

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

**HEARING DATE:** AUGUST 24, 2021

**BOARD ORDER:** D9/21

**APPLICANTS/LANDOWNERS:** ADAM MATHESON, RICHARD MATHESON, TRINA WEDDELL

**APPELLANT:** RANDY & RHONDA WOLLMMS, COLIN YOUNG, MARNIE BURKHART

**APPEAL AGAINST:** THE APPROVAL OF DEVELOPMENT PERMIT 21D 142 FOR ONE PERMANENT SEA-CAN FOR PERSONAL STORAGE, AND A RELAXATION OF SETBACKS

**SUBJECT PROPERTY:** NW 13-21-04 W5M, Plan 0010526, Lot 3

**BEFORE:** CHAIRMAN, G. BEACOM; BOARD MEMBERS, RD MCHUGH, BRAD MEYERS, CHUCK STORMES, AND PAT STIER 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 21D 142 for one permanent Sea-can for Personal Storage, and a relaxation of setbacks for an existing shed on Plan 0010526, Lot 3, NW 13-21-04 W5M (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 21D 142 for one Permanent Sea-can for Personal Storage, and a relaxation of setbacks on Plan 0010526, Lot 3, NW 13-21-04 W5M.

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

### **APPROVAL DESCRIPTION:**

The Sea-Can is permitted to remain on the subject property for the purpose of personal storage and shall be relocated to the South property line, in a location that adheres to all municipal setback requirements as identified within the Land Use Bylaw 60/2014, and is generally screened from adjacent lands and roadways.

In addition, the existing "Wood Shed" (3.58x3.80) is permitted to remain, as depicted on the Real Property Report File No. 16-0075, dated November 10th, 2016, from Newport Land Surveys, signed by Horatiu Caraba, A.L.S. All other existing and future development must meet the County setback requirements.

### **PRE-RELEASE CONDITION: TO BE COMPLETED BY NOVEMBER 1, 2021**

1. The Landowner shall bring the number of animal units on the subject property into compliance with the current Land Use Bylaw, which states that a development permit is not required with respect to the keeping of no more than one animal unit per three (3) acres in excess of nine (9) acres; therefore, a maximum of four animal units are permitted to be kept on the subject property, at any given time;
2. The Sea-can shall be relocated to the south, so as to better conceal it behind existing vegetation, and must adhere to all municipal setback standards;
3. The applicant shall paint the Sea-can in a neutral colour to aesthetically complement to surrounding landscape and/or vegetation, or shall paint the Sea-can to aesthetically complement the primary buildings on the subject property, to the satisfaction of the Development Authority. The Landowner shall provide colour examples, or exterior finishes, for review and acceptance by the Development Department prior to proceeding with painting the Sea-can;

### **CONDITIONS OF APPROVAL:**

Please note that the following requirements must be completed within the twenty-four (24) month completion period for this Development Permit, unless a time extension is issued under agreement between the Development Authority and the Applicant(s). Failure to complete the conditions of approval will see the Development Permit deemed null and void:

1. The applicant shall maintain the development in accordance with all conditions of approval and plans that have been 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;
2. It is the Landowners' responsibility to ensure the Sea-can is generally screened from adjacent properties and roadways;
3. The Sea-can shall be used exclusively for the Landowners' personal storage and shall not be rented out at any time, nor is the Sea-can permitted for the storage of any business related materials;
4. Should the Sea-can be removed from the subject property for greater than 60 consecutive days, the Sea-can would not be permitted to return to the subject property without receiving an updated approval;
5. No portion of the Sea-can shall be used as a living residence at any time, this includes any overnight accommodations;

6. It is the Landowners' responsibility to provide notification to the Development Authority upon completion of the development, as approved herein;
7. A maximum of five (5) unoccupied recreational vehicles, including boats, are permitted to be located on the subject property, at any given time;
8. The Landowners are advised that no business related materials, vehicles, or equipment are permitted to be located on the subject property and no business operations of any kind are to take place on the property;
9. Should the existing woodshed be moved or demolished, no structure shall be built in its place. All future accessory buildings are to adhere to setback requirements as set out in the Land Use Bylaw 60/2014.

### **ADVISORY REQUIREMENTS:**

The following advisory comments are provided by Foothills County as a courtesy to the applicant(s) and property owner(s). These comments will not form the basis of the decision to approve the development permit application. They are simply provided for information purposes.

