

**ROCKY VIEW COUNTY
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

Board Order No.: 2021-SDAB-003

File No.: 03223665; PRDP20210264

Appeal by: Condo Corp. 0711729 and Highway 560 Cannabis Inc. c/o Jennifer Sykes
Greg Thompson and Aleesha Gosling
Kevin Dellaire

Hearing Date: 2021 April 15

Decision Date: 2021 April 30

Board Members: Crystal Kissel, Chair
Tricia Fehr
Hazel George
Morrie M. Goetjen
Wendy Metzger

DEVELOPMENT APPEAL DECISION

INTRODUCTION

[1] This is three affected party appeals to the Rocky View County Subdivision and Development Appeal Board (the Board) from a decision of the Rocky View County Development Authority issued February 25, 2021.

[2] In this decision, the Development Authority approved a development permit application for a cannabis retail store (existing building), tenancy change, and signage at 708 Center Street NE (Lot Unit 3, Plan 0011878 within the NW-23-23-27-W04M) (the Lands).

[3] Upon notice being given these appeals were heard concurrently and electronically on April 15, 2021 in accordance with the *Meeting Procedures (COVID-19 Suppression) Regulation*, Alberta Regulation 50/2020.

DECISION

[4] The appeals are allowed and the Development Authority's February 25, 2021 decision on PRDP20210264 is overturned. Development permit application PRDP20210264 is refused.

BACKGROUND

[5] On January 7, 2021, Puneet Kaushik (the Applicant) submitted a development permit application for a cannabis retail store (existing building), tenancy change, and signage (the proposed development) on the Lands.

[6] The Lands are approximately 0.36 hectares (0.88 acres) in area and are owned by 2228776 Alberta Ltd. (the Owner).

[7] The Lands' are designated as Direct Control District (DC-2) and are regulated by Direct Control Bylaw C-4873-98.

[8] On February 25, 2021, the Development Authority issued a written conditional approval for the proposed development on the Lands.

[9] On March 19, 2021, Jennifer Sykes (the first Appellant) on behalf of Condo Corp. 0711729 and Highway 560 Cannabis Inc. filed an affected party appeal of the Development Authority's decision to conditionally approve the proposed development on the Lands.

[10] On March 22, 2021, Greg Thompson and Aleesha Gosling (the second Appellants) filed an affected party appeal of the Development Authority's decision to conditionally approve the proposed development on the Lands.

[11] On March 23, 2021, Kevin Dellaire (the third Appellant) filed an affected party appeal of the Development Authority's decision to conditionally approve the proposed development on the Lands.

[12] The appeals were received on time in accordance with section 686(1)(b) of the *Municipal Government Act* RSA 2000, c M-26 (MGA).

[13] A notice of hearing was circulated to the Appellants, Applicant, Development Authority, and adjacent landowners in accordance with the MGA and Rocky View County Council Policy C-327, *Circulation and Notification Standards*.

SUMMARY OF EVIDENCE

[14] The Board heard verbal submissions from:

- (1) Xin Deng, Senior Planner representing Rocky View County's Administration;
- (2) Jennifer Sykes, the first Appellant on behalf of Condo Corp. 0711729 and Highway 560 Cannabis Inc.;
- (3) Greg Thompson and Aleesha Gosling, the second Appellants;
- (4) Rick McDonald, on behalf the third Appellant Kevin Dellaire;
- (5) Robert (Bob) Wright, in support of the appeals; and
- (6) Puneet Kaushik, the Applicant in opposition of the appeals.

[15] The written documents submitted as exhibits and considered by the Board are listed in the exhibit list at the end of this decision.

Administration's submissions

[16] The development permit application is for a cannabis retail store within the hamlet of Langdon. The Lands are located within a commercial strip mall at the intersection of Centre Street and Highway 560. The strip mall serves as a gateway to the community.

[17] The Applicant proposes to change the existing business tenancy on the Lands to a cannabis retail store. The proposed development would be located in the middle of an existing gas station and convenience store to the west and a liquor store to the east.

