

THE MUNICIPAL DISTRICT OF WILLOW CREEK NO. 26
P.O. BOX 550, CLARESHOLM, ALBERTA T0L 0T0

NOTICE OF DECISION
OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING NO. 041-16

APPELLANT (APPLICANT): **Bonnie Waters**
Box 789
Nanton, AB
T0L 1R0

In the matter of an Appeal of the Decision of the Development Authority of the Municipal District of Willow Creek No. 26, whereby an application to allow to remain a 10 ft X 30 ft. Westlake Trailer for temporary occupancy until a permanent dwelling is constructed in the Municipal District of Willow Creek No. 26 on land legally known as NE 22-14-29 W4M was APPROVED subject to conditions by the Development Authority.

And in the matter of an Appeal held under the Authority of Sections 627 and 629 of the Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26, as amended (MGA).

The Decision and reasons for the Decision of the Subdivision and Development Appeal Board (the Board) after a Hearing duly convened in accordance with Sections 685 and 686 of the MGA on August 24, 2016, at 1:30 P.M. are as follows:

DECISION:

The Board has decided the appeal be **UPHELD** and that Development Permit Application 041-16 be **APPROVED subject to Revised Conditions.**

The Board approves development permit application 041-16 to allow to remain a 10ft x 30 ft. Westlake Trailer for temporary occupancy until a permanent dwelling is constructed. The development is **APPROVED** subject to the following **revised conditions:**

1. The subject trailer shall be removed from the subject parcel by May 18, 2018 or 6 months after the completion of the development of the primary dwelling as a permanent dwelling, whichever comes first. Upon expiration of this permit on the previously noted May 18, 2018 date, the Municipal District of Willow Creek No. 26 shall not be liable for any costs involved in the cessation or removal of the subject trailer.
2. There shall be no development within 20 feet of the adjacent property lines and 75 feet of the municipal road allowance boundary, including trees and board/plank/chain link fences, unless a development permit is obtained that specifically varies the required setback to allow the development.
3. The applicant shall adhere to any applicable municipal, provincial and federal regulations regarding the temporary placement and occupancy of a trailer on the subject parcel, including but not limited to the Alberta Private Sewage Systems Standards of Practice.

FACTS:

Upon having heard what was alleged by the Appellants (Applicants) and **upon having heard** what was alleged by the Development Authority and **upon hearing** others listed in Appendix B of this Decision and **upon having read** Exhibits noted in Appendix A of this Decision, the Board finds the facts to be as follows:

1. On April 22, 2016, the Municipal District of Willow Creek No. 26 (MD) Development Officer, Ms. Cindy Chisholm, notified the appellant, Ms. Bonnie Waters, that she had an unapproved residential mobile home on the lands legally known as NE 22-14-29 W4M [*Subject Parcel*] in the Municipal District of Willow Creek No. 26 and that in order to bring the property into compliance, she would be required to apply for a development permit (Exhibit M1).
2. The subject parcel is designated as Rural General - RG in Land Use Bylaw No. 1616 (LUB 1616) Schedule 2, Land Use District Regulations.
3. On May 5, 2016 the appellant submitted Development Permit Application 041-16 (DA 041-16) to allow to remain a 10ft x 30 ft. Westlake Trailer for temporary occupancy until a permanent dwelling is constructed on the subject parcel (Exhibit F1).
4. On May 19, 2016, the Development Officer notified the appellant that DA 041-16 would be heard by the MD Municipal Planning Commission (MPC). The notice also contained additional fees owing by the appellant for having an unapproved residential trailer on the property prior to applying for a development permit (Exhibit N1).
5. On May 22, 2016, the appellant submitted a letter to the MD containing supporting reasons for her application.
6. On May 27, 2016, the Development Officer sent notice of the MPC meeting regarding DA 041-16 to affected landowners (Exhibit G1) to be held June 15, 2016.
7. On June 22, 2016, the appellant signed a time extension agreement (Exhibit H1) to allow the MPC to make a decision on DA 041-16 at the July 20, 2016 MPC meeting as the application had been tabled at the June 15, 2016 meeting.
8. On July 20, 2016, the Development Officer sent out the notice of decision (Exhibit D1 - D3) to the appellant regarding DA 041-16 in which the proposed development was approved subject to the following conditions:
 1. *A Development Agreement for the access road to be built to Municipal District standards shall be entered into between the applicant/landowner and the Municipal District and it shall be registered on title. (Development Agreement and Policy 320-07 Minimum Local Road Standards Policy enclosed);*
 2. *The access road shall be constructed in accordance with Policy No. 320-07, Minimum Local Road Standards and if a deviation is required it shall be constructed as reasonably close to Policy 320-07, as possible, or in any case, at the discretion of the Superintendent of Public Works or his/her designate;*

