

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

Board Order No.: 2020-SDAB-014  
File No.: 06828006 PRDP20202393  
Appeal by: Michael and Melanie Shepley  
Hearing Dates: 2020 November 18  
Decision Date: 2020 December 03  
Board Members: Wendy Metzger, Interim Vice-Chair  
Tricia Fehr  
Ian Galbraith  
Hazel George  
Morrie M. Goetjen

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**DEVELOPMENT APPEAL DECISION**

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**INTRODUCTION**

[1] This is an affected party 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 25, 2020. In this decision, the Development Authority conditionally approved a development permit for a kennel (private dog park) and signage at 264136 Range Road 44 (NW-28-26-04-W5M) (the Lands).

[2] Upon notice being given, this appeal was heard on November 18, 2020 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 August 18, 2020, Sylwia Andersen (the Applicant) submitted a development permit application for a private off-leash dog park on the Lands.

[5] The Lands are 4.05 hectares (10.01 acres) in size and owned by Sylwia and Patrick Andersen.

[6] The Lands' land use designation is Residential, Rural District (R-RUR) which is regulated by sections 317-323.1 of the Rocky View County *Land Use Bylaw C-8000-2020* (the *Land Use Bylaw*).

[7] On September 25, 2020, the Development Authority conditionally approved a development permit application for a kennel (private dog park) on the Lands.

[8] On October 19, 2020, Michael and Melanie Shepley submitted an affected party appeal of the Development Authority's decision to conditionally approve a kennel (private dog park) on the Lands. The Development Authority, Appellant, Applicant, and adjacent landowners were notified of the hearing in accordance with the *Municipal Government Act*, RSA 2000, c M-26 (MGA) and Rocky View County Council policy C-327, *Circulation and Notification Standards*.

### **SUMMARY OF EVIDENCE**

[9] The Board heard verbal submissions from:

- (1) Wayne Van Dijk, Development Officer, for the Development Authority;
- (2) Sean MacLean, Supervisor Planning and Development, for the Development Authority; and
- (3) Michael Shepley, the Appellant;
- (4) Jennifer Wilkinson, in support of the appeal; and
- (5) Sylwia Andersen, the Applicant in opposition of the appeal.

[10] The documents submitted as exhibits and considered by the Board are listed in the exhibit list at the end of this decision.

#### *Development Authority's submissions*

[11] A kennel is a discretionary use on the Lands and the Lands are surrounded by residential and agricultural parcels and Direct Control 36 District to the east.

[12] The development permit application was received on August 18, 2020 and was assessed in accordance with *Land Use Bylaw C-8000-2020* which came into effect on September 8, 2020. The Development Authority assessed the development permit application under *Land Use Bylaw C-8000-2020* after receiving a written request from the Applicant.

[13] The proposed dog park's hours of operation are 8:00 am to 8:00 pm, seven days a week. There is one employee and one client permitted at any one time.

[14] The area of the proposed dog park is fully fenced with heavy duty page wire measuring 1.52 metres (5.00 feet) in height. A large 1.83 metre (6.00 feet) wooden privacy fence separates the Lands and the Appellants' property, along the north property line. This wooden

fence was built after the Development Authority's inspection and the photo in the Development Authority's presentation was provided by the Applicant.

[15] The Development Authority provided a map indicating the addresses of the authors of the letters in support of the appeal and the letters provided in the Applicant's exhibits. Some properties were in the area, some came from Cochrane, and other letters did not have addresses.

[16] The notice of hearing circulation area is determined by Council policy and it is a minimum of a two parcel depth from the Lands.

*Michael Shepley submissions – the Appellant*

[17] Mr. Shepley and his wife, Melanie Shepley, live on the parcel immediately north of the Lands with their two children and Ms. Shepley's parents.

[18] Both are 10 acre parcels, long and narrow which means the Shepleys and the Applicant live quite close to each other.

[19] The dog park covers about one acre of the Lands and shares the south property line of the Shepley property. The Applicant built a new wooden fence to help with privacy concerns but it does not cover the entire shared boundary.

[20] The Shepleys purchased the land to enjoy a healthy outdoor lifestyle with their animals and children. The dog park was not there when the Shepleys purchased the property.

