

**Municipal District of Bighorn No. 8  
Public Hearing  
7:00 p.m., Monday, October 3rd, 2011  
Beaupre Community Hall**

**RE: DEVELOPMENT PERMIT APPLICATION NO. 14/11  
TREE TOPS PET RESORT  
RENEWAL OF COMMERCIAL KENNEL OPERATION  
(DIRECT CONTROL DISTRICT)**

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Present: Reeve Dene Cooper (Chair)  
Deputy Reeve Erik Butters  
Councillor Carolyn Montgomery  
Councillor Paul Ryan

M.D. Staff: Martin Buckley, Chief Administrative Officer  
Janice Thompson, Development Officer  
Brenda Goeres, Recording Secretary

Gallery: Sharon Bright            Michelle Paciolo  
Murray Cluff                Cindy Renwick  
Dean Geddes                Ursula Reynolds  
Jean Geddes                1 other

**Call to Order**

Reeve Cooper called the room to order at 7:00 p.m., introduced himself, M.D. staff and Councillors introduced themselves. Reeve Cooper then welcomed the gallery, reminded them to turn off any electronic devices, and noted that procedure sheets for the hearing were placed in the gallery for reference and sharing.

**Purpose of the Hearing and Introduction of the Proposal**

Reeve Cooper then read the purpose of the public hearing is to receive public input regarding Development Permit 14/11:

“ The M.D. of Bighorn is holding a public hearing with respect to a development permit application to renew a commercial kennel for a five year term. The commercial kennel is known as the Tree Tops Pet Resort and is located in Ptn. SW 33-26-6-W5M as shown on the map distributed in the information package. The renewal application also outlines a proposal to completely enclose the existing kennel building in two stages. The first stage is to close off the current three foot openings between the pony wall and the roof structure with a mesh screen. The second stage would be to install hinged doors over the mesh wiring that can be opened and closed. ”

After outlining the procedure for the public hearing, Reeve Cooper reminded the gallery



that Council would not be making a decision on the Development Permit application at this hearing.

MOVED by Deputy Reeve Butters to commence the Public Hearing for Development Permit Application No. 14/11, Tree Tops Pet Resort – Direct Control at 7:03 p.m.

CARRIED

Reeve Cooper outlined the sequence of procedures to be followed during the hearing and after which Council can then ask final questions. The hearing is then formally closed and when that has occurred, no further verbal or written communications will be accepted.

### **Administrative Report**

The Development Officer read her report, attached as Schedule “A”.

She noted that the public hearing notice was advertised on September 7 and 14, 2011 in the Cochrane Eagle newspaper and as well, a notification package was mailed to adjacent landowners and affected parties. These notifications included a list of possible conditions should Council wish to approve the kennel renewal application.

Two responses were received and distributed to Council – one from Alberta Transportation with no objections to the renewal application (attached as Schedule “B”), and one in objection from adjacent owners Reid Thomas and Dean Geddes and their consultants, Patching Associates Acoustical Engineering Ltd. of Calgary (Geddes/Thomas letter and Supplements binder attached as Schedule “C”).

The Development Officer then distributed maps showing the location of the subject property and adjacent properties.

In 2009 the operation’s Development Permit was renewed (DP 27/09), with a requirement that a second sound barrier wall be installed on the north and west sides of the kennel. Instead the applicants installed a higher structure, an 8-foot wall. Councillor Ryan wanted clarification on whether it was Council or Administration who determines if the original requirement for the wall was met. The Development Officer replied that Council is the authority but noted that this area changed to a “Direct Control” zoned area since the 2009 S/DAB conditions were imposed. Councillor Ryan further inquired if Administration inspected the site to view the fence installation; the Development Officer replied no, but that from pictures submitted, Administration felt that the fence met the intent of what a smaller wall would accomplish. As well, due to the timing of the Direct Control zoning change to this property, the decision on the fence/wall installation is before Council tonight. Reeve Cooper clarified this is the reason this is the first time this fence/wall in relation to this Development Permit has been considered.

