

ROCKY VIEW COUNTY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Board Order No.: 2020-SDAB-017

File No.: 03913093 PRDP20202490

Appeal by: Michele and Joe Longo

Hearing Dates: 2020 December 16

Decision Date: 2020 December 29

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

DEVELOPMENT APPEAL DECISION

INTRODUCTION

[1] This is an affected party appeal to the Rocky View County Subdivision and Development Appeal Board (the Board) from a decision of the Rocky View County Development Authority issued October 30, 2020. In this decision, the Development Authority approved a development permit application for the operation of a vacation rental within an existing dwelling, single detached at 79 River Drive North (Lot: 6, Block: 8, Plan 1741 EW, SE-13-23-05-05) (the Lands).

[2] Upon notice being given, this appeal was heard electronically on December 16, 2020, in accordance with the Meeting Procedures (COVID-19 Suppression) Regulation, Alberta Regulation 50/2020.

DECISION

[3] The appeal is allowed in part and the decision of the Development Authority is varied. A development permit shall be issued subject to the following conditions:

Description:

1. That the vacation rental (Airbnb) may operate on the Lands, within the existing dwelling, single detached, in accordance with the approved site plan, floor plans and the conditions of this permit.

Permanent:

2. That no off-site advertisement signage associated with the vacation rental is permitted.
3. That there shall be no non-resident employees at any time, with the exception of cleaning companies (if required).
4. That the vacation rental is limited to the dwelling, single detached.
5. That the Owner shall arrange for a person to greet renters at the vacation rental at the beginning of each rental. The person greeting the renters must ensure any renters are familiar with the vacation rental's rules and the property boundaries, to ensure no trespassing on adjacent properties.
6. That no renters shall arrive after 8:00 pm when checking in to the vacation rental.
7. That the vacation rental is limited to six renters, 24 hours a day. A renter is defined as any person who is five years old or older.
8. That the Owner shall post current emergency contact information, including any information on fire bans, for all renters to see and use.
9. That the Owner shall make available to adjacent neighbours contact information for persons who can be contacted if adjacent neighbours have concerns in regards to the vacation rental. The persons available to be contacted must be able to respond to the concerns within 35 minutes of being contacted.
10. That there is a maximum of three vehicles allowed to be parked in the vacation rental's driveway at any one time.
11. That there shall not be any camping, including tenting, associated with the vacation rental on and nearby the Lands.
12. That no fire on the Lands shall be left unattended at any time.
13. That all customer parking must be on the Owner's property at all times.
14. That the operation of the vacation rental shall not change the residential character and external appearance of the Lands and dwellings.
15. That the operation of the vacation rental shall not generate noise, smoke, dust, fumes, glare, or refuse matter considered offensive or excessive by the Development Authority and at all times the privacy of adjacent residential dwellings shall be preserved. The vacation rental shall not, in the opinion of the Development Authority, unduly offend or otherwise interfere with neighbouring or adjacent residents.
16. That any minimal exterior modification of the structure or grounds may be considered by the County upon request, to ensure that no additional permits are required and that it is not changing the residential character of the property.

Advisory:

17. That all activity on the Lands must follow the rules outlined in Rocky View County's *Noise Control Bylaw*, C-5772-2003, as replaced from time to time.
18. That a building permit and applicable sub trade permits shall be obtained through Building Services, if required, prior to commencement of the vacation rental.
19. That any other government permits, approvals, or compliances are the sole responsibility of the Applicant/Owner.

20. That this development permit is valid until **September 1, 2021**, at which time a new application shall be submitted. *Note, that the County will take into consideration any enforcement action of this vacation rental prior to considering subsequent applications.*

BACKGROUND

[4] On August 25, 2020, Matthew and Teresa Weir (the Applicants) submitted a development permit application for the operation of a vacation rental within an existing dwelling, single detached (the proposed vacation rental) on the Lands.

[5] The Lands are approximately 0.22 hectares (0.55 acres) in area and owned by Matthew and Teresa Weir.

[6] The Lands' land use designation is Residential, Urban District (R-URB), which is regulated in sections 331-340 of Rocky View County *Land Use Bylaw C-8000-2020* (the *Land Use Bylaw*).

[7] On October 30, 2020, the Development Authority conditionally approved a development permit application for the proposed vacation rental on the Lands.

[8] On November 23, 2020, Michele and Joe Longo (the Appellants) filed an affected party appeal of the Development Authority's decision to conditionally approve a development permit application for a proposed vacation rental on the Lands.

[9] A notice of hearing was circulated to the Appellants, Applicants, Development Authority, and adjacent landowners in accordance with the *Municipal Government Act*, RSA 2000, c M-26 and Rocky View County Council Policy C-327, *Circulation and Notification Standards*.