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;
2. The applicants 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.

### **INTRODUCTION**

- [1] The subject property is a 13.17-acre Country Residential District parcel located on the east side of Parkins Road West and approximately 800 metres south of the intersection at 304th Street West. This is approximately 2 kilometers east off of Highway 762.
- [2] The application requests approval for one (1) existing 8' x 40' Sea-can (shipping container) to remain on the subject property for personal storage.
- [3] A Sea-can may be considered as an accessory building to be used for personal storage purposes provided that the exterior finish matches or complements the exterior finish of the principal building(s) or is screened from view to the satisfaction of the Development Authority.
- [4] In addition, the application requests that an existing woodshed be granted a relaxation to the side yard setbacks, as the woodshed does not adhere to standard side yard setback requirement of 15 meters from the north property line.
- [5] Section 5.6.2 of the Land Use Bylaw 60/2014 identifies that on Country Residential properties, it is within the discretion of the Development Officer to allow a 90% variance for the required setbacks, with respect to existing structures.

- [6] Appeals were received from Appellants Randy & Rhonda Wollms on July 29, 2021, Colin Young on August 2, 2021 and Marnie Burkhart on August 9, 2021, against the approval of Development Permit 21D 142.

## **ISSUES**

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

- [7] The Development Authority submitted that the application is to allow for the permanent placement and use of one Sea-can container on the subject property, being Plan 0010526, Lot 3, NW 13-21-04 W5M, for personal storage.
- [8] The Development Authority submitted that Sea-cans 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.
- [9] 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 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.
- [10] The Development Authority submitted that the Land Use Bylaw 60/2014 permits a cumulative maximum of five accessory buildings not exceeding 4100 sq. feet on a parcel of this size. At present the Accessory buildings are within the maximum allowable square footage.
- [11] The Development Authority submitted that the location of the Sea-can is proposed to encroach into the west yard setback distances, which normally require a setback of fifteen (15) meters. The Sea-can is currently located four and one half (4.5) meters from the West property line.
- [12] The Development Authority submitted that the application was the result of a complaint and subsequent enforcement by a Peace Officer.

## UNSIGHTLINESS OF THE SEA-CAN & SURROUNDING SITE

- [13] The Development Officer submitted that, while the Development Permit does not specifically address unsightliness and general surroundings of the Sea-can, in order to issue an approval on a development permit, the subject property must be brought into compliance with all applicable policies within the Land Use Bylaw. At present, the number of recreational vehicles is within the permitted limit of five, however one vehicle (boat) is partially situated on the neighbor's property and must be moved. In addition, the Landowner was observed to have in excess of the permitted four animal units on the property, which will need to be brought into compliance either by removing animals from the property and adhering to the permitted maximum of 4 units or by obtaining appropriate approval for an intensive livestock operation.
- [14] The Development Officer submitted that with regard to the Sea-can itself, the applicant has proposed to, and is required to, paint the Sea-can to better disguise it or to paint it in a colour that will match or complement the dwelling on the property.
- [15] The Appellant, Mr. Wollms, who also represents neighboring landowners Colin Young and Marnie Burkart provided testimony that the Sea-can is visible within the community and negatively impacts the neat and tranquil appearance of their Country Residential neighborhood.
- [16] The Appellant, Mr. Wollms provided testimony that the Sea-can itself is highly visible and is an eyesore, and in addition it acts as a site to accumulate multiple other items including abandoned vehicles, building materials, etc around the exterior of the Sea-can. The general unsightliness of the Sea-can and its surroundings is the main concern for himself and other members of the community.
- [17] The Appellant Mr. Wollms provided testimony that his neighbors Mr. Young and Ms. Burkhart are concerned with the unsightliness of the Sea-can and other materials on the site while walking in the area. They are also concerned with the lack of adherence to the setback rules for the Sea-can and feel that there is a lack of awareness, or a lack of compliance on the part of the Landowner in managing the structures and storage of personal items on his property.
- [18] The Appellant Mr. Wollms noted that upon his original complaint he was told that the Sea-can was temporary, however it has now been approved on a permanent basis. Given that, he would prefer that it be moved out of the sightlines of the road and neighboring properties.
- [19] The Landowner Mr. Matheson submitted that he was initially unaware that a moveable structure such as a Sea-can required a Development Permit from the County but has since taken all required steps to bring the container into compliance.