Councillor Ryan further asked that if this weren’t a renewal and the same conditions were placed, would Administration still feel those conditions had been met, to which the

Development Officer replied yes.

The Development Officer then referred to the documents which were distributed in the information package as well as four relevant sections of the MD's Land Use Bylaw (the Land Use Bylaw material attached as Schedule "D"). She ended her presentation noting that Document 3 in the information package, which is the Administration recommendations, which was provided to affected parties and adjacent landowners, has changed slightly in reference to the hours of operation. Currently the dogs are kept indoors from 7:00 p.m. until 8:00 a.m. The recommendation is that this time period be changed from 8 p.m. to 8 a.m., reducing to 12 hours, the time the animals would be kept indoors.

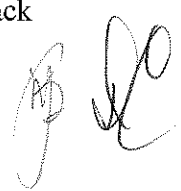
The Development Officer clarified for Reeve Cooper that two submissions received and noted earlier, were from affected parties as adjacent neighbours, per the requirements in the Municipal Government Act (Alberta).

### **Introduction by Applicant**

#### Murray Cluff and Michelle Pacileo, co-owners of Tree Top Pet Resort

Mr. Cluff presented his report (attached as Schedule "E") and outlined his reasons for purchasing Tree Tops Pet Resort at a time when there was one year remaining on the Development Permit, which is now under Direct Control zoning. Mr. Cluff and Ms. Pacileo were made aware of the past noise issues from the time of their initial ownership. The prior owner had undertaken mitigation procedures but Mr. Cluff felt they (the current owners) have done much more. For example, since dogs react to traffic and stimulus by barking, the enclosed walls work as a visual barrier for the dogs. The daily walks and the "romper room", a free run area, allows the owners to monitor the animals while they are playing and socializing. Mr. Cluff has added eight foot-high fencing/walls to act as visual barriers. The Geddes (adjacent neighbours) visited the kennel in July when there were 38 dogs on site in various locations. Mr. Cluff has brought in a 1:00 to 3:00 p.m. "nap time" when the kennel is very quiet. They also "cluster" delivery or client visits so they try to consolidate and coordinate times to occur in as limited a time period as possible. Enclosing the kennels, which they plan to do, will help with energy bills over winter, and as well, further lessen the noise. Mr. Cluff acknowledges that their operation will never be noise free. The adjacent neighbours wrote a letter in July 2009 outlining five requests; Mr. Cluff replied that he has complied with their requests (which include enclosures, lines of sight, outdoor time), and feels they have acted on the community's requests to mitigate noise and respect the wishes of their neighbours, and have been open and honest.

Mr. Cluff noted that all eight conditions in the 2009 Development Permit have been met and he has never received a complaint from the MD. He feels this has resulted in Administration's recommendation for a five year renewal as well as an additional hour of operation (resulting from a reduction in inside time for the animals). Finally he noted that he met with Administration last July: the MD's staff, including a Development Planner, had made four unannounced visits to the kennels and that the informal feedback



was that no noise had been noticed, during those visits.

Mr. Cluff emphasized that he has addressed five of the six Geddes requests. As for support, Mr. Cluff has support from Cindy Renwick, the closest neighbour.

Mr. Cluff then addressed the noise study conducted by the consultant contracted by the Geddes and Thomas families, and questioned how noise levels were determined, when one note in the report says wind direction was a contributor to the noise level. The Executive Summary in the consultant's report notes on Page 1 that the Thomas study was not analyzed. Another section of the Executive Summary refers to other noises from wind, bird, traffic, etc. contributing to the consultant's readings. He further referred to Page 8 where the ambient sound of dog barking never exceeded 45 dB (decibels), and went on to question whether the decibel readings should be attributed to the dog barking, since other activities and sounds (birds, vehicle traffic, railroad) were contributors.

