

REGIONAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

UNIT B 4730 ROSS STREET
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403-343-3394

January 27, 2022

NOTICE OF DECISION

RE: Appeal of Development Permit Application DP 21132 for a development of an Agricultural Operation (16 swine and offspring) on the lands described as Lot 1, Plan 7921292 at 37465 Range Road 19-1, located in the County of Stettler No. 6, Alberta.

SUMMARY OF APPEAL

This is an appeal of a development permit refusal for a swine operation. The discretionary use development permit was refused for two reasons: (1) due to the difficulty of enforcing noise and odour issues causing a nuisance to the neighbouring property; and (2) having a higher amount of adult swine than the land use district allows – 200% variance is not acceptable.

The Appellant, D. Klettke, appealed the approval for reasons including that the County of Stettler No. 6 Land Use Bylaw for the Country Residence Agricultural District states that residents and landowners need to be aware that agriculture is adjacent to their properties and that agricultural operations take precedence. The Appellant has a total of 7.5 acres that can be fenced in for the keeping of pigs but she is asking to keep the pigs only on her southern property, away from the neighbours.

Notice of the appeal was provided to interested parties and a hearing was held on January 18, 2022.

Hearing Panel: Joseph Henderson, Chair
Earl Graham, Board Member
Anita Gillard, Board Member

SDAB Clerk: Anika Drost

BACKGROUND OF THE APPLICATION

The Development Authority refused the discretionary use swine operation (Development Permit 21132) on December 16, 2021 on the lands described as Lot 1, Plan 7921292 (Pt. NW 25-37-19-W4M). The subject property is designated Country Residence Agricultural (CR-A) District within the County of Stettler No. 6 Land Use Bylaw (LUB). The subject site is surrounded by a vacant parcel to the north, a lake to the east, and agricultural land to the south and west. There are three parcels immediately to the north that are also districted CR-A. The Appellant owns the adjacent CR-A parcel to the north. The other two CR-A parcels are developed and contain a residence each.

The Development Authority stated the following reasons of refusal:

- a) due to the difficulty of enforcing noise and odour issues causing a nuisance to the neighbouring property; and
- b) having a higher amount of adult swine than the land use district allows – 200% variance is not acceptable.

The Appellant received the notice of decision on December 16, 2022. An appeal was filed with the Regional Subdivision and Development Appeal Board (the Board) on December 23, 2021. The appeal spoke to the agricultural awareness statement of the LUB and the Appellant's desire to keep her pigs only on the subject property, instead of expanding her operation to the vacant parcel to the north. She has sufficient land to keep up to 15 pigs on her two properties combined, but wants to respect the neighbours wishes to keep the swine on the southern property to reduce noise and smell.

Affected parties were notified of the appeal and the appeal hearing through letters distributed on January 5, 2022, and through public notifications on January 13, 2022.

MERIT HEARING

Summary of the Development Authority's Submissions

The Development Authority stated that a complaint was brought forward to staff about the subject property operating a pig farm with a greater livestock count than what the LUB allowed. Upon investigation, staff only counted two pigs on the site and no enforcement action was taken.

In late October 2021 another complaint was made, stating that more pigs were added to the property. Another site inspection resulted in observing multiple pigs being present on the property. The pigs were fenced in a corral on the southern portion of the property. A letter of non-compliance was sent to the Appellant, notifying them that their property falls under livestock count restrictions. LUB section 96.10 states that the maximum allowable animal density is one

livestock unit per usable acre of land that is fenced in and dedicated to the keeping of livestock. Section 96.11 of the LUB continues to state that one livestock unit shall mean two swine. Shortly after receipt of the letter, the landowner indicated that she misunderstood the regulations and thought she was in compliance and that she would submit an application immediately.

After application submission, a site inspection resulted in observing 21 swine with 14 offspring. Due to the time of the year, the livestock were confined to a pen, but a large area of the property was fenced in for grazing. Planning staff measured the area and estimated there to be an approximate 1.8 acres of usable space for the livestock. This allows a total of four swine as a permitted use. Currently, the closest swine are approximately 500 feet away from the neighbouring residence to the north.

The CR-A District allows the Development Authority to use discretion and approve a discretionary use development permit application for the keeping of livestock with lesser restrictions as long as the size and location are suitable, and as long as the use does not detrimentally affect the amenities of the neighbouring properties. The Development Authority clarified that there is no set maximum number of livestock units for the discretionary use permit. It is up to the Development Authority to determine what is acceptable. Similarly, there is no definition for “detrimentally affect the amenities of neighbouring properties”. It is a broad statement that is up for interpretation.

Shortly after the site inspection, the Appellant submitted an application for the discretionary use development permit to keep up to 14 adult swine on her property. The offspring, up to six months, do not count towards the allowable livestock units.

