

**FOOTHILLS COUNTY  
SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
Development Appeal Board Decision**

**HEARING DATE:** DECEMBER 3, 2020

**BOARD ORDER:** D15/20

**APPLICANTS/LANDOWNERS:** DAVID & NICOLE GOODWIN, SEAN GOODWIN  
& TINA MCKAY/DIXON LEGAL

**APPELLANT:** FREIDA CONKLING, MARK CAMPBELL

**APPEAL AGAINST:** THE APPROVAL OF DEVELOPMENT PERMIT 20D 121 FOR A  
PERMANENT SEA-CAN FOR PERSONAL STORAGE

**SUBJECT PROPERTY:** PLAN 9612704, BLOCK 2; PTN. SE 05-21-29 W4M

**BEFORE:** CHAIRMAN, G. BEACOM; BOARD MEMBERS, RD McHUGH, B. MEYERS,  
R. PERCIFIELD, G. WILKINSON; AND CLERK, S. BOGART

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**DECISION**

Having been satisfied that notice of this hearing was provided in accordance with the Municipal Government Act, R.S.A. 2000, Chapter M-26;

And upon having read the materials provided, and upon having heard the representations from the Appellants, the Applicant and the Development Authority for Foothills County with respect to the appeals filed by the Appellants in accordance with Section 685 of the Municipal Government Act against the approval of the Development Permit 20D 121 for one (1) permanent Sea-can on Plan 9612704, Block 2; Ptn. SE 05-21-29 W4M (The "Property").

The Subdivision and Development Appeal Board for Foothills County (the "Board") has decided to:

Deny the appeals and uphold the Development Authority's decision to approve Development Permit 20D 121 for one (1) Permanent Sea-can for Personal Storage on Plan 9612704, Block 2; Ptn. SE 05-21-29 W4M.

The application is thereby **APPROVED**, subject to the following **REVISED** conditions:

### **PRE-RELEASE CONDITION:**

1. A plan for finishing of the Sea-Can and/or for screening the unit from the view of area lands and road surfaces shall be submitted for review and acceptance by the Development Officer no later than January 15, 2021.

### **CONDITIONS:**

1. This approval is to allow for the placement and use of one (1) - 320 sq. ft. Sea-Can (shipping container) for the purpose of personal storage on the subject property;
2. All development on the property must meet setback requirements as are identified under the applicable Land Use District;
3. The Sea-Can shall at all times be maintained to be safe, functional, and in a good state of repair; including the preservation of the exterior finish, to ensure that the Sea-can aesthetically complements the primary structure on the subject property. Any damage must be repaired in a timely manner and the unit shall be refinished at any such time that it begins to appear unsightly from age or degradation. Replacement of the Sea-can shall not proceed unless authorized under an independent application for development permit;
4. The accepted plan for screening shall be maintained in order to support visual screening from adjacent lands and the municipal road surface(s). Exterior finishing and screening of the Sea-Can shall be completed as per the accepted plan. Any plants are to demonstrate healthy and vigorous growth. Dead stock must be replaced with similar or greater material(s) in order to ensure that the same or greater visual screening of the Sea-Can is maintained. All aspects of the approved screening plan must be fully implemented by August 15, 2021;
5. The Sea-Can shall be used for the storage of personal items, and/or equipment and materials for land maintenance and upkeep of the subject property only. Rental of, or use of the container in conjunction with a business, home occupation, or for any type of residential purpose – including for overnight stays, has not been considered under this approval. Any such additional use(s) will require approval under appropriate independent municipal application(s). Modifications to, or attachments/additions to the container is not permitted;
6. Pre-existing drainage of the parcel shall be maintained. Alteration to natural drainage may proceed only under the authorization of an approved development permit for Lot Grading;
7. Any new installation(s) of exterior lighting must adhere to the guidelines and technical specifications as outlined within the Foothills Dark Sky Bylaw;
8. The landowner(s)/applicant(s) indemnify and hold harmless the County against the cost of any claims or actions, or awards for loss or damage to the Owner(s) arising from the use of the Sea-Can on this property;
9. Issuance of a development permit by the municipality does not relieve the applicant of the responsibility of complying with all other relevant County bylaws and

requirements, nor excuse violation of any provincial or federal regulation or act which may affect use of the land and/or the storage of materials on the property;

10. The applicant is responsible for payment of any professional costs, including legal fees, which may be incurred by the County with respect to the development approved on this permit.

