

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

HEARING DATE: AUGUST 11, 2020

BOARD ORDER: 07/20

APPLICANT / LANDOWNER: CARMEN JADICK

APPELLANTS: TOM & JEAN HARRISON, BRAD OLIVE & SHEILA SEREDIUK, NAOMI VIRGO, KATHLEEN & JAY WINFIELD

APPEAL AGAINST: DEVELOPMENT PERMIT 20D 073 FOR A PRIVATE KENNEL FOR FOUR DOGS (OWNED SOLELY BY LANDOWNER)

SUBJECT PROPERTY: NE 20-20-03 W5M (THE "PROPERTY")

BEFORE: CHAIRMAN, G. BEACOM; BOARD MEMBERS, L. SPILAK, C. STORMES, R. TAYLOR, G. WILKINSON; AND CLERK, J. CLEMENT.

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, the Applicant 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 20D 073 for a Private Dog Kennel for Four Dogs (Owned Solely by Landowner) on NE 20-20-03 W5M. (The "Property");

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

Deny the appeals received from T. & J. Harrison, B. Olive & S. Serediuk, N. Virgo, and K. & J. Winfield and uphold the Development Authority's decision to approve Development Permit 20D 073 for a Private Dog Kennel for Four Dogs (Owned Solely by Landowner) on Ptn. NE 20-20-03 W5M.

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

CONDITIONS:

1. This permit is approved for a period of 12 months only, from the date of this decision. The applicant will be required to apply for renewal of the permit if needed.
2. This approval is for a Kennel, Private to allow for no more than four (4) dogs owned by the permanent resident(s) of a dwelling located on the subject property. In determining the number of dogs, pups less than six months of age shall not be included;
3. as this permit is for a Kennel, Private; no boarding of dogs, the breeding or grooming of dogs for profit, nor the training of dogs other than those owned by a permanent resident of the property shall occur;
4. the dogs are not permitted to be left unattended in the area defined as the fenced Alpaca pasture which is located to the west (rear) of the residence, and must be under the immediate control of the owner or an authorized representative when attending this area of the property;

5. 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;
6. the issuance of a development permit from the County does not relieve the landowner of the responsibility of complying with all other relevant municipal bylaws and requirements, nor excuse violation of any provincial or federal regulation or act which may affect use of the land. The County's Regulation and Control of Dogs Bylaw, Responsible Dog Ownership Bylaw, and Community Standards Bylaw apply;
7. 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 development approved on this permit.

INTRODUCTION

- [1] The subject property is a 154. 03 +/- acre Agricultural Residential District parcel located on the southeast corner of the intersection of 264th Street and 370th Avenue.
- [2] On June 24, 2020 the Development Authority for Foothills County approved Development Permit 20D 073 for a Private Dog Kennel for Four Dogs (Owned Solely by Landowner) on NE 20-20-03 W5M.
- [3] Appeals were received on July 7, 9, 13, and 16, 2020 by the appellants, T. & J. Harrison, B. Olive & S. Serediuk, N. Virgo, and K. & J. Winfield against the approval of Development Permit 20D 073.

ISSUES

Private Use Dog Kennel

- [1] The Development Authority submitted that the application was filed as a result of a complaint that was received by Foothills County Protective Services Department, with respect to the number of dogs kept on the property.
- [2] The application is for a private dog kennel to allow for four (4) adult dogs personally owned by the landowner. A private kennel is defined as the keeping of four or more adult dogs owned by the occupant(s) of the dwelling situated on the same property, as per section 10.13.10 of the Land Use Bylaw 60/2014.
- [3] The Development Authority submitted that no approval is required for the keeping of a maximum of three (3) adult dogs. A Private Kennel is a Discretionary Use on Agricultural District properties; therefore, an application shall be reviewed and decided upon by a Development Officer.
- [4] 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] Section 10.13.6 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] Section 10.13.9 of the Land Use Bylaw 60/2014 identifies that the keeping of between 4 or more adult dogs owned by the occupant(s) of the dwelling situated on the same property shall be considered a Private Kennel.

