



Municipal District of Bighorn No. 8

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DECISION OF THE SUBDIVISION and DEVELOPMENT APPEAL BOARD

Hearing: Wednesday, January 6, 2021

Development Permit 29/20 and 30/20, Fiona Mactaggart (Appellant)

I. Decision

The appeal before the Subdivision and Development Appeal Board (SDAB) was submitted by Keith Wilson of Wilson Law Office, representing R6 Ranch, Fiona Mactaggart (the “Appellant”) appealing the Approving Authority’s (Municipal Planning Commission) decision to approve Development Permits 29/20 and 30/20.

On November 8, 2020, the Development Authority issued a Notice of Decision for Development Permit 29/20 for an Extensive Agriculture Operation (to keep horses) and approval of existing Accessory Buildings for the agricultural use, all on a portion of NW, Section 26 (LSD), Township 24, Range 8, West of the 5th Meridian (the “subject property”).

On November 8, 2020, the Development Authority issued a Notice of Decision on part of Development Permit Application 30/20 for a Factory-Built Dwelling with a front yard setback variance of Existing Accessory Structures for some of those existing structures all located a portion of NW, Section 26 (LSD), Township 24, Range 8, West of the 5th Meridian (the “subject property”).

Both development permits apply to the subject property that is located in the Rafter Six Tourist and Recreation District (RSTR).

The appeal of Development Permits 29/20 and 30/20 are being made by the Appellant (adjacent landowner). The Subdivision and Development Appeal Board (the “Board”) heard the Appellant’s two appeals in one hearing.

The hearing commenced and concluded on January 6, 2021.

On the same night, the Board heard appeals from the development permit applicant, and it varied Development Permit 30/20 as approved by the Development Authority. All references to the development permits in this decision are as amended by the Board in that decision.

The Subdivision and Development Appeal Board (the “Board”) **DENIES** the appeal of Development Permit 29/20 and the decision of the Development Authority is upheld. The Board’s reasons are outlined below:

1. The Appellant has not provided sufficient evidence to satisfy the Board that the development authorized by the development permit will unduly interfere with or affect the use, enjoyment or value of the Appellant’s property.

2. The Board makes no findings regarding the validity of the access easement agreement, however for the purposes of this appeal accepts that the Applicant has access pursuant to that agreement. Access to the property is a valid planning consideration and has been addressed as condition # 16 of Development Permit 29/20 that requires Appellant to maintain the legal access to the subject property as per the registered Easement.

The Subdivision and Development Appeal Board (the “Board”) **DENIES** the appeal of Development Permit 30/20 and the decision of the Development Authority (as amended by the Board) is upheld. The Board’s reasons are outlined below:

1. The Appellant has not provided sufficient evidence to satisfy the Board that the development permit will unduly interfere with or affect the use, enjoyment or value of the Appellant’s property.
2. The Board makes no findings regarding the validity of the access easement agreement, however for the purposes of this appeal accepts that the Applicant has access pursuant to that agreement. Access to the property is a valid planning consideration and has been addressed as condition # 16 of Development Permit 29/20 that requires Appellant to maintain the legal access to the subject property as per the registered Easement.
3. The Appellant raised the issue of four dwelling units being on the subject property, being: two Recreation Vehicles (RV) sites; an old homestead cabin; and a factory-built dwelling. It is the Board’s understanding that the original application for Development Permit 30/20 did include two RV’s for residential use. The Notice of Decision issued on November 8, 2020, notes that only a Portion of Development Application 30/20 will be approved. According to condition #2 of the development permit, a separate refusal decision will be issued for part of the application refused (the two RV residences). The old cabin is identified as uninhabitable and used for storage. The existing factory-built dwelling was temporarily approved in condition 1 of the development permit until January 2, 2025, at which time it is to be replaced by a new single detached dwelling. The Board is satisfied that there is only one (1) approved residence on the subject property.

II. Background

The appeal before the Subdivision and Development Appeal Board (SDAB) was submitted by Keith Wilson of Wilson Law Office, representing R6 Ranch, Fiona Mactaggart the landowner (the “Appellant”) appealing the Approving Authority’s (Municipal Planning Commission) decision to approve Development Permits 29/20 and 30/20.

