

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

HEARING DATE: JUNE 29, 2021

BOARD ORDER: D6/21

APPLICANTS / LANDOWNERS: IGOR AND OLGA KOVALCHUK AND BARKHAS BATBAYAR

APPELLANTS: IGOR AND OLGA KOVALCHUK AND BARKHAS BATBAYAR

APPEAL AGAINST: THE REFUSAL OF THE DEVELOPMENT PERMIT 21D 024 FOR A TEMPORARY STRUCTURE FOR FARM HELP

SUBJECT PROPERTY: PTN. NE 26-22-04 W5M (THE PROPERTY")

BEFORE: CHAIRMAN, G. BEACOM; BOARD MEMBERS, RD MCHUGH, V. LAROCKE, C. STORMES, D. LARSON; AND CLERK, F. FAIRWEATHER.

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 Appellant 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 refusal of the Development Permit 21D 024 for a Temporary Structure for Farm Help on Ptn. NE 26-22-04 W5M (The "Property");

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

DENY the appeal and UPHOLD the Development Authority's decision to refuse Development Permit 21D 024 for a Temporary Structure for Farm Help on Ptn. NE 26-22-04 W5M.

The application is thereby REFUSED.

INTRODUCTION

- [1] The subject property is an 18.4 +/- acre Country Residential District parcel located adjacent to the east side of Priddis Creek Drive and is bound by 162 Avenue West on the north and Highway #22 on the south.
- [2] The application requests approval to bring a 12ft. x 60 ft modular office trailer that has been situated on the property into compliance with Land Use Bylaw 60/2014.
- [3] On May 25, 2021, the Development Authority refused Development Permit 21D 024 for a Temporary Structure for Farm Help on Ptn. NE 26-22-04 W5M.
- [4] An appeal was received from the Appellants, Igor and Olga Kovalchuk and Barkhas Batbayar on June 8, 2021 against the refusal of Development Permit 21D 024.

ISSUES**1. Temporary Structure for Farm Help**

1. The Development Authority submitted that Priddis Creek and associated known recurring waterbodies traverse the property and draft mapping from the province illustrates that much of the subject property would be directly affected by a 1 in 100-year flood. Because of this, portions of the property are subject to Section 11.1 – Flood Hazard Protection Overlay of the Land Use Bylaw 60/2014.
2. The Development Authority submitted that the subject property could be seen in the Priddis Creek Dam Breach Inundation Study. The Land Use Bylaw 60/2014 discourages new development on lands subject to flooding; the area in which the trailer is located falls within the inundation area shown in this study.
3. The Development Authority submitted that under Section 9.2 of the County’s Land Use Bylaw 60/2014 it states that “in all residential districts, the principal building on each lot shall be a Dwelling, Single Family. Notwithstanding anything contained in the land use rules applicable to such districts, accessory buildings shall be considered as permitted uses only in cases where a permitted permanent Dwelling, Single Family is actually located on the lot”.
4. The Development Authority submitted that ‘Dwelling, Temporary’ as defined within the Land Use Bylaw 60/2014 means ‘a Dwelling, Manufactured Home; Dwelling, Mobile Home or Dwelling, Single Family for the purpose of use as a dwelling which has not been situated on a permanent foundation, located on a parcel on a temporary basis in accordance with Section 10.10. This does not include the temporary storage of an unoccupied structure without appropriate utilities or Recreational Vehicles.’
5. The Development Authority submitted that ‘Temporary Farm Help Accommodation’ as defined within the Land Use Bylaw 60/2014 means ‘a separate *Dwelling unit* or *Dwelling, mobile home* used or intended to be used for seasonal accommodation or workers of the owner or operator of a farm provided such seasonal employees perform their duties on such farm, and in which lodging with or without meals is supplied to such employees.’
6. The Development Authority submitted that Section 10.10 outlines the criteria for dwellings noting that the maximum dwelling density for a parcel under 80 acres is one Dwelling, Single Family and either one Dwelling, Secondary Suite or one Dwelling, Temporary. Temporary Dwellings require a Development Permit.
7. The Development Authority submitted that a complaint was filed in January 2021 regarding an office skid which had been moved onto the subject property. The structure did not meet related definitions under the Land Use Bylaw 60/2014 for a mobile home or manufactured home and would not meet the building code requirements for use as a residence without an engineer’s review and design for renovations. The Development Authority noted that one Appellant did submit a design for the interior and stated they wish to proceed with the current application, in order to bring the property in to compliance.
8. The Development Authority submitted that the office skid was recently removed from the property, but the Applicants wish to proceed with the appeal to bring an identical trailer to the subject property in the future.
9. The Development Authority submitted that the application was refused due to potential adverse effects on an Environmentally Significant Area and because it is contrary to the statutory