SUMMARY OF EVIDENCE

[10] The Board heard verbal submissions from:

- (1) Wayne Van Dijk, Development Officer, for the Development Authority;
- (2) Michele Longo, the Appellant;
- (3) Matthew Weir, the Applicant in opposition of the appeal;
- (4) Sherri Olsen, in opposition of the appeal.

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

Development Authority's Submissions

[12] The Lands are surrounded by residential districts and a Special Public Service District to the east.

[13] The Lands contain a single detached dwelling and an accessory building. The dwelling is approximately 92.90 sq. m. (1000 sq. ft.) with three bedrooms and two bathrooms with a total of five beds.

[14] The Lands are well screened, neat and tidy, and there were no problems at the time of inspection

[15] A bed and breakfast needs to be owner-occupied but a vacation rental does not. This application is for an Airbnb and VRBO.

[16] The fence runs along the north of the boundary of the Lands.

[17] Fire bans are set provincially and the Development Authority is not sure how fire bans are communicated to Bragg Creek residents and guests.

[18] There are regulations surrounding the use and enjoyment of property. If the Development Authority receives a complaint there is an investigation to determine if something is under the County's jurisdiction. Unfortunately, the investigation usually happens after the fact.

Michele Longo's Submissions - the Appellant

[19] The Longos live directly adjacent to the Lands.

[20] There were some trespassing incidents from the Lands but a privacy fence has been erected that has stopped the trespassing. The Longos and Applicants each paid for half of the fence.

[21] The conditions on the development permit are not applicable or not enforceable.

[22] The Longos are not asking for the development permit to be refused, they are asking for conditions to protect adjacent neighbours.

[23] Ms. Longo was the Director of the Chamber of Commerce for Bragg Creek and the head of interactions with Rocky View County supporting the use of Airbnb in Bragg Creek. Airbnb supports the economy and community.

[24] Ms. Longo is the main reason for tourism in Bragg Creek and has logged over 500 volunteer hours in the community, especially a website that draws tourism to the area.

[25] There have been incidents where people were camping across the Airbnb on the Lands. Neighbours were worried the camping was related to the Airbnb. Ms. Longo is the one who convinced the neighbours that the campers were not related to the Airbnb.

[26] There are people in the area who are against Airbnb.

[27] The rental on the Lands rents primarily to groups, usually 4-6 people, and it is not unusual for more people to come out during the day though they do not spend the night.

[28] Renters tend to stay all day and do not leave. The Applicants have rules against parties but this is spot along the river is prime for parties.

[29] The Longos' bedroom window is adjacent to the Lands.

[30] Because a vacation rental is a new use under the *Land Use Bylaw*, the Development Authority said conditions are new and subjective and may not be enforceable.

[31] The approved conditions require the proposed vacation rental to be owner-occupied. The Development Authority told Ms. Longo that the inclusion of that condition was a mistake.

[32] The Longos' number one concern is trespassing, which has not been an issue since the fence was built. The Longos are concerned trespassing could still occur.

[33] The Longos are concerned about parties and noise. The proposed vacation rental before June 27, 2020 would have been described as a party rental. The Longos since explained their concerns to the Applicants and the parties have reduced.

[34] A party is loud shouting and in reviewing her records, Ms. Longo counts nine parties, which is a concern.

[35] Trespassing is when someone walks 60 feet onto Ms. Longo's property and is directly behind her house – this has happened eight times.

[36] The Longos are on their own to deal with any noise issues as Bylaw does not work on weekends and the County told the Longos that they would not come out anyway because of worries of walking into a dangerous situation.

[37] The Longos found out about the Applicants' noise monitors a few months ago but are not sure about the process. The Longos called the RCMP in November because they did not know what else to do.

[38] The day the Longos wrote their appeal there was 12 hours of smoke from the Lands. The smoke is non-stop and worse in the colder months. The Longos' air intake is on the same side as the Lands.

[39] The Longos' furnace expert said it is likely that the guests on the Lands do not know how to use the fire properly.

[40] The smoke moves down the river and gets caught in trees and hangs out. The never-ending smoke was not a problem before the vacation rental came in.

[41] The Longos have tried different furnace filters to block the smoke and are using the strongest one that it is safe to use.

[42] Ms. Longo gets a sore throat and sneezes a lot from the smoke. The best solution is for the Longos to start their own fire to warm up their house so their furnace shuts off and the smoke does not come in. This is only a solution in the colder months.

[43] The smoke bothers the Longos' enjoyment of the yard outside. The duration of the tourists' fires is longer than residents' fires. The duration of the smoke is exhausting and the Longos never get fresh air.

