

HEARING DATE: JUNE 15, 2021

BOARD ORDER: D02-2021

APPLICANT: BRENDAN KELLY

APPELLANT: STEVEN LAFORGE

APPEAL AGAINST: DP 21-30 DECISION OF MPC FOR APPROVAL, WITH CONDITIONS, FOR A MAJOR HOME OCCUPATION - LOG SPLITTING AND FIREWOOD DELIVERY

SUBJECT PROPERTY: LOT 5, BLOCK 13, PLAN 091 0930; 2 RIVERWOOD RISE, BLACK DIAMOND, ALBERTA (THE "PROPERTY")

BEFORE: CHAIRMAN; GAR BEACOM, BOARD MEMBERS; CARL FISHER, TOM WEBER, JOHN DERIJK, IVOR McCORQUINDALE; CLERK VERNA STAPLES AND ASSISTANT CLERK GARITY STANLEY

DECISION

Having been satisfied that notice of this hearing was provided in accordance with the *Municipal Government Act*, RSA 2000, Chapter M-26;

And upon having seen and read the materials provided, and upon having heard the representations from the Appellant, the Gallery (via GoToMeeting online meeting platform) and the Development Authority for the Town of Black Diamond with respect to the Appeal filed by the Appellant in accordance with Section 685 of the *Municipal Government Act* against the approval of Development Permit 21-30 to allow for a major home occupation - Log Splitting and Firewood Delivery at Lot 5, Block 13, Plan 091 0930; 2 Riverwood Rise, Black Diamond, Alberta (The "Property");

The Subdivision and Development Appeal Board for the Town of Black Diamond (the "Board") has decided to:

Deny the Appeal and uphold, with the addition of two conditions, the Development Authority's decision to approve Development Permit 21-30 for a major home occupation - Log Splitting and Firewood Delivery at Lot 5, Block 13, Plan 091 0930; 2 Riverwood Rise, Black Diamond, Alberta. The Board has ordered the addition of the following conditions:

- the Applicant must close the garage door when the log splitter is in operation, and
- the wood is to be placed into the truck in such a manner as to limit the amount of noise created.

The Application is thereby UPHELD, as varied.

FINDINGS OF FACT

1. The subject property is located in a residential, R1C Single Detached Conventional Residential District,
2. On May 7, 2021, the Development Authority, in this case, the Municipal Planning Commission, approved Development Permit 21-30 for a major home occupation - Log Splitting and Firewood Delivery at Lot 5, Block 13, Plan 091 0930; 2 Riverwood Rise, Black Diamond, Alberta, with conditions.
3. An appeal was received from the Appellant, Steven LaForge, on May 20, 2021, against the approval.

ISSUES

Summary of the Development Authority's Position

- (i) The Application met the requirements of section 9.2 of the Land Use Bylaw and did not request or receive any variances.
- (ii) The Development Authority considered the Land Use Bylaw (Bylaw 98-14) and the Municipal Development Plan (Bylaw 01-04).
- (iii) The property in question is designated R1C, Single Detached Conventional Residential District.
- (iv) The Applicant had been operating his business for three (3) years prior without a development permit.
- (v) The Town received no complaints about this operation.
- (vi) Denice Stewart, Development Officer, informed the Board that the Land Use Bylaw does not restrict the personal use of a garage, provided that the user complies with the Public Order Bylaw. This Bylaw prohibits noise that is likely to disturb the peace of other persons between the hours of 10 pm and 7 am during the week and 10 pm and 9 am on the weekend.

Summary of the Grounds for Appeal and Testimony Supporting the Appeals

- (vii) One Appeal was received against the Development Authority's decision on May 20, 2021.
- (viii) The basis of concern identified in the Appeal was noise pollution. The Appeal further stated that this type of business belongs in a non-residential area, not in an R1C Single Detached Conventional Residential District.
- (ix) No other person made a submission or requested to speak in support of the Appeal.

Summary of testimony submitted in opposition to the Appeals

- (x) Brendan Kelly submitted a PowerPoint presentation outlining the growth of the business and its place in the community.
- (xi) Mr. Kelly confirmed that operationally he makes between one (1) and three (3) deliveries a week, generally loading by 5:00 pm for delivery the following day, taking approximately fifteen minutes to load his truck.
- (xii) Mr. Kelly confirmed he would be willing to close his garage door in the future when splitting wood.
- (xiii) The business increased during the COVID-19 pandemic. Mr. Kelly hopes to return to full-time work as a teacher in the fall of 2021.
- (xiv) No other person made a submission or requested to speak opposing the Appeal.

REASONS FOR DECISION

The Board is upholding the Development Authority's decision to approve a major home occupation - Log Splitting and Firewood Delivery at Lot 5, Block 13, Plan 091 0930; 2 Riverwood Rise, Black Diamond, Alberta, with the additional conditions that the Applicant must close the garage door when the log splitter is in operation and that the wood be placed into the truck in such a manner as to limit the amount of noise created.