documents, such as the Municipal Development Plan, which provides direction to ensure that the impact on surface and subsurface water resources is minimized.

10. The Development Authority submitted that as this is a Country Residential parcel, a Dwelling, Single Family must be the principal use. Related accessory uses and infrastructure should be considered subsequently. Accessory buildings or infrastructure are not permitted prior to a dwelling being located on the property.
11. The Development Authority submitted that the proposed development is not consistent with the purpose of the Country Residential Land Use District which intends for the principal building to be a Dwelling, Single Family.
12. The Development Authority submitted that the subject property sits in somewhat of a basin with a large stretch of its boundaries bordered by road allowances.
13. The Development Authority submitted that she could not speak to whether another development officer informed the applicants that the property could be subdivided prior to the purchase of the property but noted that it would be unlikely as the property is surrounded on three sides by road surfaces and has the water influence, which would make subdivision and development difficult.
14. The Appellant B. Batbayar submitted that all three Appellants have tried working with the County since October 2020 to find a suitable use and location for development, and new issues with the property continue to arise. He stated that they consulted with the County prior to purchasing the parcel, and were under the impression from those interactions that the desired developments would be approved. Mr. Batbayar noted his feelings of being frustrated with the application not being able to proceed.
15. The Appellant B. Batbayar submitted that once winter had set in there was a need to store building materials and move the trailer onto the property. He subsequently applied for a development permit. The Appellant B. Batbayar noted that there is a sense of urgency to develop the land. The Appellants wish to move forward to enjoy the land and work to conduct research as the other Applicant/Appellant I. Kovalchuk is a hemp researcher for the University of Lethbridge and he himself has a vested interest in hemp farming. Mr. Batbayar note that there has been opposition to their plans from nearby residents, including several hostile confrontations.
16. The Appellant B. Batbayar submitted that the application for a Temporary Structure for Farm Help was a starting point and that they would like to work with the County to find a suitable location for a permanent dwelling. He noted that the landowners understood this was a Country Residential parcel and had hoped to subdivide the land. He stated they were informed by a County employee that it was a feasible option but were informed after the purchase of land that it was not feasible.
17. The Appellant I. Kovalchuk concurred with B. Batbayar regarding the original hope to subdivide the property and that they had confirmation it was possible prior to purchase.
18. The Appellant I. Kovalchuk submitted that restrictions kept preventing them from developing and they had provided 3 different locations for the proposed Temporary Structure, but all the locations had been denied. He noted that he understood permanent residency would not be permitted on this land.
19. The Appellant I. Kovalchuk submitted that he had hired a Riparian Biologist, Stewart Rood to examine the property and Mr. Rood stated that there is no risk on this property and indicated locations suitable for the structure. Mr. Rood came to the conclusion that this is not a channel and therefore the setbacks should be reduced. The Appellant noted that in looking at the Development

Authority's decision, he does not see merit in any of the reasonings and is therefore appealing the decision.

