



Appeal no.: SDAB-030-23
Hearing date: January 29, 2024

INTERMUNICIPAL SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

BETWEEN:

Bill Yaceyko

(Appellant)

and

Damien and Keane Binnie-Brown

(Proponent/Respondent)

and

SMOKY LAKE COUNTY

Represented by Jordan Ruegg, Development Officer

(Development Authority)

ISDAB REPRESENTATIVES:

Chairperson: Margaret Allan Newell

Panel Member: Christine Hansen

Panel Member: Gary Henry

Clerk: Kyle Schole

DECISION

The Smoky Lake Intermunicipal Development and Appeal Board (ISDAB; the Board) **VARIES** the decision of the Development Authority and **UPHOLDS** the approved Development Permit No. 030-23 on the lands legally described as Plan 1324097, Block 1, Lot 1 (± 9.46 acres within NW-36-58-13-W4M) subject to amended conditions. The appeal is **DENIED** and the development of an Animal Breeding and/or Boarding Facility and Accessory Buildings (i.e., dog kennel, greenhouse, shed, coop & detached garage) is **APPROVED** subject to the following amended conditions (with amendments indicated in italics):

1. *The Proponent shall re-submit revised site plans within 60 days of the date of this decision to the satisfaction of the Development Officer, and the proposed development*



shall be sited and constructed as per said site plan, which will be attached to, and form part of, the Development Permit. All structures shall conform to the following setbacks:

- Minimum front yard setback (from property line adjacent to RGE RD 131): 23.1 m (75.7 feet)
 - Minimum rear yard setback (from easternmost property line): 18.3 m (60.0 feet).
 - Minimum side yard setback (from northernmost property line): 18.3 m (60.0 feet).
 - Minimum side yard setback (from southernmost property line): 18.3 m (60.0 feet).
2. The maximum number of dogs (excluding pups less than six months of age) permitted in the Animal Breeding and/or Boarding Facility shall not exceed *twenty (20)*.
 3. Each exercise area (run) shall be a minimum of *4.6 m² (50.0 square feet)* in area.
 4. All exterior areas (runs) shall be enclosed with an acceptable fence with a minimum height of 1.8 m (6.0 feet).
 5. All dogs shall be kept within buildings or fenced areas at all times when not leashed.
 6. All dog facilities shall be cleaned on a daily basis, and all feces shall be stored in an enclosed container and disposed of in a sanitary manner.
 7. Pens, rooms, exercise areas (runs) and holding stalls shall be soundproofed wherever possible, to the satisfaction of the Development Authority.
 8. A separate air extractor system shall be provided in the animal shelter or holding area where heating and air conditioning are necessary.
 9. All Animal Breeding and/or Boarding Facilities and operations shall be in compliance with Provincial Regulations.
 10. All Accessory Buildings (greenhouse, shed, coop & detached garage) shall not be located within 2.0 m (6.5 feet) of a residence.
 11. All Accessory Buildings shall not encroach upon any easement or right-of-way.
 12. The cumulative total site area of all Accessory Buildings shall not exceed 12% of the total site area.
 13. No Accessory Building shall be used as a dwelling unless it is an approved Guest House, Garage Suite or Garden Suite.



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14. *Said development shall be commenced within 1 year of the date of this Decision and completed within 2 years of the date of this Decision, to the satisfaction of the Development Authority.*

15. *The Proponent shall obtain any necessary Safety Codes permits (such as Building, Plumbing, Electric, Gas, and/or Private Septic) prior to the commencement of business.*

Details of the Decision are provided herein.

JURISDICTION AND ROLE OF THE BOARD

1. The Board is governed by the *Municipal Government Act*, R.S.A. 2000, c. M-26 as amended (the MGA). Planning and Development are addressed in Part 17 of the MGA, and also in the Subdivision and Development Regulation, Alberta Regulation 43/2002 as amended.
2. The Board is established by Smoky Lake County Bylaw No. 1447-23, the *Intermunicipal Subdivision and Development Appeal Board Bylaw* (June 29, 2023). The duty and purpose of the Board is to hear and make decisions on subdivision and development appeals within the municipal boundaries of Smoky Lake County, the Town of Smoky Lake, the Village of Waskatenau, and the Village of Vilna.
3. None of the Hearing parties had any objection to the constitution of the Board.
4. There were no conflicts identified by the Board Members.