He summarized by saying that he knows his operation is not noise free, but it is not as noisy as it was through the 1990s and the noise study proves that. Mr. Cluff understands that Mr. Thomas is absent tonight due to a conflict of interest as an MD Councillor, but regrets that Mrs. Thomas did not attend.

In a meeting Mr. Cluff attended with M.D. Administration and neighbours in July 2010, comments were made that "Country Residential" areas should be "dead quiet": this is impossible, with noise from livestock, calving, coyotes, wolves, quads, snowmobiles, occasional rifles, chainsaws, etc.

The study says that at Mr. Thomas's property line the noise level is 46 dB.

Reeve Cooper confirmed for the gallery that mailouts of the package from Administration included Councillor Thomas as an addressee and that puts him clearly in a conflict of interest as an MD Councillor.

Mr. Cluff then clarified for Reeve Cooper that the Tree Tops has an on-site manager who lives at Tree Tops (and who was in the gallery tonight); Mr. Cluff and Ms Pacileo reside in Cochrane, but they work at the kennels daily. Seasonal and holiday staff are brought in as needed. Reeve Cooper wished to clarify that the operation is adequately staffed.

The Development Officer clarified for Councillor Ryan that Tree Tops is not a home occupation.

### **In Support**

#### Cindy Renwick

The Renwick family lives on the south side of Tree Tops. Ms. Renwick stated that she represents two other neighbours: Jim Craig who is on the east side of the Renwick property and on the SE corner of Mr. Cluff's operation, as well as Andrew and Colleen Cole, who live almost directly north of Tree Tops and are therefore the closest neighbours.



Ms Renwick has no complaints and she is home most of the time during the day. The only time she hears the dogs is in the mornings when they come out of their kennels. She stated that the Coles also have no concerns. She feels that Mr. Cluff and Ms Pacileo have done everything they were asked and she has helped Murray with the dogs on occasions. She witnessed the difference the "outdoor puppy room" wall has made. She agrees with the tall fence being a good noise and visual barrier. She recalls the chain link fence at the front has been replaced by a solid wood fence, and that when the next barrier is installed, she does not feel the dogs will be heard at all.

She notices that at night, she can hear the train clicking on the tracks and that is from across the Ghost River, so sound carries. During hunting season she hears gunshot sounds for a long time. Even Mrs. Renwick's hot tub can be heard by Mr. Craig, with the Renwick's house being between the hot tub and the Craig residence.

Reeve Cooper asked if the Coles are permanent residents; Ms Renwick replied that they are constructing a home at the moment but are on the site every weekend.

There was no one else present who wished to speak in favour of the proposed Development Permit 14/11, nor were there any further written submissions in favour.

### **In Opposition**

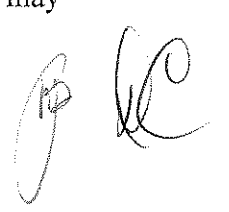
Dean (Jean) Geddes, also representing the Reid Thomas family

Mr. Geddes outlined the history of this noise issue which has persisted for years for him and for the Thomas family; he provided a letter from the Thomas's, authorizing him to speak on their behalf (attached as Schedule "F"). Mr. Geddes referred to the MD's Nuisance and Noise Bylaw 09/97 and noted that Section 2 applies specifically to the Tree Tops operation.

In July 2010 Mr. Geddes attended an informal meeting of M.D. Administration, Tree Tops personnel and neighbours to the kennel. Notes of that meeting are attached as Schedule "G". The meeting was informative, but he referenced the second last note which reads that Mr. Cluff is confused because some neighbours do and others don't hear noise. Mr. Geddes wants hard data, in order to eliminate the "myth" of noise as stated by Mr. Cluff who said at that meeting that he will expect some apologies. In the absence of "reasonable persons" guiding this conflict, Mr. Geddes and Mr. Thomas had a noise study conducted in order to replace the supposed "myth" with factual data. Mr. Geddes then introduced Jessie Roy of Patching Associates Acoustical Engineering Ltd., who presented her findings, attached as Schedule "H".

