

**PALLISER INTERMUNICIPAL
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

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HEARING DATE: April 1, 2022
FILE NO.: 532532-22-D005

Notice of Decision of the Board

INTRODUCTION

[1] On February 11, 2022, the Development Authority of the Town of Drumheller (the "Development Authority") issued development permit number 532532-22-D0005, file number T00005-22D to Peggie Ginger for a Home Occupation - Urban for Peggie's Feline Rescue (the "Development Permit") located at Lot 12, Block 1, Plan 4128EQ, municipally described as 446 2 Avenue, East Coulee (the "Lands") in Town of Drumheller, Alberta.

[2] On March 4, 2022, the Palliser Intermunicipal Subdivision and Development Appeal Board (the "Board") received an appeal from Frank and Donna Kalman (the "Appellants").

[3] The Board heard the appeal on April 1, 2022 via videoconference in accordance with the Meeting Procedures (COVID-19 Suppression) Regulation, AR 50/2020.

PRELIMINARY MATTERS

A. Board Members

[4] At the outset of the appeal hearing on April 1, 2022, the Chair requested confirmation from all parties in attendance that there was no opposition to the composition of the Board hearing the appeal. None of the persons in attendance had any objection to the members of the Board hearing the Appeal.

B. Exhibits

[5] At the beginning of the hearing, the Chair enquired if everyone in attendance had received the Agenda Package. The Board marked the exhibits as set out at the end of this decision (Agenda Package, Exhibits 1-17) received in accordance with the submission deadlines.

[6] At the beginning of the hearing, the Chair asked whether any of the persons in attendance had any further information or evidence which they wished to submit to the Board for the hearing. The Appellants and one of the affected persons, Tony Miglec, wished to submit further information to the Board. The information from the Appellants was, in essence, rebuttal information which was a response to the materials submitted by other persons. The information from Mr. Miglec was a link to a news article about what he indicated was a similar

development in Lethbridge. The Development Authority objected to the additional information being submitted on the basis that it was rebuttal information and the Development Authority did not have the opportunity to put in rebuttal information, but would have if it had known that the Board would accept further materials.

[7] Upon reviewing the additional information from the two parties, the Board determined that the Board would not accept additional information from either party.

[8] With respect to the additional information submitted by the Appellants, the Board rejected the submission for reasons of procedural fairness to the Development Authority. All parties were given a deadline date for submitting information. If the Board were to allow late information on the date on the appeal, the Board is of the view that accepting a late submission would be unfair to the other party (here the Development Authority) and affected persons who complied with the filing deadlines. These other parties would not have an opportunity to submit a response to the additional information received. The Board has determined that it would not be fair to accept a written rebuttal submission from one party, but not the others. Since the Development Authority did not provide a written rebuttal, the Board has determined that it would be procedurally unfair to accept written rebuttal information from only one party.

[9] With respect to the additional information submitted by Mr. Miglecz, the Board did not accept the late submission as the Board noted from a preliminary review that the information submitted did not relate to the Town of Drumheller or the Development Permit. The Board has determined that it was irrelevant to the issues in the appeal.

D. Miscellaneous

[10] The Board is satisfied that it had jurisdiction to deal with this matter.

[11] There were no objections to the proposed hearing process.

[12] There were no preliminary matters raised at the beginning of the hearing.

DECISION OF THE BOARD

[13] The Board denies the appeal and upholds the Development Permit on the same conditions as set out in the Development Permit issued by the Development Authority (set out below for ease of reference).

1. The developer shall conform to Land Use Bylaw 16.20.
2. The developer shall not employ more than four people not residing in the Dwelling Unit.
3. Outdoor Storage of materials, commodities, or finished products related to the use is prohibited.
4. One Sign is permitted, in accordance with Part 4 of the Land Use Bylaw 16.20.
5. A development permit for a Home Occupation – Urban may be revoked at any time if, in the opinion of the Development Authority, the operator of the Home Occupation - Urban has violated any provisions of the Bylaw or the conditions of the Development Permit, or both.

6. If the holder of any Home Occupation – Urban Development Permit relocates within the municipality, a new development permit is required for the new location.
7. A development permit is valid for 12 months from its date of issuance, unless the development has been substantially started in a manner satisfactory to the Development Authority.
8. No use shall cause or create any nuisance, by way of noise, vibration, smoke, dusty, fumes, odors, heat, light, or traffic generation, at the determination of the Development Authority.
9. Garbage and waste material must be stored in closed containers, and visually screened from public roads, excluding lanes and disposed of in a timely manner.
10. Storage of cat food must be stored in closed containers, within Principal or Accessory Building(s), and visually screened from public roads, excluding lanes.
11. A fence or hedge located in a front yard or a secondary front yard shall be a maximum height of 1.2 metres. All other fences or hedges shall be a maximum height of 1.8 metres.
12. A Development Permit for the placement of all Accessory Buildings must be submitted under a separate application. Parcel Coverage must not exceed the maximum limit for the Neighbourhood District.

GENERAL REQUIREMENTS

13. Shall conform to the Town of Drumheller Community Standards Bylaw 06.19.
14. Shall conform to the Town of Drumheller Responsible Pet Ownership Bylaw 06.13.
15. If Development is no longer recognized as exempt under the Responsible Pet Ownership Bylaw 06.13, the Development Permit may be revoked.
16. No animal shall be permitted to run at large.
17. An **Annual Business License** is required for the duration of occupancy for the Home Occupation.
18. Home Occupation must operate as a **Registered Charity**. Confirmation as a Registered Charity must be provided to the Development Authority prior to occupancy. Confirmation as a Registered Charity must be provided to the Development Authority upon request.
19. If the holder of the permit wishes to make any change in the conduct of the business that departs from the description in the application or from any other condition or restrictions impose, the holder of the permit must obtain prior permission of the Development Authority.
20. Development to conform to any and all Federal, Provincial and Municipal regulations and guidelines that apply.