## **INTRODUCTION**

- [1] The subject property is a 4.66 +/- acre Country Residential district parcel on the northeast corner of the intersection at 12<sup>th</sup> Street east and 338<sup>th</sup> Avenue, just west of Highway #2A and adjacent to the north boundary of the Town of Okotoks.
- [2] The application requests approval for one existing 320 sq. ft. Sea-can (shipping container) to remain on the subject property for the purpose of personal storage, including lawn equipment, etc.
- [3] Appeals were received from Appellant M. Campbell on November 3, 2020, and from Appellant F. Conkling on November 4, 2020 against the approval of Development Permit 20D 121.

## **ISSUES**

### **PLACEMENT OF A SEA-CAN**

- [4] The Development Authority submitted that the application is to allow for the permanent use of one (1) existing Sea-can container on the subject property, being PLAN 9612704, BLOCK 2; PTN. SE 05-21-29 W4M.
- [5] The Development Authority submitted that a Sea-Can may be considered as an accessory building to be used for personal storage purposes provided the exterior finish matches or complements the exterior finish of the principal building(s) or is generally screened from view to the satisfaction of the Development Authority.
- [6] Section 9.2.8 of the Land Use Bylaw identifies that a Sea-can may be considered as an accessory building to be used for storage purposes only in accordance with the following:
  - a) On parcels 21 acres or more, one (1) Sea-can no larger than 48' in length and 10' in width, is permitted without a Development Permit, provided it meets the minimum setback requirements for that Land use District and does not exceed the maximum requirements under the applicable land use district;
  - b) In all other instances, a Development Permit is required for placement of a Sea-can and must be in compliance with the maximum area for accessory buildings not requiring a permit;

- c) The exterior finish should match or complement the exterior finish of the principal building or be screened from view to the satisfaction of the Development Authority.
- [7] The Development Authority submitted that on a property of this size, the maximum for accessory buildings is identified as a maximum of four buildings having a total cumulative size not to exceed 3,075 sq. ft.; accessory to the residence. The cumulative area of the Sea-Can and the existing Accessory Building which is 2,171 sq. ft. in size according to the Real Property Report, would fall within these requirements.
- [8] The Development Authority submitted that while vegetation appears to shield the Sea-can from view of the adjacent lands on a seasonal basis, the container is not screened from the view of 338<sup>th</sup> Avenue or the commercial development to the south that is located within the Town of Okotoks.
- [9] The Development Authority submitted that the decision to approve the existing Sea-can includes a pre-release condition requiring the landowners to submit a finishing and screening plan for review and acceptance by the development officer.
- [10] The Appellant, Mr. Campbell provided testimony that as the property is situated at the entrance to the community, it is essentially the gateway to their residential neighborhood and the Sea-can is an eyesore that detracts from the neat and tranquil appearance of their Country Residential neighborhood. The Sea-can is inadequately screened and highly visible.
- [11] The Appellant, Mr. Campbell provided testimony that the landowners already have a very large detached shop and a double attached garage for personal storage and a Sea-can should not be required. The general appearance of the area around the detached shop and Sea-can is cluttered and disorganized with multiple vehicles and other items that ideally would be removed.
- [12] The Applicant Connor Dixon provided testimony that the landowners acknowledge that there may be concerns of unsightliness along 338<sup>th</sup> Avenue, and as such they have developed a screening plan to plant a row of staggered 8' (eight foot) spruce trees to reduce sightlines onto the property. Given the concerns of neighbors in the area, they will add an additional row of trees on the North side of the property as well (not pictured in presentation materials).
- [13] The Applicant Mr. Dixon provided testimony that the landowners recently purchased the property and funds have been held back in trust in order to paint the exterior of the Sea-can container to match the detached shop building; which will make the Sea-can significantly less noticeable from the street and from adjacent lands.