[21] Since the dog park opened in mid-August, the Shepleys have lost the use of their western field and experienced a significant loss of enjoyment of other areas on their property. The Shepleys

- (1) no longer feel safe along the shared fence;
- (2) no longer feel safe playing with their own dogs off leash anywhere on the property – they must be leashed or penned;
- (3) no longer feel safe playing in the western field;
- (4) can no longer pasture their horses in the western field for fear they will be fed dog treats by dog park guests;
- (5) can no longer ride horses in the western field for fear of aggressive barking or an escape from a dog that is unfamiliar with horses; and
- (6) are worried they will be thrown from a horse who is scared of their natural predators barking a few feet away through a fence.

[22] To the Shepleys' knowledge, no dogs have escaped from the dog park yet but they feel it is matter of time and are concerned about the safety of their children.

[23] Privacy in the area has been compromised and the quiet dead end road is now experiencing increased vehicle use.

[24] The dog park is geared towards reactive dogs that cannot use normal dog parks, as noted in a August 20<sup>th</sup> Cochrane Today article. The short fence along the property line could easily be jumped by a motivated large to medium sized dog and a small dog could squeeze through the page wire.

[25] The Shepleys have approached the Applicant numerous times with concerns and the result has been an increase in animosity.

[26] The Applicant's dog has attacked the Shepleys' dog three times and none of these were reported until May this year. One attack was a serious incident where the Shepleys' dog had to go to the vet. The Shepleys declined the Applicant's offer to pay the vet fees and asked the Applicant to keep their dog under control. The Shepleys would have no problem if the page wire fencing was just for the Applicant's own dogs.

[27] Walks along the gravel road have changed as strangers now come to the area and speed, kicking up dust as they drive past neighbours. Several neighbours have noted these concerns.

[28] The Shepleys spoke to many neighbours along their range road and there is much opposition to the dog park, including Collin and Tamara Caswell, Melissa Bowie, Wendy and Jeff Shipley, Craig Gerlach and Meribeth Murray, Stephanie and Tim Haroldson, Shane Christensen, and Kent and Leanne Lien. Urban Star, a developer on the road, mentioned their disapproval to the Shepleys via email.

[29] Every family the Shepleys spoke to disapproved of the dog park though even if only one family is adversely affected by an application, that should be grounds enough to reject the application.

[30] Some neighbours shared stories of negative interactions with dogs off leash in the area.

[31] The Shepleys understand why the dog owners who wrote letters in the Applicant's submissions would want the dog park. Kent and Lorraine Lien summarize the position well – people support the park in concept but would not want the dog park directly next to them.

[32] The Shepleys have two letters from realtors who have said that a dog park next door would decrease the value of the Shepley property by about 20%.

[33] The town of Cochrane deals with dog parks responsibly – opportunities for dog parks should be supported in new neighbourhoods but not pre-existing neighbourhoods. The Shepleys would not have bought their property if the dog park was already there.

[34] Kennels should be removed as a discretionary use for small residential acreages in the *Land Use Bylaw*. Dog parks are not even listed in the *Land Use Bylaw*.

[35] The *Land Use Bylaw* states that the minimum setback from a property side yard is 15 metres for a parcel the size of the Lands. The Shepleys would not feel safe even if the dog park continues to operate with an adjusted side yard setback.

[36] The *Land Use Bylaw* only allows kennels on business parcels if they are greater than 12.36 acres in size. Why the discrepancy between a business and residential parcel? Instead of using the size of parcel as the determining factor, the 100 metre distance of the dog park from the Shepley home should be considered instead. Kennels should be a minimum of 700-800 metres away from dwellings.

[37] The dog park opened without a permit and a GoFundMe campaign was started to enclose another six acres (nearly the entire of the Lands) for an expansion of the dog park.

[38] The Applicant continued to operate even after development bylaw came to the Lands to shut them down and ask them to apply for a permit.

[39] The Shepleys love dogs and the rural life. They were once close with the Applicant and her family but the dog park has ended that. Mr. Shepley is happy the Applicant has found her dream but this type of business does not belong on a rural residential property.

*Jennifer Wilkinson – in support of the appeal*

[40] Ms. Wilkinson read a letter on behalf of Melanie Shepley, one of the Appellants. In her letter, Ms. Shepley restated the concerns voiced by Mr. Shepley in his verbal submissions.

*Sylvia Andersen – the Applicant in opposition of the appeal*

[41] The dog park has been a dream for Ms. Andersen for many years. The Andersens purchased the Lands for the purpose of creating the dog park.