- [7] Section 10.13.10 of the Land Use Bylaw 60/2014 identifies that a Development Permit is required for a Private Kennel.
- [8] The Development Authority submitted that there are four dogs that reside on the property: two large dogs for the protection of the alpaca herd that is farmed on the property, and two dogs for herding and companionship. The protection dogs remain with the alpaca herd at all times, staying within their barn in the evening, and the companionship dogs stay within the dwelling.
- [9] The Development Authority submitted that the protection dogs and the herd of alpacas are contained within an electrified wire livestock fence, approximately 5.0ft in height that borders the perimeters of the pastures and property.
- [10] The first appeal was submitted by B. Olive and S. Serediuk on July 7, 2020. B. Olive presented a video that displayed him walking with his dog adjacent to the property line on 264 Street, and showed the two protection dogs barking among the alpaca herd.
- [11] B. Olive and S. Serediuk submitted that the establishment of a private dog kennel on a neighbouring property was reducing their quality of life, and causing severe noise disturbances. The appellants provided testimony that the dogs are unsupervised, causing safety concerns when passing the landowner's property to walk their dogs.
- [12] B. Olive and S. Serediuk submitted that there have been concerns of non-compliance with the development permit conditions; in particular, condition two due to sightings of five dogs instead of the permitted four.
- [13] B. Olive and S. Serediuk submitted that the electric fence located on the property is also a source of concern. Mr. Olive noted that as per section 10.7.2 of the Land Use Bylaw, the fence is higher than what is allowed. Further, he has requested that the safety codes officer inspect the fence and assess the voltage as he is concerned that his dog or child could be harmed should they come in contact. To the applicant's credit, Mr. Olive noted that the extensions have been changed from the stark white color to beige.
- [14] Mr. Olive suggested that conditions be imposed in accordance with the following sections of the Land Use Bylaw: Section 10.13, Subsection (e) - All dog facilities shall be located at the rear of the principal building; Subsection (f) - All dog facilities shall be visually screened by fences or landscaping from the existing dwellings on adjoining lots. Alternatively, the permit be revoked and no dogs permitted.
- [15] The second appeal was submitted by T. and J. Harrison on July 13, 2020, their concern was that the establishment of a private dog kennel on a neighbouring property was reducing their quality of life, and that the dog barking could be heard both day and night. T. Harrison states that there is no apparent compliance with condition 3 that, "the dogs shall at all times be contained within the property boundaries, and must be kept indoors between 9 P.M. and 7 A.M. daily", as the protection dogs can be heard at night. Furthermore, T. Harrison submitted that there has been no apparent attempt to control or correct the animals.
- [16] T. Harrison submitted that a moved-on home was placed on the subject property on a foundation over two years ago but contains no septic, water, electricity or completed exterior finishes. T. Harrison stated that the compliance with the moved-on home conditions for the completion of the property could mirror the compliance with the Dog Kennel, Private permit.
- [17] A third appeal was submitted by K. and J. Winfield on July 16, 2020, with their concern being the decline of quality of life due to the barking of the protection dogs. K. Winfield states that

there is no apparent compliance with condition 3 that, “the dogs shall at all times be contained within the property boundaries, and must be kept indoors between 9 P.M. and 7 A.M. daily”, as the protection dogs can be heard at night. K. Winfield submitted that she can no longer ride her carriage horses down the public pathway adjacent to the subject property, due to the aggressive nature of the dogs, and is affecting the enjoyment of her property.

[18] A fourth appeal was submitted by N. Virgo on July 7, 2020. N. Virgo submitted that although the guard dogs are among the alpaca herd, the companionship dogs can be seen barking to alert the other animals. N. Virgo further stated that the protection dogs have meant that she can no longer enjoy horse riding out of her property due to 264 Street being the only exit. N. Virgo submitted that the large electrical fence should be adequate in keeping predators at bay, or at least during the day when predator attacks are low, and the public are out enjoying the pathway along 264 Street. Furthermore, N. Virgo suggested that if the permit is approved, the permit should not allow for the replacement of dogs once the current dogs are deceased.

[19] A. Love, a member in the gallery, spoke in opposition of the appeal stating that the protection dogs are lessening her quality of life and the enjoyment of her home.

[20] Three letters of opposition by J. Michalchuk, R. Davidson, A. and A. Nel were presented and read by the board members.

[21] The applicant’s agent, R. Potrie, spoke in support of the application. R. Potrie explained that the applicant conducted a similar operation in Sturgeon County for 12 years without a complaint, and since relocating to Foothills, the applicant has worked with several contractors to complete improvements on the property. R. Potrie explained that alpacas are defenseless, and that dogs are necessary to protect the herd against wildlife predators in the area. The alpaca herd and protection dogs remain in the area close to the public roadway due to the appropriate nature of the grazing lands. The applicant’s primary house is located with the ability to visually monitor the herd and protection dogs. R. Potrie responded to the comments that the guard dogs are untrained by stating that the dogs are trained to respond to perceived threats.

[22] R. Potrie presented a letter of support submitted by D. Houden. D. Houden stated that he witnessed neighbouring residents pestering the alpaca herd area, thus causing the protection dogs to bark.

[23] Applicant C. Jadick, spoke in support of the application. C. Jadick spoke to the complaints regarding noise disturbances on the public pathway, stating that the guard dogs do their part to protect the alpacas by responding to perceived threats. C. Jadick continued to state that pedestrians have previously pestered the protection dogs and alpacas, and therefore the protection dogs may react to traffic on 264 Street.

