

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

Board Order No.: 2019-SDAB-048  
File No.: 05336004; PRDP20191651  
  
Appeal by: Leo David Bishop  
Appeal Against: Development Authority of Rocky View County  
  
Hearing Date: 2019 October 9  
Decision Date: 2019 October 24  
  
Board Members: D. Kochan, Chair  
D. Henn  
I. Galbraith  
H. George  
W. Metzger

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**DEVELOPMENT APPEAL DECISION**

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**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 September 17, 2019. In this decision, the Development Authority conditionally approved a development permit for Cannabis Cultivation (existing building) at 255185 Range Road 280 (the Lands).

[2] Upon notice being given, this appeal was heard on October 9, 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 Cannabis Cultivation, within an existing accessory building (shop/barn), may commence on the subject lands in general accordance with the application and site plan.
  - (a) That the maximum building area of the accessory building (shop/barn) is relaxed from **190.00 sq. m (2,045.14 sq. ft.) to 283.87 m (3,055.60 sq. ft.)**.
  - (b) That the maximum height of the accessory building (shop/barn) is relaxed from **5.50 m (18.04 ft.) to 6.40 m (21.00 ft.)**.

### Permanent:

- (2) That this approval does not include a *Cannabis Retail Store, Cannabis Facility or Cannabis Sales*.
- (3) That there shall be no water discharged offsite from the subject property at any time.
- (4) 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 spillover glare, and eliminates glare as viewed from nearby residential properties.
- (5) That no outdoor storage shall be allowed at any time for the proposed business use.
- (6) That the entire site shall be maintained in a neat and orderly manner at all times, to the satisfaction of the Development Officer.
- (7) That any waste containers, garbage or recycling shall be completely screened from view from all adjacent properties and public thoroughfares.
- (8) That a dual filtration process that uses both a carbon filtration system and a bio filter be used at all times.
- (9) That any future signage for the development shall require separate development permit approval.
- (10) That should this proposed development not proceed, the Applicant/Owner should obtain a separate Development Permit for the accessory building (shop/barn), to bring the building into compliance with the County's Land Use Bylaw.

- (11) 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:**

- (12) 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.
- (13) That the County Bylaw C-5772-2003, the "Noise Bylaw", shall be adhered to at all times.
- (14) That the site shall remain free of restricted and noxious weeds and maintained in accordance with the Alberta Weed Control Act.
- (15) 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.
- (16) That a Building Permit shall be obtained through Building Services, for the accessory building (shop/barn), prior to commencement of the proposed development. The application shall include but is not limited to: Building Code Classification, engineered stamped drawings for the Mechanical Ventilation, Spatial Separations, and an as-built sign off from an Engineer for the building structure.

*Note: The size of the accessory building may need to be reduced, in order to meet the requirements of 200 square meters as per Health Canada Micro Cultivation regulations. The building shall conform to the National Energy Code 2017, with documentation provided at Building Permit stage*

**BACKGROUND**

[4] On May 24, 2019, Curtis Dansereau (the Applicant) submitted a development permit application for Cannabis Cultivation.

[5] The Lands are located at NE-36-25-28-W4M, located approximately 0.20 kilometres (1.8 mile) south of Township Road 260 and on the west side of Highway 791. The Lands are approximately 9.46 hectares (23.38 acres) in area and are owned by Curtis and Richard Dansereau.

[6] 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*].

[7] On September 17, 2019, the Development Authority conditionally approved to grant a development permit on the following grounds:

**Description:**

- (1) That Cannabis Cultivation, within an existing accessory building (shop/barn), may commence on the subject lands in general accordance with the application and site plan.
  - (a) That the maximum building area of the accessory building (shop/barn) is relaxed from **190.00 sq. m (2,045.14 sq. ft.) to 283.87 m (3,055.60 sq. ft.)**.
  - (b) That the maximum height of the accessory building (shop/barn) is relaxed from **5.50 m (18.04 ft.) to 6.40 m (21.00 ft.)**.