SUMMARY OF HEARING

[14] The following is a brief summary of the oral and written evidence submitted to the Board. At the beginning of the hearing, the Board indicated that it had reviewed all the written submissions filed in advance of the hearing.

Submissions of the Appellants the Development Authority

[15] The Lands are located in the Town of Drumheller and legally described as Plan 4128 EQ, Block 1, Lots 12-14 and municipally described as 446 2 Avenue, East Coulee.

[16] The Lands are located within the Neighbourhood District of the Town of Drumheller.

[17] In the appeal, the Development Authority was represented by Darryl Drohomerski, Development Officer and CAO, Antonia Knight, Development Officer in Training, and Greg Peters, Director of Emergency and Protective Services.

[18] The Development Authority deals with land forms and items that are prescribed in the Land Use Bylaws only and their applicability when it considers a development application.

[19] On January 28, 2022 the Development Authority received an application from Peggie Ginger requesting a Home Occupation - Urban permit for the Lands in question. Due to the Drumheller Flood Mitigation project, Ms. Ginger was required to relocate her primary residence in Lehigh where she currently operates a charitable rescue for felines, Peggie's Feline Rescue (the "Rescue").

[20] The Lands in East Coulee were zoned under the Land Use Bylaw as a Neighbourhood District. Ms. Ginger was considering relocating there pending approval of the Development Permit which would allow her to relocate the Rescue.

[21] When the application first came in on January 28th 2022, the full package was not submitted and considered incomplete. Ms. Ginger returned to the office on January 31, 2022 to complete the package. This included signing of the documents, providing authorization from the current property owner, as well as submitting a site plan, and providing letters of support from members of the neighbourhood. At that time Ms. Ginger also indicated that there were two members of the public that were not in favour of the application. At this time, the application was still deemed as not being complete.

[22] During this time, Mr. & Mrs. Kalman submitted a letter to the Development Authority stating that they were not in support of the permit. This letter was provided to Ms. Ginger. Ms. Ginger provided the Development Authority with measures to mitigate nuisances including privacy screening, the number of cats that would be permitted at her home, the refuse concerns, smells, noise pollution, and any potential traffic that may be impacted.

[23] Between February 1 to February 11, 2022, emails were submitted to the Development Authority from the residences of East Coulee. These emails were received and documented and were later considered by the Development Authority when making their decision.

[24] On February 8, 2022, Ms. Ginger submitted a real property report ("RPR"). At this time, the application was still deemed to be not complete. Multiple other site plans were submitted by Ms. Ginger. The RPR was annotated with documents to be to scale because the site plans submitted prior were not deemed to be to scale.

[25] On February 11, 2022, the application was reviewed by Ms. Knight and Mr. Drohomerski and, after reviewing the Land Use Bylaw and other applicable bylaws including the Community Standards Bylaw and the Responsible Pet Ownership Bylaw, the application was considered complete and approved.

[26] Once approved, the notice of completed application along with the notice of the decision was sent to Ms. Ginger. The Development Authority also sent a letter to adjacent property owners, reaching about 50 meters out from the Lands. The letter was not mailed until after 4:30 pm so it was not picked up for delivery by the mail service until Monday morning.

[27] During the application process, the Development Authority posted 2 notices in the Drumheller Mail. The first notice was posted on February 9, 2022, letting the public know that Ms. Ginger's application for the Home Occupation – Urban was under consideration. The second notice was posted on February 16, 2022, letting the public know that the Development Permit had been approved. It is typical for the Development Authority to advertise permitted uses once authorization has been completed. Because this application was deemed to be controversial, the Development Authority decided to put an additional notice in the Drumheller Mail regarding the consideration of Development Permit application.

[28] When determining whether the application would be approved, the Development Authority spoke with Ms. Ginger and looked at the existing operation as part of the reference for what they felt was a good indication of the future state of the operation. Upon this review, the Development Authority was of the opinion that the operation was a permitted use under the defined category of Home Occupation – Urban in accordance with the Land Use Bylaw Section 6 Interpretation and Definitions.

[29] The Land Use Bylaw defines Home Occupation – Urban as follows:

means an accessory use by a resident of a Dwelling Unit and/or Accessory Building for small-scale business activities that do not adversely affect the residential character of the property and may have limited client visits to the property. Uses do not include fabrication, manufacturing, or mechanic shops.

[30] The Land Use Bylaw is not all encompassing, it does not contain an all-inclusive listing of permitted uses of items under the Home Occupation - Urban category. It does not include accounting or aesthetician services which are known permitted uses under Home Occupation - Urban in Neighbourhood Districts. This is because the Land Use Bylaw is allowed to be open to interpretation to make it more adaptable for residences and business to be able to work and play appropriately in Drumheller.

[31] A permitted use delegates authority to the Development Officer to determine whether an application is suitable for approval. If a development is deemed to be discretionary use, then it goes to Municipal Planning Commission where they decide the approval. However, the Development Authority did not feel that was needed in this case. Based on the Neighbourhood District zoning and the Home Occupation - Urban request, the current version of the Land Use Bylaw indicates that this is a permitted use not a discretionary use.