Ms. Roy explained sound level measurements used in order to assess the duration and levels of dog barking, and provided technical information regarding readings and interpretation of same.

Councillor Ryan asked her about the May recordings; Ms Roy replied that there may have been more, but 1.5 hours is a minimum time period for the recordings.



Ms. Roy then displayed a sound level graph with time of day and she played a recording of the sound done from the south edge of the Geddes property (map displayed). Councillor Ryan asked and Mr. Geddes clarified that one monitor is about 300 m from his property and that there are two trailers on his property.

Ms Roy played a further sound sample, noting the colour coding on the sample. The loudest recording was 40 dB and the minimum was 23 dB. The graph also shows other sounds heard during the recording. The recording cannot be played exactly at the sound level it was recorded.

Ms Roy noted the level of birdsong in relation to the level of barking, and that the spring surveys have much higher sound levels, as “dawn chorus”, the global sound from animals, is higher at that time of year.

Ms Roy noted that sound levels change on a logarithmic vs linear basis so if two equal sounds are heard at 30 dB, a 10 dB change will boost that sound to a “twice as loud” level, perception-wise.

She also clarified that wind direction is where the wind originates or the direction it is coming from, so for most of the year, the Thomas and Geddes properties are “downwind” of the boarding facility.

Councillor Ryan requested a 7:00 and 7:30 a.m. recording which were played, and no dog barking was heard.

Mr. Geddes continued that he does not want to put the owner out of business but noted that the noise he experiences is not a myth. He suggests a less expensive recording system was used by Tree Tops. He played two cassette tapes from August 2010 and July 2011, both revealing dog barking. He noted that these recordings were 150 feet north of the Thomas residence. The dog barking was very evident in the recordings, and therefore Mr. Thomas feels this is nuisance noise. Mr. Thomas also had MD staff present on several occasions to hear the noise.

He requests that the noise should not go beyond the Tree Top boundaries. This may be researched so that a design can be developed. He would like Tree Tops to design and modify its facility and conduct operations so that all barking noise does not extend beyond the kennel property’s boundaries.

During the years of operations, the only parties involved have been adjacent neighbours and MD staff. Mr. Geddes has therefore submitted his and Mr. Thomas’ supplementary report in hopes that Council will find it helpful in assessing this situation.

Regarding Administration’s eight recommendations for Council to consider, Condition #3 recommends that the indoor night inside time be reduced to 12 hours from 13 hours, but since 13 hours has existed in all prior Development Permits, Mr. Geddes questions

whether Administration changed this and if so, why. Condition #5 requires a two stage modification to the kennel building which must be constructed by September 30, 2011; Mr. Geddes noted that the applicants were going to close their off leash area and the entire kennel once this containment construction completed, and he wants to ensure this improvement be undertaken. Regarding Condition 8, Messrs. Geddes and Thomas prefer a two-year renewal versus the five years recommended, because the operation has still not accomplished containment of barking dogs.

In closing, Mr. Geddes repeated the need for ongoing noise abatement measures and stated that neighbours should not need to monitor this operation on an ongoing basis. He and the Thomas' chose not to submit complaints but preferred to gather the data presented tonight.

Reeve Cooper asked Mr. Geddes if his interest in this as a homeowner is considered from his home or his fence line; Mr. Geddes replied from his fence lines, and he feels his neighbours would have the same preference.

Reeve Cooper asked for the difference between noise and sound. Ms Roy explained that sound is measurable. Noise is an objection by the receiver of sound. Levels include all the sound or noise, depending on the listener's perception.

Councillor Ryan asked for, and received, technical clarification of recordings referenced in the Executive Summary of the report.