20. The Appellant I. Kovalchuk submitted that they have not made an application for a Dwelling, Single Family as the land was not in their possession at that time. He also submitted that they did not apply to subdivide the property because when they made an inquiry to the County regarding the subdivision procedure, they were provided with set back requirements, flood mapping report and the opinion that locating a residence on this property would not likely be possible.
21. The Appellant I. Kovalchuk submitted that they would be open to placing a narrow house on the property. He noted that the location S. Dimant indicated in the report he submitted, would not be possible because of the setbacks. He stated that if they were supplied an adequate location from the County for a residence, they would proceed with a Development Permit.
22. The Appellant O. Kovalchuk submitted that the Appellants have tried to reach a solution with the County but were not successful. O. Kovalchuk reiterated B. Batbayar's comment's that they had consulted about the land use of the property with the County prior to purchasing the land and after purchasing the land more issues arose.
23. The Appellant O. Kovalchuk submitted that they understood from the consultation with the County that it was Country Residential property which requires a Dwelling and with that comes limited Agricultural Use. It was noted that there is an issue finding a suitable location for a dwelling.
24. Member of the gallery S. Dimant spoke in opposition to the application and appeal and referred to his written submission and stated that he was originally interested in purchasing this land but did his due diligence. The report and the study of the 2011 flood he obtained found that the lands were wetlands and confirmed the setback locations. He noted that the report also shows a proposed building area which would be the only location that would be feasible on this property, but the location does not adhere to the required setbacks. S. Dimant had concluded that it was not possible for the property to be developed and therefore chose not to move forward with purchasing this property.
25. Member of the gallery S. Dimant submitted that gravel fill was brought onto the subject property and he has concerns that if swelling occurs in the creek the bridge will become flooded.
26. Member of the gallery S. Duffill submitted that she is opposed to the application and the appeal and has concerns regarding building on the property. She stated the permanent dwelling should be located on the property prior to a temporary dwelling being located on the property.

2. Agriculture and Creek

27. The Development Authority submitted that the use of the property for agricultural purposes (farming) is limited. Sections 4.2.1.3 and 4.2.1.4 of the Land Use Bylaw 60/2014 allow for a crop to be planted and a total of 6 animal units to be located on the parcel without a development permit. It was noted that given the existing influence of water it seems unusual that a seasonal worker would be needed on site to manage a small area of cropland and 6 animal units.
28. The Development Authority submitted that Federal licensing is required for hemp crop and Alberta Environment and Alberta Agriculture are the higher authorities which hold jurisdiction over who is able to draw water and encouraged those who have attended the hearing to make note of this, and direct any further inquiries to the appropriate authorities.

29. The Development Authority stated that the intent for agricultural research including 6 or 7 employees attending the site daily, should be reviewed by the County to see if a Development Permit or application to Council should be made.
30. The Appellant I. Kovalchuk submitted that they would like to use this land for research purposes such as breeding and developing new varieties within 1 acre of the subject property. The Appellant provided an explanation of his previous experience with agricultural research and noted that 6 or 7 students would be needed to monitor the crop consistently to collect data, take measurements and complete harvesting and yield. The Appellant stated he has to attend the property every day because they do not have a temporary structure for an employee to stay in to monitor the crop.
31. The Appellant I. Kovalchuk submitted that this would be a seasonal research project and the dwelling would be for 1 or 2 individuals who would be overseeing the project. The remainder of the students would be commuting.
32. The Appellant I. Kovalchuk submitted that a vehicle has been coming onto the bridge near the subject property to pump water from the wetlands.
33. The Appellant I. Kovalchuk submitted that around 2,500 hemp crops have been planted on about 1/3 of an acre and the crop grows about 6 to 6.5 ft in height.
34. The Appellant I. Kovalchuk submitted that the intent is not to turn the property into farmland. He noted that he is a professor, and he would like to use the property for his own research. He stated part of the research would be to see how the crop would do without being watered and if he decided to use water on the crop he would proceed with a well.
35. The Appellant I. Kovalchuk submitted that he uses about 50 to 60 litres of water from the creek every 3 or 4 days for the hemp crop and stated that he has witnessed the municipality draw water from the creek.
36. Member of the gallery S. Duffill raised a concern regarding the number of staff on the property. She inquired as to whether the staff would be living on the property or commuting and whether this would be a year-round or a seasonal research project.
37. Member of the gallery S. Duffill submitted that she has concerns regarding water and chemical usage on the hemp crop and noted that hemp is very water intensive.
38. Member of the gallery A. Pipe submitted that she disapproves of the application and the appeal and she is concerned about how the Appellants will obtain water for the hemp crop.
39. Member of the gallery M. Heimbecker submitted that his greatest concern is the creek. He noted he is working diligently to maintain the creek for his cattle and is concerned about what maybe entering the creek from the subject property.
40. Member of the gallery M. Stuart submitted that she is not opposed to development on the parcel but has a concern regarding the water on the property as the property was severely flooded during the 2013 flood. She noted that the creek also flows through her property.
41. Member of the gallery D. Bogstie submitted that he is concerned that the crop will be intensive if it would require 6 to 7 employees for small area of crop. D. Bogstie also submitted a concern that water should not be drawn from the creek and it is running very low with the recent weather.