[32] The details for requirements on permitted uses, as set out in the Land Use Bylaw, are solely related to land application, which is what the land is used for, built form such as structures and parking, and zoning. It does not contain details or requirements for items such as drinking water or wastewater.

[33] Ms. Ginger had proposed to live in the new home on the Lands and develop and utilize two cat cottages as accessory buildings for the cats that were part of the Rescue. In the application, Ms. Ginger had stated there would be limited visits from the public, that there would be only 1 to 2 people working the operations, and she did not request to have any signage. Ms. Ginger indicated she has run the Rescue operation in a similar manner from her current home in Lehigh and has for a number of years.

[34] It was determined that the proposed Rescue fell under the confines of the Home Occupation - Urban definition and would be allowed in the Neighbourhood District.

[35] The total parcel coverage of all the buildings including the proposed cat cottages was also considered. The total allowable lot coverage of buildings is 70%. In this case, the proposed coverage would be 33%. The proposed cat cottages were of similar style and construction to the existing accessory buildings, both on this property and those in the surrounding area.

[36] Furthermore, there were no variances granted in the application because there were no variances needed. In terms of coverage, the accessory structures as well as primary structures had front, side, and rear setbacks that are required from the property lines. The existing buildings fall within these setbacks and any proposed structures would be required to also fall within the setbacks at the time when those structures are being proposed to the Development Authority.

[37] Furthermore, with respect to the Land Use Bylaw definitions, it was determined that Peggie's Feline Rescue was a shelter and did not fit within the definition of a kennel. A kennel is defined in Section 6 as follows:

means any premise with 3 or more dogs and/or 5 or more cats are cared for, maintained, boarded, bred or trained, in exchange for compensation.

[38] The Development Authority determined there was no compensation received by Ms. Ginger for the protection and the care of the cats. Donations of food and other general supplies were received from time to time from citizens to assist Ms. Ginger in the animal's care. This was not regular; it was sporadic and not used as a staple base to maintain the operations.

[39] The concerns considered under the Community Standards Bylaw included smell, noise, and overall nuisances being created by the development.

[40] It was proposed that the food and cat litter would be stored inside buildings and any used litter would be promptly removed and either delivered to the landfill directly or put into appropriate garbage bins until waste collection days. The cats would not be permitted to run free. They would be contained within the cat cottages and only leave them if they are adopted, relocated, or when, in warmer weather, they are allowed outside on the "Catios", which are enclosed spaces where the cats are able to go outside.

[41] Therefore, if the property was properly maintained, free of feces, any visible accumulation of cat food, and loose refuse, then there is no offense as outlined in this bylaw. It was determined the cats would be kept indoors for majority of the time with the exception of times when they were allowed out on the enclosed Catio in warm weather.

[42] Inspection of the current location for the Feline Rescue demonstrated that the operation was properly maintained and that there were no violations of the Community Standards Bylaw and the applicable sections. Furthermore, it was noted that the Rescue had never received a complaint throughout its years of operations. As such, the Development Authority had no reason to believe that this attention to detail in her operation would cease on her moving her operation to the new proposed location.

[43] With respect to the Pet Ownership Bylaw, the limits set out at sections 8.1 and 8.2 do not apply to a humane society or a person who holds a valid business license to operate a retail pet store, vet clinic, animal boarding or breeding facility, as long as the Land Use Bylaw permits the same (as set out in section 8.3). Ms. Ginger operates an animal boarding facility. She may continue to do so on the condition that she obtains a business license. If she complied with this requirement, then there were no violations as provided for in the Pet Ownership Bylaw.

[44] In addition, when considering the application, the Development Authority also held discussions with a Public Health Inspector from Alberta Health Services, the Director of Emergency and Protective Services, and one of the Town's Community Peace Officers to ascertain that the application met the applicable bylaws or policies for the respected area.

[45] Both the Peace Officer and the AHS inspector inspected the location of the current Rescue operations in Lehigh which demonstrated that the operation was properly maintained and that there were no violations of the Community Standards Bylaw and the applicable sections. Site visits to the Lands were also undertaken.

[46] No parties had any objections to approving the relocation of the Rescue to the Lands.

[47] The application was considered solely based on the merits of the Land Use Bylaw and felt it was a reasonable application, submitted in good faith. After an onerous review of the applicable bylaws, inspection of the current operations, inspection of the proposed lands, and discussions with AHS, Emergency Protective Services, and the Peace Officer, the Development Authority felt there was no reason to deny the application and therefore it was approved.

[48] The Development Officer/CAO recognized that although he wears many hats, his ethical and moral obligations to the community, and himself, did not allow him to bypass the bylaws, restrictions, or requirements that are put on him when he considered this application.

[49] The Development Authority also raised concerns about the allowance of an appeal for what is to be considered a permitted use within the Land Use Bylaw as only discretionary uses are appealable.

Submissions of the Appellants Frank Kalman and Donna Kalman

[50] At the appeal, Mr. Stephen Wilton acted as agent and spoke on behalf of the Appellants.

[51] Frank and Donna Kalman live next to the proposed development and filed the appeal. While they are not opposed to the Rescue operation run by Ms. Ginger, and they sympathize with her having to relocate her home and her operations due to flood mitigation issues, they had significant concerns with the approval of the Home Occupation - Urban and adamantly opposed a Rescue being approved within the Neighbourhood District of East Coulee.

