

Municipality of Crowsnest Pass
Subdivision and Development Appeal Board

**NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD
OF THE MUNICIPALITY OF CROWSNEST PASS.**

DECISION DATE: AUGUST 29, 2023

BEFORE: Subdivision and Development Appeal Board

MEMBERS: Chair, Rupert Hewison, Glen Girhiny, Marlene Ancil
Recording secretary, Glen Snelgrove

ATTENDING Richard and Ingrid Dietl, Appellant

Justin Dietl, Nate and Angela Marois and family, Mallory Dietl, Delbert Dietl, Johan Van Der Bank, Manager of Development and Trades, Katherine Mertz, Development Officer.

In the matter of the Municipal Government Act, Statutes of Alberta, 2000, Chapter M-26, as amended (MGA); and in the matter of the Municipality of Crowsnest Pass Land Use Bylaw No, 868, 2013 and amendments thereto, and in the matter of an appeal by Richard Dietl, against the decision of the Development Authority of the Municipality of Crowsnest Pass to issue a STOP ORDER Where a campground is being operated on a portion of the NW-8-8-4-W5 which is in contravention of the provisions of the NUA-1 district.

Notice of the Hearing was sent to adjacent land owners, the property owner, The Development staff of the Municipality of Crowsnest Pass and, six members of the Subdivision and Development Appeal Board.

PERTINENT FACTS:

1. The property is legally described as MERIDIAN 5 RANGE 4 TOWNSHIP 8 SECTION 18 ALL THAT PORTION OF THE NORTH WEST QUARTER THAT LIES NORTH AND EAST OF THE NORTH EAST LIMIT OF ROAD PLAN 731237 CONTAINING 1.99 HECTARES (4.91 ACRES) MORE OR LESS
2. The property has not been assigned a civic address by the Municipality of Crowsnest Pass but is described as 63rd Street at McGillvary, Coleman
3. The property is zoned non urban area (NUA-1)
4. No application for a development permit has been received by the Municipality of Crowsnest Pass.
5. There are four holiday trailers parked on the property and a pump-out septic

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Katherine Mertz, Development Officer submitted her report (EXHIBIT H):

- The Development Authority who issued the STOP ORDER has taken the position that the Subdivision and Development Appeal Board does not have the jurisdiction to hear this appeal and should adjourn the hearing to consider the matter of jurisdiction.
- The landowners are appealing a Stop Order issued by the Development Authority of the Municipality of Crowsnest Pass for a campground operating on the lands with no approvals from the municipality. Page 2 of 4
- In 2021, Council directed administration to proceed with enforcement of all properties using RVs for accommodation without a proper development permit or an established principal building.
- An inspection on September 1, 2022 (photos attached) concluded that RVs were stored on the subject property and used as a campground.
- A letter of intent to issue a stop order was mailed to the landowners on title on September 19th and 23rd .2022.
- The landowner contacted the municipality in the fall of 2022 to discuss moving forward with an application to rezone the property to Non-Urban Commercial Recreation (NUCR) in order to facilitate bringing the property into compliance with the land use bylaw through a development permit for a campground which is listed as a use in the NUCR district. An on-site inspection October 12, 2022 (photos attached) confirmed the RV sites and accessory structures. If the property were rezoned to Non-Urban Commercial Recreation, a development permit application for a campground would be required. •
- An extension was granted for submitting the application due to the concurrent adoption of the Land Use Bylaw Omnibus 2 containing relative amendments. •
- A rezoning application was not received and following a site inspection on June 27, 2023 (Photos attached), administration proceeded with a Stop Order. •
- A Stop Order was issued to all landowners on title, July 10, 2023. • July 14, 2023, an application was made to rezone the property. •
- The application requires all landowners signature on the application and due to some landowners not signing, the application was not able to be processed. •
- on July 28, 2023 one of the landowners submitted an appeal to the Subdivision Development and Appeal Board against the Stop Order
- The STOP ORDER was delivered to the landowner/s by registered mail.
- The STOP ORDER correctly describes the property subject to the order
- The STOP ORDER orders the landowner/s to (in accordance with S.645(2) of the MGA) and the Land Use Bylaw provisions, to remove the recreation vehicles from the property no later than July 31, 2023,
- The STOP ORDER was issued by a development officer, authorized to issue Stop Orders on behalf of the Municipality of Crowsnest Pass.

