

Clerk's stamp:

COURT FILE NUMBER 1901-06503

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANTS GERRIT TOP, JANTJE TOP, SPOT ADS INC., and ROSS MARTIN

RESPONDENT MUNICIPAL DISTRICT OF FOOTHILLS NO. 31

DOCUMENT **AFFIDAVIT OF BRIAN WORKHORST**

ADDRESS FOR
SERVICE AND
CONTACT INFORMATION
OF PARTY FILING
THIS DOCUMENT

James Kitchen and Jay Cameron
Justice Centre for Constitutional Freedoms
#253, 7620 Elbow Drive SW
Calgary, Alberta T2V 1K2
Phone: 403-667-8575
Fax: 587-352-3233

and

CONTACT INFORMATION
OF ALL OTHER PARTIES

Sean Fairhurst
Dentons Canada LLP
15th Floor, Bankers Court, 850 - 2nd Street SW
Calgary, AB T2P 0R8
Phone: 403-268-6803
Fax: 403-268-3100
Email: sean.fairhurst@dentons.com
Counsel for the Respondent

AFFIDAVIT OF BRIAN WORKHORST


Sworn on December 13, 2019

I, Brian Workhorst, of the Municipal District of Foothills, Alberta MAKE OATH AND SAY THAT:

1. I have personal knowledge of the matters and facts hereinafter deposed to by me, except where same are stated to be based upon information and belief, in which cases I believe them to be true.
2. I am a resident landowner in the Municipal District of Foothills ("Foothills") and have been since 1996. I am the owner and resident of SE 7-18-28 W4, the rural civic address for which is 594135 Hwy 2, Foothills.
3. I am always looking for ways to increase the income generated by my land, especially in light of the tax burden imposed upon me in the form of property taxes. Leasing small portions of my property for the purpose of roadside adverting presents a welcome and unique means to supplement my income. The economy has not been good and the revenue assists my family in meeting its expenses.
4. I have had a sign attached to the side of a trailer on my property for approximately the last 20 years, since approximately 1998. I have had Spot Ads signs on my property since approximately 2014. The signs are situated entirely on my own land, and not on public land owned by the Crown.
5. The signs have always been in good repair. I do not consider the signs to be obstructive or displeasing to look at. The most recent sign, in particular, which is attached to this affidavit as **Exhibit "A"**, was a clean and attractive real estate advertisement.
6. It is my intention in having Spot Ads signs on my property to exercise my constitutional right to freedom of expression to display the advertising message on the signs to the public.
7. I am advised and believe that litigation is currently ongoing to challenge the sign prohibition as an unlawful violation of freedom of expression.

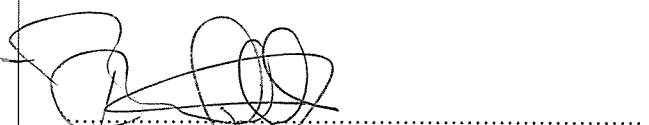
8. I received a letter from Foothills dated November 12, 2019, attached to this affidavit as **Exhibit "B"**, regarding the aforementioned Spot Ads sign on my property. The letter demanded I remove the sign by November 26.
9. The sign was removed, but the trailer to which the sign was attached is unmoved.
10. Without Spot Ads roadside signs, I would lose out on much-needed income.
11. I swear this affidavit *bone fide*, for no improper purpose.

Sworn before me at Calgary, in the Province
of Alberta, on December 13, 2019.



James Kitchen

Barrister and Solicitor



BRAIN WICKHORST

THIS IS EXHIBIT " A "
referred to in the Affidavit of
Brian Wickhorst
Sworn before me this 13
day of December A.D. 20 19

A Commissioner in and for the Province of Alberta

James Kitchen
Barrister & Solicitor



SERVING SOUTHERN ALBERTA
www.southernbertahome.ca

CINDY PINEO 403.680.6762

RE/MAX REAL ESTATE-LETHBRIDGE
(CLARESHOLM OFFICE)



THIS IS EXHIBIT " _____ " referred to in the Affidavit of _____
Sworn before me this _____ day of _____ A.D. 20 _____