[52] The Appellants identified 8 concerns with the approved Development Permit:

- a. The Land Use Bylaw specifies that the property in question is to be located in a Neighbourhood District. There is nothing in the Land Use Bylaw under either permitted or discretionary uses that specifies that an animal rescue operation would be permitted in a Neighbourhood District.
- b. For Home Occupation - Urban in the Land Use Bylaw, it specifically prohibits outdoor storage of anything related to the use; however, the conditions set in the Development Permit approval directly contravene the Land Use Bylaw. Particularly its proposed Catio's are a visible nuisance potentially creating other nuisances such as noise and smell including howling, fighting, foul odours and the smell of urine. Also, it contemplates outside storage and has requirements that garbage and waste be stored in closed containers which indicates outside storage.
- c. Conditions of the Development Permit also include compliance with Community Standards Bylaw 06-19 which includes provisions that no owner or occupier of a premises shall allow on the premises any material that creates unpleasant odours including animal feces or urine. It also prohibits allowing airborne matter that may cause a disturbance to escape from the premises without taking reasonable precautions to ensure such airborne matter does not escape. It also prohibits a person from causing or committing any noise that disturbs the peace of any other person. It also states that a person who owns, harbours, houses or allows to stay on the premises an animal, which by reason of howling, disturbs other persons is guilty of an offence. The concern is that the Rescue will violate all of the above requirements of this Bylaw.
- d. The conditions of the Development Permit also include compliance with the Responsible Pet Ownership Bylaw 06-13. This Bylaw defines a cat as a domestic feline of either sex over the age of 90 days. It specifies that no person shall be permitted to keep more than 5 cats on the land at any time; however, this limit does not apply to a rescue facility as long as the Land Use Bylaw permits the same. There is nothing in the Land Use Bylaw which permits a rescue facility in a Neighbourhood District. It is therefore legally impossible for the Rescue to comply with the Responsible Pet Ownership Bylaw if it were allowed to move into the Lands. Numerous different numbers for the proposed number of cats in the Rescue were used in the application and now there was uncertainty surrounding how many cats would be under the Rescue's control at any given time. The proposed numbers were all more than 5 and therefore in contravention of this Bylaw.

- e. The Development Authority and Ms. Ginger did not comply with the Land Use Bylaw and the requirements for providing notice. Section 5.12 of the Bylaw requires that prior to approving the application for a development permit for a discretionary or for a permitted use requiring variance, the Development Authority shall require the Applicant to post a notice on the property in a location and format determined by the Town describing the proposed development and advising any interested parties where further information regarding the application may be obtained. This notice is to be posted for a minimum of 10 days prior to using the development permit. This was not completed. The Development Authority decided it was a permitted use and opted to run a notice twice in a weekly paper and ignored section 5.12. There was complete disregard for the mandatory notice posting requirements.
- f. In section 5.5.1 of the Land Use Bylaw or 640 (6) of the Municipal Government Act ("MGA"), a Development Authority can grant a development permit which does not comply with the Bylaw if, in the opinion of the Development Authority, the development does not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment, or value of neighbouring parcels. This discretion to ignore a bylaw is limited because both the MGA and the Land Use Bylaw permit reliance on this discretion only if the proposed use is authorized by the Bylaw. However, there is nothing in the Bylaw which permits specifically this type of animal use in a Neighbourhood District. Therefore, the Development Authority had no discretion to approve the Rescue at its proposed location on the Lands.
- g. Of great concern is the preservation of the shared water supply. The community and homes use individual shallow wells. Prior to allowing the permit, health authorities were not contacted to evaluate the risks to the water supply from cat waste and run off associated with cat feces and long-term pet cleaning and maintenance. It was only after the approval and more public concerns were raised, that a health authority was contacted. However, no one from the health authority has actually seen the inside of one of the onsite wells and has only looked through windows. They also could not see any drainage issues or concerns as there was snow coverage on the ground when they visited the Lands. No one has assessed the potential risk to people, pets, and wildlife associated with airborne diseases or other parasites carried by stray cats. There was no consideration given to the fact that cats howl, fight, create noise and spray urine and feces, not to mention the increased number of flies that they will bring.
- h. The Rescue operation will interfere with the amenities of the East Coulee neighbourhood and will materially and negatively affect the use, enjoyment, and value of the properties. Lehigh is a different community from East Coulee with larger land parcels and, due to the spacing differences, no one is quite as close to the cat cottages in Lehigh as they would be in East Coulee.

[53] The Appellants stated they had no submission on whether there were any relaxations or variances granted in this application.

Submissions from those speaking in favour of the Appeal – Tony Miglecz

[54] Tony Miglecz is a resident of East Coulee and has lived there for the past 1 and a half years. He spoke in favour of the appeal.

[55] Mr. Miglecz supported the evidence already provided by the Appellants.

[56] Mr. Miglecz noted that his number one concern was the water issue. He felt that East Coulee is different than Drumheller as Drumheller has supplied water whereas East Coulee requires their drinking water to come out of the ground.

[57] Their wells are only 25 feet deep and water levels are around 12 feet. The water runs straight through the gravel and sand into the wells. He wants to ensure the protection of their water.

Submissions from those speaking in opposition of the Appeal – Candice Girard and Kim Almadi

Candice Girard

[58] Candice Girard is the daughter of Peggie and Ted Ginger, the applicants of the Development Permit.

[59] Ms. Girard pointed out that AHS has stated that the cats themselves pose no risk to the water supply in the community as they will not have access to either of the wells on site.

[60] Ms. Girard also noted that the well located in the basement of home on the Lands is currently not sufficiently sealed and is subject to contamination and this has likely been the state for its lifetime. The soil was already at risk of contamination from this cracked sewer. She noted that measures to rectify the situation were going to be undertaken by the Gingers and a qualified professional.