**Permanent:**

- (2) That this approval does not include a *Cannabis Retail Store, Cannabis Facility or Cannabis Sales*.
- (3) That there shall be no water discharged offsite from the subject property at any time.
- (4) 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.
- (5) That no outdoor storage shall be allowed at any time for the proposed business use.
- (6) That the entire site shall be maintained in a neat and orderly manner at all times, to the satisfaction of the Development Officer.
- (7) That any waste containers, garbage or recycling shall be completely screened from view from all adjacent properties and public thoroughfares.
- (8) That any future signage for the development shall require separate development permit approval.
- (9) That should this proposed development not proceed, the Applicant/Owner should obtain a separate Development Permit for the accessory building (shop/barn), to bring the building into compliance with the County's Land Use Bylaw.
- (10) 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:**

- (11) 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.
- (12) That the County Bylaw C-5772-2003, the "Noise Bylaw", shall be adhered to at all times.
- (13) That the site shall remain free of restricted and noxious weeds and maintained in accordance with the Alberta Weed Control Act.
- (14) 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.
- (15) That a Building Permit shall be obtained through Building Services, for the accessory building (shop/barn), prior to commencement of the proposed development. The application shall include but is not limited to: Building Code Classification, engineered stamped drawings for the Mechanical Ventilation, Spatial Separations, and an as-built sign off from an Engineer for the building structure.

*Note: The size of the accessory building may need to be reduced, in order to meet the requirements of 200 square meters as per Health Canada Micro Cultivation regulations. The building shall conform to the National Energy Code 2017, with documentation provided at Building Permit stage*

- (16) 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 any required Health Canada and Alberta Health Services approval(s).
  - (b) That all cannabis waste shall be managed in accordance with Alberta Cannabis Waste Management Fact Sheet.
  - (c) That all highway access points are to be considered temporary. No compensation shall be payable to the Applicant/Owner or their assigns or successors when the Alberta Transportation removes or relocates the temporary access or if highway access is removed and access provided via service road, or additional subdivision or intensified development requires the Applicant/owner to relocate the access at their expense.
    - (i) That no signage shall be placed contrary to Alberta Regulation 326/2009 unless a separate application form is submitted and approved for any proposed signage.

(17) That this Development Permit, once issued, shall be valid until **October 9, 2020**.

**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 proposed land.***

[8] On September 23, 2019, the Appellant appealed the Development Authority's decision. The Notice of Hearing was circulated to 10 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) Oksana Newman, Municipal Planner, for the Development Authority;
- (2) Sean MacLean, Planning and Development Supervisor, for the Development Authority;
- (3) Gurbir Nijjar, Supervisory Engineer, for the Development Authority;
- (4) Leo Bishop, the Appellant;
- (5) Greg Shields, in support of the Appeal;
- (6) Curtis Danserau, the Applicant;

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

- (1) David and Faye Bailey
- (2) Chris Brown
- (3) Kerry Shields

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

#### *Development Authority's Submissions*

[12] The cultivation facility will be contained within an existing accessory building. This building only requires a relaxation to the height of the building.

[13] The facility will operate from 9-5, 7 days a week.

[14] The development permit does not limit the amount of plants that can be cultivated; this permit is supplied by Health Canada. The assumption is that this will be a micro-cultivation due to the size requested by the applicant.

[15] A new development permit would be needed to enlarge the building to increase the cultivation operation.

[16] The development permit is only valid for a year; the permit will need to be re-applied for if the applicant wishes to continue using the accessory building for cultivation. During this process, the Development Authority will look at any complaints that the facility has received over the year of the permit.

[17] Alberta Health monitors their own conditions and they are not included in the development permit from the County.

[18] Alberta Environment and Parks requires a water license to be issued if rain, surface or ground water is being used for the facility, the applicant is planning to use rainwater for the facility.

[19] There shall be no processing done on the site, the product is shipped to a licensed producer and processed.

[20] Currently, there no requirements in place by the County in terms of odor control for these facilities.