A Commissioner in and for the Province of Alberta



Foothills County
309 Macleod Trail
Box 5606
High River, AB
T1V 1M7

Ph: 403-603-6300
Fax: 403 652-4548



THIS IS EXHIBIT " B "
referred to in the Affidavit of
Brian Wickhorst
Sworn before me this 13
day of December A.D. 20 19

November 12, 2019

Brian & Marna Wickhorst
Box 6060
High River, AB
T1V 1P7

A Commissioner in and for the Province of Alberta

File No.: 2019-458

James Kitchen
Barrister & Solicitor

Re: Land Use Bylaw: Prohibited Vehicle Signs

Property Location: SE 7-18-28 W4, Plan 9412737 Blk 1 Lot 1/ ROLL1828070010
594135 Hwy 2, Foothills County

In follow up to the letter that was sent to you on February 1, 2019 (attached), requesting that you voluntarily remove signage attached to trailers on your property, this letter is being sent to you today because it has been observed that you continue to have trailer sign(s) located on your property.

DIRECTIONS FOR BRINGING YOUR PROPERTY INTO COMPLIANCE:

A roadside inspection was conducted (2019/11/07), at which time it was observed that a total of (1) vehicle sign are currently located on your property.

At this time, you are directed to ensure that all Vehicle Signs are removed from your property by 2019/11/26. Photographs of the vehicle sign(s) that have been observed on your property are attached for your reference.

Our mission at Foothills Patrol is to attempt to resolve compliance issues with the lowest recourse possible. It is our hope that it will not be necessary to further escalate this matter in order to achieve compliance with the Land Use Bylaw. If the signs attached to the trailer(s) located on your property are removed as requested, the County will not initiate any further enforcement action and our investigative file will be concluded.

FAILURE TO COMPLY:

Failure to remove prohibited sign(s), as directed above will result in formal enforcement measures being commenced, which may include, but are not limited to:

- Issuance of a Stop Order, pursuant to Section 645 of the Municipal Government Act;
- Issuance of Violation ticket(s) for displaying or allowing to display a prohibited sign;
- Issuance of Violation ticket(s) for failing to comply with a Stop Order;
- Pursuing an injunction from Alberta Court of Queen's Bench;
- Enforcing the Stop Order by entering onto the property to have the vehicle signs removed, pursuant to Section 646 of the Municipal Government Act
- Any costs incurred during the enforcement of a Stop Order are an amount owing to the municipality and as such, may be added to the tax roll, pursuant to Section 553 of the Municipal Government Act.

SPECIFIED PENALTIES – FINES FOR OFFENCES:

Section 9.24.11(j) Foothills County Land Use Bylaw

Erect/place/affix/locate, or allow any person to erect/place/affix/locate any prohibited sign

- Minimum Specified Penalty: \$2000.00 per sign
- Second Contravention within 12 months: \$4000.00 per sign
- Third or Subsequent Contravention within 12 months: \$6000.00 per sign

Section 7.18.2(c) Foothills County Land Use Bylaw

Fail to comply with Stop Order

- Minimum Specified Penalty: \$2500.00
- Second Contravention within 12 months: \$5000.00
- Third or Subsequent Contravention within 12 months: \$7500.00

LAND USE BYLAW AMENDMENTS (June 2019):

Foothills County recently amended the Land Use Bylaw, to more clearly define and identify what constitutes a prohibited sign, and to provide for a new specified penalty fine structure. Please make note of the following amendments:

Vehicle Sign Definition – S. 9.24.1 (Amendment)

A sign that is mounted, affixed or painted onto an operational or non-operational vehicle, including but not limited to trailers with or without wheels, Sea-cans, wagons, motor vehicles, tractors, recreational vehicles, mobile billboards or any similar mode of transportation that is left or placed at a location clearly visible from a highway.

Prohibited Signs – S. 9.24.10 (Amendment)

The following signs are prohibited in the municipality:

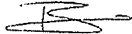
- (a) Vehicle signs, except for signs exclusively advertising the business for which the vehicle is used, where the vehicle:
- (i) is a motor vehicle or trailer;
 - (ii) is registered and operational; and
 - (iii) is used on a regular basis to transport personnel, equipment or goods as part of the normal operations of that business.

