

**SUMMER VILLAGE OF SUNRISE BEACH
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

SUBDIVISION & DEVELOPMENT APPEAL BOARD HEARING DECISION

Hearing: Monday, August 22, 2022

Adjourned to September 19, 2022

Development Permit Application No. 22P05-44

File No. 22SDAB05-44

Background:

The Subdivision and Development Appeal Board (the "Board") heard an appeal by [REDACTED] of the decision by the Development Authority for the Summer Village of Sunrise Beach to deny approval of Development Permit Application No. 2022DP05-44 with respect a Home Occupation – Doggy Daycare (Dog Kennel) on lands described as Plan 4652TR, Block 1, Lot 8: 4108 Sylvan Cove within the Summer Village of Sunrise Beach, Alberta (the "Lands").

The Board heard from [REDACTED] Appellants, [REDACTED] Representative for Appellants, [REDACTED] Development Officer for the Summer Village of Sunrise Beach, and adjacent and effected landowners. Documents were provided to the Board, as follows:

Exhibit 1	Letter of Appeal – Submitted by [REDACTED] on behalf of [REDACTED] Received July 25, 2022
Exhibit 2	Request to Postpone Hearing – [REDACTED]
Exhibit 3	Development Officer's Report – Submitted by [REDACTED]
Exhibit 4	Appellant's Report – Submitted by [REDACTED]
Exhibit 5	Submission in Favour of Appeal – Submitted by [REDACTED]
Exhibit 6	Submission in Favour of Appeal – Submitted by [REDACTED]
Exhibit 7	Submission in Favour of Appeal – Submitted by [REDACTED]
Exhibit 8	Submission in Favour of Appeal – Submitted by [REDACTED]
Exhibit 9	Development Officer's Summary Comments – [REDACTED]
Exhibit 10	Appellant's Presentation Notes – Submitted by [REDACTED]

The Board determined based upon the information supplied that the Hearing would fall under the Summer Village of Sunrise Beach's Subdivision and Development Appeal Board.

Decision:

The Board determined that the Home Occupation – Doggy Daycare is permitted, with conditions, under Development Permit Application No. 22DP04-55 for the following reasons:

Conditions:

- (1) The home occupations shall initially be approved for a period not exceeding one year. At that time, the application may be extended at the discretion of the Development Officer, for the period of time that the property is occupied by the Applicant whom the home occupation was approved for.

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- (2) The home occupations shall be subject to the condition that they may be reviewed, and possibly revoked at any time, if, in the opinion of the Development Officer, the use is or has become detrimental or otherwise incompatible with the amenities of the neighbourhood.
- (3) The number of dogs on the subject lands shall not exceed 10 at any given time, and no overnight stays are permitted except that for those dogs personally owned by the landowners.

Reasons:

1. The Board considered the information that was submitted on Development Permit Application 22DP05-44 which states the project description as "Doggy daycare as a home occupation – accessory to Single Detached Dwelling." A note was inserted into the original application that states, "Suggested Used: Home Occupation Dog Kennel."

The Board also considered Section 50(2) Discretionary Uses of Land Use Bylaw No. 71-199[9] that lists a Home Occupation as a Discretionary Use based on the information included on the original Development Permit Application.

The Board also considered the suggested use as a Home Occupation Dog Kennel and how it applies to the following:

Section 9 of Land Use Bylaw No. 71-1999 which states:

SECTION 9 SAME OR SIMILAR USES

The uses which are listed in the permitted and discretionary uses columns under the land use districts are not intended to be exclusive or restrictive. Where a specific use does not conform to the wording of any definition, the Development Officer may deem that the proposed use conforms to the spirit and intent of the purpose of the land use district and is deemed similar to other uses allowed in that land use district. Notwithstanding, all uses defined as "same or similar uses" shall be discretionary.

and

SECTION 46 KEEPING OF ANIMALS

- (1) No person shall keep or permit to be kept in any part of the yard in any Summer Village Residential District:
 - (a) animals, livestock, or poultry with the exception of dogs, cats, and such other usual domestic pets as are kept indoors, providing always that domestic pets are kept under the condition that they do not act as a nuisance or reduce the amenities of the area; and
 - (b) any pets or domestic animals on a commercial basis, except for an approved pet store or kennel.

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The Board considered the relevance of Section 9 stating “Where a specific use does not conform to the wording of any definition, the Development Officer may deem that the proposed use conforms to the spirit and intent of the purpose of the land use district and is deemed similar to other uses allowed in that land use district.”

There is no definition within Land Use Bylaw No. 71-1999 for either Home Occupation or Small animal breeding and boarding establishment so the Development Officer may deem that the proposed use conforms to the spirit and intent of the purpose of the land use district as it can be supported by Section 46(1)(b) that will allow an approved pet store or kennel in a Residential District.

The Board determined that the provisions of Land Use Bylaw No. 71-1999 relating to both home occupations and the keeping of animals support either a “Doggy daycare as a home occupation – accessory to Single Detached Dwelling” or the suggested use of “Home Occupation Dog Kennel”.

