

DEVELOPMENT PERMIT APPLICATION**Summer Village of Sunrise Beach****Development Services****Box 2945, Stony Plain, Alberta T7Z 1Y4****Phone: 1-780-718-5479****Fax: 1-866-363-3342****Email: pcm1@telusplanet.net****Application Number:** 22DP05-44**Application Received Date:** May 7, 2022**Application Deemed Complete:** May 17, 2022**PROJECT LOCATION – REQUIRED**

Suite: _____ Street Address: _____ Street Name: _____

Legal Description: Unit / Lot / Block / Plan or Quarter / Section / Township / Range / Meridian

Lot 8 / Block 1 / Plan 4652TR /

TYPE OF USE – REQUIRED

- | | | | |
|--|--|--|--|
| <input type="radio"/> New Construction | <input type="radio"/> Addition | <input type="radio"/> Fence | <input checked="" type="radio"/> Other |
| <input type="radio"/> Garage | <input type="radio"/> Well / Cistern / Septic System | <input type="radio"/> Temporary Business | Accessory Use - Home Occupation |
| <input type="radio"/> Accessory Building / Shed | <input type="radio"/> Change of Occupancy or Use | <input type="radio"/> Variance | |
| <input type="radio"/> Accessory Structure / Deck | <input type="radio"/> Secondary Suite | <input type="radio"/> Sign | |

PROJECT DESCRIPTION - REQUIRED**COST OF PROJECT - REQUIRED \$ 5000.00 at most**

Doggy daycare as a home occupation - accessory to Single Detached Dwelling (see attached)

Suggested Use: Home Occupation - Dog Kennel**NEW CONSTRUCTION – REQUIRED**

- | | | | | |
|--|---|---------------------------------|----------------------------------|-------------------------------------|
| <input type="radio"/> Residential | <input type="radio"/> Multi-family Dwelling | Commercial | <input type="radio"/> Industrial | <input type="radio"/> Institutional |
| <input type="checkbox"/> Single Detached | | | | |
| <input type="checkbox"/> Semi Detached | Number of units: _____ | Total Area _____ m ² | | |

GARAGES/ACCESSORY BUILDINGS/ADDITIONS/ STRUCTURES / DECKS / FENCES – REQUIREDTotal Area (m²): _____ Height (if applicable): _____ ☐ Residential ☐ Commercial ☐ Industrial ☐ Institutional**CHANGE OF OCCUPANCY OR USE – COMPLETE ONLY IF APPLYING FOR CHANGE OF USE OR OCCUPANCY OR FAMILY DAY HOME**Total Area (m²): _____**FAMILY DAY HOME – COMPLETE ONLY IF APPLYING FOR A FAMILY DAY HOME**Are room alterations involved: ☐ YES ☐ NO If yes – Number of Rooms: _____ List Rooms: _____
Describe alterations: _____

Provide a detailed description of materials, equipment and/or vehicles including utility trailer(s) that will be used and where they will be stored: _____

Number of resident employees: (employees that reside in the home): _____

Number of children (including children under the age of 5 who are otherwise permanent residents of the dwelling): _____

Hours of Operation: _____

Number of daily business visits to the property: _____

Number of household vehicles: _____

Number of onsite parking stalls: _____

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Temporary:

- ☐ Balloon
☐ Billboard
☐ Portable - # of 30 day periods _____
☐ Developer Marketing
☐ Development Directional
☐ Other

Permanent :

- ☐ Freestanding
☐ Fascia / Wall / Projecting / Roof / Canopy
☐ Changeable Copy
☐ Other

SECONDARY SUITE – COMPLETE ONLY IF APPLYING FOR A SECONDARY SUITE

The proposed secondary suite is located within:

- ☐ The principal dwelling unit
☐ The second story of a detached garage
☐ An accessory building
☐ Other (describe): _____

Floor area of the secondary suite (m²):

Number of bedrooms in the secondary suite:

Floor area of the principal dwelling unit (m²):

Number of parking stalls available on site:

OWNER OR REPRESENTATIVE – REQUIRED☒ I am the registered owner of the land described aboveI have been designated as the representative of the owner
(written consent attached)

Owner Name:

Sean And Cindy MacDonald

Agent Name:

Signature:

Signature:

MAILING ADDRESS (OWNER) – REQUIRED

Mailing address:

City:

Province:

Postal Code:

Phone no.:

Builders
License #

Email Address:

APPLICANT ☐ SAME AS OWNER/REPRESENTATIVE – REQUIRED

Applicant Name:

Cindy & Sean MacDonald

Phone no.:

Builders License no.:

Company Name:

Sunrise Beach Doggy Daycare

Email Address:


Mailing address:

City:

Province:

Postal Code:

I acknowledge that if the development permit application is approved it is subject to an appeal period pursuant to Section 678 of the Municipal Government Act, RSA 2000, Chapter M-26 and that the decision may be ultimately overturned or amended. I accept that if I commence development prior to the appeal expiry date, I am doing so with the appropriate development and building permits issued and at my own risk accepting all legal responsibilities.


 Applicant's signature

June 7 2022

Date

RIGHT OF ENTRY AUTHORIZATION

MUNICIPAL GOVERNMENT ACT, R.S.A. 2000, Chapter M-26



Summer Village of Sunrise Beach

Development Services

Box 2945, Stony Plain, Alberta T7Z 1Y4

Phone: 1-780-718-5479 Fax: 1-866-363-3342

Email: pcm1@telusplanet.net

Owner(s) consent to the Right of Entry by an authorized person of the Summer Village of Sunrise Beach for the purpose of a land site inspection relative to a proposed development permit application or Land Use Bylaw amendment.

Section 542 of the Municipal Government Act, R.S.A. 2000, Chapter M-26 stipulates that:

542(1) *If this or any other enactment or a bylaw authorizes or requires anything to be inspected, remedied, enforced or done by a municipality, a designated officer of the municipality may, after giving reasonable notice to the owner or occupier of land or the structure to be entered to carry out the inspection, remedy, enforcement or action,*

(a) enter on that land or structure at any reasonable time, and carry out the inspection, enforcement or action authorized or required by the enactment or bylaw,

(b) request anything to be produced to assist in the inspection, remedy, enforcement or action, and

(c) make copies of anything related to the inspection, remedy, enforcement or action.

(1.1) A consent signed under section 653 is deemed to be a reasonable notice for the purposes of subsection (1).

(2) The designated officer must display or produce on request identification showing that the person is authorized to make the entry. (3) In an emergency or in extraordinary circumstances, the designated officer need not give reasonable notice or enter at a reasonable hour and may do the things in subsection (1)(a) and (c) without the consent of the owner or occupant.

In accordance with the above Section and the Summer Village of Sunrise Beach Land Use Bylaw requirements, it is necessary that this form be completed and returned with your application submission in order that an authorized person from the Summer Village may be able to do a site inspection if required on the property.

I/We grant consent for an authorized person of the Summer Village of Sunrise Beach to enter upon the subject land for a site inspection.

Legal Land Description	Lot 8, Block 1, Plan 4652TR	
Registered Owners Name as Per Certificate of Title	Cindy and Sean MacDonald	
Name of Signing Authority (If owner is a numbered company)		
Property Address	[REDACTED]	
	Summer Village of Sunrise Beach	
[REDACTED]	Cindy MacDonald	June 07 2022
Signature	Print	Date

ELECTRONIC COMMUNICATION

MUNICIPAL GOVERNMENT ACT, R.S.A. 2000, Chapter M-26

Summer Village of Sunrise Beach



Development Services
Box 2945, Stony Plain, Alberta T7Z 1Y4
Phone: 1-780-718-5479 Fax: 1-866-363-3342 Email:
pcm1@telusplanet.net

Owner(s) consent to communicate with the Summer Village of Sunrise Beach and its applicable contractors through electronic means.

Section 608(1) of the Municipal Government Act, R.S.A. 2000, Chapter M-26 provides that:

608(1) Where this Act or a regulation or bylaw made under this Act requires a document to be sent to a person, the document may be sent by electronic means if

(a) the recipient has consented to receive documents from the sender by those electronic means and has provided an e-mail address, website or other electronic address to the sender for that purpose, and

(b) it is possible to make a copy of the document from the electronic transmission.