[18] The proposed development would operate seven days a week from 11:00am to 9:00pm and would require three full-time and two part-time employees. The proposed development's front, where customers first enter, would be a large sales area with a safe room, offices, and washrooms in the back. Proposed exterior signage would read "NIRVANA CANNA".

[19] The development permit application was assessed by Administration in accordance with *Land Use Bylaw C-4148-97* (the *Land Use Bylaw*). Section 20.10 of the *Land Use Bylaw* requires cannabis retail stores to have the following minimum setback distances:

- (1) 300m from other cannabis retail stores; and
- (2) 150m from health care sites.

[20] The proposed development would be located about 140 metres away from a recently approved existing cannabis retail store and about 100 metres away from an existing dental clinic, which is considered a health care site under the *Land Use Bylaw*.

[21] The existing cannabis retail store was approved by Rocky View County's Municipal Planning Commission in September 2020 and the development permit was issued in October 2020. The owner indicated that it would be opened in March 2021.

[22] The approval of the existing cannabis retail store included relaxations of the minimum setback distances from the dental clinic. Administration recommended refusal of this development permit application for this reason and because it is close to a daycare facility located nearby, which is considered a school site under the *Land Use Bylaw*. The Municipal Planning Commission chose to approve the development permit application.

[23] There are other similar businesses in the same strip mall as the proposed development, including the existing cannabis retail store, a vape store, a smoke store, and a liquor store. Administration suggested that the Applicant should relocate the proposed development outside of the minimum setback distances and where it would serve a different area of customers.

[24] Administration believes this is not an appropriate location for the proposed development due to its location being within the minimum setback distances. Its approval would intensify similar uses and unnecessary competition in the area. Administration recommended refusal of the Applicant's development permit to the Municipal Planning Commission for these reasons.

[25] Despite Administration's recommendation for refusal, the Municipal Planning Commission conditionally approved the Applicant's development permit at its meeting on February 24, 2021. The Municipal Planning Commission was not concerned about competition between the two cannabis retail stores, as it would allow customers to compare prices and products.

[26] The Municipal Planning Commission believed it had the authority to approve the Applicant's development permit even though the application did not meet the setback requirements of the *Land Use Bylaw*. Section 12.2 of the *Land Use Bylaw* states:

The Development authority, in making a decision on a Development Permit application... may approve the application... if the proposed development does not conform with the [*Land Use Bylaw*]... if the proposed development would not (a) unduly interfere with the amenities of the neighbourhood, or (b) materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land.

[27] Between March 19-23, 2021, three notices of appeal were received against the conditional approval of the Applicant's development permit. The Appellants raised the following concerns:

- (1) The proposed development would be contrary to the requirements of the *Land Use Bylaw* and would result in the proliferation of the same type of use in the same business area;
- (2) The proposed development would affect the adjacent residents' enjoyment and value of the properties, increase the chance of crime in the area, and increase the need for public services and would be a burden on health services; and
- (3) The proposed development would interfere with the amenities of the neighbourhood, create nuisance, divert family traffic away from adjacent business, and increase liability issues for adjacent business.

[28] The Applicant provided a petition in support of his application with 52 signatures in support. Some of the signatories provided their addresses and others did not. Administration provided a map in their PowerPoint depicting as many signatories as possible. The map shows 74 people who signed in support of the application, as well as the three appellants who are in opposition of the application.

Jennifer Sykes submissions – the first Appellant

[29] The Appellant is representing two clients, Condo Corp. 0711729 and Highway 560 Cannabis Inc.

[30] The Appellant provided, in her written submission, a copy of the Municipal Planning Commission's decision for the other cannabis retail store, which included two minimum setback relaxations. The relaxations were of the separation distances from the dental office as a health care site and the daycare as a school site.

[31] The existing cannabis retail store opened on April 5, 2021.

[32] The Appellant's clients are not opposed to cannabis retail stores in general. One of her clients owns a retail cannabis store. Her clients are only opposed to having another cannabis retail store in this location. They believe the new store would be in the wrong location.

[33] Approval of the proposed development would require three relaxations of the *Land Use Bylaw*. Administration identified two relaxations in their presentation, but there is also an additional minimum setback distance to consider.