NOTE: Contact the MD Public Works department prior to construction and upon completion of construction;

3. *All Safety Codes permits shall be obtained, inspections finalized and approved by Superior Safety Codes Inc. and a copy of the approvals to be filed with the Municipal District office by October 19, 2016;*
4. *Prior to construction or commencement of the development, the developer/owner shall obtain all necessary permits under the Alberta Safety Codes Act, (including building, electrical, gas, plumbing and private sewage disposal system) as required. Permits must be obtained from Superior Safety Codes Inc. (contact information enclosed);*
5. *Shall comply with all legislative requirements of The Safety Codes Act as it applied to building, electrical, gas, plumbing and private sewage permits issued by an accredited agency on behalf of the municipality;*
6. *The applicant/developer shall comply with Schedule 6 Mobile/Modular Home Development Standards' contained in municipal Land Use Bylaw No. 1616, as amended (information enclosed);*
7. *There shall be no development within 20 feet of the adjacent property lines and 75 feet of the municipal road allowance boundary, including trees and board/plank/chain link fences, unless a development permit is obtained that specifically varies the required setback to allow the development;*
8. *The trailer shall be removed from the property no later than **July 20, 2017.***
9. On July 26, 2016, Development Permit 041-16 (DP 041-16) was issued with the same conditions listed (Exhibit E1 -E3).
10. As part of the approval of DP 041-16, a development agreement for the construction and upgrading of TWP Road 144 West of Range Road 291 [*Subject Road*] and notice of development agreement, was forwarded to the appellant outlining the procedure for signing the development agreement as part of the listed conditions of DP 041-16 (Exhibit I1 -I4).
11. The appellant did not sign the development agreement (Exhibit I2 -I3).
12. On August 8, 2016, the appellant filed an appeal with the following reasons (Exhibit C1 - C2):
 1. *Too onerous and biased*
 2. *Trailer is not a mobile home but a 10 ft X 30 ft construction office trailer, which is being rented for temporary housing from a construction company. This was done so I could care for my livestock, which is my responsibility under the Animal Welfare Act, on land zone agricultural since the road to my land is often impassable unless I keep it open. It is a criminal offense to knowingly cause animals distress. I have wintered my cattle here for over 10 years so this is not something new.*
 3. *Utilities are not needed except generator and propane as there are none on my property as of yet. Composting toilet and privy built outside which is compliant on a quarter section.*

Reasons in regards to the condition of rebuilding access road:

1. *Municipal Government Act Section 532(1) (a) (b) and (2) This act states:*

Repair of roads public places and public works

532(1) Every road or other public place that is subject to the direction, control and management of the municipality, including all public works in, on or above the roads or public place put there by the municipality or by any other person with the permission of the municipality, must be kept in a reasonable state of repair by the municipality have regard to

(a) the character of the road, public place or public work, and

(b) the area of the municipality in which it is located.