2. The Board considered Section 42 Home Occupations of Land Bylaw No. 71-1999 which states:
 - (1) Home occupations shall be limited to those areas which do not interfere with the rights of other residents to quiet enjoyment of a residential neighbourhood. Home occupations shall not be a primary use of the residential building, or garage, and shall not:
 - (a) involve the storage of goods in the public view, a change in appearance of the residence or its accessory buildings, unless approved by the Development Officer,
 - (b) require alterations to the building unless the alterations area approved by the Development Officer, and
 - (c) shall not employ any employees who do not reside on-site.
 - (2) Development approval for home occupations business signage shall be at the discretion of the Development Officer.
 - (3) Home occupations shall initially be approved for a period not exceeding one year. At that time, the application may be extended at the discretion of the Development Officer, for the period of time that the property is occupied by the Applicant whom the home occupation was approved for.
 - (4) All permits for home occupations shall be subject to the condition that they may be reviewed, and possibly revoked at any time, if, in the opinion of the Development Officer, the use is or has become detrimental or otherwise incompatible with the amenities of the neighborhood.
 - (5) At all times, the privacy of the adjacent dwellings shall be preserved and shall not unduly offend the surrounding residents by way of excessive lighting, noise, traffic, congestion, late visitations by clients, etc.

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The Board heard evidence that the Home Occupation complies with Section 42(1) as outlined in Exhibit No. 10, page 5, paragraph 6. The Board also considered the site map and natural features map that formed part of Exhibit No. 4 along with submissions from neighbouring properties and determined that the Home Occupation complies with Section 42(1) and 42(5) of Land Use Bylaw No 71-1999.

The Board determined that Section 42(3) and Section 42(4) of Land Use Bylaw No 71-1999 shall form part of the conditions of the approval of Development Permit Application No. 22DP05-44.

3. The Board considered Bylaw No. 142-2018, the Animal Control Bylaw, and whether to deny Development Permit Application No. 22DP05-44 based on Section D(1) which states that, "No person shall keep or harbour more than three (3) animals of the same species whatever sex or age at the same time in any residential area. Specifically, a property owner may have 3 dogs and 3 cats, etc. but no more than 3 of one type of animal" was a sound planning reason for refusal by the Development Officer.

Upon review of Bylaw No. 142-2018 in its entirety, the Board noted that there were no provisions in the bylaw to support either Section 46(1)(b) or Section 53(2) for Small animal breeding and boarding establishment as a permitted use in Land Use Bylaw No. 71-1999. Additionally, the Board concluded that the intent of Section D(1) of the Animal Control Bylaw is unclear due to lack of definitions and that it was undetermined how many property owners the subject Lands had.

Therefore, the Board determined that, although, the Animal Control Bylaw was considered, there was not sufficient planning reasons to refuse Development Permit Application No. 22DP05-44 based upon Bylaw No 142-2018.

4. The Board considered Section 10 Development Permit Referrals of Land Use Bylaw No. 71-1999 that states the following:

The Development Officer may refer any matter regarding a proposed development for comments to any department or agency that the Development Officer deems necessary. Notwithstanding any other provisions of this bylaw, all variance requests will be directed to council for their review and comment.

The Board also considered that there was no establishment of a Municipal Planning Commission within Land Use Bylaw No. 71-1999.

As Development Permit Application No. 22DP05-44 did not require a variance nor is there a provision of a Municipal Planning Commission within Land Use Bylaw No. 71-1999, the Board,

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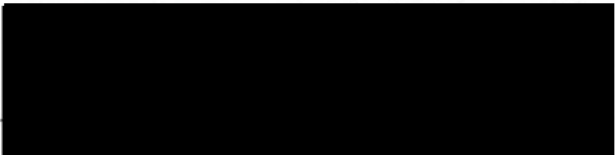
determined that, although respectful of Council's position, there were no provisions to support a referral to Council.

5. The Board considered Section 42(3) and Section 42(4) of Land Use Bylaw No 71-1999 and determined that the inclusion of these conditions in the approval of Development Permit Application No. 22DP05-44 would provide safeguards for the Summer Village of Sunrise Beach to handle any negative occurrences that may arise from the Home Occupation.

In light of the evidence given, the Board determined that Development Permit Application No. 22DP04-55 be approved with conditions for the Home Occupation – Doggy Daycare.

A decision of the Subdivision and Development Appeal Board is final and binding on all parties and persons. Subject only to an appeal on a question of law or jurisdiction, an appeal lies to the Alberta Court of Appeal from a decision of the Subdivision and Development Appeal Board, pursuant to Section 668 of the Municipal Government Act, Revised Statutes of Alberta 2000 Chapter M-26. An application for leave to appeal shall be made:

- (a) To a judge for the Court of Appeal; and
- (b) Within thirty (30) days after the issue of the decision sought to be appealed.


Subdivision and Development Appeal Board


Subdivision and Development Appeal Board

October 3, 2022
Date of Decision