[61] Ms. Girard felt the issues and opinions brought forward were unsubstantiated accusations and fears of poor operation and were not facts based on what the bylaws allow. All the concerns posed by those opposed have been addressed by the AHS report and the written requirements on the approved Development Permit.

[62] Ms. Girard also noted that any money taken by the Rescue is from donations for the adoption of the feline and is based on whatever the person feels like paying; there is no set fees. These donations are then used towards supporting future animals.

Kim Almadi

[63] Kim Almadi does not currently live in East Coulee, but her family has owned property there for many years.

[64] Ms. Almadi stated her support for the Rescue and that she believes that Ms. Ginger provides a huge service in the community.

[65] Ms. Almadi has visited the current location of the Rescue and stated that, although there is odour when you are in the cat cottages, it is minor. She also stated that kitty litter is dumped into a bag and put into a garbage and that urine running or trickling out the cat cottages is not an issue. She also noted that storage of the food is in dry bags that is kept inside the cat cottages.

[66] Ms. Almadi noted that she paid a \$75.00 fee for her cat from the Rescue but that this was used for future animals to get spayed.

FINDINGS OF FACT

[67] In addition to any facts found by the Board which are set out in its reasons, the Board makes the following findings of fact.

[68] The Lands are located at Town of Drumheller and legally described as Plan 4128EQ, Block 1, Lots 12-14 and municipally described as 446-2 Avenue East Coulee.

[69] The Lands are located within the Neighbourhood District (the "ND District") of Town of Drumheller.

[70] The Appellants, Frank and Donna Kalman, are affected persons.

[71] Those speaking in favour of the appeal and those speaking in opposition to the appeal are affected persons.

REASONS

Jurisdiction

[72] The Board notes that its jurisdiction is found in section 687 of the MGA. In making this decision, the Board has considered the oral and written submissions made by the Development Authority, the Appellants, and those who spoke in favour of the appeal, those who spoke in opposition to the appeal and the written submissions.

687(3) In determining an appeal, the subdivision and development appeal board

- (a) repealed;
- (a.1) must comply with any applicable land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;
- (a.3) subject to clause (a.4) and (d), must comply with any land use bylaw in effect;
- (a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;
- (b) must have regard to but is not bound by the subdivision and development regulations;

- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
 - (i) 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,
 - and
 - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

Affected Persons

[73] The first question the Board must determine is whether those appearing and speaking before the Board are affected persons. The Board notes that there was no objection made to those making submissions to the Board. However, for completeness, the Board will address this issue in its reasons.

[74] The Appellants live next door to the Lands. Due to their proximity to the proposed development, the Board finds that the Appellants Frank Kalman and Donna Kalman are affected by this appeal.

[75] Mr. Tony Miglecz spoke in favour of the appeal. He also lives in East Coulee and the Board find that due to his proximity to the Development that he is affected by this appeal.

[76] Ms. Candice Girard spoke in opposition to the appeal. She is the daughter of Peggie and Ted Ginger, who are the applicants for the Development Permit and the board accepts that she made submissions in support of their permit. The Board finds that she is affected by the appeal.

[77] Ms. Kimberly Almadi spoke in opposition to the appeal. She has family property in the East Coulee area and the Board finds that as a result, she is affected by the appeal.

Issues to be decided

[78] The Appellant has argued that the use is not listed in the Neighbourhood District, and that the Development Authority erred in approving it. The Development Authority has stated that the use is a permitted use and therefore under section 685(3) of the *Municipal Government Act*, the Board should deny the appeal. The Appellant has also raised a number of other issues concerning the appeal.

[79] The Board has determined that the following issues need to be addressed:

1. What is the use?
This question requires the Board to determine the nature of the use, and which use definition it falls into.
2. Is the Use permitted or discretionary?
3. If the Use is Permitted, have the provisions of the Land Use Bylaw been misinterpreted, relaxed or varied?
4. Can the Board consider the submissions about the potential impact of the Proposed Development on the well water and submissions alleging an impact on use, value and enjoyment?
5. What is the impact of the Applicant's failure to post signage regarding the Proposed Development?
6. Does the Development Authority's posting of notice of the proposed development and a subsequent posting of notice of the Development Permit in the newspaper a "misinterpretation, relaxation or variance" of the Land Use Bylaw enabling the Board to grant the appeal?

1. **What is the use?**

[80] The Appellant argued that there are no provisions in the Land Use Bylaw which permit the Applicant to have a rescue facility in the Neighbourhood District. As a result, the Appellant argues that the use cannot be approved. By contrast, the Development Authority has stated that the definition of Home Occupation – Urban is a broad category which contains many kinds of occupations such as accountants and aestheticians.

[81] The Board notes that Land Use Bylaw does not contain a definition for animal rescue or cat rescue. However, the Board accepts the submissions of the Development Authority that the definition of Home Occupation – Urban is a broad one which encompasses a number of uses, such as accountant, etc. The Board agrees that the definition of Home Occupation – Urban should be non-prescriptive so that it can provide flexibility to the Development Authority. There is nothing else in the Land Use Bylaw brought to the attention of the Board that would preclude the Proposed Development from being a Home Occupation – Urban, and therefore the Board rejects the Appellants' argument that because the definition of Home Occupation – Urban does not specifically include the words "animal rescue" the use cannot be a Home Occupation – Urban.

[82] The Appellant did not specifically argue that the Proposed Development was a Kennel. However, the Development Authority did provide submissions analyzing these 2 uses (see page 105/211 of the Agenda Package).