PRELIMINARY MATTERS

5. The Appeal commenced on January 29, 2024 in a hybrid format: it was held in-person in Smoky Lake County Council Chambers and online via the Telus Business Meeting platform. The Hearing was recorded.
6. The Chairperson called the Hearing to order at 5:30 PM on January 29, 2024. However, before the agenda could be adopted, the Appellant requested consideration of additional time to review the Hearing package, which he had not seen ahead of time. Clerk Schole confirmed that the package was made available online on January 25, 2024 and that this had been communicated to the Appellant by telephone. The Board briefly moved into closed session to deliberate the matter and returned to declare a recess of one week.
7. On January 30, 2024, Clerk Schole published a Notice of Hearing Continuation. The Hearing reconvened on February 5, 2024 at 5:30 PM and closed at 8:03 PM.



8. Prior to the room being cleared, the Chairperson provided commentary on the process and next steps. She noted that, in accordance with legislation, the Board would deliberate in closed session, and that a written Decision would be handed down within 15 days of the close of the Hearing.

BACKGROUND

9. A Development Permit Application was submitted by Mr. Damien and Mrs. Keane Binnie-Brown (together, the Proponent/Respondent) for an Animal Breeding and/or Boarding Facility (i.e., dog kennel), and Accessory Buildings (i.e., greenhouse, shed, coop & detached garage) on Lands located within Smoky Lake County, approximately 1.5 km south of Cache Lake and legally described as Plan 1324097, Block 1, Lot 1 (PT. NW-36-58-13-W4M, containing ± 9.46 acres).
10. The Development Authority received the Application (DP-030-23) on November 23, 2023 and issued Approval on December 14, 2023.
11. The zoning of the property is Agriculture General (AG) District, under Smoky Lake County Land Use Bylaw #1272-14. Within the Agriculture District, "Animal Breeding and/or Boarding Facility" is a Discretionary Use under Section 8.2.3 of the Land Use Bylaw.
12. A Notice of Appeal, dated January 4, 2024, was received from the Appellant, Mr. Bill Yaceyko, who **opposes** the decision of the Development Authority.
13. The following documents were received **prior to** the noon January 24, 2023 written submission deadline published in the Notice of Hearing. These documents were included in the Hearing package and form part of the Hearing record:
 - a. The Proponents' Application DP-030-23, including proposed plans;
 - b. The Development Authority's approved Development Permit;
 - c. The Development Officer's written submission and attachments;
 - d. The Appellant's written Notice of Appeal; and
 - e. The Proponent/Respondent's written submissions.
14. Some documents were received **after** the noon January 24, 2023 written submission deadline. Consideration of late submissions is at the discretion of the Board. Clerk Schole read into the record the following late submissions:
 - a. An email letter dated January 24, 2024, from Mrs. Mandy Yaceyko (daughter of the appellant), who **opposes** the decision of the Development Authority.



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- b. An email letter dated January 29, 2024, from Mr. Marvin Pelech and Mrs. Cathy Jamieson, who together own the subject site, and **support** the decision of the Development Authority.
 - c. An email letter dated February 2, 2024, from the Proponent Mrs. Keane Binnie-Brown, who **supports** the decision of the Development Authority.
 - d. Clerk Schole also indicated that he was in receipt of anonymous submissions (letter; newspaper article) that did not follow submission requirements and would not be read into the record.
15. The Appellant stated in his oral presentation that he had a petition including signatures of neighbours who also opposed the development. He declined to submit the petition or read it into the record because of confidentiality surrounding some of the names on the petition. The Board cannot consider documents that do not follow submission requirements or are not made available.

