

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

**HEARING DATE:** April 8, 2021 – 11:00 AM

**BOARD ORDER:** D03/21

**APPLICANT / LANDOWNER:** NICOLE PROKOPISHYN &  
ELIZABETH FRIEDMAN-PROKOPISHYN

**APPELLANT:** TOVIE VAN NES & GORDON LAPTOS

**APPEAL AGAINST:** DEVELOPMENT PERMIT 21D 113 FOR A PRIVATE KENNEL FOR UP TO 10 ADULT DOGS (OWNED SOLELY BY LANDOWNER)

**SUBJECT PROPERTY:** PLAN 9812918, LOT 9; PTN. SW 28-21-29 W4M (THE "PROPERTY")

**BEFORE:** CHAIRMAN, G. BEACOM; BOARD MEMBERS, R. TAYLOR, D. MILLER, B. MEYERS, R. PERCIFIELD; 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 Applicants and the Development Authority for Foothills County with respect to the appeal filed by the Appellants in accordance with Section 685 of the Municipal Government Act against the approval of Development Permit 21D 113 for a Private Dog Kennel for Up to 10 Adult Dogs (Owned Solely by Landowner) on PLAN 9812918, LOT 9; Ptn. SW 28-21-29 W4M (The "Property");

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

DENY the appeal received from T. Van Nes and G. Laptos and UPHOLD the Development Authority's decision to approve Development Permit 21D 113 for a Private Dog Kennel for Up to 10 Adult Dogs (Owned Solely by Landowner) on PLAN 9812918, LOT 9; Ptn. SW 28-21-29 W4M.

The application is thereby APPROVED subject to the following conditions:

**CONDITIONS OF APPROVAL:**

Failure to maintain compliance with the conditions of approval will see the Development Permit deemed null and void.

1. As this permit is for a Kennel, Private; no boarding of dogs, the grooming of dogs for profit, nor the training of dogs other than those owned by a permanent resident of the property shall occur. If a dog attends the property for breeding purposes, the cumulative total number of dogs on the property may not exceed the approved 10 at any given time;
2. the applicant shall maintain the development in accordance with all conditions of approval and plans that have been submitted by the applicant and acknowledged by the municipality to be appropriate. Any revisions and/or additions to use of this land shall not proceed except under benefit of appropriate approvals;

3. the dogs shall be under the care and attention of the resident owner(s) or an authorized representative at all times;
4. the dogs must be contained within an enclosed building between 9 P.M. and 7 A.M. daily, unless under the immediate control of the owner or an authorized representative;
5. the accepted screening shall at all times be maintained as per the plans accepted to be appropriate by the County and must at all times be safe, functional, and in a good state of repair. Any included plantings are to be maintained to demonstrate healthy and vigorous growth;
6. the applicant shall be responsible for payment of any professional costs including legal fees that may be incurred by the County with respect to the implementation of this permit.

**ADVISORY REQUIREMENTS:**

The following requirements are provided by Foothills County to inform the applicant(s) and landowner(s) of their necessity and do not form part of the approval description or conditions of approval. It is the sole responsibility and liability of the applicant(s) and landowner(s) to ensure adherence with these requirements. Please be advised that these requirements are not appealable to the Subdivision and Development Appeal Board.

1. The issuance of a development permit by the County does not relieve the landowners 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.

**INTRODUCTION**

- [1] The subject property is an existing 3.83 +/-acre Country Residential District parcel that is located on 16th Street E and 1.5 miles south of Dunbow Road.
- [2] On February 24, 2021, the Development Authority for Foothills County approved Development Permit 21D 113 for a Private Dog Kennel for Up to 10 Dogs (Owned Solely by Landowner) on PLAN 9812918, LOT 9; PTN. SW 28-21-29 W4M.
- [3] An appeal was received on March 17, 2021 from the Appellants Tovie Van Nes and Gordon Laptos against the approval of Development Permit 21D 113.

**ISSUES**

**Private Use Dog Kennel**

- [1] The Development Authority submitted that the application resulted from a complaint from a neighboring landowner, received by the Foothills County Protective Services Department on December 28, 2020. The Applicants/Landowners were directed to contact a Development Officer to determine what action was necessary, as they were not in compliance with the 'Keeping of Dogs' provisions in the Land Use Bylaw.
- [2] The Development Authority submitted that the subsequent application from the landowner was to request approval for a private dog kennel to allow for the keeping of up to ten (10) adult dogs personally owned by the landowner on PLAN 9812918, LOT 9; PTN. SW 28-21-29 W4M ("the property").