532(2) The municipality is liable for damage caused by the municipality failed to perform its duty under subsection (1)

- 2. This road (TWP Road 144 west of Range Road 291) the road in question was constructed by the M.D. of Willow Creek themselves. It was moved from a much lesser gradient to a very steep gradient at the request of one land owner even though the larger community lobbied against it.*
 - 3. The M.D. of Willow Creek Planning Commission continually references TWP Road 144 west of Range 291 as a road allowance in their documents referencing the approval yet AXYS Environmental Consulting Limited reference road as a medium grade gravel road in an environmental report I had done. This will be confirmed with pictures.*
 - 4. The Stavely Research Ranch designates travel TWP Road 144 west of RR 291 exceedingly more than I do. This ranch is now owned by the Provincial Government not the Lethbridge Research Station and the Federal Government as of November of last year which means the parameters of usage have changed.*
 - 5. The Explornet internet maintenance people frequently use TWP Road 144 west of Range Road 291. The M.D. of Willow Creek approved the tower to be placed on the road allowance directly beside the medium grade gravel road. Pictures to come.*
 - 6. Neighbours have been issued development permits without having to rebuild a municipal public road that was not in compliance with Policy No. 320-07 or having a caveat filed against their property until such times as the road was rebuilt.*
13. The appellant stated that the subject trailer is not considered a mobile home because the trailer has a Canadian Standard Association number (Exhibit F13) and is registered under the Alberta Motor Vehicles Administration Act as a motor vehicle. The trailer is also insured as a commercial vehicle (Exhibit U- Appendix 5, Figure A & B).
 14. The trailer is self-sustaining and operates on a small generator, propane radiant heater and a water pump. The trailer also contains a composting toilet and has no "black water" discharged from it (Exhibit T6).
 15. The appellant stated that the use of the trailer is only temporary, so she can take care of her livestock while she builds a home.
 16. LUB 1616, Administration Section, Temporary Permit (47) states:
 - 47. When in the opinion of the Municipal Planning Commission, a proposed use is of a temporary or discretionary nature, it may issue a temporary development permit valid for such a period as it considers appropriate. It shall be a condition of every temporary development permit that The Municipal District of Willow Creek No. 26 shall not be liable for any costs involved in*

the cessation or removal of any development at the expiration of the permitted period. The Municipal Planning Commission may require the applicant to post a guarantee for the cessation or removal of the use and any associated development.

17. The MGA, Section 687(3) states:

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

(a) must act in accordance with any applicable ALSA regional plan; (a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;

(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. In determining an appeal, the subdivision and development appeal board must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect.

REASONS:

THAT the Board encompasses the findings of fact within these reasons and, as a result, **UPHOLDS the appeal** and approves the development **subject to revised conditions**, based on the following:

1. The Board has determined that the use is not considered a mobile home and is not meant to be a permanent dwelling. In particular, the Board finds that the unit does not meet the definition or the criteria of Schedule 6, Mobile Homes of LUB No. 1616, and that the defined criteria are not applicable in this situation. The Board deems the trailer to be a temporary use as a habitable shelter for the purpose of providing accommodation for monitoring agricultural operations on an interim basis until such time a more permanent dwelling is constructed on the subject parcel.
2. The Board is satisfied that the use is temporary, and as a non-permanent use, alternative servicing arrangements such as privies, compost-units, solar or power generators, etc., are acceptable in the interim. The Board is of the opinion that more permanent servicing arrangements should not be required, as the conditions require the removal of the unit at the end of the specified time. The trailer unit is found to be licensed, similar to a commercial trailer unit used at work camps or as security suites, are a habitable living accommodation, and the unit shall be removed from the parcel as stipulated in the conditions. In respect of this, the Board does not believe there should be concerns with any long-term impacts to the applicant or the MD.