SUMMARY OF EVIDENCE AND ARGUMENT

The Development Authority

16. The Development Officer stated that the proposed Animal Breeding and/or Boarding Facility and associated Accessory Buildings comply with the requirements established by Section 2.4, Section 7.19 and Section 8.2 of Smoky Lake County Land Use Bylaw #1272-14, and further noted that proposed conditions are reasonable and address issues pertaining to animal health and safety, cleanliness, waste and other related issues.
17. The Development Officer noted that "Animal Breeding and/or Boarding Facility" (i.e., dog kennel) is listed as a Discretionary Use within the Agriculture General (AG) District under the County's Land Use Bylaw. Section 1.7, clause 13 of the Land Use Bylaw describes an "Animal Breeding and/or Boarding Facility" as "an establishment for the keeping, breeding, housing, exercising, training, and/or raising of 3 or more animals that are not livestock for profit or gain, but shall not apply to the keeping of animals in a veterinary clinic for the purpose of observation and/or recovery necessary to veterinary treatment."
18. The Development Officer considered the "Accessory Buildings" (i.e., greenhouse, shed, coop & detached garage) to be minor, supporting the proposed primary operation on the site, and consistent with Permitted Uses within the Agriculture General (AG) District.
19. Development Application No. 060-23 was considered by the Municipal Planning Commission on December 14, 2023 and approved, subject to conditions. The conditions were as follows:



- 1) The proposed Development shall be sited and constructed as per the Site Plan, dated November 16, 2023, attached to, and forming part of, this Development Permit. All structures shall conform to the following setbacks:
 - Minimum Front Yard Setback (from property line adjacent to RGE RD 131): 23.1 m (75.7 feet)
 - Minimum Rear Yard Setback (from easternmost property line): 18.3 m (60.0 feet).
 - Minimum Side Yard Setback (from northernmost property line): 18.3 m (60.0 feet).
 - Minimum Side Yard Setback (from southernmost property line) 18.3 m (60.0 feet).
- 2) The maximum number of dogs (excluding pups less than six months of age) permitted in the Animal Breeding and/or Boarding Facility shall not exceed thirty (30).
- 3) Each exercise area (run) shall be a minimum of 2.3 m²(25.0 square feet) in area.
- 4) All exterior areas (runs) shall be enclosed with an acceptable fence with a minimum height of 1.8 m (6.0 feet).
- 5) All dogs shall be kept within buildings or a fenced area at all times when not leashed.
- 6) All dog facilities shall be cleaned on a daily basis, and all feces shall be stored in an enclosed container and disposed [sic] of in a sanitary manner.
- 7) Pens, rooms, exercise areas (runs) and holding stalls shall be soundproofed wherever possible, to the satisfaction of the Development Authority.
- 8) A separate air extractor system shall be provided in the animal shelter or holding area where hearing [sic] and air conditioning are necessary.
- 9) All Animal Breeding and/or Boarding Facilities and operations shall be in compliance with Provincial regulations.
- 10) All Accessory Buildings (Greenhouse, Shed, Coop & Detached Garage) shall not be located within 2.0 m (6.5 feet) of a residence.
- 11) All Accessory Buildings shall not encroach upon any easement or right-of-way.



- 12) The cumulative total site area of all Accessory Buildings shall not exceed 12% of the total site area.
- 13) No Accessory Building shall be used as a dwelling unless it is an approved Guest House, Garage Suite or Garden Suite.

The Appellant

20. The Appellant, Mr. Bill Yaceyko of SW-36-58-13-W4M, and his daughter, Ms. Mandy Yaceyko (place of residence not disclosed), both oppose the approval of the Development Authority. In addition to their written and oral submissions, the Board also heard from Mrs. Yaceyko, who orally shared views aligned with those of her husband and daughter.

21. Collectively, the stated reasons for opposition include:

- a. Concerns around the Development Authority process, and not having been notified of the permit application prior to approval at the Municipal Planning Commission;
- b. Desire to have the file referred to Saddle Lake First Nation for comment;
- c. Concern dogs escaping and potentially causing offsite impacts for people/cattle;
- d. Concern about feces management;
- e. Concern about the proponent's wellness and income sources;
- f. Concern about offsite impacts to neighboring seniors' peaceful use and enjoyment of adjacent lands;
- g. Potential impacts on adjacent agricultural operations;
- h. Ecological integrity including wildlife and potential wetlands;
- i. Questions of jurisdiction and enforcement;
- j. Noise trespass;
- k. Concerns with the specific breed(s) of dogs being reared;
- l. Traffic impacts including dust control and damage to the roads;
- m. Potential stormwater/sewage impacts;
- n. Potential offsite traffic impacts;
- o. Sightliness and viewscales;
- p. Possible effects on crime trends and/or poaching;
- q. Demographics of the users of the proposed development.