3. Non-Compliance

42. The Development Authority submitted that the property is not in compliance with Section 4.2.1.14 and 4.2.1.7 of the Land Use Bylaw 60/2014 as a recreational vehicle, two animal shelters and portable privy are located on the parcel as well as a structure of unknown detail/purpose. In addition, two unapproved approaches are under construction and there are tree's being planted within the municipal road allowance without authorization and inspection from the County's Public Works Department.
43. The Development Authority submitted that having a recreational vehicle on this property is in contravention of the Land Use Bylaw 60/2014 and the bylaw states that the recreational vehicle must be located where the dwelling exists.
44. The Appellant B. Batbayar submitted that the horse barn is not located on the subject property.
45. The Appellant B. Batbayar submitted that the two approaches in question were located on the property prior to the Appellants purchasing the property in October 2020. He also noted that the trees could be removed to bring the property into compliance.
46. The Appellant B. Batbayar stated that the unknown structure is a septic tank which is to be used by the landowners in the future, if necessary.
47. The Appellant I. Kovalchuk submitted that no more gravel will be brought in and that it was being used to extend the approaches as well as to prepare for a farm building.
48. Member of the gallery S. Dimant submitted that the landowners placed equipment on his property as there had been a misunderstanding over who owned that piece of land. S. Dimant noted that once the equipment was removed, he constructed a fence around that portion of his property after which the Appellants created the two approaches in question for access.

4. Untidy Premises

49. The Appellant B. Batbayar responded to a neighbour's written concern regarding the untidiness of the property. He stated that the untidiness stems from their inability to secure a Development Permit to develop the land.
50. The Appellant I. Kovalchuk submitted that the travel trailer will be repaired and remain on the property.
51. Member of the gallery S. Dimant submitted a concern that the site is unruly and there is aluminum debris on the edge of the creek and other loose debris on the property.
52. Member of the gallery A. Pipe submitted that she has a concern that the trailer located on the property is situated very close to the creek and notes that the trailer is very visible from the highway and is unsightly.
53. Member of the gallery S. Duffill submitted a concern that there are makeshift tents located over top of the creek on the subject property.
54. Member of the gallery M. Stuart submitted that should the County and the Appellants find a solution and proceed with development on the subject property, she requested that any development be aesthetically pleasing and consistent with the area.

55. Member of the gallery T. Thomas submitted a concern that the trailer and porta-potty are located on the property

REASONS FOR DECISION

The Board considered the information presented by the Development Authority, the Applicant's/Appellants and the Gallery. The Board is denying the appeal and upholding the Development Authority's decision to refuse Development Permit 21D 024 for a Temporary Structure for Farm Help on PTN. NE 26-22-04 W5M for the following reasons:

In their consideration of the information presented, the Board determined that the Temporary Structure for Farm Help on the subject property does not comply with the County's Land Use Bylaw 60/2014. The Board determined that a permitted Dwelling, Single Family shall be the principal building on the subject Country Residential parcel, prior to the Temporary Structure for Farm Help being permitted on the property.

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 29th day of June 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.



Mr. Gar Beacom, Chairman

RELEVANT LEGISLATION

FOOTHILLS COUNTY LAND USE BYLAW 60/2014

Definitions:

DWELLING, TEMPORARY

means a Dwelling, Manufactured Home; Dwelling, Mobile Home or Dwelling Single Family for the purpose of use as a dwelling which has not been situated on a permanent foundation, located on a parcel on a temporary basis in accordance with Section 10.10. This does not include the temporary storage of an unoccupied structure without appropriate utilities or Recreational Vehicles.

TEMPORARY FARM HELP ACCOMMODATION

means a separate *Dwelling unit* or *Dwelling, mobile home* used or intended to be used for seasonal accommodation or workers of the owner or operator of a farm provided such seasonal employees perform their duties on such farm, and in which lodging with or without meals is supplied to such employees.

