



Municipal District of Bighorn No. 8

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DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

Hearing: 7 Jan 16

Development Permit 65/15, K. Wick

Block 2 Plan 8111934, within NE Sec 1-25-6-W5M (the subject property)

Livingstone Creek Ranch Ltd. (Appellants)

I. Decision

For the reasons outlined below, the Board upholds the 26 November 15 decision of the Municipal Planning Commission (“MPC”) to issue a Development Permit to K. Wick, owner of the subject property, for an addition to the existing accessory building on site, and for a major home-based business, on the subject property; the appeal of Livingstone Creek Ranch Ltd., received 10 Dec 15, is denied.

In upholding the decision of the MPC, the Board notes that the major home-based business permit approval is for a one year period, pursuant to Section 4.3.4 of the M.D. of Bighorn Land Use Bylaw 04/10, which will give an opportunity for all parties to monitor compliance with the Development Permit and Land Use Bylaw requirements.

II. Background

The Subdivision and Development Appeal Board (the “Board”) heard an appeal from Livingstone Creek Ranch Ltd. (the Appellants), with respect to the MPC’s 26 Nov 15 approval of Development Permit 65/15, for an addition to an existing accessory building on the subject property, and to also issue a major home based business permit on the same property. The Appellants, represented by Mike and Brent Goodwin, have property in close proximity to the subject property, and noted concerns with the nature of the proposed major home-based business and the outdoor storage facility also located thereon.

The subject property is located within the Agriculture Conservation district (“AC”). Part 3 Section 8 of the Land Use Bylaw indicates that, within the AC district, accessory buildings are a Permitted Use, while major home-based businesses are a Discretionary Use.

The appeal hearing by the Board was held on January 7th, 2016, at the M.D. Administration building in the Hamlet of Exshaw. The Appellants were present at the hearing; the applicant for the Development Permit and owner of the subject property, Kevin Wick, was also present; there were three other attendees in the gallery. The Board heard from the Appellants; and the applicant the Board also heard from the Development Officer, one member of the gallery (Mary Madore) and received a number of written submissions from residents and owners of property in the vicinity of the subject property. Documents were submitted and provided to the Board, as follows:

- Board Secretary’s Case Outline/Overview;
- copy of the 26 Nov 15 Notice of (MPC) Decision on Development Permit 65/15;

- copy of the appeal letter from the Appellants, received 10 Dec 15;
- copy of a map showing the location of the Subject Property;
- copy of the Development Permit application, dated 24 July 15;
- copy of the Supplementary Information, Application for a Home-Based Business;
- copy of site plans showing structures, layout, waterbodies and other fixtures locations;
- photos of the accessory building and various trailers on the subject property;
- copy of Certificate of Title for the subject property;
- copy of the Alberta Energy Regulator map showing abandoned wells in the vicinity of the subject property;
- copies of Part 3 Section 8 (Agricultural Conservation district), and Part 2 Section 4 (Regulations for Specific Uses – Home Based Businesses) of the Land Use Bylaw;
- submissions indicating support for the Appellant/appeal:

- D. Anderson
- J. Clarkson
- P. & T. Einarsson
- M. Madore

- M. Munro
- R. Rothwell
- R. Ward

M. Madore also addressed the Board, regarding her concerns and her submission.

There were no submissions received in support of the applicant.

The aforementioned documents are attached as Exhibits to the minutes of the hearing.

Issues Raised

The following issues were noted as being before the Board:

1. The outdoor storage of the numerous trailers on the subject property;
2. The possible past and ongoing use of the subject property for a campground;
3. Noise coming from the subject property, arising from use as a campground;
4. Whether the applicant meets the residency requirements for a home-based business;
5. Visibility and aesthetics related to the property (location of the trailers, with respect to adjacent properties' sightlines);
6. Abandoned wells and active pipelines that may be on the subject property;
7. Impact of the home-based business/activities on the waterbodies on the subject property

1. Outdoor storage of the numerous trailers on the property

The Appellants and others raised the concern that the numerous trailers on site were being stored for a Calgary-based pawn shop, owned by the subject property's owner (the applicant, K. Wicks). It was the Appellant's feeling that this type of operation did not fit within the neighbourhood: these trailers were constantly "coming and going".