- [20] The Landowner Mr. Matheson submitted that he purchased the property approximately two years ago and has been attempting to clean up the yard site, as it was previously a rental property and a great deal of damage and dumping of junk by tenants pre-dated his ownership of the lands. Some of the items depicted in the photos submitted by the Appellants and neighboring landowners are of items he pulled out of the bush to dispose of and did not belong to him. Many of the items have been removed since the submitted photos were taken.
- [21] The Landowner Mr. Matheson submitted that many of the items around and in the Sea-can are building materials related to the ongoing renovations of the principal dwelling, which is older (built in 1978) and had been a rental property and which requires extensive repairs and refurbishing. In addition, there are some fencing materials for ongoing fence repairs.
- [22] The Landowner Mr. Matheson submitted that the Sea-can is not visible to any of the neighbors from their homes, and that other more visible structures exist in the neighborhood, including an orange two-story structure, among others. He notes that the nearest/most affected neighbors do not have any concerns with the Sea-can.
- [23] The Landowner Mr. Matheson submitted that the Sea-can was situated in such a way that it would be well screened by mature trees and therefore less visually disturbing to his neighbors. If he were to strictly comply with the side yard setbacks, the Sea-can would be further out into the field, closer to the road and therefore much more visible. He is willing to do that, however does not feel it would alleviate his neighbors concerns. He notes that the dwelling is on a hilltop, and due to the topography, there are very limited spots to situate the Sea-can. The meadow is fairly steep, while the forested areas are quite dense with trees and brush.

#### PURPOSE & USAGE OF THE SEA-CAN

- [24] The Appellant Mr. Wollms queried whether materials related to the Landowner's demolition business are being stored at the site, which would be a concern. He submits that the Landowner should not be conducting any part of his business from the Country Residential property. He does not believe that the Landowner has the proper licensing or approvals from the County to be operating from the subject parcel.
- [25] The Development Officer submitted that a permit would be required for any storage of non-personal items, anything related to a business or anything that relates to a non-permitted use on the property. During the course of the site inspection, the Development Officer did not observe any indication of business activities being operated from the property. Storage of renovation materials to be used on the property and other personal and/or Country Residential materials, equipment, etc are allowed and do not require a permit.

- [26] The Landowner Mr. Matheson provided testimony that none of the materials or activities on the subject parcel are related to his demolition business or any business. His business is licensed and operated out of a one-acre lot in the City of Calgary. He has no plans to locate any business related items on the Country Residential property.
- [27] The Landowner Mr. Matheson provided testimony that he intends to eventually build a large barn structure in the field for his animals, but cannot afford to do so at present. In the meantime, the Sea-can is helping to provide a windbreak and shade structure in the field for his horses. He notes that many of his neighbors have barns and sheds in their surrounding fields, which have a visual impact on the valley views to varying degrees. The inside of the Sea-can is used for storing personal items, such as dirt bikes. The Sea-can is in the field where a barn will eventually be developed.
- [28] The Appellant Mr. Wollms notes that vehicles and other items unrelated to animal care are located around the Sea-can and still visible. In his opinion, the Sea-can is not being used as an animal shelter.
- [29] The Development Officer confirmed that the property slopes down from East to West, providing limited options for placement of a Sea-can or other structure. The Sea-can could possibly be rotated and set near the South property line so it is less visible.

#### SETBACKS FOR EXISTING WOODSHED

- [30] The Development Officer submitted that the woodshed (2.48x6.30) is located 3.58 metres (11.75 ft.) from the north property line when it is required to a minimum of 15 metres (49.21 ft.) from this property line, at its closest point. Therefore, the applicants are seeking an 11.42 metre (37.47 ft.) or 76.1% relaxation of setbacks for this structure, from the north property line.
- [31] Section 5.6.2 of the Land Use Bylaw 60/2014 identifies that on Country Residential properties, it is within the discretion of the Development Officer to allow a 90% variance for the required setbacks, with respect to existing structures.
- [32] The Appellant Mr. Wollms noted that the woodshed is in a state of disrepair and is not in adherence with required setback standards, which is a concern for himself and the other Appellants.
- [33] The Landowner Mr. Matheson submitted that the woodshed has been in existence for approximately 30 years and has never resulted in any concerns or complaints before. The structure long pre-dated his ownership of the property. The structure pre-dates most of the homes in the area, including the homes built more recently by the Appellants. He is attempting to bring all structures into compliance on the

property. It is his opinion that the woodshed which is also well screened by vegetation, should not be a concern to neighbors.