The subject property is 5.4 acres in size, but the Appellant also owns the 5.9 acre parcel directly to the north. The Appellant was informed that if she were to consolidate the two parcels, the created parcel would accommodate the number of livestock requested. She told the Development Authority that she had a verbal agreement with the landowner to the north to keep the livestock on the southern property as they would be considerably closer to the neighbours if located on the northern property.

At the Municipal Planning Commission meeting, the opposition letters of both adjacent landowners to the north were presented. The landowners immediately adjacent to the vacant parcel to the north stated that the smell and noise of the pigs was not allowing them to enjoy their property, and that it would negatively affect their property values. Their neighbour to the north echoed these concerns. In consideration of the objection letters, the application for the discretionary use was denied for the following reasons:

- i. due to the difficulty of enforcing noise and odour issues causing a nuisance to the neighbouring property; and

- ii. having a higher amount of adult swine than the land use district allows – 200% variance is not acceptable.

The Development Authority provided the Appellant until the end of March 2022 to reduce the number of swine to four. Following thereafter, the Appellant filed the appeal.

The Development Authority clarified that if the Appellant did not consolidate her two parcels, she could still achieve her requested number of swine by applying for a development permit for each property, and by fencing in additional grazing land for the livestock. Section 96.10(c) of the LUB stipulates that the containment area has to be 75 metres from the closest residence, excluding residences associated with the operation. This would give the Appellant approximately 7.5 acres across the two properties to contain livestock.

Summary of the Appellant's Submissions

After the denial of the discretionary use development permit, the Appellant met with planning staff to discuss the LUB requirements and possible fencing options. If she were to fence in all available land for livestock grazing, she could have approximately 15 swine across the two properties she owns.

The Appellant is already planning on fencing the remainder of the subject property in the spring, this will create approximately 4.5 acres for the keeping of swine on the southern parcel. The Appellant feels that this is a large enough area for keeping additional swine beyond the two swine per acre restriction.

The Appellant explained that pigs are generally much quieter than cattle. The noisiest parts are castration and weaning, which only occur a handful of times a year. The Appellant tries to be mindful of the noise and attempts to do these activities while the neighbours are away. To reduce smell, the Appellant has access to a skid steer and trailer to remove the winter's waste from the property and make use of it elsewhere as fertilizer. In the summer, this additional task is unnecessary as the swine spend more time foraging in the grass and their feces dry and decompose with no smell.

Any wind within the area typically blows to the west, not towards the neighbours to the north. The Appellants are planning on planting trees along the north of their property, which would further buffer any sound and act as a wind barrier. The trees were initially planned to be planted last summer but due to dry conditions and extreme heat, the Appellant decided to delay planting.

The Appellant's goal is to have 11-12 sows. Currently the Appellant has 13 sows and three unrelated boars. She mainly sells weaner pigs off the sow in the spring. The operation also raises hogs for butcher weight. At the time of the site inspection, there were four ready to butcher hogs still on the property, which put the property in non-compliance with the LUB. Her operation is registered with Alberta Pork, and follows their guidelines. She mentioned that there is a demand for these pasture raised products.

In the spring and summer two groups of the swine go to family members which provides the Appellant with additional space to raise a few additional butcher hogs. In the fall, all swine return to the subject property for ease of feeding them in the winter. The Appellant is willing to adjust her operations and not have butcher hogs over the winter months when all other swine are at the property.

The Appellant highlighted section 96.7 of the LUB, which states that:

Landowners and residents within this District must be aware that the Agricultural District is often adjacent to this District, and that agricultural operations take precedence. Therefore they should plan and develop their lots in such a manner and at their own cost that agricultural nuisances are reduced.

The Appellant does not expect her neighbours to put cost towards buffering any nuisances that come from her operation, but the Agricultural Awareness statement of the LUB states that agriculture takes precedence within the County. The Appellant is trying to mitigate any nuisances by keeping the swine to the south of her residence to increase the distance towards the northern neighbours. Agricultural operations towards the west allow cattle to graze up to the adjacent road, which is much closer than the Appellant's swine to the neighbouring property.

The Appellant is willing to work with her neighbours to address their concerns but in an agricultural community that puts agriculture first, she reserves the right to make use of her property for agricultural purposes, which is why she purchased parcels within the CR-A District.

KEY FINDINGS OF FACT

The Board makes the following key findings:

1. The subject development is located within the CR-A District of the LUB, which lists "Agricultural Operation" as a permitted and discretionary use.
2. The proposed use falls within the discretionary use category of the LUB, as it exceeds two swine per usable acre of land.
3. The Appellant has approximately 4.5 acres on the subject property that can be fenced in as usable area for her swine operation.
4. The Appellant owns the vacant adjacent parcel to the north.
5. The vacant parcel to the north of the subject property requires its own development permit in order to allow for the keeping of livestock.