- [3] The Development Authority submitted that per Section 4.2 and 9.12 of the Land Use Bylaw (60/2014), no approval is required for the keeping of a maximum of three (3) adult dogs on a property that contains a dwelling. A Private Kennel to keep more than three (3) adult dogs is a Discretionary Use on a Country Residential District property; therefore, an application shall be reviewed and decided upon by a Development Officer.
- [4] The Development Authority submitted that Section 10.13.4 of the Land Use Bylaw 60/2014 identifies that the Approving Authority may, when issuing a Development Permit, determine the maximum number of dogs that may be kept at any one time by the operator of a private or commercial kennel.
- [5] The Development Authority submitted that Section 10.13.5 of the Land Use Bylaw 60/2014 identifies that all dogs, including puppies, shall be kept indoors between the hours of 9:00 P.M. to 7:00 A.M. daily.
- [6] The Development Authority submitted that Section 10.13.6 of the Land Use Bylaw 60/2014 identifies that all dog facilities, including the buildings and exterior exercise area, shall be located to the rear of the principal building unless otherwise approved by the Approving Authority.
- [7] The Development Authority submitted that Section 10.13.7 of the Land Use Bylaw 60/2014 identifies that all dog facilities shall be visually screened from the existing dwellings on adjoining lots in accordance with the County's Screening Standards.
- [8] The Development Authority approved Development Permit 21D 113 on February 24, 2021 for a Kennel, Private to allow the keeping of up to 10 adult dogs owned by the permanent residents of the property.
- [9] The Appellant T. Van Nes submitted that they have had years of issues with high pitched barking from the Applicant's dogs. The dogs cause a noise disturbance particularly any time they are trying to enjoy their outdoor spaces such as walking on their property, doing gardening and landscaping or riding their horses. The constant barking is also a concern in the early morning hours, which Ms. Van Nes states begins as early as 6:00 a.m. every day despite keeping the windows closed, which often wakes her earlier than planned as she is retired.
- [10] The Appellant submitted that in the past, they also had issues with the dogs running at large on their own property as they were not properly contained and/or supervised.
- [11] The Appellant noted that there has been some improvement with regard to barking and having dogs at large since the Protective Services Officer visited the property. However, it is her opinion that the Development Permit Application for a kennel was submitted only so that the Applicants will avoid losing any of their dogs. Although there is now better screening in place, she notes that the Applicants' property slopes down and overlooks her property so the screening at the bottom fence line is insufficient to block the dogs from seeing them, which triggers the barking.
- [12] The Appellant is concerned that the Development Permit Approval for a Kennel, Private allows for up to ten (10) adult dogs and unlimited puppies under six (6) months of age, as they are currently experiencing noise issues with only eight (8) adult dogs on the subject property. The approval of a private kennel permit may bring the dogs into compliance, but it does nothing to solve the disturbance issues.

- [13] The Appellant submitted that according to the County's own Responsible Dog Owner Bylaw (15/2019) no nuisance is permitted that unreasonably interferes with the peaceful enjoyment of neighboring properties.
- [14] The Applicant Nicole Prokopishyn submitted that they did pursue the Development Permit Application to ensure that they are in full compliance with the Land Use Bylaw; they are a small preservation breeder which they undertake as a hobby.
- [15] The Applicant submitted that they currently have eight (8) purebred Finnish Lapphunds, three of them are over eight (8) years of age and five of them are under two (2) years of age. In addition, there may on occasion be a visiting female for breeding purposes, which is why the application was for a maximum of ten (10) dogs, though they have no plans to add to their current number.
- [16] The Applicant submitted that they only breed one (1) litter every one to two years, and therefore the addition of puppies will be infrequent. They do not allow visitors to their kennel except on rare occasions where a puppy adoption is taking place.
- [17] The Applicant submitted that they personally own all the animal units on the property – they do not provide any boarding or other related services. There are no commercial activities taking place on the property (training, grooming, etc.)
- [18] The Applicant displayed a photograph of the property with the screened area (inner fenced area) as it is currently situated. She stated that all of the dogs sleep inside the home with them at all times and are supervised when outdoors. The dogs are brought inside if they are barking. The dogs go to obedience/play classes several times per week for exercise and socialization.
- [19] The Applicant displayed an areal photo to demonstrate her home in relation to their nearest neighbors J. Sauer and M. Bery, who fully support their application for a Kennel, Private and have submitted a letter of support for the Board's consideration. She noted that a letter of support was also submitted by their neighbor T. Epp for the Board's consideration.
- [20] The Applicant provided testimony that they have undertaken many steps to try to address the concerns raised by the Appellants, this includes removing dead trees/brush to control pests and rodents on the property, adding inner fencing with plans to add additional fencing later this year, as well as adding additional trees for screening of the yard and additional screening on the deck. They have also added deterrents against birds, as their presence can trigger the barking. The Applicants have also undertaken renovations in the home, include treadmills to provide exercise opportunities for the dogs. They are also dedicated to the ongoing training and development of each dog to help control inappropriate barking.
- [21] The Applicant submitted that they have always been open to discussion, suggestions and working with the neighbors in their area to minimize concerns. She states that it is unfortunate that a Bylaw complaint was made prior to the opportunity to have a conversation with Mr. Laptos or Ms. Van Nes to discuss their concerns. She states that on one occasion Mr. Laptos entered their property to aggressively bully and threaten them, which was not a productive means of negotiating a solution and was a frightening encounter.
- [22] Member of the gallery C. Hamm submitted that she is a neighboring landowner on the acreage property just South of the Applicant's and has lived there for 18 years. She notes that she has known the Applicants since they moved into the neighborhood eight (8) years ago and during that time she has never had an issue with their dogs. Her family does not hear the dogs barking and she has never observed the Applicant's dogs running at large. Ms. Hamm states