3. As the Board has determined that this is a temporary, non-permanent use, the Board has amended the conditions of approval to reflect the situation and decision of the Board. In particular, the Board has removed the requirement to enter into a Development Agreement for the construction of the road to municipal standards. The Board has determined the condition is too onerous and not practical to apply to a use and development permit that has only been conditionally granted for a temporary basis and will need to be removed from the parcel as stipulated in the condition imposed. The Board recognizes that this application (041-16) is closely associated to development application No. 071-16 and pertains to the same parcel of land owned by the applicant, and as such, the Board finds that addressing the road access is more applicable and should be addressed through development application and permit No. 071-16 as it relates to a permanent dwelling.
4. The Board has determined the trailer is only for the purpose of and approved as a temporary use on an interim basis on the premise that a more permanent residential dwelling is to be constructed on the parcel by the applicant. The trailer unit is not to be placed on a permanent foundation and is not to become permanent living arrangements. The Board would emphasize that if the residential dwelling as approved on permit No. 071-16 is not constructed in accordance with conditions and timelines as prescribed on that approval, the trailer must be removed from the land as per the conditions on permit No. 041-16. The Board also notes, that if the dwelling is constructed and the conditions have been met, the temporary trailer must similarly be removed as per the conditions imposed by the Board.

APPENDIX A

Documentary Material Submitted to the Board:

| NO. | ITEM |
|-----|---|
| A. | Notice of Hearing and Subject Parcel Map |
| B. | List of Persons Notified |
| C. | Letter of Appeal |
| D. | Notice of Decision with conditions outlined. |
| E. | Development Permit 041-16. |
| F. | Development Application No. 041-16 with location map and photographs of proposed development |
| G. | Notice of Application and M.D. of Willow Creek Municipal Planning Commission Meeting to adjacent landowners. |
| H. | Agreement for Time Extension, dated June 24, 2016. |
| I. | Unsigned development agreement between the M.D. of Willow creek and the Appellant. |
| J. | Development Officer Report to the M.D. of Willow Creek Municipal Planning Commission Regarding Development Application No. 041-16. |
| K. | Development Officer Report, with additional information from July 20, 2016, to the M.D. of Willow Creek Municipal Planning Commission Regarding Development Application No. 041-16. |
| L. | Excerpts from the unapproved minutes from the M.D. of Willow Creek Municipal Planning Commission meeting regarding Development Application No. 041-16 |
| M. | Letter from the M.D. of Willow Creek to appellant regarding the development of an unapproved residence, dated April 22, 2016. |
| N. | Letter from the M.D. of Willow Creek to appellant regarding Development Permit Application for unapproved residence, dated May 19, 2016. |
| O. | Letter of support regarding Development Application No. 041-16. |
| P. | Photographs and location of proposed access road. |
| Q. | M.D. of Willow Creek Road Access Policy 329-08. |
| R. | M.D. of Willow Creek Minimum Local Road Standards Policy 320-07. |
| S. | Excerpts from the M.D. of Willow Creek Land Use Bylaw No. 1616. |
| T. | Additional information regarding reasons for appeal, submitted by the appellant regarding Development Permit Application 041-16, Submitted August 23, 2016. |
| U. | Supporting information for Appeal Hearing 041-16 & 071-16, submitted by the appellant on August 23, 2016. |

- V. Request to Postpone the hearing from Huckvale LLP, Submitted by the appellant on August 19, 2016.
- W. Handout regarding a legal case involving roads as a condition of development, submitted by Mike Burla, Senior Planning Representative.

APPENDIX B

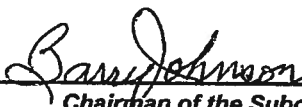
List of persons who gave oral evidence or made submissions:

| CAPACITY | NAME |
|---|--|
| Appellant/Applicant: | Bonnie Waters |
| Municipal District of Willow Creek No. 26 Representatives: | Mike Burla – Senior Planning Advisor Glen Alm - Municipal Planning Commission Chairperson Roy Johnson - Superintendent of Public Works |
| Public Gallery | Hilt Collis Jory Cofield |

Date:

SEPT 06/16

Signed:


Chairman of the Subdivision and Development Appeal Board
Municipal District of Willow Creek No. 26

IMPORTANT:

This Decision of the Subdivision and Development Appeal Board
is final and binding on all parties and persons, subject only to Appeal to the Provincial Court of Appeal.