On November 8, 2020, the Development Authority issued a Notice of Decision for Development Permit 29/20 for an Extensive Agriculture Operation (to keep horses) and approval of existing Accessory

Buildings for the agricultural use, all on a portion of NW, Section 26 (LSD), Township 24, Range 8, West of the 5th Meridian (the “subject property”).

On November 8, 2020, the Development Authority issued a Notice of Decision on part of Development Permit Application 30/20 for a Factory-Built Dwelling with a front yard setback variance of Existing Accessory Structures for some of those existing structures all located a portion of NW, Section 26 (LSD), Township 24, Range 8, West of the 5th Meridian (the “subject property”).

Both development permits apply to the subject property that is located in the Rafter Six Tourist and Recreation District (RSTR).

The appeal of Development Permits 29/20 and 30/20 are being made by the Appellant who is the adjacent landowner. The Subdivision and Development Appeal Board (the “Board”) heard the Appellant’s two appeals in one hearing.

The hearing by the Board was held on January 6, 2021, at the M.D. Administration building in the Hamlet of Exshaw; the Appellant was present at the hearing. The Board heard from Keith Wilson, legal counsel for Rafter 6 Ranch, representing the Appellant and Development Officer Janice Thompson on the Notices of Decision for Development Permit Applications 29/20 and 30/20. Several documents were submitted to the Board, including:

- Copy of the Notice of Decision Development Permit Applications 29/20 and 30/20 issued on November 19, 2020;
- Copy of the letter of appeal, with attachments, from the Appellant received December 17, 2020;
- Copy of R6 Ranch Submission to the Municipal Planning Commission dated October 19, 2020, regarding Development Permit applications 29/20 and 30/20;
- Copy of PTA 200036 and Copy of PTA 200037 – Rustic Camping Area
- Copy of Conceptual Site Plan of the Subject Property;
- Copy of Title to the Subject Property; and
- Photographs of Structures on the Subject Property.

Issues Raised

The Board and Appellant discussed the following reasons for the appeal of Development Permits 29/20 and 30/20:

- Mr. Wilson said the Cowley’s are using the 3-acre parcel for commercial use, which they are not allowed to under the terms of the easement agreement on title.
- Mr. Wilson stated it is their belief that there are four residences on the site and referred to two RV sites, the original log cabin, and the second dwelling (Factory-Built) that are shown on the Conceptual Site Plan submitted in the Development Permit applications for 29/20 and 30/20.

- L. Hogarth asked if the Cowley's are transporting the horses through the R6 land over to the trail riding facility. Mr. Wilson said there was photographic evidence showing horses being trailed from the 3-acre parcel through the Ranch and to temporary corrals used for a trail riding operation.
- L. Hogarth asked if the access road agreement that was set up originally was grandfathered into that property. Mr. Wilson said the easement is permanent and runs with the land, and that it is a binding restriction on the Cowley's use of the 3-acres and to have access through the R6 property.
- L. Hogarth asked the Development Officer about the first permit outlining the number of horses for personal use. The Development Officer said the Extensive Agriculture Permit allows two horses to be kept on the property for personal purposes only. She said that permit outlines specifically that there can be no commercial activities with those horses conducted on the land.
- L. Hogarth asked if, under the Land Use Bylaw, if they were keeping horses there to rest from the trail riding operations, is that allowable under the permit. The Development Officer said no.
- E. Butters asked about the 2 RV sites and if the MPC allowed them. The Development Officer replied no, and stated the application did include 2 RVs to be used for family purposes, but those uses were denied and a Notice of Refusal was sent to the landowners explaining that they cannot have 2 RV temporary residences.
- E. Butters asked for clarification from the Development Officer that the RVs were not ordered off the property, but they must be conforming with the 14 days out of 90. The Development Officer said he was correct, the RVs could be stored there and if they wanted the RVs to be utilized, they would be allowed 14 days out of a 3-month period.
- E. Butters asked about buildings that would be considered accessory to those 2 RV sites. The Development Officer said those are not included as part of the RVs, they were considered as Accessory Buildings in Development Permit 29/20 and 30/20.

III In Opposition

The Board heard from the adjacent landowner (Gloria Cowley and Kateri Cowley).

- K. Cowley stated the MPC had a 2-hour in-camera session to discuss their applications and the situation with the neighbours, and RV uses. K. Cowley said the RV uses were limited to 14 day over a 3-month period, and they agreed to that.
- K. Cowley said they are not running any commercial business on their property and it seems the easement is an issue. She said the commercial operations are all held on their leases on the other side of Mactaggart's property. She said it is not at their 3-acre parcel.