[34] The first relaxation identified by Administration is the separation distance required between the two cannabis retail stores. If approved, the proposed development would be in essentially the same complex as the existing cannabis retail store. The two stores would share the same parking lots and there is no road separating them. There are important considerations to this relaxation. Setback distances are not theoretical. They have real-world consequences.

[35] The second relaxation identified by Administration is the separation distance required between cannabis retail stores and medical clinics. One of the important things to consider in this appeal is whether the Development Authority followed Council's direction under the Direct Control District (DC-2) when it granted its approval of the Applicant's development permit. The minimum setback distances provided in the *Land Use Bylaw*, including the separation distances from health care sites, are directions from Council.

[36] The third relaxation, which was not identified by Administration, is the separation distance required between cannabis retail stores and school sites. Immediately behind the Lands is a residential district, and within that residential district is a daycare that provides pre-school and kindergarten services for the area. It does not seem like this relaxation was considered by the Municipal Planning Commission.

[37] The daycare was identified as a school site during the other cannabis retail store's development permit approval and a relaxation was granted. This relaxation was not identified for the proposed site even though it is closer to the school site than the existing cannabis retail store.

[38] All of these relaxations of the *Land Use Bylaw* represent relaxations of Council's clear and explicit direction. Separating cannabis retail stores from one another is important in terms of safety and protecting the community.

[39] Alberta Health Services (AHS) made a number of recommendations to municipalities when cannabis was legalized in order to reduce the harm that can be caused by cannabis. They recommended between 300-500 metres of separation between cannabis retailers. In this case, the two cannabis retailers would not even be 150 metres away from each other.

[40] Having cannabis retail stores too close together can cause problems. A report by AHS states that "similarly with liquor stores, higher densities are associated with high-risk consumption behaviours—especially among youth, facilitating access and possession by adolescents, as well as increased rates of violence and crime."

[41] Council provided clear direction through the minimum setback requirements between cannabis retailers in the *Land Use Bylaw*. This direction was provided in the context of the recommendations made by AHS.

[42] There are similar uses in the same immediate area that could make the situation worse. The report by AHS comments on “co-use” which is the simultaneous use of cannabis and other substances, alcohol and tobacco in particular. Statistics show that around 80-90% of people using cannabis are also using one of these other substances. Co-use almost doubles the likelihood of impaired driving, social consequences, and self-harm.

[43] AHS recommends that cannabis retail stores should not be located near businesses selling alcohol and tobacco. The proposed cannabis retail store would be located near a liquor store and in the same complex as a vape store and smoke shop.

[44] There are other uses in the area that are particularly vulnerable to the negative affects that could occur from too many cannabis retailers in the area. AHS emphasizes the importance of keeping cannabis away from schools and children, as the presence of cannabis can normalize the use of cannabis. The use of cannabis can impact brain development. Children and youth are particularly vulnerable.

[45] The proposed cannabis retail store would also be located near a family restaurant and a yoga studio offering programing for children, which could encourage the use of cannabis with children and increase crime in the area.

[46] Because the Lands are located within a direct control district, the question of this appeal is whether the Development Authority followed the directions of Council. Those directions are found in the *Land Use Bylaw* and the Langdon Area Structure Plan.

[47] The Langdon Area Structure Plan designates the area as highway commercial, with the objectives being to create a welcoming gateway to the community and to provide a range of services to support the hamlet and surrounding area.

[48] The proposed cannabis retail store would do neither of these. Visitors to the community would be greeted by multiple cannabis stores close together, which would exclude a large number of people who cannot or do not want to use cannabis from benefitting from the businesses. Residents of the hamlet would not be receiving a range of services.

[49] The petition provided by the Applicant should not be given any weight as it is irrelevant to the question at hand. The question at hand is whether the Development Authority followed the directions of Council, which the Appellant suggests did not.

[50] In addition, the petition was not signed by many people in the area. Most of the signatories appear to live a significant distance away from the Lands and would not experience the negative consequences. The petition may actually signal a lack of support from the community given very few signatories live near the area.