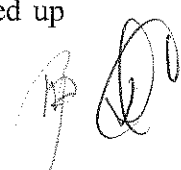
Councillor Ryan noted the maximum recordings were lower than a library reading; Ms Roy clarified these are an average and within a living room range (A1 levels). When one listens to 20 and then 30 dB, 30 seems twice as loud as the 20, in that unique sounds pick up the louder points of sound.

Reeve Cooper asked Mr. Geddes if he owns dogs; Mr. Geddes does not but his son, who lives in a second trailer 800 m from Tree Tops, owns dogs. Mr. Thomas does not own a dog. Reeve Cooper noted that under the MD bylaws, any residence can have up to three dogs.

Reeve Cooper asked how the consultants know that all barking dogs are from Tree Tops; Ms Roy doesn't know, but notes there is a tonal difference between dog barking and coyotes howling.

Reeve Cooper noted the consultants have not recommended or discussed acceptable fence line distances. Ms Roy referenced the City of Calgary bylaw which defines measure as fence line or other locations on property for measuring; e.g. a living room. Oil and gas measures 15 m from the home and that there be no noise reflection from the building. She referred to Appendix A in the Patching Associates report as a helpful index.

Deputy Reeve Butters asked Mr. Geddes if he hears the dogs when they are locked up



overnight. Mr. Geddes said he only hears them from 8:00 a.m. to 7:00 p.m.

Councillor Ryan returned to the question on thresholds for the City of Calgary noise bylaw, the Alberta Utility Commission and ERCB (Energy Resources Conservation Board); Ms. Roy provided her knowledge on each set of guidelines.

Reeve Cooper asked about the complexity of sound. Ms Roy acknowledged that sound has health affects and quality of life is affected by sound perception. Mr. Geddes noted he has read various reference books and that noise perception is not an exact science.

Reeve Cooper asked Ms Roy about her training as an acoustic engineering specialist; she replied that she is trained to separate the perception of noise and measurable sound, clarifying that noise and sound are different entities.

#### Ursula Reynolds NW Section 27

Ms Reynolds noted her family lives in down by the Ghost River, at a lower elevation than the Tree Tops Pet Resort, and are not bothered by the Tree Top kennel operations, though she has had an issue with another kennel operation. She feels Tree Tops runs a good operation. Her own family has two dogs which are kept inside unless they are walking and they only bark if a visitor arrives.

She noted that the wind comes from the southwest so the sound goes towards the Geddes and Thomas residences, and additionally the wind plays with the sound. She does have an issue with the statement that the noise is a myth or made up. Thomas' have had more severe issues with the noise over the years, but she feels Mr. Cluff should not make a statement that something is "made up".

Ms Reynolds says that the noise should be studied from the house versus the fence. She is also tired of the ongoing dispute on this kennel noise issue.

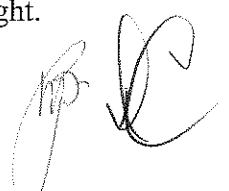
There was no one else present who wished to speak in opposition to the proposed Development Permit 14/11, nor were there any further written submissions in opposition.

The Chief Administrative Officer distributed the above mentioned letter from Alberta Transportation indicating no opposition to approval of the Development Permit renewal.

#### **Rebuttal Opportunity For Applicant**

##### Murray Cluff

Regarding having made the statement that the sound complaints issue was a myth, Mr. Cluff apologized for that. Mr. Thomas told him at the time of that statement he was unable to hold a conversation on his deck. Mr. Cluff says he also hears area noises from his own property as well. He also acknowledged that tonight's presentation reveals that sound is a complex issue so he respects the professional information presented tonight.



He also agrees that people have different thresholds of annoyance for hearing and therefore Messrs. Geddes and Thomas may each have different tolerances for sound levels.