Continuing Offences – S. 7.18.1.1. (New Section)

Where a contravention of this Bylaw is of a continuing nature, a contravention constitutes a separate offence in respect of each day, or part of a day, on which it continues and a person is guilty of such an offence and is liable to a penalty for each day.

A copy of the pertinent sections of the Land Use Bylaw have been attached for your reference and review. Should you have any questions regarding this request and the attachments, please feel free to contact the undersigned Peace Officer during regular business hours at 403-603-6300.

Regards,



B. M. ZINKHAN
Peace Officer (Reg #14805)
Investigator
Foothills Patrol Division

attachments



Foothills County
309 Macleod Trail
Box 5606
High River, AB
T1V 1M7

Ph: 403-603-6300
Fax: 403 652-4548



February 1, 2019

Re: Land Use- Prohibited Signage

Your property has been identified as having a large advertising trailer(s), which is in contravention of the *Land Use Bylaw 60/2014*, as our records show no development permit that would allow this use.

Land Use Bylaw states that:

Prohibited Signs:

The following signs are prohibited in the municipality:

- a. Signs attached to shipping containers or Sea-cans, including signage painted or adhered directly onto a container;
- b. Signs attached to licensed or unlicensed vehicles, not including imagery or wording either painted or adhered by magnetic or glued on decals directly onto the vehicle in question;

At this time, we are asking for your compliance in removing the signage from your property. Currently, the fine for having a non-compliant sign, such as is currently located on your property, carries a fine of \$1000 per occurrence. Please be advised that Foothills County is currently revising the Land Use Bylaw provisions respecting prohibited signs and that these revisions shall further clarify what constitutes a prohibited sign as well as substantially increasing the fine structure for property owners or other persons who place or allow to be placed trailers with advertising or messaging on them without proper permits in place.

Failure to remove prohibited signs will result in formal enforcement measures being commenced against yourself, your property, and the owners of the advertising trailers. These may include but are not limited to a Stop Order pursuant to *Section 645* of the *Municipal Government Act*, violation ticket(s) for displaying a prohibited sign, or failing to comply with a stop order, removal of the prohibited sign, and/or an injunction from the Alberta Court of Queen's Bench.

Our mission at Foothills Patrol is to attempt to resolve compliance issues with the lowest recourse possible; it is our hope that it will not be necessary to further escalate this matter in order to achieve compliance with the Land Use Bylaw. If the signs attached to the trailer(s) located on your property are removed as requested, no further enforcement action will be initiated by the municipality.

Should you require more information or have additional questions please feel free to contact the undersigned Peace Officer during regular business hours.

Regards,

Brady Durbano
Peace Officer (Reg 15488)
Investigator
Foothills Patrol Division
(403) 603-6300

- 9.23.11 The type of wastewater disposal/septic systems installed in a development shall be in accordance with the site requirements specified in the applicable land use district or an alternate type of wastewater disposal/septic system as specified by Bylaw.
- 9.23.12 Septic systems or alternate means of waste removal shall be approved by the Municipal Plumbing Inspector prior to any commencement of construction of the proposed development.
- 9.23.13 All wastewater disposal/septic systems shall meet all requirements of the Alberta Private Sewage Systems Standard of Practice.
- 9.23.14 All private wastewater/sewage disposal systems shall be sited in accordance with the Alberta Agriculture, Food and Rural Development minimum setback requirement to man-made water features. See Section 9.18 on Man-made water features for more information pertaining to setback requirements.

Storm water:

- 9.23.15 A storm water management plan, prepared by a qualified Professional Engineer, may be required for all future subdivision and/or development in accordance with Provincial regulations and Municipal standards.

Solid Waste:

- 9.23.16 Lot owners and residents are encouraged to take their solid waste to the Foothills Regional Waste Facility or a Transfer station.
- 9.23.17 Burning barrels may be used only if constructed with a non-combustible apron around the perimeter of at least 24" (61 cm) and if fully covered with a screen mesh that prevents the escape of sparks or combustible materials. Fire permits may be granted by local fire guardians for all other fires. Failure to comply may result in Fire-Response charges and a fine for non-compliance in accordance with the Municipal Fire Bylaw.