I/We being the registered owner(s) or Agents for the lands described below, for the purpose of Development Permit Approval, desire to enter into an agreement with the Summer Village of Sunrise Beach and its applicable contractors to communicate through electronic means:
Email Address: [REDACTED]

Legal Land Description	Lot 8, Block 1, Plan 4652TR
Registered Owners Name as Per Certificate of Title	Cindy and Sean MacDonald
Name of Signing Authority (If owner is a numbered company)	
Property Address	[REDACTED]
	Summer Village of Sunrise Beach
	Cindy MacDonald
	June 07 2022
Signature	Print
	Date

This information is being collected under the authority of section 33(c) the Freedom of Information and Protection of Privacy (FOIP) Act. It will be used to administer a development permit. The personal information provided will be protected in accordance with Part 2 of the Act. If you have any questions regarding the collection, use and disclosure of personal information, please contact the FOIP Coordinator at (780) 967-0271.



Notification Letter and Notice of Decision

July 11, 2022

File: 22DP05-44

CINDY MACDONALD



Dear Ms. MacDonald:

**Re: Development Permit Application No. 22DP05-44
Plan 4652 TR, Block 1, Lot 8 : 4108 Sylvan Cove (the "Lands")
R – Residential : Summer Village of Sunrise Beach**

DEVELOPMENT PERMIT APPLICATION - DECISION

You are hereby notified that your application for a development permit with regard to the following:

HOME OCCUPATION – DOGGY DAYCARE (DOG KENNEL).

Has been **REFUSED** at this date, July 11, 2022, for the following reasons:

- 1- The proposed use is neither a Permitted, nor a Discretionary, use within the R – Residential District under Summer Village of Sunrise Beach Land Use Bylaw 71-1999, as amended (LUB); where Small animal breeding and boarding establishment is listed as a Permitted use within the UR – Urban Reserve District under the LUB.;
- 2- The Summer Village of Sunrise Beach Animal Control Bylaw 142-2018, Section D(1) states that, "No person shall keep or harbour more than three (3) animals of the same species whatever sex or age at the same time in any residential area. Specifically, a property owner may have 3 dogs and 3 cats, etc. but no more than 3 of one type of animal." The development permit application proposes a maximum of ten (10) dogs at any one time.
- 3- Pursuant to the Summer Village of Sunrise Beach LUB, Section 8(6)(a) and 8(6)9b the Development Officer is of the opinion that:
 - i. the proposed development would unduly interfere with the amenities of the neighbourhood;
 - ii. the proposed development would materially interfere with or affect the use, enjoyment or value of neighbouring properties; and



-
- iii. the proposed development does not conform with the uses prescribed for that land or building in the LUB.
- 4- Pursuant to the Summer Village of Sunrise Beach LUB, Section 20 POLLUTION CONTROL the Development Officer is of the opinion that activity / proposed use constitutes an annoyance to persons on public property or adjacent lands by reasons of the generation of noise and odour.
- 5- Pursuant to the Summer Village of Sunrise Beach LUB, Section 10 DEVELOPMENT PERMIT REFERRALS the Development Officer, directed the development permit application to Council for their review and comment. The following motion, reflecting Council's comments, was carried as follows:
- MOVED** by Deputy Mayor Benson that the Council for the Summer Village of Sunrise Beach, respond to the referral sent to them for comment with respect to Development Permit Application 22DP05-44 MacDonald Home Occupation for a Kennel at 4108 Sylvan Cove as follows:
- a) Council does not support an amendment to the Land Use Bylaw which would add Small Animal Breeding to the R – Residential District;
 - b) Council does not support an amendment to the Land Use Bylaw which would redistrict the subject Lands from R – Residential District to UR – Urban Reserve District;
 - c) Council does not support an amendment to the Animal Control Bylaw which would allow in excess of three dogs on a Residential parcel;
 - d) It is Council's opinion that the proposed use would unduly offend the surrounding residents by way of excessive noise; and
 - e) It is Council's determination that the proposed development does not meet the spirit and intent of the current Land Use Bylaw and not compatible with the community.