The applicant advised that the cargo trailers were used by his business to carry merchandise back to the pawn shop, and were not items being sold or offered for sale; he has owned some of them for 8-

9 years. He indicated that there was no retail activity occurring on the subject property, and he has declined offers to buy the trailers; he is the only one who takes the trailers on and off the subject property. The applicant distributed photos of the current trailer on site, indicating that he might have 8 cargo trailers maximum on site at any one time; there wouldn't be more than that on any frequent basis.

The Board accepted the applicant's statements regarding the ownership of and the number of trailers on site.

2. Campground

The Board heard that the M.D.'s Bylaw Enforcement had originally received a complaint regarding the use of the subject property for a campground: the complaints/comments received indicated that "every weekend and through the peak season", there may be 10-15 people camping on the subject property. The applicant indicated that he does not have commercial camping on site; friends who may be passing through may camp occasionally on the odd weekend, possibly his daughter once in a while and a niece's 30th birthday party were all that has occurred.

The Board accepted the applicant's statement that the subject property was not being used as a commercial campground.

3. Noise

The Board heard that noise was an issue coming from the subject property, and particular times were noted by the complainants. The applicant indicated he could prove he was not in the country at the time the complaint was received; his parents were on site at the time, but that they "were not that type of people", and there was no one else on site. The applicant otherwise noted that he does own quads and ski-doo's, and uses these on the subject property.

The Board accepted that noise was not a problem on the subject property.

4. Residency

The Board heard, and received submissions indicating, that the applicant did not meet the residency requirement for a home-based business. The submissions included a copy of a Certificate of Title for a City of Chestermere property showing the applicant as a Joint Tenant of the property, a picture of the home on that property, a copy of the City of Chestermere phone directory showing the applicant's Chestermere home phone number, and social media (FaceBook) site communications around the Chestermere home and camping on the subject property.

The applicant indicated that he is on the subject property more during the week than he is at the Chestermere home: he leaves the subject property on Monday morning, and returns Thursday night. He indicated this means he spends four nights at the subject property, and three at Chestermere.

The Board accepted that the applicant met the residency requirement for a home-based business.

5. Visibility and Aesthetics

The Board heard concerns regarding the visibility of the operations of the home-based business: the Appellants noted that, being kitty-corner to the subject property, they can see right into certain parts of same; another submission indicated lighting is also visible through the trees.

The applicant provided photos showing how parts of the subject property (where trailer storage will take place) are bermed and treed; he further noted that the lighting was pre-existing, and that he has installed lower wattage fixtures and bulbs, to lessen the light intensity.

The Board accepted that visibility and aesthetics were satisfactory.

6. Abandoned wells/pipelines

The Board heard concerns with respect to abandoned wells and pipelines, but noting that the structures were pre-existing (with the exception of the addition to the accessory building, which is constructed between the accessory building and an existing dwelling unit), did not consider the wells/pipelines issue in its deliberations.

7. Waterbodies

The Board received concerns, in the submissions, with respect to the impact of the home-based business/trailer storage/other on-site activities on the waterbodies found on the subject property; given that human activity on the waterbodies would take place regardless of whether a home-based business was operating on the subject property or not, did not consider the waterbodies issue in its deliberations.

III Reasons for Decision

The reasons for the Board's decision to uphold the MPC decision are as follows:

- the Board believes that the applicant, having heard the comments and received the submissions, will operate the business in a fashion that allows the neighbouring property owners to have the peaceful enjoyment of their own properties.
- the Appellants, in their rebuttal comments near the end of the hearing, generally indicated that, if the applicant had come out and spoken with all of the adjacent property owners, a better understanding of the applicant's intentions might have been available.

IV Findings of Fact

The findings of fact are:

- The proposed development and home-based business conforms with the Land Use Bylaw requirements prescribed for the subject property and buildings thereon.

As indicated earlier in this Decision, the Board notes that, in issuing a home-based business permit

to the applicant, the permit will be valid for a one year period, after which the applicant can re-apply for a longer (three year) permit. In the initial one year period, all parties will have the opportunity to observe and monitor compliance with the permit requirements, in preparation for a three year home based business permit renewal application, should one be submitted.

January 11th, 2016
DATE



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, SA 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.