
**SUBDIVISION AND DEVELOPMENT APPEAL BOARD OF
MOUNTAIN VIEW COUNTY**

DECISION

Hearing held at: Mountain View County Office
Council Chambers

Date of Hearing: September 4th 2018

Members Present: Greg Harris
Gil Hegel
Mark Olson

Basis of Appeal: This is an appeal from a Development Permit for Kennel Facility – 24 Dogs (The “**Development**”) on SW 26-29-5-W5M; Lot 14, Block 1, Plan 78141100 (The “**Lands**”) cancelled by Mountain View County on July 25th 2018. The Appellant stated the following as the Reason for Appeal, as well as other reasons contained within the Notice of Appeal and presented during the hearing:

- The Appellant moved to the Lands in October 1988 with 6 dogs. There were no known restrictions to limit the number of dogs at that time.
- In the late 1990’s, the Appellant attended at a Mountain View County meeting and requested permission to have 24 Siberian huskies on the premises where the request was “grandfathered-in” and no development permit was required.
- In July 2001, the Appellant was advised that a development permit was required for the kennels that were built for the dogs. The Appellant applied and was granted a permit.
- The Appellant has lived on the property, with dogs, for almost 30 years and it has only been in the last 3 years that there have been issues with certain neighbours.
- If the Appellant was forced to reduce the number of dogs to 3, it would negatively impact the quality of life that has been enjoyed for the last 30 years and the Appellant would suffer financial hardship.
- The appellant has reduced the risk of dogs escaping the premises by installing fencing and gates and has rehomed the dogs that were running at large.
- The Appellant is dealing with manure issues by purchasing 5 gallon containers and removing manure to a waste management facility as required.

Appellant: Allan Charles Pace
Landowner: Allan Charles Pace

Description of Application

On September 4th, 2018, the Subdivision and Development Appeal Board (the "**Board**") opened the appeal hearing for the appeal filed by the Appellant in regard to a Development Permit cancelled with respect to a Kennel Facility – 24 dogs (the "**Development**") on SW 26-29-5-W5M; Lot 14, Block 1, Plan 78141100 (the "**Lands**") pursuant to Section 686 of the *Municipal Government Act*, R.S.A. 2000 Chapter M-26, as amended. The Development Permit was cancelled by the Development Authority on July 25th, 2018 (the "**Development Permit**").

The Notice of Development Appeal was filed by the Appellant with the Board on August 10, 2018. (the "**Notice of Appeal**").

Findings of Fact:

1. The Lands are located at SW 26-29-5-W5M; Lot 14, Block 1, Plan 78141100
2. The Lands are 1.2 acres in size;
3. The Lands are zoned County Residential (1) District (R-CR);
4. The Development Permit was issued with conditions on July 18th 2001;
5. Condition h of the Development Permit states that "The dogs shall not be permitted to run free and will be confined in the kennel facility";
6. Condition I of the Development Permit states that "Disposal of animal manure shall be provided to the satisfaction of the Development Officer";
7. Municipal Government Act Section 640 (2)(c)(iii) states that a "land use bylaw must establish a method of making decisions on applications for development permits and issuing development permits for any development, including provision for processing an application for, or issuing, cancelling, suspending or refusing to issue, a development permit";
8. Land Use Bylaw 16/18 Section 7.3 (1)(e) states that "The Development Authority may cancel, suspend, or modify a Development Permit by written notice to the permit holder if, after a Development Permit has been approved and./or issued, the Approving Authority becomes aware that the condition(s) imposed in the Development Permit have not been complied with";
9. A Stop Order was issued on January 12th 2017 with six conditions and associated dates for compliance including the requirement for the Appellant to ensure that Dogs were not permitted to run at large and to provide a detailed Waste Management Plan in accordance with Provincial requirements to the Development Officer;
10. The Board accepts that the requirements of the Stop Order remain outstanding and as such, the Stop Order remains in effect for the Development;
11. The Board accepts the submissions from both the Respondent and Appellant that the Development has a repeated history of Dogs Running at Large and at times, that the Dogs were knowingly let to run at large by the Appellant;
12. The Board accepts the evidence from the Respondent and declaration by the Appellant that in 2017, the Appellant's Dogs Running at Large attacked a neighbors' pet pig and in 2018 the Appellant's Dogs Running at Large attacked and killed a neighbors' pet cat;
13. The Board accepts the submission from the Respondent and neighbouring landowners that a strong odour of manure exists due to the Development.