The appellants have submitted the following written letter, read by Nate Marois as follows:

Dear Council Members of the Municipality of Crowsnest Pass,

May this letter find you well. I am writing in support of our appeal on matters concerning property NW-18-8-4- W5M

The above stated property has been in use for 25+ years by three generations of family for recreational purposes. The previous owners used the property in the same manner with a camping trailer on site, as well as a camping shelter containing a wood burning stove (which was removed

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shortly after we came into possession). To be clear, the previous owners used this property for camping, and we, the current owners, are using this property for camping. During the full ownership of this property, camping was never discontinued.

As such, we would like to submit an appeal citing legal non-conformance. Within the Municipalities of Alberta, land use is not affected by a change of ownership or tenancy. A land purchaser may continue a pre-existing lawful non-conforming use. Given the significant number of years this property has been used for camping, it is evident that this is a clear case of legal non-conformance.

We acknowledge the work the MD has been doing in recent years to reduce the presence of unsightly "campgrounds" situated between residential neighbours. However, this property is not situated near residential lots. The closest resident lives approximately one km away from our property on a large section of farmland, with the nearest residential area being one mile south, separated by a quarter section of Crown land. The neighbouring half section to the west is owned by the Nature Conservancy of Canada (NCC), and to the north we share a property line with Crown land. Considering our situation adjacent to crown land, which is dedicated to random camping, continuing to allow for a private campground is an ideal use of the land.

Furthermore, in the late 90's, as the property tax rate increased significantly, an appeal was submitted requesting a reduced rate since the property was being used for camping only. This appeal was denied on the basis that the property was not a principal residence. At this time, the MD was made aware of the current use of the property for a private, family campground and nothing was said to dissuade from these plans.

Given the information presented in this appeal letter, including the history of the land use, the proximity of residential neighbors/Crown Land, and a clear case of legal non-conformance, we request that the SDAB allow continued use as a family campground, and all fines and the current stop order be withdrawn immediately.

Thank you in advance for your consideration on this matter. We look forward to hearing from you.

Kindest regards,

Richard Dietl

Additional statements made by those attending:

- The current owns acquired the property in 1997.
- Prichard owned it before that
- There are four RV units on the property
- There is a pump out septic tank in place
- There have been water drainage tests
- There are 3, 1000-liter tanks for water for fire suppression
- Each camper brings their own fresh water
- There is a 24-volt battery operated pump for the water tank
- Campers on this site adhere to fire bans
- Crown land campers are adjacent to this parcel.
- They have put out other fires left by careless campers on the crown lands

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DECISION:

Having considered the written and oral submissions, and having regard to the provisions of the Land Use Bylaw 1103, 2021, and the Municipal Development Plan, the decision of the Board is as follows:

THE APPEAL IS DENIED AND THE STOP ORDER REMAINS IN EFFECT:

THE REASONS ARE AS FOLLOWS:

1. As to the question of whether the Subdivision and Development Appeal Board has the jurisdiction to hear this appeal, the Board has discussed this in Camera and has decided that the Board does have the Jurisdiction to hear this matter.
2. As to the question raised by the appellant here the current use should be considered a "legal non-conforming use" because the use has not changed with a change of ownership. The Board does not accept that argument because the key word is "Legal", which in the opinion of this board means that the operation first of all has to be at a minimum either a permitted or a discretionary use within that zone. The current use is neither a permitted or a discretionary use with in the Non-Urban Area zone
3. The appellant has stated that there is a pump out septic tank on the property that has not been properly authorized or inspected. Therefore, the current use is not a "legal" non conforming use.
4. As to the argument that the STOP ORDER and the fines should be withdrawn immediately, the Board is bound by the provisions of the Municipal Government Act section 687(3) and the Board is of the opinion that since the development is neither a permitted nor a discretionary use within the Non-Urban Area Zone the Board is ruling in favour of the Municipality and deny the appeal.
5. ***The Board by this decision is extending the time for removal of all recreational vehicles from the property to September 30, 2023***



CHAIR, Rupert Hewison

September 1, 2023

DATE

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