three months at the time the Appellant filed their appeal.

[48] There is a berm in place on the Applicant's property to prevent any runoff from entering the Appellant's property.

[49] The horses are doing wonderful and have gained weight since they have come onto the Appellant's property. The water is refreshed daily and available in two locations. The Applicant is looking into ways the water can be heated during the winter months.

[50] The Applicant is looking at a walk in shelter for the horses to provide increased shelter for any inclement weather that will occur.

[51] The horses are not full sized horses – they are ponies.

Appellant's Rebuttal

[52] None.

Development Authority's Closing Comments

[53] None.

Appellant's Closing Comments

[54] None.

FINDINGS & REASONS FOR DECISION

[55] The keeping of livestock is both a permitted and discretionary use in the Residential Two District, in accordance with section 50 of the *Land Use Bylaw*.

[56] 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*.

[57] 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.

[58] The Board acknowledges that the approval of this development permit would bring the property into compliance.

[59] The Board finds that the surrounding area includes properties with cattle and horses.

[60] The Board acknowledges that the proper management plans are in place that demonstrate the proper care of the animals and property.

[61] The Board finds that the property has ample pasture and adequate shelter for the two horses. The Board also finds that there is proper fencing to contain the horses in place.

[62] The Board acknowledges that the Appellant did not properly demonstrate that negative impacts are occurring with regards to smell, manure management or noise.

[63] Given the above findings and pursuant to section 687 of the *Municipal Government Act*, the Board finds that the proposed development would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The Board also finds the proposed development conforms to the use prescribed for the Lands in the *Land Use Bylaw*.

CONCLUSION

[64] For the reasons set out above, the appeal is denied and the decision of the Development Authority is upheld. A development permit shall be issued subject to the above-noted conditions.

Dated at Rocky View County, in the Province of Alberta on September 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 (22 pages)
2.	Development Authority's Presentation to the Board (8 pages)
3.	Appellant's Presentation to the Board (14 pages)
4.	Letter from Kerry Merrit of Merrit Stables (2 pages)
5.	Property photos submitted by the Applicant (35 photos)