9.24 **SIGNAGE**

Definitions for this Section:

- 9.24.1 For the purpose of this Section, the following definitions shall apply:

Billboard Sign: a sign, primarily self-supporting and permanently affixed to the ground, that advertises goods, products, services, events or facilities which are at a location other than the property on which the sign is located.

Directional Sign: a sign which is required to provide direction to a business, trade or institution and advertises goods or services which are at a location other than the property on which the sign is located. A directional sign may also be a temporary sign depending upon how it is to be used.

Fascia Sign: a sign placed flat and parallel to the face of a building so that no part projects more than 0.3m. (1 ft.) from the building.

Free Standing Sign: a sign on a standard base or column permanently fixed to the ground and not attached to any building or other structure. The sign advertises goods and services which are at the location on which the sign is located.

Functional Sign: a sign which is not intended to be used for promotional purposes. It is required by public authorities, utility companies and other companies. Its sole purpose is for the direction and control of traffic, pedestrians or parking (i.e. identification of service locations and on-site hazards).

Portable Sign: a sign, regardless of how mounted or supported, capable of being moved and which is not attached or affixed to a building or the ground.

Roof Sign: any sign erected upon, against, or directly above a roof or on top of or above the parapet wall of a building.

Sign: any device or structure used for the display of advertisements, pictures and/or messages and without, in any way, restricting the generality of the foregoing, includes posters, notices, panels and boarding.

Sign Area: the total surface within the outer edge of a frame or graphics, the sum of the area of the smallest rectangle enclosing the letters, numerals or graphics.

Temporary Sign: a sign which is not permanently anchored to the ground or affixed to a building, advertising for a limited time goods, services or activities and which by their nature, could readily be relocated to service a similar purpose in another location. These include garage sale signs, banners, portable signs, pennants, signs advertising a demonstration of agricultural methods and signs announcing the sale of goods or livestock on land not normally used for commercial purposes.

Vehicle Sign: a sign that is mounted, affixed or painted onto an operational or non-operational vehicle, including but not limited to trailers with or without wheels, Sea-cans, wagons, motor vehicles, tractors, recreational vehicles, mobile billboards or any similar mode of transportation that is left or placed at a location clearly visible from a highway..

General Provisions:

- 9.24.2 Any person applying to erect, enlarge or structurally alter a sign that is on privately owned lands shall comply with the provisions of this Part. These regulations do not deal with signage within Municipal or Provincial right of ways.
- 9.24.3 A sign which is separate from a building must be located so as to comply with the front yard setback, requirements applicable to the principal building unless otherwise provided, or exempted by a designated officer in writing.
- 9.24.4 Signs that are located in the right of way of a municipal or provincial road are governed by the *Temporary Signs on Highways Bylaw #18/2006*.

General Sign Regulations:

- 9.24.5 All signs, whether or not they require a Development Permit, shall meet the following general provisions:
 - a. A sign shall not be located such that it obstructs visibility at roadway intersections;
 - b. No signs shall be erected on or affixed to private property without the consent of the owner;
 - c. Signage which makes use of illumination, whether it be on the exterior or from the interior of the sign, shall adhere to the *Dark Sky Bylaw* included as Appendix E of this bylaw;
 - d. Animated signs or illuminated signs shall not be permitted in developments where, in the opinion of the Development Authority, they might:
 - i. Affect residents in adjacent housing or residential districts and are visible from any residential property within a distance of 90m (295 ft.);
 - ii. Interfere with the interpretation of traffic signs or controls;
 - iii. Cause interference to the motoring public; or
 - iv. Contravenes the County's *Dark Sky Bylaw* included as Appendix E of this bylaw.