[24] C. Jadick submitted that she has worked to cooperate with neighbouring landowners, and will continue to do so. Further, C. Jadick stated that she has not explored other avenues of protection outside of the electric fence and protection dogs. C. Jadick stated that a single alpaca can be sold for up to \$25,000 and therefore, protection is necessary.

[25] C. Jadick spoke to the electric fence concerns by stating that a wildlife biologist specialist constructed the fence. The specialist designed the fence, and was not able to erect the fence in areas of the property where there were neighbouring trees; therefore, the fence would not be affective alone for the herd due to breaks in the fencing, and the low fence height.

[26] The applicant stated that the alpacas sleep within the barn where the alpaca herd rests in the evening. C. Jadick stated that barn is not fully enclosed, and the protection dogs are able to leave the barn at night.

[27] C. Jadick responded to the claims that there are more than the allowed dogs on the property than otherwise stated within the development permit. C. Jadick submitted that there were five dogs, and one had recently passed.

Board member Mr. Taylor moved that the Board go into a closed meeting session at 2:25 p.m.

REASONS FOR DECISION

The Board is denying the appeal and upholding the Development Authority's decision to approve Development Permit 20D 073 for a Private Dog Kennel for Four Dogs (Owned Solely by Landowner) on Ptn. NE 20-20-03 W5M for the following reasons:

In their consideration of the information presented, the Board determined that the application for a Dog Kennel, Private for Four Dogs conforms to the requirements of the Land Use Bylaw.

Based on testimony heard, the Board determined that the development permit's original conditions were not adequate in protecting the quality of life of the neighbouring properties. The Board has decided to change the permit to a temporary approval of one year, and the applicant will be required to apply for renewal of the permit if needed. Secondly, the Board has decided to alter the conditions to mitigate noise in the evening hours by requiring that the dogs remain in an enclosed building between 9 P.M. and 7 A.M. daily. Lastly, the Board considered provisions for a Private Kennel under the Land Use Bylaw 60/2014, specifically Section 10.13.10 which states that *'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'* and determined that disturbance created by barking dogs may be mitigated by restricting the area of the property whereby the dogs are permitted to roam when not under the direct control of the owner or an authorized representative.

The Board recognizes that all complaints concerning the barking of dogs are to be directed to the Protective Services department of Foothills County for investigation.

Section 687 of the Municipal Government Act provides the Board with the ability to confirm, revoke or vary the Development Officer's decision or any condition attached to it, or make or substitute an order of its own.

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 11th day of August, 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.



Mr. Gar Beacom, Chairman

RELEVANT LEGISLATION**FOOTHILLS COUNTY LAND USE BYLAW 60/2014****9.12 KEEPING OF DOGS**

- 9.12.1 In accordance with section 4.2, no permit is required for the keeping of up to three (3) adult dogs over 6 months of age at any one time, on a lot containing a dwelling, in all land use districts so long as the dogs are managed in accordance with all other municipal bylaws.
- 9.12.3 The keeping of dogs in the county shall be done so in accordance with “the regulation and control of dogs”, attached as appendix k of this (Bylaw 60/2014) bylaw and the “community standards bylaw” attached as appendix j.

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 All dogs, including puppies, shall be kept indoors between the hours of 9:00 PM to 7:00 AM 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 Municipality’s Screening Standards.

Private Kennel:

- 10.13.8 The keeping of 4 or more adult dogs owned by the resident(s) of the dwelling located on the same property shall be considered a Private Kennel.
- 10.13.9 The keeping of between 4 or more adult dogs owned by the occupant(s) of the dwelling situated on the same property shall be considered a Private Kennel.
- 10.13.10 A Development Permit is required for a Private Kennel.

12.1 AGRICULTURAL LAND USE DISTRICT

- 12.1.5 Discretionary Uses: Kennel, Private

APPENDIX “A”

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

<u>NAME</u>	<u>CAPACITY</u>
1. B. Bartnik	Foothills County Development Officer
2. B. Olive	Appellant
3. S. Serediuk	Appellant
4. K. Winfield	Appellant
5. J. Winfield	Appellant
6. T. Harrison	Appellant
7. J. Harrison	Appellant
8. N. Virgo	Appellant
9. C. Jadick	Applicant
10. R. Podrie	Applicant’s Agent
11. A. Love	Gallery Member, Opposition

APPENDIX “C”

EXHIBITS MADE AVAILABLE AT THE HEARING

NO.	ITEM
1.	Presentation by the Foothills County Development Officer, Brenda Bartnik
2.	Presentation by Applicant C. Jadick’s Agent, R. Potrie
3.	Letters of opposition from J. Michalchuk, R. Davidson, A. and A. Nel
4.	Letter of support from D. Houden
5.	Video from appellant B. Olive