that the Applicants are reasonable and respectful neighbors who are also very responsible dog owners and she fully supports the application.

[23] The Appellant Ms. Van Nes noted again that there has been significant improvement since the Application process began, and she is willing to work collaboratively to ensure a positive outcome for everyone. She noted that it is not her intention to have the dogs removed from the Applicants, but rather that the nuisance issues be appropriately addressed. They are open to continuing the dialogue with their neighbors.

**REASONS FOR DECISION**

The Board is denying the appeal and upholding the Development Authority's decision to approve Development Permit 21D 113 for a Private Dog Kennel for Up to Ten (10) Dogs (Owned Solely by Landowner) on PLAN 9812918, LOT 9; PTN. SW 28-21-29 W4M for the following reasons:

In their consideration of the information presented, the Board determined that the application for a Private Dog Kennel for Up to Ten (10) Dogs conforms to all requirements of the Land Use Bylaw.

Furthermore, based on testimony heard and presentations and submissions from the Appellants, the Applicants, the Development Officer, and all other interested parties, the Board determined that the development permit as approved is consistent with section 10.13 of the Land Use Bylaw 60/2014, and does not unduly interfere with the use, enjoyment or value of neighboring 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 8<sup>th</sup> day of April, 2021 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**

**10.13 KENNELS**

- 10.13.1 Kennel provisions apply to the keeping of more than three (3) adult dogs (older than 6 months of age) at any one time on a lot containing a dwelling.
- 10.13.2 A Development Permit is required for a kennel meeting the criteria noted in 10.13.1.
- 10.13.3 In determining the number of dogs, pups less than six months of age shall not be included.

**General Kennel Provisions:**

- 10.13.4 The Approving Authority may, when issuing a Development Permit, determine the maximum number of dogs that may be kept at any one time by the operator of a private or commercial kennel.
- 10.13.5 The Land Use Bylaw identifies that all dogs, including puppies, shall be kept indoors between the hours of 9:00 p.m. to 7:00 a.m. daily.
- 10.13.6 The Land Use Bylaw identifies that all dog facilities, including the buildings and exterior exercise area, shall be located to the rear of the principal building unless otherwise approved by the Approving Authority.
- 10.13.7 The Land Use Bylaw identifies that all dog facilities shall be visually screened from the existing dwellings on adjoining lots in accordance with the County's Screening Standards.

**Private Kennel:**

- 10.13.8 The keeping of four (4) or more adult dogs owned by the occupant(s) of the dwelling situated on the same property shall be considered a Private Kennel.
- 10.13.9 A Development Permit is required for a Private Kennel.
- 10.13.10 Care should be given to situate buildings or exterior exercise areas, used to accommodate dogs as part of a private kennel on the property as to not unduly interfere with the use and enjoyment of adjacent parcels.

**APPENDIX “A”**

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

<u>NAME</u>	<u>CAPACITY</u>
1. B. Hornsby	Foothills County Development Officer
2. T. Van Nes	Appellant
3. N. Prokopishyn	Applicant/Landowner
4. E. Friedman-Prokopishyn	Applicant/Landowner
5. C. Hamm	Gallery

**APPENDIX “B”**

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

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<b>NO.</b>	<b>ITEM</b>
1.	Development Officer’s Decision of February 24, 2021
2.	Notice of Appeal submitted by T. Van Nes & G. Laptos – March 17, 2021
3.	Written Submission from N. Prokopishyn
4.	Written Submission from T. Epp – Letter of Support
5.	Written Submission from J. Sauer/M. Bery – Letter of Support

**APPENDIX “C”**

EXHIBITS MADE AVAILABLE AT THE HEARING

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<b>NO.</b>	<b>ITEM</b>
1.	Presentation (Slide Show) by the Foothills County Development Officer
2.	Presentation (Slide Show) by the Applicant N. Prokopishyn