[51] The signatories of the petition did not have all of the relevant information. They signed a document stating, “we, the undersigned, are citizens of Langdon and urge Council to allow a Cannabis Retail Store in the town of Langdon”. The signatories did not acknowledge the relaxations or state that they want a second cannabis store near the first cannabis store.

Greg Thompson and Aleesha Gosling submissions – the second Appellants

[52] The Appellants Thompson and Gosling are co-owners of the Langdon Firehouse Bar & Grill. Their bar and restaurant has a liquor store on either side of it. One of those liquor stores has an existing cannabis store beside it, and the other liquor store will now have the proposed development beside it. These services are too condensed.

[53] The area is supposed to be the gateway to Langdon, but the strip mall is only promoting a certain kind of activity. It does not represent Langdon the way it should be represented. The Appellants are not opposed to new business and understand the risks it takes to get into business, especially during the COVID-19 pandemic. They applaud the Applicant for taking on something like this.

[54] The Appellants are not against another cannabis retail store in Langdon, but the hamlet is growing and there may be room for two but not within such a close distance of each other. They are only opposed to the location of the proposed development.

[55] The Appellants have a good relationship with the hamlet of Langdon and hope they find some peace and a way for everyone to win. The Appellants employ 90% of their staff from Langdon and the surrounding area, which contributes to the community. The Applicant would not be employing people from Langdon for the proposed development.

[56] There is about ten to fifteen parking stalls to share between the Appellants' restaurant and bar, the liquor stores, the convenience store and gas station, and the proposed development. The amount of parking is not ample and should be addressed, but the Appellants are not fighting the parking.

[57] The Appellants believe they were provided a fair opportunity to present their evidence to the Board. Much of what they wanted to say was said already by the previous Appellant.

Rick McDonald submissions – representing the third Appellant Kevin Dellaire

[58] The Appellant lives right behind the proposed development. It would be in his backyard and would lower the value of his home. It would also bring negative effects to the community, such as undesirable people and smells.

[59] There should be designated areas for smoking cannabis, but with the proposed development being so close to the bar, people will leave the bar to buy cannabis. They will then smoke outside in between drinks, which will cause problems.

[60] This would be too much in one place.

Robert (Bob) Wright – in support of the appeals

[61] Mr. Wright is concerned with the proposed development from a policing and crime aspect. He is a retired police officer with 37 years of experience, the last 15-20 years of which Mr. Wright was a detachment commander of various units throughout Alberta. He is currently the owner of one of the condominium units of the strip mall. He has an interest in keeping the peace between the other owners.

[62] The real issue is the conflict that the proposed cannabis retail store would create with the various owners of the condominium units within the strip mall. Reasonable development of the area needs the cooperation of all of the owners, which happened a couple of years ago when the owners had drainage issues that were resolved at considerable expense shared by all of the owners and the neighbours.

[63] The proposed cannabis retail store would create conflict, however. These kind of conflicts tend to start small but escalate in Mr. Wright's experience responding to such disputes. There are reasons why cannabis stores and liquor stores are supposed to be located away from each other. Competing businesses encourage a race-to-the-bottom, which includes dropping prices, badmouthing and terrorizing each other's businesses, and bootlegging problems.

[64] Locating two cannabis retail stores so close to each other would encourage the practise of "double doctoring" and selling cannabis to children. People would walk into one of the cannabis stores and purchase their legal limit of 30 grams. They will then walk into the other cannabis store to purchase another 30 grams. They will then sell this cannabis in smaller quantities to children at schools in the area.

[65] Langdon has an existing crime problem because the hamlet's policing tends to be out of Strathmore. The hamlet is underserved in terms of policing. Two cannabis retail stores sharing the same strip mall, the same parking mall, and the same traffic would be asking for problems and for devaluing property values in the area. Healthcare calls, vandalism, petty crime, and policing calls would increase in the community if the proposed cannabis retail store is approved.

Puneet Kaushik submissions – the Applicant in opposition of the appeal

[66] When the Applicant's development permit was approved at the February 24, 2021 Municipal Planning Commission meeting, he stated that all of his workforce would be hired from the Langdon area. He is not hiring people from somewhere else. The Applicant operates a different cannabis store that employs 11 people from Alberta.