[42] Years of research informed the construction and design of the dog park. A proper dog park is a controlled environment where there is constant supervision. A controlled environment reduces negative interactions with livestock, cars, and other dogs.

[43] The dog park is for all dogs, not just reactive dogs. The Cochrane Eagle article authored by Tyler Klinkhammer was the author's own spin on his interview with Ms. Andersen and he has since said that in re-listening to the interview, he was the one the made that interpretation. The dog park targets shy dogs and dogs that need a space of their own, for instance to practice agility.

[44] The fence is page wired and the holes get smaller as they get closer to the ground. It is a very safe fence.

[45] The Andersens put up the privacy fence to try to address the Appellants' concerns but the two parties have not been able to come up with a compromising solution.

[46] The dog park generates minimal traffic, only one vehicle per hour. There would not be more than eight extra cars in a day.

[47] The dog park is essentially noise-free and the fencing is taller than what is required in the Rocky View County bylaw and the bylaw was written by experts who have done research.

[48] Ms. Andersen wants to share the relaxing atmosphere of the Lands with other dog owners.

[49] Only two of the authors of the four letters in opposition to the dog park live on Range Road 44. Ms. Andersen has submitted more letters in support of the dog park from authors who live on Range Road 44.

[50] 150 residents signed at their own initiative the petition from the Cochrane Off Leash Dog Spaces group supporting the dog park.

[51] There are very strict rules of engagement at the dog park including

- (1) all dogs must be directly supervised;
- (2) a ratio of two dogs per handler only, unless approved by management;
- (3) excessive barking or charging at fence will not be tolerated; and
- (4) dogs must be redirected to appropriate behaviours immediately.

[52] If any rules are not complied with, a customer and their dog(s) will be asked to leave with no refund.

[53] The dog park is monitored by CCTV and noncompliance will be dealt with immediately.

[54] A number of experts have assessed the dog park and given their professional opinions on the space, including a board member from the Canadian Association of Professional Dog Trainers. The experts confirm that the park has been designed to ensure safety.

[55] Customers must drive into the dog park and close the gates behind them before they let their dogs out.

[56] A police officer also inspected the park and found it to be safe. The police service is interested in using the dog park as a location to train their dogs who inspect vehicles.

[57] The head of the Cochrane Humane Society is interested in bringing long term residents to the dog park to give them an opportunity to be outside.

[58] There are neighbours on Range Road 44 who think the park is a good idea and a safe place to keep small dogs safe from coyotes. They have no concerns with their safety and have walked by the dog park without incident.

[59] The dog park is more secure than a normal backyard and the dogs at the park are always under supervision.

[60] The Appellants have plenty of space on their property away from the dog park that they can use. Ms. Andersen does not agree the Appellants cannot use their western field as it is perfectly safe.

[61] The Andersens no longer plan on expanding the dog park by six acres after talking to the Appellants. The Andersens understand that is where the Appellants pasture their horses.

[62] One neighbour said in 26 years they had never seen anyone use the Appellants' western field.

[63] The road is designed to a certain standard and the eight vehicles generated by the dog park will not negatively impact the road. The road belongs to Rocky View County and not the residents of the area and should be open to everyone.

[64] The story about the dog attack in the Shipley letter of support is not based on fact.

[65] The Appellants' story that a dog jumped from Ms. Andersen's yard and attacked the Shepleys' dogs is not true.

[66] The McPike and McDonald letters are examples of why Ms. Andersen's dog park is needed. There are negative interactions when dogs are off leash and uncontrolled.

[67] Property values are primarily dictated by economic climate as proven by her Exhibit #7 which states that increasing amenities in the area would actually increase the value of homes.

[68] Another realtor who lives in the area but wants to remain anonymous also stated that the dog park amenity would increase values in the area.

[69] There is time in between appointments for a customer to load up their dog(s) and leave while the next customer waits outside the gate for the current customer to leave. There is sufficient parking that was approved as part of the application.

[70] There would be no incentive for dogs to jump over the dog park's fence. A dog that can jump a six foot fence is highly trained and would be under the control of their supervisor who is there at all times.

[71] Ms. Andersen does not yet have clients, the dog park is currently only used by friends and family. The dog park will not be used unless Ms. Andersen is present and the CCTV in operation.

[72] There is a maximum of two dogs allowed per handler, so if someone has three dogs, there must be two handlers.

[73] Ms. Andersen has the appropriate insurance to run the dog park.