CARRIED



Development Services
for the

Summer Village of Sunrise Beach

Box 2945, Stony Plain, AB., T7Z 1Y4, Phone (780) 718-5479 Fax (866) 363-3342

Email: pcm1@telusplanet.net

This decision may be appealed to the Subdivision and Development Appeal Board by serving written notice of appeal to the Clerk of the Subdivision and Development Appeal Board. Such an appeal shall be made in writing and shall be delivered either personally or by mail so as to reach the Clerk of the Subdivision and Development Appeal Board no later than twenty-one (21) days after the notice of decision. The appeal should be directed to this office at:

Clerk of the Subdivision and Development Appeal Board
Summer Village of Sunrise Beach
Box 1197
Onoway, AB T0E 1V0

and should include a statement of the grounds for the appeal and have attached an Appeal fee in the amount of \$200.00.

Sincerely,

Tony Sonnleitner, Development Officer, Summer Village of Sunrise Beach

Phone: (780) 718-5479

Fax: (780) 967-0431

Email: svsunrisebeach@wildwillowenterprises.com

cc: Wendy Wildman, Municipal Administrator, Summer Village of Sunrise Beach

Sean & Cindy MacDonald

July 21, 2022

Clerk of the Subdivision and Development Appeal Board
Summer Village of Sunrise Beach
Box 1197
Onoway AB T0E1V0

Re: Appeal of the Refused Development Permit Decision (Application No. 22DP05-44)

In accordance with Section 686(1) of the Municipal Government Act, please accept this letter as notice of appeal concerning the decision of the development authority in refusing our development permit application for a home-based business located at 4108 Sylvan Cove and legally described as Lot 8, Block 1, Plan 4652. Below are our reasons for appeal and a jurisdiction matter that we bring to Board's attention.

Jurisdictional Matter

In accordance with Section 685(2.1) of the MGA, an appeal referred to Section 685(1) may be made to the Land and Property Rights Tribunal [if it] contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site...(emphasis added).

Our property is adjacent to Sandy Lake which is a body of water. Therefore, the Board needs to establish whether it has jurisdiction to hear our appeal or refer our appeal to the Land and Property Rights Tribunal.

Reasons for Appeal

The development authority cited five reasons for refusal. It is our position the development authority misinterpreted our application and did not give due consideration to the merits of our application against the appropriate test for a discretionary use. In this regard, I will address each reason for refusal. Additional evidence and information will be provided at the appeal.

Reason #1

The proposed use is neither a Permitted, nor a Discretionary use within the R – Residential District under Summer Village of Sunrise Beach Land Use Bylaw 71-1999, as amended (LUB); where Small animal breeding and boarding establishment is listed as a Permitted use within the UR – Urban Reserve District under the LUB.

We submitted development permit application on May 29, 2022, for a Home Occupation, Doggy Daycare. We did not apply for a Small Animal Breeding and Boarding Establishment. A home occupation is not defined in the Land Use Bylaw. However, home occupation is listed as a Discretionary Use in the Land Use Bylaw (Section 50(2)). If a Land Use Bylaw does not provide a definition for a listed use, then the common understanding is applied. According to Law Insider, a home occupation is defined as: "any occupation, trade, profession, personal service, day care or craft carried on by an occupant of a residential building as a secondary use to the residential use of the building."

The home occupation will be carried out at our home. The principal use of our property is, and always will be, a single detached house. The home occupation will be entirely incidental and accessory to our single detached house.

The development authority's first reason for refusal means Small Animal Breeding and Boarding will be the principal use. We were clear in our application that the proposed will be accessory to our home. We have no intention of turning our home into a full-scale breeding and boarding facility.

The Land Use Bylaw also does not define Small Animal Breeding and Boarding Facility. Since there is no definition listed within the LUB for neither a home-based business nor a small animal breeding and boarding facility, there is nothing disqualifying a doggy day care from being a home occupation. As such, the Land Use Bylaw proffers us with the right to this use as a discretionary use. This means we have the right to the use unless there is a valid planning reason that would take this right away.

Reason #2

The Summer Village of Sunrise Beach Animal Control Bylaw 142-2018, Section D(1) states that, "No person shall keep or harbour more than three (3) animals of the same species whatever sex or age at the same time in any residential area. Specifically, a property owner may have 3 dogs and 3 cats, etc. but no more than 3 of one type of animal." The development permit application proposes a maximum of ten (10) dogs at any one time.