[21] A new development permit would be required if any signage were to be installed.

#### *Appellant's Submissions*

[22] There are very limited sources of water in the area. You can drill a well, collect rainwater in a dugout, or purchase water from Airdrie or the Western Irrigation District.

[23] There is an irrigation canal one mile east of the property. Based on approval you can purchase a certain amount of water from the Western Irrigation District.

[24] There is a concern that this cultivation facility will affect the value of the surrounding land and the future use of these lands.

[25] This facility will increase traffic in the area, it will also increase the exposure of the surrounding lands to the public.

[26] The appellant simply does not want this facility in his area.

#### *Greg Shields Submissions*

[27] There are many very active small businesses in the area; in fact, there is an active small fencing business on the subject lands.

[28] The odour emitted from the cultivation process is a concern. There is no requirement on the odour emitted from these facilities, or the monitoring of the odor control systems within the facility.

[29] Water supply is not an issue on this property, there is a significant amount of surface water and rainwater is very prevalent and stored in the dugout on the lands. Any additional water required is available from the Western Irrigation District for a nominal yearly fee; this water is then trucked to the lands.

*Curtis Danserau Submissions*

[30] The rainfall in the area is substantial and would be enough for the facility; therefore, water will not be a concern.

[31] The well water is quite salty and is not useful for cultivation as the salt inhibits growth.

[32] This facility will be a hobby type facility. The daily operation will only include one or two staff members.

[33] Carbon filtration will be installed to reduce the odors. There will also be a secondary filter system (bio filter) used that will include woodchips and compost. The carbon filter filters the air before it leaves the building, the air would then be vented to the bottom of the compost material before escaping.

[34] This facility will not use pesticides or herbicides.

[35] There will be two fences for security; as well, the building is behind a hedge that shields the building from the road.

[36] The slough that is on the property is fed by a spring and will be used for the facility as well.

[37] The facility will only be operational from April to October, shortening the growing season but allowing the building to not be heated during the winter months.

[38] The fencing business will be maintained.

*Appellant's Rebuttal*

[39] This facility is an intrusion into the agricultural and residential lands and does not quite fit into the area.

[40] It is suggested that the bylaws be updated to include odor control, or to designate specific areas for cannabis cultivation.

*Development Authority's Closing Comments*

[41] The Nuisance and Unsightly Property Bylaw that was passed in 2017 states that An Owner shall not cause or allow their Property to be a Nuisance, Unsightly Property, or Dangerous Property. Nuisance as defined by this Bylaw is means the physical condition of, use of, or an emission from a Property which, in the opinion of a Designated Officer, constitutes an unreasonable interference with the use and enjoyment of other private or public Property, including, without limiting the foregoing, Unsightly Property and Dangerous Property.

[42] Any odor complaints would be looked at and considered when this development permit is reapplied for.

[43] Federal regulations for cannabis cultivation include air filtration.



*Appellant's Closing Comments*

[44] None.

**FINDINGS & REASONS FOR DECISION**

[45] Cannabis Cultivation is a discretionary use in the Agricultural Holdings District, in accordance with section 46 of the *Land Use Bylaw*.

[46] 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*.

[47] 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.

[48] The Board finds that the applicant has committed to providing proper fencing, screening and security measures.

[49] The Board finds that the business is consistent with the land use designation and there will be no processing or distribution done at this location.

[50] The Board notes that the facility will only operate in the summer months, with water needs being provided by rainwater or utilizing the Western Irrigation District system; therefore, little to no impact to the communities' ground water levels would be experienced.

[51] The Board acknowledges that any potential odor issues will be mitigated by the utilization of a dual filtration process that uses both a carbon filtration system and a bio filter.

[52] 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**

[53] 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 October 24, 2019.



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Don Kochan, Chair  
Subdivision and Development Appeal Board

**EXHIBIT LIST**

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD

<b>NO.</b>	<b>ITEM</b>
1.	Development Authority's Report to the Board (23 pages)
2.	Development Authority's Presentation to the Board (11 pages)