6. Any verbal agreements between the Appellant and adjacent landowners are irrelevant for the subject appeal.

DECISION

The appeal filed by Danelle Klettke is denied and the decision of the Development Authority is upheld.

REASONS FOR DECISION

The Board acknowledges that the subject property is districted CR-A, which is intended for the development of country residential uses and the option for the keeping of livestock and accommodation of other minor agricultural pursuits. In this case, the Board finds that the request to have a total of 16 swine on the subject property is too much for a parcel of the subject size. If the Appellant were to fence in the suggested 4.5 acres of the subject property for the keeping of livestock, she could have a total of nine swine pursuant to a permitted use development permit.

The Board acknowledges that the Appellant applied for a discretionary use development permit, which does not have the same limitations on the allowed number of livestock units. However, the Board is of the opinion that a variance of 78% is too much for this property and goes beyond what it would consider a minor agricultural pursuit within the CR-A District. The Board finds that the intensification at such a level for a single property is more appropriate for other districts within the County that are more accommodating to higher intensity agricultural operations. The Board interprets this district to accommodate hobby-type agricultural operations at a much smaller scale. Intense agricultural operations should take place in the Agricultural District were limitations are less restricting and agriculture takes precedence.

In response to the Appellant's mention of section 96.7 of the LUB:

Landowners and residents within this District must be aware that the Agricultural District is often adjacent to this District, and that agricultural operations take precedence. Therefore they should plan and develop their lots in such a manner and at their own cost that agricultural nuisances are reduced.

The Board finds that this section speaks to the general awareness of agricultural operations within the vicinity of the CR-A District. In particular, it speaks to the potential impacts from adjacent parcels within the Agricultural District and raises awareness that these agricultural operations take precedence. The Board does not interpret this to refer to the agricultural operations on CR-A parcels themselves taking precedence over other uses.

The Board acknowledges that the Appellant also owns the parcel directly north of the subject property and that combined, the properties could accommodate up to 15 swine and be in compliance with the LUB. However, this property requires its own development permit unless

the properties are consolidated. Since the Appellant expressed no interest in consolidating the properties, the Board is only evaluating the subject property for which a development permit for a discretionary use has been denied.

The Board bases its decision on the available space for the keeping of livestock in relation to the intensification of the proposed use, and not on the potential for “detrimental” impacts to the amenities of the neighbouring properties. However, the Board acknowledges the Appellant’s disagreement with the adjacent neighbours’ objection letters. The Board sympathizes with the Appellant’s desire to be a good neighbour and maintain as much of a buffer between the neighbouring residences and her swine as possible. Nevertheless, the intensification of the proposed swine operation on the subject property would not prevent additional swine to be kept on the vacant parcel, as the Appellant or a future landowner could apply for a permitted use development permit. The only required buffer noted by the Development Authority would be the 75 metre buffer from the area that is dedicated for the livestock operation to the nearest residence. The Board notes that the LUB regulates the use of land and does not contemplate agreements between property owners and users of the property. As such, the Board cannot take into account verbal agreements between neighbours when making its decision on land use planning matters.

The Board finds that despite the decision on the subject property’s application, the Appellant has the option to submit a development permit for additional swine on the property to the north, in order to achieve the desired number of swine and be in compliance with the LUB.

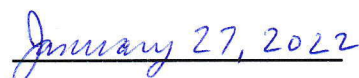
CLOSING:

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 which requires an application for leave to appeal to be filed and served within 30 days of the date of this decision.

Dated at Ponoka County, in the Province of Alberta this 27th day of January, 2022 and signed by the Chair on behalf of all three panel members who agree that the content of this decision adequately reflects the hearing, deliberations and decision of the Board.



Joseph Henderson, Chair



Date

APPENDIX "A"

PARTIES WHO ATTENDED, MADE SUBMISSIONS, OR GAVE EVIDENCE AT THE HEARING:

<u>Name</u>	<u>Capacity</u>
Danelle Klettke	Appellant
Rich Fitzgerald	Development Authority
Andrew Brysiuk	Observer with County of Stettler No. 6
Jacinta Donovan	Observer with County of Stettler No. 6

APPENDIX “B”

DOCUMENTS RECEIVED PRIOR TO THE HEARING:

<u>Reference Tab</u>	<u>Item</u>
TAB A	Notice of Appeal
TAB B	Application
TAB C	Notice of Decision – Refusal of Development Permit
TAB D	Information Provided by Development Authority
TAB E	Notices of Hearing
TAB F	Development Authority’s Supplementary Submissions
TAB G	Appellant’s Supplementary Submission