Decision:

The decision of the Subdivision and Development Appeal Board is to **deny the appeal** and **support** the decision of the Development Authority. The decision of the Board is to cancel the Development Permit DP 053-01 and require the Landowner to complete the following within thirty (30) days of the date of the issuance of the Notice of Decision:

1. Permanently remove all but three (3) dogs from the property.
2. Decommission and remove from the property all components of the kennel structure including chain link fences and gates, wooden frames, roofing materials, tarps and any other material, item or object associated with or a part of the kennel structure (property perimeter fencing may stay).
3. Ensure all animal manure has been contained, bagged and removed to a waste management facility.

Reasons for Decision:

1. The Board determined that the Development has a long history, even after repeated warnings and citations, of having Dogs Running at Large, in direct contravention of the Development Permit;
2. Although the Board accepts that the Appellant has attempted to mitigate the odor concerns of the property through the purchase of lids for the manure receptacles, the Board has determined that the Development has, and continues to have, large odor concerns due to the manure created by the Development, in direct contravention of the Development Permit;
3. The Board determined that the Respondent had issued the Stop Order correctly and granted adequate time for the Appellant to comply with the requirements of the Stop Order including the issuance of a time extension;
4. The Board determined that the Respondent has appropriate authority granted by the Municipal Government Act and Mountain View County Land Use Bylaw to cancel the Development Permit and has determined that an additional thirty (30) days is adequate to comply with the conditions of the cancellation.

Evidence:

The Board considered the following evidence in making its decision:

1. The Agenda and Notice of Appeal;
2. Report and verbal presentations to the Subdivision and Development Appeal Board including all attachments presented to the Board by the Appellant;
3. Report and verbal presentations to the Subdivision and Development Appeal Board including all attachments presented to the Board by the County's Planning and Development Department;
4. Report and Verbal presentations to the Subdivision and Development Appeal Board including all attachments presented to the Board by landowners in support of the Respondent;
5. **Municipal Government Act**, R.S.A. 2000, Chapter M-26;
6. Mountain View County Land Use Bylaw 16/18;

Appeals:

If you wish to appeal this decision, you must follow the procedure prescribed in Section 688 of the **Municipal Government Act** as follows:

Section 688(1)

An appeal lies to the Court of Appeal on a question of law or jurisdiction with respect to

- (a) a decision of the Subdivision and Development Appeal Board.

Section 688(2)

An application for permission to appeal must be filed and served within 30 days after the issue of the decision sought to be appealed, and notice of the application for permission to appeal must be given to

- (a) the Municipal Government Board or the Subdivision and Development Appeal Board, as the case may be; and
- (b) any other persons that the judge directs.

Section 688(3)

On hearing the application and the representations of those persons who are, in the opinion of the judge, affected by the application, the judge may grant permission to appeal if the judge is of the opinion that the appeal involves a question of law of sufficient importance to merit a further appeal and has a reasonable chance of success.

Section 688(4)

If a judge grants permission to appeal, the judge may:

- (a) direct which persons or other bodies must be named as respondents to the appeal,
- (b) specify the questions of law or the questions of jurisdiction to be appealed, and
- (c) make any order as to the costs of the application that the judge considers appropriate.

Section 688(5)

If an appeal is from a decision of a subdivision and development appeal board, the municipality must be given notice of the application for permission to appeal and the board and the municipality

- (a) Are respondents in the application and, if permission to appeal is granted, in the appeal, and
- (b) Are entitled to be represented by counsel at the application and, if permission to appeal is granted, at the appeal.

**SUBDIVISION AND DEVELOPMENT APPEAL
BOARD OF MOUNTAIN VIEW COUNTY**

Per: 
Chair

Date Signed: September 14, 2018