[67] Cannabis is a federally legal substance. Cannabis is regulated under the *Cannabis Act*, which provides a strict legal framework for the production, distribution, sale, and possession of cannabis in Canada.

[68] The three goals of the *Cannabis Act* strives to keep cannabis out of the hands of youth, keep profits out of the pockets of criminals, and protect the public by allowing safe access to legal cannabis.

[69] Alberta's cannabis framework allows for the legal consumption of cannabis in people's homes and in some public spaces. Personal reservations against the use of cannabis do not mean the police are involved. Another cannabis retail store would not decrease the value of properties. The Applicant's store would add value to the community by increasing competition and removing the need for the illegal sale of cannabis.

[70] The Applicant operates another cannabis store and is experienced in the rules and regulations of the sale of cannabis, including weight limits, identification requirements, and recognizing signs of intoxication. Cannabis retailers have a duty of care to fulfill and are trained through Alberta Gaming, Liquor, and Cannabis, which is a provincial agency.

[71] It is not a crime to possess, consume, or sell cannabis. There has been a stigma with the industry since prohibition of cannabis and the stigma still exists today. It is difficult for some people to accept political and societal changes. It takes time for people to accept change.

[72] The Applicant was aware when he considered this particular location that it was located within a direct control district that has setback requirements from other cannabis retail stores and health care sites. The Applicant was aware of this but went ahead with the development permit application anyway because he is a young entrepreneur who can afford to take risks.

[73] The Applicant researched other locations in Langdon, but the Lands were the only suitable location for the proposed store in the hamlet. The only other location would be the existing cannabis retail store. The Applicant is unsure if there will be more locations available in the future.

Jennifer Sykes rebuttal – the first Appellant

[74] The Appellant's client had no prior discussions with the Applicant suggesting that they would be supportive of the Applicant's development permit application. This should not be relevant as the question is whether the Development Authority followed the direction of Council, but the Appellant wanted to clarify that point.

[75] The Lands are not the only suitable location for the Applicant's proposed development in Langdon. This is not the only commercial complex and there are other options for the Applicant that do not have another cannabis retail store already located there.

[76] While the Applicant stated that cannabis is a federally regulated and legal substance, regulations for cannabis retail store locations is ultimately enforced at the municipal level through setback requirements in the *Land Use Bylaw*.

[77] One of the purposes of the *Canada Cannabis Act* is to protect young people from cannabis, but that duty has been transferred to provincial governments. The Alberta government then transferred that duty to municipalities through the *Gaming, Liquor, and Cannabis Act*.

[78] The Appellant believes that she was provided a fair opportunity to present her evidence to the Board.

Greg Thompson and Aleesha Gosling rebuttal – the second Appellants

[79] The Appellants did not provide a rebuttal.

Rick McDonald rebuttal – representing the third Appellant Kevin Dellaire

[80] The Appellant did not provide a rebuttal.

FINDINGS & REASONS FOR DECISION

[81] The Board finds that a cannabis retail store is a discretionary use under Direct Control Bylaw C-4873-98 (DC-2). Section 4.4.1 of the DC-2 bylaw states that Parts One, Two, and Three of *Land Use Bylaw C-4841-97* (the *Land Use Bylaw*) apply to development permit applications falling within the DC-2 bylaw.

[82] The Board finds that it has the authority to make a decision on this matter pursuant to section 685(4)(b) of the *Municipal Government Act* (MGA).

[83] The Board reviewed all evidence and arguments, written and verbal, submitted by the parties and focused on the most relevant evidence and arguments in outlining its reasons. The Board also considered the context of the proposed development, sound planning considerations, the merits of the application, and all applicable legislation, plans, and policies.

[84] The Board heard from three different appellants on the negative impacts that the proposed development will have on the nearby businesses and surrounding residential communities. The Board is satisfied that the second and third Appellants (Thompson & Gosling and Dellaire) have standing before the Board as they could potentially be affected by the proposed development due to the close proximity of their business and residential dwelling.