1. The Board considered that the Development Authority, in this case, the Municipal Planning Commission, did not misinterpret their authority to grant the development permit.
2. The Board considered that Home Occupations, Major is a listed discretionary use. The Development Authority placed 19 Regular Conditions on the approval of DP21-30.
3. Taking into consideration the concerns raised by the Appellant with respect to the stated concerns about the noise, the Board determined that as the Applicant has the support of many of the neighbours and that no other complaints of noise have been received, the Board has no reason to uphold the Appeal.
4. The Board gave consideration to the Development Officers' statement that the Town of Black Diamond has enforcement options available to deal with complaints if required, such as the Public Order Bylaw. Further, the two (2) new conditions imposed by the Board, when taken with

Condition #15 "The home occupation shall not, in the opinion of the Approving Authority, be a source of inconvenience, materially interfere with or affect the use, enjoyment or value of neighbouring properties, by way of excessive noise, smoke, steam, odor, dust, vibration or refuse matter which would not commonly be found in the neighbourhood,"

and with

Condition #18 "If, at any time, any of the requirements for a home occupation have not, in the opinion of the Approving Authority, been complied with, or the use is not in keeping with the terms of this approved application, the Approving Authority may suspend or cancel the development permit for the home occupation, pursuant to the provisions under the *Municipal Government Act* or request the applicant to submit a new application to the Approving Authority for consideration,"

provide the Town with stronger means of gaining compliance if not achieved through education or other enforcement options such as the aforementioned Public Order Bylaw.

CLOSING

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal this decision, you must follow the procedure found in Section 688 of the *Municipal Government Act*, RSA 2000 Chapter M-26, which requires an application for leave to appeal to be filed and served within 30 days of this decision.

INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

D02-2021

Dated at the Town of Black Diamond, in the Province of Alberta this **29th day of June 2021** and signed by the Chairman of the Subdivision and Development Appeal Board, who agrees that the content of this document adequately reflects the appeal hearing, deliberations and decision of the Subdivision and Development Appeal Board.



Gar Beacom, Chairman

RELEVANT LEGISLATION

TOWN OF BLACK DIAMOND LAND USE BYLAW 98-14

3.7.5 The Municipal Planning Commission shall decide upon applications for Development Permits, even though the proposed Development is a non-conforming building, if, in the opinion of the Municipal Planning Commission, the proposed physical change is minor, and

- a) the proposed Development would not:
 - i) unduly interfere with the amenities of the neighbourhood, or
 - ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land and
- b) the proposed Development conforms with the use prescribed for that land or building in the land use bylaw.

10.2.1 R-1C SINGLE DETACHED CONVENTIONAL RESIDENTIAL DISTRICT

10.2.1.1 GENERAL PURPOSE

To establish a District primarily for Single Detached Housing.

10.2.1.2 PERMITTED USES

Accessory Buildings
Home Occupation, Minor
Single Detached Housing
Signs
Art Studio and Gallery: Lot 12 Block 20 Plan 8010853 (05-16)

10.2.1.3 DISCRETIONARY USES

Accessory Suites
Bed and Breakfast Accommodation
Child Care Services
Home Occupation, Major (02-04)
Group Homes, limited
Manufactured Homes (02-04)
Religious Assembly
Restoration of antique implements of husbandry: Lot W1/2 of 2 and all of 3, Block 10, Plan 8985FM
Single Detached Housing, Moved-On

MUNICIPAL GOVERNMENT ACT, RSA 2000, CHAPTER M-26

Hearing and Decision

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

- (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,

APPENDICES

APPENDIX "A"

PERSONS WHO WERE IN ATTENDANCE, MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING.

NAME	CAPACITY
1. Denice Stewart	Town of Black Diamond – Development Officer
2. Steven LaForge	Appellant
3. Brendan Kelly	Applicant
4. Carly Fanjoy	On-line Gallary

As this hearing was held electronically, no members of the public attended in person. Staff recorded the names of all virtual attendees.

APPENDIX "B"

DOCUMENTS RECEIVED PRIOR TO THE HEARING AND MADE AVAILABLE AT THE HEARING:

NO.	ITEM
1.	Notice of Appeal submitted by Steven LaForge
2.	Notice of Decision to Development Permit 21-30 by the Development Authority for the Town of Black Diamond
3.	Development Officer's Report, submitted by Denice Stewart
4.	One (1) Submission opposing the Appeal submitted by the Applicant, Brendan Kelly

APPENDIX "C"

EXHIBITS MADE AVAILABLE AT THE HEARING

NO.	ITEM
1.	Exhibit A1-1 to 2 Submission/Presentation by Town of Black Diamond Development Officer
2.	Exhibit B1-2 Presentation by Steven LaForge
3.	Exhibit C1-1 Submission/Presentation by Brendan Kelly
4.	Exhibit D1-1 Public Package