The development authority cited the Animal Control Bylaw. The right to the use of a home occupation comes from the Land Use Bylaw. Citing the Animal Control Bylaw is not a planning reason. The development authority is ultra vires by citing the Animal Control Bylaw.

Reason #3

Pursuant to the Summer Village of Sunrise Beach LUB, Section 8(6)(a) and 8(6)9b the Development Officer is of the opinion that:

- i. The proposed development would unduly interfere with the amenities of the neighbourhood;*
- ii. The proposed development would materially interfere with or affect the use, enjoyment, or value of neighbouring properties; and*
- iii. The proposed use does not conform with the uses prescribed for that land or building in the LUB.*

With respect to i. and ii., while the development authority cited the Land Use Bylaw, he did not provide any reasons or explain why he arrived at his opinion. Our application included photographic evidence, air photographs showing screening and separation, letters from our neighbours, and other documentation demonstrating that the use is perfectly suitable. The development authority did not address the evidence provided in his decision and thus, we believe he did not properly weigh our application against the correct test for a discretionary use.

With respect to iii, please refer to our response to reason #1 above.

It is important to note, the development authority applied the incorrect test. Section 8(6)(a) is the test for considering a variance to regulations and not for a discretionary use. These are two very different and distinct considerations, each with its own test to apply against the specific merits of the application. In this case, the test should be for a discretionary use. Our application complies in all regards with the regulations set out in the Land Use Bylaw and therefore, there are no variances to be considered. The correct test is whether the use would be reasonably compatible with nearby properties. In other words, and as noted above, there would need to be a valid planning reason to take away our right to this development. We provided ample evidence why our application will be reasonably compatible. Citing the Animal Control Bylaw is not a valid planning reason.

Reason #4

Pursuant to the Summer Village of Sunrise Beach LUB, Section 20 POLLUTION CONTROL, the Development Officer is of the opinion that activity / proposed use constitutes an annoyance to persons on public property or adjacent lands by the reasons of the generation of noise and odour.

The development authority has cited the Land Use Bylaw but has not provided any reasons other than his own personal opinion. As noted, we provided evidence demonstrating that our application will not pose any adverse effects.

Reason #5

Pursuant to the Summer Village of Sunrise Beach LUB, Section 10 DEVELOPMENT PERMIT REFERRALS the Development Officer, directed the development permit application to Council for their review and comment. The following motion, reflecting Council's comments, was carried as follows:

- a) Council does not support an amendment to the Land Use Bylaw which would add Small Animal Breeding to the R – Residential District;*
- b) Council does not support an amendment to the Land Use Bylaw which would redistrict the subject Lands from R – Residential to UR – Urban Reserve District;*
- c) Council does not support an amendment to the Animal Control Bylaw which would allow in excess of three dogs on a Residential parcel;*
- d) It is Council's opinion that the proposed use would unduly offend the surrounding residents by way of excessive noise; and*
- e) It is Council's determination that the proposed development does not meet the spirit and intent of the current Land Use Bylaw and not compatible with the community.*

Nowhere does Section 10 give the authority to the Development Officer to refer our application to Council. Section 10 states:

The Development Officer may refer any matter regarding a proposed development for comment to any department of agency that the Development Officer deems necessary. Notwithstanding any provisions in this bylaw, all variance requests will be directed to Council for their review and comment.

As noted, our application is for a discretionary use. Our application complies in all regards and there are no variances being considered. The Development Officer is given the sole authority to exercise discretion on development permits for a discretion use. Notwithstanding, given Council's motion, there was an obvious lack of clarity and understanding exactly what Council was reviewing and commenting on. According to their motion, they did not appear to even know what was before them. This is evident in points a), b), and c). Nowhere in the motion are the words "home occupation" mentioned.

In summary, nowhere in the development authority's decision referred to the actual merits of the application. The development authority misinterpreted our application by deeming our proposed development a Small Animal Breeding and Boarding Facility. We applied for a home occupation which is listed as a discretionary use. The development authority erred by citing a non-planning document. The merits of our application were not given consideration of the correct test. We are fully prepared to speak to the merits of our application at the hearing.

Sincerely,

Craig Thomas, MA, DSocSci
Agent acting on behalf of Cindy and Sean MacDonald