- e. Temporary signs relating to a specific sale, event or work shall be removed by the advertiser within 14 days after the completion of the sale, event or work to which the sign relates;
- f. A sign which is separate from a building must be located so as to comply with the front yard setback requirements applicable to the principal building unless otherwise provided, or exempted by a designated officer in writing.
- g. All signs shall be kept in a safe, clean and tidy condition and may be required to be renovated or removed if not properly maintained;
- h. Existing signs which conform to this Bylaw, may be cleaned, maintained, repaired and repainted without need for an additional Development Permit;
- i. All signs must comply with applicable provincial legislation and approvals; Currently, no sign, notice or advertising device shall be erected within 300m (984 ft.) from the limit of a controlled highway or 800m (2625 ft.) from the center point of an intersection of a controlled highway another highway or other public roadway without a permit from the Minister of Transportation pursuant to Section 5 of the Highway Development Control Regulation, Alberta Regulation 242/90.
- j. Setbacks, approval requirements and provincial regulations may be subject to change from time to time. It is the responsibility of the landowner / developer to contact the appropriate department for updated and current regulations.

Signs requiring a Development Permit:

- 9.24.6 Unless otherwise exempted under *Section 4.2* of this bylaw, a Development Permit shall be obtained for all signs, structures for signs and any enlargement, relocation, erection, construction or alteration of an existing sign.
- 9.24.7 An application for a Development Permit to structurally alter or erect a sign that requires a Development Permit shall be made to the Development Authority and shall include the following:
 - a. A letter of consent from the registered owner of the land or building upon which the sign will be located;
 - b. The name and address of the sign company responsible for the sign;
 - c. The owner of the sign;
 - d. Two copies of a rendering / illustration of the proposed sign with dimensions and total sign area, height of top and bottom of the sign above average ground level and thickness of the sign;
 - e. Materials, finishes, colours, size of lettering and graphics;
 - f. Mounting or Installation details: the Development Authority may require that a structural drawing be prepared and sealed by a Professional Engineer;
 - g. The location of all existing and proposed signs on the building façade or on a site plan of the parcel indicating the front and side property lines, setbacks and distances from existing buildings;
 - h. Mounting height or clearance to grade; and
 - i. The appropriate fee as outlined in the Planning Fee Service Bylaw, as amended from time to time by Council resolution.
- 9.24.8 Where a sign is located within 300m (984 ft.) of a Provincial highway or 800m (2,624.8 ft.) of such intersection, the landowner and / or applicant must have an approved

Foothills County Land Use Bylaw |

Roadside Development Permit, from the Province, before the County will consider applications for a Development Permit.

- 9.24.9 Where an applicant wishes to deviate from the terms of the Development Permit, the applicant shall notify the Development Authority, submit amended drawings and, if required by the Approving Authority, make application for a new Development Permit and submit the prescribed fee.

Prohibited Signs:

- 9.24.10 The following signs are prohibited in the County:

- a. Vehicle Signs, except for signs exclusively advertising the business for which the vehicle is used, where the vehicle:
 - i. Is a motor vehicle or trailer;
 - ii. is registered and operational; and
 - iii. used on a regular basis to transport personnel, equipment or goods as part of the normal operations of that business.
- b. Signs that are prohibited in accordance with the Dark Sky Bylaw included as Appendix E of this bylaw;
- c. Signs that display intermittent, flashing or rotating lights;
- d. Signs using a red or yellow background;
- e. Signs that incorporate moving parts; and
- f. Signs on hay and/or straw bales.

Signs – Offences:

- 9.24.11 No person shall erect, place, affix or locate, or allow any other person to erect, place, affix or locate:

- a. A sign that obstructs visibility at roadway intersections;
- b. A sign erected on or affixed to private property without the consent of the owner;
- c. A sign that uses illumination not compliant with the *Dark Sky Bylaw*, as included in *Appendix E* of this Bylaw;
- d. An animated or illuminated sign without Development Authority approval;
- e. A temporary sign at any location exceeding 14 consecutive days;
- f. A sign not complying with setback requirements;
- g. A sign that is located within 300 m (984 ft) from the limit of a controlled highway without permit;
- h. A sign that is located within 800 m (2625 ft) from the centre point of an intersection of a controlled highway another highway or other public roadway without permit;
- i. A sign that requires a development permit without such permit;
- j. A sign that is prohibited pursuant to Section 9.24.10; or
- k. A sign that does not comply with the provisions set out in this Bylaw.

594135 - Highway 2
Brian & Marna WICKHORST