Agriculture and Livestock:

SECTION 4.2.1.3 – Agricultural general uses in a District which lists Agricultural general as a permitted use.

SECTION 4.2.1.4 – The keeping of no more than one animal unit per three (3) acres in excess of nine (9) acres.

a) The keeping of no more than three (3) animal units on parcels between three (3) and nine (9) acres,

Accessory Building/Structures:

SECTION 4.2.1.7 – A detached accessory building where it is accessory to a primary residence:

- a. having an area 20.8 sq. m. (224 sq. ft.) or less, where an accessory building is a permitted use in the land use district, including those lands designated as Sub-district “A”, Direct Control District, or within the Flood Hazard Protection Overlay, provided the structure does not result in the cumulative accessory buildings on the property exceeding the size or number of accessory buildings allowed under Table 4.2.1.7A, and
- b. having an area greater than 20.8 sq. m. (224 sq. ft.) where an accessory building is a permitted use in the land use district and does not exceed the cumulative size of accessory buildings allowed under Table 4.2.1.7A except on any lands designated Sub-district “A”, Direct Control District, or Flood Hazard Protection Overlay District or where the accessory building is being relocated from another property. Relocation of structures requires a Development Permit in accordance with Section 9.21 of this bylaw.

Accessory Uses:

SECTION 4.2.1.14 – The temporary storage of the following number of unoccupied recreation vehicles on a parcel where a dwelling unit exists on site and the use is listed as a Permitted Use,

- a. No more than five (5) unoccupied recreation vehicles on a parcel where it is located outside

of a Hamlet boundary.

- b. No more than one (1) unoccupied recreational vehicle on a parcel in all other land use districts where listed as a permitted use;
- c. Notwithstanding Section 2.4.2 “Special Provision for Parcels with Sub-districts”, the above exemption to a Development Permit is applicable on sub-district “A:” designated lands.

SECTION 9.2 – ACCESSORY BUILDINGS AND USES

9.2.1 - In all residential districts, the principal building on each lot shall be a Dwelling, Single Family. Notwithstanding anything contained in the land use rules applicable to such districts, accessory buildings shall be considered as permitted uses only in cases where a permitted permanent Dwelling, Single Family is actually located on the Lot.

SECTION 10.10 – DWELLINGS

10.10.2 - A Building Permit and all necessary Safety Code Permits (Plumbing, Gas, Septic and Electrical) shall be required for all dwellings being placed on a property.

SECTION 11.1 – 2013 FLOOD HAZARD PROTECTION OVERLAY

11.1.1 – The general purpose of this section is to provide for the safe and efficient use of lands within the floodway and flood fringe of all the rivers, streams, creeks, and waterways as they are defined under the Alberta Environment’s Flood Hazard Identification Program, as well as the areas impacted by June 2013 flood event within the Foothills County.

The intent of this section is to discourage new development on lands subject to flooding and achieve the long-term goal of maintaining and decreasing the overall density of development on lands that may be subject to flooding.

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
- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;

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.	Igor Kovalchuk	Applicant/Appellant
3.	Olga Kovalchuk	Applicant/Appellant
4.	Barkhas Batbayar	Applicant/Appellant
5.	Steve Dimant	Gallery
6.	Teena Thomas	Gallery
7.	Angela Pipe	Gallery
8.	Doug and Susan Bogstie	Gallery
9.	Sylvia Duffill	Gallery
10.	Mike Heimbecker	Gallery
11.	Megan Stuart	Gallery

APPENDIX “B”

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

NO. ITEM

1. Development Permit Decision - 21D 024 (May 25, 2021 Decision)
2. Notice of Appeal submitted by Igor and Olga Kovalchuk and Barkhas Batbayar (June 8, 2021)
3. Written Submission – Mike Heimbecker - Emailed Concern
4. Written Submission – Sylvia and Syd Duffill- Emailed Concern
5. Written Submission – Steve Dimant – Emailed Report/Photograph
6. Written Response – Igor Kovalchuk

APPENDIX “C”

EXHIBITS MADE AVAILABLE AT THE HEARING

NO. ITEM

1. Power Point Presentation by the Development Authority, Brenda Bartnik
2. Verbal Presentation by the Appellants, Igor and Olga Kovalchuk and Barkhas Batbayar