[74] The hours of operation in the development permit conditions were not exactly what Ms. Andersen requested, she requested 8:00 am to 2:00 pm and 5:00 pm to 7:00 pm Monday through Friday, and 9:00 am to 2:00 pm on Saturday and Sunday.

*Michael Shepley's rebuttal submissions- the Appellant*

[75] There was a miscommunication between neighbours, Mr. Shepley agrees that a dog did not jump from the dog park and attack the Shepleys' dog. The attacks on the Shepleys' dog

were from the Applicant's dog, not a dog from the dog park. The Shepleys' concerns are about reactive dogs charging the fence and the potential that a dog could escape from the dog park.

[76] A dog following its natural instinct to chase or hunt is not going to respond to their owners' calls. The Shepleys' concern is that when a dog gets out, it will go after their horses and that the dog will not be able to be recalled no matter how trained they are.

[77] The dog park was very busy throughout the summer and it is only since the weather has worsened that attendance has declined.

[78] Mr. Shepley feels he had a fair opportunity to present his evidence to the Board.

## **FINDINGS & REASONS FOR DECISION**

[79] Section 10 of *Land Use Bylaw C-8000-2020* states that

All development permit applications received in a complete form prior to the effective date of this bylaw shall be processed based on 'Land Use Bylaw C-4841-97', unless the Applicant requests in writing that the application be processed based on the regulations of this bylaw.

The Board finds that

- a. the development permit application was completed on August 18, 2020;
- b. *Land Use Bylaw C-8000-2020* came into effect on September 8, 2020; and
- c. the Applicant provided a written request to the Development Authority to have the development permit application assessed under *Land Use Bylaw C-8000-2020*.

The Board is satisfied that the condition outlined in section 10 of *Land Use Bylaw C-8000-2020* is met and that *Land Use Bylaw C-8000-2020* is the correct land use bylaw by which to assess the development permit application for the proposed private dog park.

[80] The Board finds that a kennel is a discretionary use in the Residential, Rural District in accordance with section 318 of the *Land Use Bylaw* and that a private dog park is not a listed use in the *Land Use Bylaw*.

[81] 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*.

[82] 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 development, sound planning considerations, the merits of the application, and all applicable legislation, plans, and policies.

[83] Part 8 of the *Land Use Bylaw* outlines the definition of kennel as a "facility for the keeping, breeding, boarding, caring, or training of dogs and/or other domestic pets over three months of age, excluding livestock." The Board finds that the proposed private dog park does



not meet this definition and the Board does not agree with the Development Authority's original interpretation to approve the proposed development as a kennel.


[84] The Board finds that the proposed private dog park does not meet the definition of a kennel as outlined in the *Land Use Bylaw*. There was no evidence that any keeping, breeding, boarding or caring would be taking place at the proposed private dog park. While some training would take place, it would clearly be secondary to the primary purpose of the development which is a private dog park where clients attend the Lands to have their dog(s) run off-leash.

[85] Section 687(3)(d)(ii) of the *Municipal Government Act* requires a development to conform with the prescribed use for the land as outlined in the *Land Use Bylaw*. The Board finds that the *Land Use Bylaw* does not provide for a private dog park use and therefore the Board has no authority to approve the proposed development.

## CONCLUSION

[86] For the reasons set out above, the appeal is allowed and the decision of the Development Authority is overturned. A development permit shall not be issued.

Dated at Rocky View County, in the Province of Alberta on December 3, 2020.



Wendy Metzger

Interim Vice-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 (47 pages)
2.	Development Authority's PowerPoint Presentation (6 pages)
3.	Appellant PowerPoint Presentation (16 pages)
4.	Applicant PowerPoint Presentation (22 pages)
5.	Applicant Exhibit 1 Timelines (1 page)
6.	Applicant Exhibit 2 Email (2 pages)
7.	Applicant Exhibit 3 Letters from neighbours (8 pages)
8.	Applicant Exhibit 4 Cochrane Off Leash Dog Spaces (2 pages)
9.	Applicant Exhibit 5 Letters from other residents (13 pages)
10.	Applicant Exhibit 6 Letters from experts (3 pages)
11.	Applicant Exhibit 7 Letter from realtor (1 page)
12.	Haroldson letter to the Board in support of the appeal (1 page)
13.	McDonald letter to the Board in support of the appeal (1 page)
14.	McPike letter to the Board in support of the appeal (1 page)
15.	Shipleigh letter to the Board in support of the appeal (1 page)