[83] The Board notes that the above two uses are the only two which may have some relevance to the nature of the Proposed Development. The Board will therefore review the definitions to determine whether the Proposed Development falls within either of these uses.

[84] The definition of Kennel is:

Kennel means any premises where 3 or more dogs and/or 5 or more cats are cared for, maintained, boarded, bred, or trained in exchange for compensation.

[85] The definition of Home Occupation, Urban is:

Home Occupation – Urban means an accessory use by a resident of a Dwelling Unit and/or Accessory Building for small-scale business activities that does not adversely affect the residential character of the property and may have limited client visits to the property. Uses do not include fabrication, manufacturing, or mechanic shops.

[86] The evidence before the Board (both in writing and orally) was that the Applicant will be living in the dwelling on the lands, and that the rescue cats will be housed in 2 accessory dwellings on the Lands. The Applicant is going to store the cat food in another outbuilding. There will be a "catio" – an enclosed space where the cats are able to go outside. The cats will use litter boxes and the litter boxes will be emptied into garbage cans and then taken to the land fill. In response to Board questions, Ms. Girard noted that her parents accepted donations of whatever amount from people to assist her with the costs of caring for the cats. Ms. Almadi stated that the Applicant charged \$75.00 for an already spayed cat, with the money then being used to spay future cats.

[87] The Board noted that the Appellant did not contest the nature of the Applicant's operation and provided no evidence in relation to its nature.

[88] In determining whether the Applicant is operating a Kennel or a Home Occupation, Urban, the Board has examined the definition of Kennel. The Board notes that the definition of Kennel is comprised of 3 elements:

- a. The number of animals is 3 or more dogs and/or 5 or more cats;
- b. Cared for, maintained, boarded, bred, or trained;
- c. In exchange for compensation.

[89] In examining the definition, the Board has determined that the commercial aspect of Kennel is the significant element that distinguishes it from an animal rescue operation. In looking at the definition of Kennel, the "bundle of services" (the caring, maintaining, boarding, breeding or training) are done in exchange for compensation. This definition suggests to the Board that the intention is for the Kennel operator to provide the services for compensation.

[90] In looking at the definition of Kennel, the anticipated number of animals in the Proposed Development would fall within the definition of Kennel. Further, the Applicant has indicated in its written application for a Development Permit that it would be caring for, maintaining and boarding animals. There is no suggestion that the Applicant would be breeding the animals, as there is evidence that the animals are likely to be spayed or neutered while at the Applicant's operation. There is also no evidence supporting a claim that the Applicant provides training.

[91] The Board must determine whether the evidence before it establishes that the Applicant intends to operate a Kennel – that is, to provide services of maintaining, caring and boarding for compensation.

[92] The Board notes that the written materials provided do not indicate that the Applicant charges for her services. At page 37/211, there is a note that the intention is to find “forever homes” for the cats. At page 40/211, the document references a rescue program, and there is evidence of a monthly 50/50 draw with proceeds supporting the society. The application (page 54/211) does not list any charges for services, noting that cats are adopted through donation of monetary funds and also noting a subsidized spay/neuter program. At page 107/211, there is evidence that the Applicant has a registered charity.

[93] In considering the evidence, the Board finds that the documents do not support a conclusion that the feline rescue is done for compensation. The evidence of 50/50 draws and donations suggests that there is no set fee for the cats or the services, which is inconsistent with activities for compensation. The Board concludes that although there are some charges, these are not of the same nature as a commercial operation as a Kennel would be where the intention is to provide the services for compensation. Further the registered charity status indicates that the Applicants are not running a commercial operation. As a result, the Board finds on the evidence presented to it that the Proposed Development is not a Kennel.

[94] The question still remains whether the Proposed Development is a Home Occupation – Urban. In this regard, the Board notes that there is a Dwelling Unit on the Lands, and the evidence is that the Applicant intends to live in it. There is also a clear intention to use Accessory Buildings to house the cats and the cat food. The evidence received by the Board in the materials was that the accessory buildings will be of good quality and will blend in to the neighbourhood. As a result, the Board finds as a fact that the Accessory Buildings will not adversely affect the residential character of the Lands.

[95] The Board notes that the definition of Home Occupation does use the words “small-scale business activities”. In the Board’s interpretation, these words do not mean that the rescue operation is a commercial operation in the same manner that the Kennel would mean. The Board interprets the words to mean that there is an operation which is different from residential. The Board interprets the intention of the definition of Home Occupation – Urban to provide for some type of non-residential operation in a dwelling. The Board finds that there is no reason why the operation of a society, including a rescue society, cannot be a “business activity” since there is paper-work and other administrative details that accompany the operation, in addition to the caring for the cats.

[96] The evidence before the Board (see page 52/211) indicates that there are only 2 employees. The application also indicates that there will be people coming to the Lands to adopt cats. No number of visits was indicated, but the Board infers that the number of visits will not be significant so that the number of visitors will fall within the “limited client visits” required under the Land Use Bylaw.

[97] The Board concludes based on the evidence before it that the Proposed Development is a Home Occupation – Urban.

2. **Is the Use permitted or discretionary?**

[98] The Board notes that the uncontested evidence is that the Lands are located in the Neighbourhood District (section 3.5 of the Land Use Bylaw).

[99] The Board notes at section 3.5.2 of the Land Use Bylaw that Home Occupation – Urban is a permitted use in the Neighbourhood District, and that Kennel is neither permitted or discretionary. In light of the Board’s conclusion that the Proposed Development is a Home Occupation – Urban, the Board finds that the use is a permitted use.