He asked for clarification: if the September noise level reading is 30 dB and the ambient noise is 24 dB, does that mean the dogs are only contributing 6 dB? If so, that would indicate that the dogs are contributing the equivalent of a whisper to the noise readings. The 40 dB level equivalent to a living room is quite acceptable and if that is the issue with Tree Tops, then that sound level should be acceptable.

Deputy Reeve Butters agreed that different sound levels can aggravate different individuals; he asked if Mr. Cluff has exhausted every possibility to mitigate the sounds. Mr. Cluff replied yes in that the barriers, clustering of the traffic to his site and the overnight housing of the animals are the things he continues to work on. He added that if sound perception doubles after a 6 dB increase, he may change from his regular use of a basic Radio Shack recorder in order to consider better and evolving technical improvements in sound barriers and equipment that will improve his operation.

Deputy Reeve Butters asked Mr. Cluff if 12-hour inside quiet time for his animals is acceptable. Mr. Cluff noted that some dogs can't last 12 hours before a break, particularly the new ones, some older animals, and those whose diet is changed, but that for most other dogs, 12 hours will be all right.

Councillor Montgomery asked Mr. Cluff if he feels he has done everything he was able to do to mitigate the noise from his operation. He replied yes, and though there have been court challenges on this issue, he wants to avoid that situation and will continue to seek improvements to his operation.

Councillor Ryan referred to the staff recommendations that would apply to the Development Permit renewal. Mr. Cluff feels he has done everything to meet the prior Development Permit but doesn't have the new renewal pending its approval, so he is still operating under the prior Development Permit.

### **Council Questions To Administration**

Reeve Cooper asked if there are noise standards at fence limits within the MD's noise bylaw. The Development Officer replied that the bylaws do not include measures/standards. The Chief Administrative Officer noted that the M.D. noise bylaw is a general one: for example, it doesn't set noise standards, but does set time limits on construction activity.

Reeve Cooper asked what kinds of noise complaints the MD office receives. The Chief Administrative Officer replied that there are various complaints, and that not all of them are dog barking complaints.



Reeve Cooper asked for a definition of kennels; the Development Officer clarified that the keeping of four or more dogs represents a kennel operation.

The Development Officer confirmed for Reeve Cooper that other Direct Control properties within the MD also have public hearings.

Councillor Montgomery asked if a letter is required for a speaker to act on someone else's behalf; the Development Officer confirmed that it is, even though Ms. Renwick did not submit letters from neighbours she represented this evening and Council can consider that and choose whether to accept her representation. The Chief Administrative Officer also noted that these permissions should have been in writing, but at the hearings it is impossible to know who is going to be represented verbally.

There were no more questions or comments.

The Development Officer closed with three comments:

- the clarification that Mr. Cluff's prior Development Permit expired in July 2011 but Council passed a motion to extend that until a period after tonight's Public Hearing could be held. Mr. Cluff cannot commence any construction prior to building and/or development permits. The addition of hinges for noise attenuation will not require a building permit.
- that Alberta Transportation's response was distributed via Municipal Affairs due to the public land adjacent to the subject property.
- that Council has full authority to accept, change or deny the eight recommendations Administration has submitted for renewal of this Development Permit.

### **Hearing Closure**

The Reeve reminded the gallery that no further verbal or written submissions would be received by Council and all submissions received regarding this public hearing are now a matter of public record.

The Reeve declared the Public Hearing on Development Permit 14/11 closed at 9:15 p.m.

  
Reeve

  
Secretary

SCHEDULES ATTACHED TO THESE MINUTES

A	Development Officer's presentation
B	Response from C. Bullock, Alberta Transportation
C	Letter/presentation from D. Geddes/R. Thomas c/w Supplements (binder)
D	Relevant sections of M.D. Land Use Bylaw
E	Applicant's presentation – M.Cluff/M.Pacileo
F	Letter of authorization from R. & L. Thomas – D. Geddes
G	Notes from July 2010 meeting re Tree Tops Pet Resort
H	Patching Associates Acoustical Engineering report