- She said there was one time, where she had brought the horses up through the property only because there was a massive wasp nest that was blocking the trail and she had to backtrack. She said she does not believe that was to be disruptive to Appellant's property, it was just simply caught on camera.

IV Reasons for Decision / Findings of Fact

The Board's reasons to DENY the Appellant's appeal of Development Permit 29/20 are outlined below:

1. The Appellant has not provided sufficient evidence to satisfy the Board that the development permit will unduly interfere with or affect the use, enjoyment or value of the Appellant's property. The Board acknowledges the Appellant's arguments and evidence concerning the Appellant's use of the Appellant's property, and the arguments respecting the use of the road that accesses the subject site. However, the Appellant has not satisfied the Board that the proposed development as described in Development Permit 29/20 (including the associated non-conforming buildings or those for which a development permit is not required) will have a material impact on the Appellant's property or activities.
2. The Board makes no findings regarding the validity of the access easement agreement, however for the purposes of this appeal accepts that the Applicant has access pursuant to that agreement. Access to the property is a valid planning consideration and has been addressed as condition # 16 of Development Permit 29/20 that requires Appellant to maintain the legal access to the subject property as per the registered Easement.

The Board's reasons to DENY the Appellant's appeal of Development Permit 30/20 are outlined below:

1. The Appellant has not provided sufficient evidence to satisfy the Board that the development permit will unduly interfere with or affect the use, enjoyment or value of the Appellant's property. The Board acknowledges the Appellant's arguments and evidence concerning the Appellant's use of the Appellant's property, and the arguments respecting the use of the road that accesses the subject site. However, the Appellant has not satisfied the Board that the proposed development as described in Development Permit 30/20 (including any associated non-conforming buildings or those for which a development permit is not required) will have a material impact on the Appellant's property or activities.
2. The Board makes no findings regarding the validity of the access easement agreement, however for the purposes of this appeal accepts that the Applicant has access pursuant to that agreement.

Access to the property is a valid planning consideration and has been addressed as condition # 16 of Development Permit 29/20 that requires Appellant to maintain the legal access to the subject property as per the registered Easement.

3. The Appellant raised the issue of four dwelling units being on the subject property, being: two Recreation Vehicles (RV) sites; an old homestead cabin; and a factory-built dwelling. It is the Board's understanding that the original application for Development Permit 30/20 did include two RV's for residential use. The Notice of Decision issued on November 8, 2020, notes that a Portion of Development Application 30/20 be approved. According to condition #2 of the development permit, a separate refusal decision will be issued for part of the application refused (the two RV residences). The old cabin is identified as uninhabitable and used for storage. The existing factory-built dwelling was temporarily approved in condition 1 of the development permit until January 2, 2025, at which time it is to be replaced by a new single detached dwelling. The Board is satisfied only one (1) approved residence on the subject property.
4. The Appellant raised the issue of two (2) Recreation Vehicle (RV) sites on the subject property. Under Section 3.16. Recreation Vehicles, of Land Use Bylaw, 3.16.1. states: "Temporary occupancy of a Recreation Vehicle shall not exceed a total of fourteen (14) days within a 3-month period". The Board is satisfied the two RV sites on the subject property are restricted in their use under the noted regulations in the Land Use Bylaw. The Appellant has not put forward evidence sufficient to satisfy that such limited use is incompatible with the Appellant's use of the Appellant's land or would negatively impact the Appellant. The Board acknowledges the Appellant's argument that enforcement could be problematic, but the Board is not satisfied that the potential for an activity outside of this permit is a sufficient reason to deny this permit.

January 26, 2021

DATE

M. D. Apedaile

CHAIRMAN,

SUBDIVISION/DEVELOPMENT APPEAL BOARD

A decision of the Subdivision/Development Appeal Board is final and binding on all parties and persons subject only to an appeal upon, or questions of jurisdiction or law pursuant to, Section 688 of The Municipal Government Act, RSA 2000, as amended. An application for leave to appeal to the Appellate Division of the Court of Alberta shall be made to a judge of the Appellate Division within THIRTY (30) days after the issue of the order, decision, permit or approval sought to be appealed.