[44] There are no bylaws to address smoke from an indoor fireplace

[45] Ms. Longo has videos and photos of smoke and trespassing issues.

[46] The Longos are not comfortable that issues with noise have stopped permanently. The Longos are not sure who to call if there are noisy parties. The Longos only called the RCMP once because it became quite clear that no one was coming to help.

[47] Cars park along the Longos window on the driveway for the vacation rental. There are places cars can park away from the Longo home but they do not.

[48] Once a diesel truck ran its lights at 12:30 am for 15 minutes right into the Longo bedroom window.

[49] The other adjacent neighbour on the other side of the Lands is in a different situation. That neighbour lives in a log cabin that blocks the noise while the Longo house is all glass. The other neighbour also makes some noise from heavy equipment so it is more of a give and take relationship.

[50] The statistics given by the Applicant do not match the Longos' experience. There were only two days a month where the vacation rental was not used. In the off season, it is 1-2 nights a week where it is not used. This has changed since the lockdown

[51] The Longos started seeing groups in August of 2019.

[52] The privacy fence starts where the cars are parked and the Longo bedroom window back to the river.

[53] An owner-occupied condition might help but the Longos do not want to disrupt the Applicant's business model.

[54] The Applicant does have guests and extended family that sometimes use the vacation rental.

[55] The privacy fence has helped block some of the lights from cars from entering the Longos' bedroom window.

Matthew Weir submissions – the Applicant in opposition of the appeal

[56] The Weirs bought the Lands in 2019 with the intent of using it for a vacation rental.

[57] The Weirs did not apply earlier because the County was in transition between land use bylaws and was coming up with an Airbnb type use for the new land use bylaw. The Weirs bought the Lands even though they knew a Airbnb was not guaranteed, they figured they could use it as a long-term rental if needed.

[58] The Weirs use the Lands for personal use as well and rent it out when they are not using it.

[59] There is a maximum of six guests allowed, not including children. Most of the guests are families. The Weirs have an average of just over three guests per stay.

[60] It was not too long after the Weirs started renting the Lands that they heard concerns from neighbours about trespassing . A privacy fence was built to deal with the issue.

[61] It is very clear in the Weirs' rules that parties are not allowed. The quiet time and no party rules are communicated to all guests.

[62] The Weirs do not want parties on the Lands either and it is in their best interest to keep things tidy and orderly.

[63] There are cameras on the driveway to see when people are coming and going.

[64] There are noise monitors in the house so the Weirs can contact the guests to keep down the noise.

[65] If the Weirs are unable to reach a guest, Mr. Weir's brother lives across the street and can go over to check on things.

[66] Mr. Weir and his brother were harvesting firewood for use on the Lands but it was a bit moist which probably added to the smoke. To address the neighbours' concerns about smoke, the Weirs have started sourcing fully cured and dried wood for use on the Lands.

[67] The Weirs bought a controlled light fixture to control how bright the outside light can be.

[68] The Weirs have been trying to mitigate the impacts of their development and are committed to addressing any concerns.

[69] The Appellant has only contacted the Weirs directly once and prefers to call other neighbours instead. The Appellants can call the Weirs directly to deal with issues.

[70] If the vacation rental is not allowed, the Weirs will likely look for long-term tenants.

[71] Mr. Weir's brother is a firefighter and is away for 24 hour shifts and is working seven shifts a month so on average he is at home 21 days a month day and night to deal with issues.

[72] There are other neighbours willing to attend to any problems on a moment's notice.

[73] The Weirs live a 32 minute drive away from the Lands.

[74] The guests that are friends and family are very aware of the rules and what is expected. The rules are for anyone who uses the property.

[75] The Weirs understand the noise does travel in the area and that the users need to be sensitive to how much noise they are making.

[76] There is enough room on the property for all the vehicles even if each guest showed up in their own vehicle. The Weirs ask guests to park closer to the house and away from the Appellants' property.

Sherri Olsen's submissions – in opposition of the appeal

[77] Ms. Olsen also operates a short-term rental in Bragg Creek.

[78] They all agree, including Ms. Longo, that these rental types are good for Bragg Creek. The neighbours just need to figure out how to manage them.

[79] Ms. Olsen and Mr. Weir take the impact of their developments very seriously.

[80] Ms. Olsen is in charge and responsible for her guests and will let them know if there is a fire ban.

[81] Short-term rentals used by good guests are preferred to long term rentals.

[82] Ms. Olsen lives at 155 White Avenue which is across the river and out of earshot of the Lands.

Michele Longo's rebuttal submissions – the Appellant

[83] Ms. Longo does not want the permit for the vacation rental to be refused. Ms. Longo is asking for better conditions.

[84] Ms. Longo is worried about her reputation as she is very involved in the community, and even co-chaired the FireSmart Committee.