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The Proponent/Respondent

22. The Board received written and oral submissions from the Applicant, Mr. Damien and Mrs. Keane Binnie-Brown, both of 58553 Range Road 131. Together, they are the Proponent/Respondent. Their written and oral submissions voiced support of the approval by the Development Authority.
23. The Board received oral submissions from Mr. Marvin Pelech of 58149 Highway 849, who owns the subject site and supports the approval of the Development Authority.
24. The Board received oral submissions from Ms. Rose Waspinski of SE-29-57-13 W4M, who supports the approval of the Development Authority.
25. The Board received oral submissions from Mr. Justin Davis of 58335 Range Road 134, who supports the approval of the Development Authority.
26. The Board received oral submissions from Mr. Nevada Smith of 14831 104 Street, Gilford, British Columbia, who supports the approval of the Development Authority.

FINDINGS AND REASONS

Introduction

27. The Board wishes to acknowledge the submissions of all parties. The Board is sympathetic to the concerns voiced on both sides of the Appeal but quite simply has no authority to consider many of the concerns raised. This is a Subdivision and Development Appeal Board, which is a quasi-judicial and unelected Board tasked to objectively consider a development application and, within the legislative framework in place, render a decision on whether to allow a development from a planning perspective.
28. The Board's powers and instructions for hearing development appeals are legislated under the Municipal Government Act (MGA).
29. Section 687(3)(d)(ii) of the MGA compels the Board to first consider whether the proposed development conforms with acceptable **land use** as set forth in the land use bylaw.
30. Only if the Board is satisfied that the Use is either a Permitted Use or a reasonably compatible Discretionary Use can the Board proceed to assess the proposed development's conformance with **other planning requirements**, such as regulations of the Bylaw and/or applicable Statutory Plans.



31. After land use and planning matters are addressed, the Board can consider whether the proposed development would unduly interfere with the amenities of the neighbourhood, or materially interfere with neighbouring parcels of land, as outlined in section 687(3)(d)(i) of the MGA dealing with **potential for negative impacts**.

32. This is the roadmap that the Board followed.

Land Use

33. All applications before the Board must comply with the use prescribed for the property. In this case, the Lands are within Smoky Lake County's Agriculture General (AG) District, designated for "a range of activities associated with working landscapes including agricultural uses and resource extraction uses that support the rural economy, rural lifestyle and discourage the fragmentation of the County's land base" (Land Use Bylaw #1272-14, section 8.2, clause 1).

34. The proposed "Accessory Buildings" (i.e., greenhouse, shed, coop & detached garage) are supportive of agricultural uses and/or other uses that support the rural economy. Such "Buildings and Uses Accessory to Permitted Uses" **are permitted** under section 8.2, clause 2E of the Land Use Bylaw.

35. "Animal Breeding and/or Boarding Facility" is listed as a Discretionary Use under section 8.2, clause 3A of Land Use Bylaw #1272-14. A development permit for a Discretionary Use may be obtained but is not a right. The Board applied its test of reasonable compatibility and concluded that the proposed Discretionary Use (i.e., dog kennel) **is compatible**. In this determination, the Board considered:

- a. Relevant Smoky Lake County policies and bylaws;
- b. Relevant Provincial legislation and regulations;
- c. Relevant evidence submitted by affected parties.
- d. Potential impacts on adjacent agricultural operations;
- e. Potential impacts on environmental integrity, including stormwater;
- f. Potential of-site traffic impacts;
- g. Potential impacts of dust, odor, and noise;
- h. Sightliness and viewscales.