3. **If the Use is Permitted, have the provisions of the Land Use Bylaw been misinterpreted, relaxed or varied?**

[100] Section 685(3) of the Municipal Government Act provides:

685(3) Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under section 683.1(8).¹

[101] This section of the Municipal Government Act means that if there has been no misinterpretation, relaxation or variance of the provisions of the Land Use Bylaw, then the Board has no authority to grant the appeal.²

[102] The Appellant has argued that the provisions of the Land Use Bylaw were misinterpreted in relation to the use. The Board has addressed that under question 1 above.

[103] The Board specifically asked both the Development Authority and the Appellant if there were any variances or relaxations of the Land Use Bylaw.

[104] The Appellant indicated that it was not aware of any. The Development Authority specifically stated that there were no relaxations or variances. In this regard, the Development Authority noted that the site coverage could be as high as 70%, but was at 33%. The Development Authority noted there were no variances or relaxations of any side yard or any other regulation under the Land Use Bylaw.

[105] The Board noted in the written submissions at pages 105-106/211 that the Development Authority had examined the general regulations found at section 3.1.1 of the Land Use Bylaw and noted that the Use standards in section 3.1.1.(8)(a) provided that the Home Occupation – Urban cannot employ more than four people who do not reside in the Dwelling Unit and that the Application complies with this regulation, having only 2 employees. Section 3.1.1.(8)(c) prohibits outdoor storage of materials, commodities, or finished products related to the use and that this is met because the cat food is to be stored in an accessory building. Although signs are permitted, the Applicant will not have a sign.

¹ There is no suggestion in this appeal that the application was deemed refused under section 683.1(8). Therefore, the Board will not be considering this portion of s. 685(3).

² See the case of *Rau v Edmonton (City)*, 2015 ABCA 136.

[106] The Board also wishes to address the argument advanced by the Appellant that there is a variance due to what the Appellant alleges is outdoor storage. The uncontested evidence is that the cat food is going to be stored in one of the Accessory Buildings, and thus the Board finds that storage is in accordance with the Land Use Bylaw and is not a variance. The Appellant has also argued that the fact that garbage will be stored in bins outside of an Accessory Building is "outside storage". The Board rejects this argument. The Board interprets "outdoor storage" as meaning products associated with the Proposed Development, such as food, animal supplies etc. and not the waste. The Board finds that to give this meaning to outdoor storage would mean that any operation that cannot have outdoor storage would need to store their waste bins inside buildings, which the Board finds to be a workable situation. The other concerns about the catios and the potential for nuisance do not address the question of a variance, relaxation or misinterpretation.

[107] Based on this information, which is not contested, the Board finds as a fact that there are no variances to any of the regulations under the Land Use Bylaw. Therefore, under section 685(3), the Board must deny the appeal.

4. Can the Board consider the submissions about the potential impact of the Proposed Development on the well water and submissions alleging an impact on use, value and enjoyment?

[108] Having concluded that section 685(3) requires the Board to dismiss the appeal, the Board has no authority to consider the submissions about well water, or any of the other of the Appellants' submissions which have been made about the Proposed Development.

[109] In this regard, the Board notes that there were many written submissions made to the Board, both in favour of and in opposition to the Proposed Development. However, none of the written submissions provided any information in relation to the question relevant to the Board's role which is to determine the nature of the use – whether it is a permitted use. Then, if the Board concludes that the use is permitted, have the provisions of the Land Use Bylaw been relaxed, varied or misinterpreted.

[110] The Board acknowledges that the location of this Proposed Development is one which has given rise to significant community input in this process. However, this Board is bound to follow the provisions of the Municipal Government Act. That Act provides that where there is a permitted use and no provisions of the Land Use Bylaw have been relaxed, varied or misinterpreted, then this Board must deny the appeal. That is what has happened in this case. This Board has to apply section 685(3) and the number of letters in support of the Proposed Development or against the Proposed Development are relevant only if they provide input on the question of whether there are any relaxations, variances, or misinterpretations of the Land Use Bylaw. The written submissions received by the Board do not address this question and therefore the Board found them to be of little assistance in the Board's task in this appeal.

[111] In making its decision, the Board disregarded any comments that were not relevant to the issues in this appeal. The Board did not take into account any comments about the benefit of the rescue operation or the nature or character of either the Applicant or the Appellant. Such factors are not relevant to the Board's decision and the Board took no note of them.

5. What is the impact of the Applicant's failure to post signage regarding the Proposed Development?

[112] The Board notes that the Appellant argued that the Applicant had failed to post a notice on the Lands before the issuance of the development permit as required under section 5.12.1 of the Land Use Bylaw.

[113] Section 5.12.1 states:

5.12.1 Prior to approving an application for a development permit **for a discretionary use, or for a permitted use requiring a variance**, the Development Authority shall require the applicant to post a notice on the property in a location and format that determined by the Town describing the proposed development and advising any interested parties where further information regarding the application may be obtained. Such notice shall be posted for a minimum of 10 days prior to the issuance of a notice of decision. (emphasis added).

[114] The Board notes that the requirement for posting arises only in 2 circumstances. The first is if the application is for a discretionary use. In this case the Board has found as a fact that the Proposed Development is a permitted use so this portion of section 5.12.1. does not apply.

[115] The second circumstance is if there is a permitted use requiring a variance. In this case, the Board has found as a fact that there were no variances for the Proposed Development. Thus, this portion of section 5.12.1 also does not apply.

[116] The Board finds as a fact that notice under section 5.12.1 is not required and therefore the fact that there has not been notice under the section is not a misinterpretation, relaxation or variance which authorizes the appeal.