[85] In the Longos' experience, the average number of guests staying on the Lands is over 4 and not between 3 and 4.

[86] A user does not have to indicate how many guests they are bringing on Airbnb.

[87] Ms. Longo believes the Applicants want their rules to be followed but there is no enforcement which is the problem.

[88] The Longos got the Applicants' phone number in June for the fence but the Longos did not feel they had the permission to use it to deal with late night problems.

[89] The dimmer light on the Lands is nice but people do not really use it.

[90] The Applicants did not check in with the Longos to see how things were going or give them a number to contact them.

[91] Ms. Longo is very collaborative and would like to work with the Applicants to come up with solutions. It is difficult for the County to come up with conditions.

[92] At the heart of this is a misunderstanding. Ms. Longo believes it is the business developer's responsibility to approach the community with solutions instead of the other way around.

[93] The Longos have not "harassed" guests and have actually helped them in the past. Ms. Longo did approach six 21 year old males once and she recorded the conversation because she was scared to approach them at night. Their group kept coming over to the Longo property and the RCMP did not come even though they were called. A neighbour helped Ms. Longo, which is the only time she has involved another neighbour.

[94] Ms. Longo feels she had a fair opportunity to present her evidence to the Board.

FINDINGS & REASONS FOR DECISION

[95] Section 10 of *Land Use Bylaw C-8000-2020* states that

All development permit applications received in a complete form prior to the effective date of this bylaw shall be processed based on 'Land Use Bylaw C-4841-97', unless the Applicant requests in writing that the application be processed based on the regulations of this bylaw.

The Board finds that

- a. the development permit application was completed on August 25, 2020;
- b. *Land Use Bylaw C-8000-2020* came into effect on September 8, 2020; and
- c. the Applicants provided a written request to the Development Authority to have the development permit application assessed under *Land Use Bylaw C-8000-2020*.

The Board is satisfied that the condition outlined in section 10 of *Land Use Bylaw C-8000-2020* is met and that *Land Use Bylaw C-8000-2020* is the correct land use bylaw by which to assess the development permit application for the proposed vacation rental.

[96] The Board finds that a vacation rental is a discretionary use in the Residential, Urban District (R-URB) in accordance with section 325 of the *Land Use Bylaw*.

[97] The Board finds it has the authority to make a decision on this matter pursuant to section 687(3)(d) of the *Municipal Government Act*.

[98] The Board reviewed all evidence and arguments, written and oral, 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.

[99] The Board acknowledges the representations made by all parties to this appeal concerning the potential impact of the proposed vacation rental on adjacent properties and appreciates the willingness of all parties to find solutions. The Board also acknowledges that a vacation rental is a new use in the *Land Use Bylaw* and that the *Land Use Bylaw* gives little guidance on regulating a vacation rental.

[100] The Board heard from the Appellants concerns about the negative impacts on the use and enjoyment of their property as a result of the noise, smoke, and trespassing from the vacation rental. The Board also heard from the Applicants about the steps they have taken to address the Appellants' concerns. The Board has varied the conditions of approval requiring the Applicant to maintain control over the vacation rental, its guests, and the potential impact on neighbouring parcels.

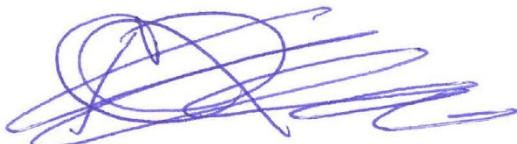
[101] The Board understands the Appellants' concerns about the enforcement of the conditions of approval. The Board, however, is not an enforcement body and can only mitigate potential impact through conditions of approval. The Board has amended the duration of the development permit's approval to give the Applicant time to prove the vacation rental can operate within its residential setting while minimizing impact on adjacent parcels. The amended development permit duration also provides opportunity for the Development Authority, Applicants, and Appellants to re-evaluate the development earlier than originally approved in order to make any necessary adjustments.

[102] Given the above findings and pursuant to section 687 of the *Municipal Government Act*, the Board finds that with the new conditions, the proposed vacation rental would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The Board also finds the proposed development conforms to the use prescribed for the Lands in the *Land Use Bylaw*.

CONCLUSION

[103] For the reasons set out above, the appeal is allowed in part and the decision of the Development Authority is varied. A development permit shall be issued subject to the above-noted conditions.

Dated at Rocky View County, in the Province of Alberta on December 29, 2020.

A handwritten signature in blue ink, appearing to read "Crystal Kissel".

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 (37 pages)
2.	Development Authority's PowerPoint (7 pages)
3.	Applicant Exhibit 1 (6 pages)
4.	9 letter(s) in opposition of the appeal (12 pages)