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36. In determining this Appeal, the Board did not consider the following, as they are explicitly considered irrelevant planning matters, and may or may not be contemplated by other authorities, agencies, processes, and/or legislation:

- a. Claims that proper process was not followed in the lead-up to hearing of the Appeal, or the process of approval granted by the Municipal Planning Commission (the Board felt comfortable and confident that proper procedure had been adhered to);
- b. A desire for referral to Saddle Lake First Nation, which is not contiguous with the Lands of the proposed development and is outside the established jurisdictional process;
- c. Planning practices or procedures in other jurisdictions such as the Village of Halkirk;
- d. Regulating the specific breed(s) of dogs being bred;
- e. Demographics of the possible users of the proposed development, or potential for users trespassing on adjacent lands;
- f. Possible effects of the proposed development on crime trends;
- g. The status or responsibility or proper jurisdiction of any enforcement action, as those matters are simply not the subject of this Appeal;
- h. Any prior rental or rent-to-own arrangements that may or may not have been in place or underway, or terminated, especially as the existing landowner has endorsed the development application;
- i. Correspondence from any party that was not properly entered into evidence during the Hearing; any materials that were not read into the record or submitted to the Clerk after the closing of the deadline provided for within the Notice of Hearing; and irrelevant evidence or evidence submitted by those deemed not to be affected parties;
- j. Potential for issues to arise that that would be civil in nature.

Other Planning Requirements

37. The Proponent/Respondent declared plans to breed Olde English Bulldogges. The Appellant voiced concern that the size of exercise areas stipulated in the Development Authority's approved Development Permit was too small for this breed. Section 7.19, clause 9 of Land Use Bylaw #1272-14 regulates the size of exercise areas based on breed weight. It is specified that "An exercise area shall be provided for each dog as follows:

- a. breeds weighing 16 kg (35 lbs.) or less - at least 2.3 sq. m. (25.0 sq. ft.) per dog;
- b. breeds weighing more than 16 kg (35 lbs.) - at least 4.6 sq. m. (50.0 sq. ft.) per dog."



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38. The Proponent/Respondent acknowledged that an adult Olde English Bulldogge can be expected to exceed 16 kg (35 lb) and that being required to provide a larger exercise area would be reasonable.
39. The Board felt that it would be prudent to require in writing that the Proponents obtain any necessary Safety Codes permits (such as Building, Plumbing, Electric, Gas, and/or Private Septic) prior to the commencement of business.

Potential for Negative Impacts

40. Parties opposing the Development expressed concern about unsightliness nuisance during construction, particularly if the proposed development has a prolonged construction phase. The Board recognizes that establishing timelines for construction has the potential to limit nuisance concerns.
41. In the opinion of the Board, and in consideration of all the relevant evidence before it, approving a development with an intensity of not more than 20 dogs (as opposed to 30 dogs in the Development Authority's approved Development Permit) would be reasonable for lessening any impacts and compatible with the proposed development.

CLOSING

For these reasons, the appeal is **DENIED**, the decision of the Development Authority is **UPHELD**, with certain conditions being **VARIED**. The development is **APPROVED**.

DATED at Smoky Lake County in the Province of Alberta, this **19th day of February 2024**,

Margaret Allan Newell, Chairperson
Smoky Lake County Intermunicipal Subdivision and Development Appeal Board

*** END ***



Other Important Information for the Applicant/Appellant/Affected Parties

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26.
 - a. An application for leave to the appeal must be made to the Court of Appeal within thirty (30) days after the issue of this decision and notice of the application must be given to the Subdivision and Development Appeal Board and any other persons that the court directs.
 - b. If you are considering '*application for leave of appeal*' it may be prudent to engage a lawyer.
2. When a decision on a Development Permit application has been rendered by the Smoky Lake County Intermunicipal Subdivision and Development Appeal Board (ISDAB), the enforcement of that decision is conducted by Smoky Lake County Planning & Development Services, accessible at 4612 McDougall Drive, Smoky Lake, AB T0A 3C0, by telephone at 780-656-3730 or by email at pd@smokylakecounty.ab.ca.
3. In accordance with the Smoky Lake County Land Use Bylaw, as amended, this Decision does not restrict the ability of a proponent to reapply in the future for consideration of subsequent development permitting or phases of development.