6. Does the Development Authority's posting of notice of the proposed development and a subsequent posting of notice of the Development Permit in the newspaper a "misinterpretation, relaxation or variance" of the Land Use Bylaw enabling the Board to grant the appeal?

[117] The evidence was that the Development Authority thought that the application might be controversial and so provided notice of the upcoming decision as well as notice of the decision. The Appellant argued that the fact that there were 2 notices instead of the one notice required under the Land Use Bylaw was a sufficient variance or relaxation to justify having the appeal.

[118] The Board notes that there is no obligation in the Land Use Bylaw for the Development Authority to provide notice of a potentially controversial permit. Therefore, the Board concludes that there has been no relaxation or variance of the Land Use Bylaw, since there is no provision to relax or vary. In relation to section 5.15.3 of the Land Use Bylaw, the Board notes that the Development Authority is required to notify the owner of adjacent parcels to the Lands. The evidence before the Board is that the Appellant is the adjacent neighbour and therefore the

obligation of notice in relation to the Appellant has been satisfied. The Appellant knew of the Development Permit and was able to file an appeal to this Board.

[119] The Board notes that the evidence of the Development Officer regarding the notice of the decision being issued and then sent to the Applicant meets the requirements of section 5.15.1 of the Land Use Bylaw. No one raised an issue in regard to this notice, but having reviewed the steps taken to decide and notify, the Board finds as a fact that this obligation has been satisfied by the Development Authority.

Further Comments

[120] The Board notes that the Appellants made arguments about the Applicant's compliance with the Community Standards Bylaw and the Responsible Pet Ownership Bylaw. The Board notes that it does not have authority to enforce these bylaws and the concerns raised by the Appellants are ones of enforcement. If there are concerns of noise, etc. these concerns should be raised with the appropriate municipal officials as the Board cannot address them.

[121] The Board notes that the Appellant made comments about the Development Authority taking into account factors other than relevant planning provisions when making his decision, which was refuted strongly by the Development Authority. The Board finds that there is no evidence to support the Appellant's allegations. The evidence submitted by the Development Authority showed that the Development Authority took into account the relevant statute (the Municipal Government Act), the provisions of the Land Use Bylaw and the Board rejects any suggestion that there was any conduct by the Development Authority which was improper.

[122] The Board notes that the Appellants reference section 5.5.51 of the Land Use Bylaw which speaks of the ability for the Development Authority to approve a development if the development does not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment, or value of neighbouring parcels. The Board notes that this provision (and section 640(5) of the MGA) deal with the situation where a variance is sought. Since there are no variances, this provision does not apply.

[123] Finally, the Board notes that the Appellants and those speaking in favour of the appeal were concerned about the state of their well water. The Development Authority provided evidence of inspections by Alberta Health Services which indicate that there are no health concerns or concerns in relation to the well water arising from the Proposed Development. Further, the evidence is that the cats are not allowed to leave the property, except for the patio and that they will use the litter boxes. As a result, on the evidence, the Board does not see how the water supply can be compromised. However, the Board recognizes that water supply is a concern for the Appellants. In light of the Board's conclusion that this Proposed Development is for a permitted use that complies in all regards, the Board must approve the development. The Board notes that the Appellants are able to contact the appropriate health officials if they believe that there is a concern with their water.

[124] Issued this 11th day of April, 2022 for the Palliser Intermunicipal Subdivision and Development Appeal Board.


T. Wallace, Chair

PALLISER INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This decision may be appealed to the Court of Appeal of Alberta on a question of law or jurisdiction, pursuant to Section 688 of the Municipal Government Act, RSA 2000, c M-26.

APPENDIX "A"
REPRESENTATIONS

PERSON PRESENTING TO THE BOARD

1.	D. Drohomerski, Development Officer
2.	A. Knight, Development Officer in training
3.	G. Peters, Director Protective and Emergency Services
4.	S. Wilton, agent for Appellants F and D Kalman
5.	T. Miglecz
6.	C. Girard
7.	K. Almadi

APPENDIX "B"
DOCUMENTS RECEIVED AND CONSIDERED BY THE ISDAB

Exhibit	Description	Page #
1.	Appellant - Appeal Information – Frank Kalman	3-95
	Note: P21-36 is the same document without the highlighted sections	22 – 37
	Additional Information – Frank Kalman authorizing Stephen Wilton to represent him at the Hearing on April 1, 2022	86-87
	Additional Information – Denise Lines, Clerk clarification for representative authorization form	88-91
	Additional Information – Frank Kalman – Feline Rescue Site concerns – AHS	92-95
2.	Development Authority Submission: Darryl Drohomerski, C.E.T; Antonia Knight	96-177
3.	Landowner Written Submission – Peggie Giner	178-188
4.	Landowner: Written Submission – Peggie Ginger	189-190

Exhibit	Description	Page #
5.	Written Submission – Cathy Arndt	191
6.	Written Submission – Elizabeth Gallagher	192-193
7.	Written Submission – Angel Patterson	194
8.	Written Submission – Rob Pohl	195
9.	Written Submission – Bonnie Constable	196
10.	Written Submission – Linda Bixby	197-198
11.	Written Submission – Susan Wood	199-203
12.	Written Submission – Karen Almadi	204
13.	Written Submission – Kimberly Almadi	205
14.	Written Submission – Laura Almadi	206
15.	Written Submission – Margaret English	207
16.	Written Submission – Kathy Anderson	208-209
17.	Written Submission – B. Coates	210-211