[85] Upon reviewing the verbal and written submissions of the first Appellant, Jennifer Sykes, it is unclear to the Board how her client, Condo Corp. 0711729, is potentially affected by the proposed development. Notwithstanding this lack of clarity, Ms. Sykes' other client owns a business in close proximity to the proposed development and therefore has the potential to be affected. For this reason, the Board finds that the first Appellant has standing before the Board.

[86] The Board notes that the existing cannabis retail store in the strip mall received relaxations of the minimum setbacks from a health care site and a school site from the Development Authority. There were no other cannabis retail stores in the area when the existing cannabis retail store was approved.

[87] The Board notes that the Applicant was aware of the risks with the location of the proposed development when he was considering the location for his business.

[88] The Board acknowledges that the regulation of cannabis is shared between the federal, provincial, and municipal governments. The Board agrees with the first Appellant, Ms. Sykes, that the main consideration of the Board in this matter is whether the Development Authority followed the directions of Council pursuant to section 685(4)(b) of the *Municipal Government Act*.

[89] The directions of Council provided to the Development Authority most relevant to this matter are found in the *Land Use Bylaw*. The DC-2 bylaw reflects this direction by stating that Parts One, Two, and Three of the *Land Use Bylaw* apply to the direct control district.

[90] Council established minimum separation distances for cannabis retail stores through section 20.10 of the *Land Use Bylaw*. That section of the *Land Use Bylaw* provides clear direction to the Development Authority that cannabis retail stores must be located at least 300 metres away from each other and at least 150 metres away from health care and school sites.

[91] The Development Authority, therefore, failed to follow the direction of Council when it approved the Applicant's proposed development with setback relaxations from 300 metres to 140 metres from an existing cannabis store and from 150 metres to 100 metres from an existing health care site. The Development Authority acted outside of the direction provided to it by Council when it approved these relaxations.

[92] The Board notes that it heard evidence from the first Appellant, Ms. Sykes, that an additional relaxation from a school site should have been considered. The Board was not provided evidence to determine whether this was considered by Administration when it processed the Applicant's development permit application or by the Development Authority when approving the proposed development.

[93] Section 12.2(b)(i) of the *Land Use Bylaw* provides that the Development Authority may approve a discretionary use application within a direct control district only when the application meets the direction set out by Council. The Development Authority acted outside of the direction provided to it by Council when it approved the development permit with the relaxations.

[94] The Board finds that the Development Authority failed to follow the direction of Council when it approved the Applicant's development permit application and that it may substitute its own decision for the Development Authority's in accordance with section 685(4)(b) of the MGA.

[95] The Board's decision must be in accordance with the directions provided by Council pursuant to section 685(4)(b) of the MGA. The Board finds that the Applicant's development permit application does not comply with the direction of Council established in the *Land Use Bylaw* and therefore must be refused.

[96] The Board heard arguments from the Appellants on the importance of minimum setback requirements as a way of mitigating the negative impacts of cannabis, which include competition between businesses, children having access to cannabis, increase in petty crime and vandalism, and the proliferation of similar uses. The Board's decision to refuse the proposed development is not a determination of the potential impact of the proposed development on the amenities of the neighbourhood or use, enjoyment, or value of neighbouring parcels of land. The Board's decision to refuse the proposed development is based on section 685(4)(b) of the MGA which requires the Board to follow the direction of Council.

CONCLUSION

[97] For the reasons set out above, the appeal is allowed and the Development Authority's February 25, 2021 decision on PRDP20210264 is overturned. A development permit shall not be issued.

Dated at Rocky View County, in the Province of Alberta on April 30, 2021.



Crystal Kissel, Chair
Subdivision and Development Appeal Board

EXHIBIT LIST

Documents presented at the hearing and considered by the Board.

- | NO. | ITEM |
|------------|--|
| 1. | Development Authority's Report to the Board (48 pages) |
| 2. | Development Authority's PowerPoint (9 pages) |
| 3. | Sykes Appellant 1 Exhibit (34 pages) |
| 4. | Bob Wright letter in support of the appeals (1 page) |