- [14] The Applicant Mr. Dixon provided testimony that the South side of 338<sup>th</sup> Avenue directly across from the subject parcel contains two large commercial dealership properties, and as such one Sea-can on the subject parcel is not unreasonable and does not materially change the character of the neighborhood.
- [15] The Landowner Mr. Goodwin provided testimony that his family are new owners of the subject property, having purchased it only four months ago. The placement of the Sea-can pre-dated the purchase and to their knowledge has been there for some time. The family is endeavoring to bring the Sea-can into compliance with a development permit, as part of a larger plan to develop a home based business on the property, for which a separate Development Permit Application is currently pending.
- [16] The Landowner Mr. Goodwin provided testimony that the majority of the vehicles on the property are registered and in use by family members. Many of the items stored around the Sea-can (as pictured in the Development Officer and Appellants photographs of the property) have since been removed and were only there temporarily due to their recent move onto the property. A hot tub remains at this time, but will be relocated and installed near the existing residence in the spring. Approval of the Sea-can will allow for tidy storage of personal property on the parcel.
- [17] One letter in support of the Application was submitted November 26, 2020 by T. & S. Whitlock and circulated to the Board prior to the hearing.
- [18] One letter of opposition to the Application was submitted December 2, 2020 by D. Luttmner and circulated to the Board prior to the hearing.

### **REASONS FOR DECISION**

The Board is DENYING the appeals and UPHOLDING the Development Authority's decision to approve Development Permit 20D 121 for the permanent placement and use of one (1) Sea-can, on the subject property Plan 9612704, Block 2; Ptn. SE 05-21-29 W4M, subject to the REVISED conditions of approval.

Based on testimony heard, the Board considered the application and the testimony of the Development Officer, the Applicant, the Landowners, and the Appellant. In their consideration of the information presented, the Board found that there was not sufficient evidence presented to demonstrate that the Sea-can would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

## **CLOSING**

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in Section 688 of the Municipal Government Act, R.S.A. 2000 Chapter M-26 which requires an application for leave to appeal to be filed and served within 30 days of this decision.

Dated at the Town of High River, in the Province of Alberta this 3<sup>rd</sup> day of December, 2020 and signed by the Chairman of the Subdivision and Development Appeal Board who agrees that the content of this document adequately reflects the appeal hearing, deliberations and decision of the Subdivision and Development Appeal Board.



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Mr. Gar Beacom, Chairman

## RELEVANT LEGISLATION

### FOOTHILLS COUNTY LAND USE BYLAW 60/2014

#### ACCESSORY BUILDINGS AND USES

- 9.2.8 A Sea-Can may be considered as an accessory building to be used for storage purposes only in accordance with the following:
- a) On parcels 21 acres or more, one (1) Sea-can no larger than 48' in length and 10' in width, is permitted without a Development Permit, provided it meets the minimum setback requirements for that Land use District and does not exceed the maximum requirements under the applicable land use district;
  - b) In all other instances, a Development Permit is required for placement of a Sea-can and must be in compliance with Table 4.2.1.7A "Maximum Area for Accessory buildings not requiring a permit";
  - c) The exterior finish should match or complement the exterior finish of the principal building or be screened from view to the satisfaction of the Development Authority.

### MUNICIPAL GOVERNMENT ACT, R.S.A. 2000, CHAPTER M-26

#### Hearing and Decision

**687(3)** In determining an appeal, the subdivision and development appeal board

- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
  - (i) the proposed development would not
    - (A) unduly interfere with the amenities of the neighbourhood, or
    - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

## **APPENDIX "A"**

PERSONS WHO WERE IN ATTENDANCE, MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING:

	<u>NAME</u>	<u>CAPACITY</u>
1.	Brenda Bartnik	Foothills County - Development Officer
2.	Connor Dixon	Applicant
3.	David Goodwin, Sean Goodwin	Landowners
4.	Freida Conkling	Appellant
5.	Mark Campbell	Appellant

## **APPENDIX "B"**

- I. DOCUMENTS RECEIVED PRIOR TO THE HEARING AND MADE AVAILABLE AT THE HEARING:

### **NO. ITEM**

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1. Development Permit 20D 121
2. Notice of Appeal submitted by Mark Campbell
3. Notice of Appeal submitted by Freida Conkling
4. Letter of Support for Application submitted by T. & S. Whitlock
5. Letter of Opposition to Application submitted by D. Luttmer

## **APPENDIX "C"**

EXHIBITS MADE AVAILABLE AT THE HEARING

### **NO. ITEM**

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1. Presentation by the Development Authority, Brenda Bartnik