### OTHER MATTERS

- [34] The Development Officer submitted that passenger vehicles, trailers, RV's, etc are not required to meet setback rules, however a maximum of five (5) unoccupied recreational vehicles, including boats, are permitted to be located on the subject property, at any given time. At present, the number of vehicles exceeds the permitted maximum.
- [35] The Development Officer submitted that the animal units on the property exceed the allowable number for a parcel of this size. A property of 13 acres is permitted a maximum of four (4) animal units unless approval has been obtained to allow for additional units under an Intensive Livestock Operation approval. Approximately eight (8) animal units were observed on the property at the time of the site inspection; therefore, the Landowner will need to bring the animals into compliance with the land use bylaw, by either removing animals from the property and adhering to the permitted maximum of four (4) units or obtaining appropriate approval for an intensive livestock operation.
- [36] The Landowner Mr. Matheson provided testimony that some of the vehicles, campers and other items do not belong to him and he has been endeavoring to have them removed from the property. Some of the vehicles have been removed since the submitted photographs were taken. He will ensure that the number of vehicles meets the requirements as set out by the Land Use Bylaw.
- [37] The Landowner Mr. Matheson provided testimony that he owns two horses, and five to six sheep. While there have been goats also present at the property, he does not own the goats and they are borrowed for weed management purposes. He was unaware of the animal unit limits and will bring this into compliance, either by selling off several animals, or by applying for the appropriate permit.

### REASONS FOR DECISION

The Board is **denying** the appeals and **upholding** the Development Authority's decision to approve Development Permit 20D 142 for the permanent placement and use of one (1) Sea-can and a relaxation of setbacks for an existing accessory building on the subject property being Plan 0112224, BLOCK 1, LOT 6; PTN. SE 16-21-29 W4M.

The Board notes the Foothills County Land Use Bylaw No. 60/2014 allows for the placement of Sea-cans on Country Residential parcels within the County, as a discretionary use.



Based on testimony heard, the Board considered the application and the testimony of the Development Officer, the Appellants and the Applicant/Landowner.

In their consideration of the information presented, the Board found that there was not sufficient evidence presented to demonstrate that the placement of a Sea-can in the most appropriate location possible, or the relaxation of setbacks for an existing accessory building 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 24<sup>th</sup> day of August, 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**

#### **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.

#### **SETBACKS**

- 12.2.7.3 Minimum Yard Setbacks Requirements:
- Front Yard Setbacks:
- i. 15m (49.21 ft) from the right of way of an internal subdivision road;
  - ii. 48m (157.48 ft) from the centreline of a Municipal road;
  - iii. 40m (131.23 ft.) from the ultimate right of way or 70 meters from the centreline of a Provincial highway, whichever is greater;
- Side Yard Setbacks:
- i. 15m (49.21 ft) from the property line.
- Rear Yard Setbacks:
- i. 15m (49.21 ft) from the property line.

#### **VARIANCES**

- 5.6.2 The Development Authority may allow with respect to existing development, a variance of any yard setback to a maximum of 90% of the setback required by this Bylaw, with the exception of Hamlet Residential District lands.

### **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.	Drew Granson	Foothills County - Development Officer
2.	Adam Matheson	Applicant/Landowner
3.	Randy Wollms	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 Decision - 21D 142 (July 21, 2021)
2. Notice of Appeal submitted by Randy & Rhonda Wollms (July 29, 2021)
3. Notice of Appeal submitted by Colin Young (August 2, 2021)
4. Notice of Appeal submitted by Marnie Burkhart (August 9, 2021)
5. Photographs submitted by Randy Wollms (July 29, 2021)
6. Written Submission and Photographs submitted by S. Kallis (August 13, 2021)
7. Written Submission submitted by A. Pachiano (August 18, 2021)
8. Written Submission and Photographs submitted by R. Lentsch (August 23, 2021)
9. Written Submission submitted by M. Burkhart (August 23, 2021)
10. Written Submission submitted by S. Watkins (August 24, 2021)

**APPENDIX “C”**

EXHIBITS MADE AVAILABLE AT THE HEARING

**NO. ITEM**

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1. Presentation by the Development Authority, Drew Granson