

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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DATE: September 25, 2017
FILE NO.: 17-S-009

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Subdivision Authority of Parkland County refused a subdivision application for 52229 Rge Road 270, legally described as Plan 0224682 Block 1 Lot 2 (the "Parcel"). The Appellants, Lewis Farms 1 Ltd., David Arcand, and Tracy-Ann Young, by their agent Quillcorp 2016 Inc., appealed the refusal of the subdivision application by the Subdivision Authority.

PRELIMINARY MATTERS

A. Board Members

[2] At the outset of the appeal, the Chair requested confirmation from all parties in attendance that there was no opposition to the composition of the Board hearing the appeal. None of the persons in attendance had any objection to the members of the Board hearing the appeal.

B. Additional Materials

[3] No additional materials were submitted at the hearing of the appeal.

C. Miscellaneous

[4] The Board marked the exhibits as set out on the list at the end of this decision.

[5] The appeal was filed on time, in accordance with Section 678(2) of the *Municipal Government Act*, R.S.A. 2000, c.M-26 (the "Act").

[6] The Board is satisfied that it has jurisdiction to deal with this matter. There were no objections to the proposed hearing process.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[7] The Board allows the appeal and grants the subdivision application with the following conditions:

1. Pursuant to Provision 654(1)(d) of the Municipal Government Act, any outstanding taxes on the subject property shall be paid or arrangements be made, to the satisfaction of Parkland County, for the payment thereof.
2. Pursuant to Section 655 of the Municipal Government Act, the landowner shall complete the following with respect to approaches and ditching:
 - (a) one of the existing approaches off Range Road 270 to Lot 3 shall be removed in accordance with Council Policy C-EN010; and,
 - (b) the existing approach off Range Road 270 to the remnant agricultural parcel shall meet Engineering Standard Drawing No. 7.12.

All approaches shall maintain the 90 metre spacing requirements from adjacent approaches. No disturbance or grading is to adversely affect existing drainage on adjacent lots. All surface grading is to be done in a manner that will prevent cross lot drainage conflicts. All approaches shall contain an apron equivalent to the surface of Range Road 270. Please contact a Development Engineering Officer prior to construction and to schedule inspection appointments at 780-968-8443.

3. Pursuant to Section 654(1)(c) of the Municipal Government Act, the proposed subdivision must meet Section 7(g) of the Subdivision & Development Regulation with respect to septic disposal and an inspection of the existing septic system on the remnant agricultural parcel is required pursuant to the Private Sewage Disposal Systems Regulation. Please read attached Private Sewage Checklist for Subdivision Approval and contact Parkland County Safety Codes at 780-968-8443 to pay fee and schedule an inspection of the existing septic system. Following inspection of the septic system, a copy of the inspection report shall be provided to Planning & Development Services.

4. Pursuant to Parkland County Bylaw No. 2015-30, the parcels shall be numbered using Parkland County's civic addressing system. Following final inspection of the approaches, please contact our Planning & Addressing Technician at 780-968-8443, ext. 8612 to request address assignments. Following assignment of civic addresses, please contact Public Works at 780-968-8448 to order all required address signs. A copy of the receipt confirming purchase of the address sign(s) shall be provided to Planning & Development Services.

5. Pursuant to Section 4(4) of the Subdivision and Development Regulation, the applicant shall register a Restrictive Covenant to the satisfaction of Parkland County on title notifying future owners of the location of any existing abandoned well site (Licence 0115959) and required setbacks. The Alberta Land Surveyor shall be responsible for providing a schedule to accompany the Restrictive Covenant identifying the abandoned well site location and the required 5m setback and 8m access route.

6. Pursuant to Section 23 of the Water Act, the applicant shall register a Restrictive Covenant, to the satisfaction of the Parkland County, against the remnant agricultural

parcel notifying future owners of inadequate groundwater availability and that potable water supply shall be limited to cisterns as outlined in the in the Preliminary Groundwater Potential Study dated July,7 2017 and prepared by Merle Hagstrom, P.Eng. of Hagstrom Geotechnical Services Ltd.

7. Pursuant to County Policy C-PD15 and Sections 663 and 669 of the Municipal Government Act, the existing Deferred Reserve Caveat shall be revised to include all Municipal Reserves (4.8 ha (11.9 ac)) deferred onto the remnant agricultural parcel.

8. The subdivision shall be registered in a manner acceptable to the Registrar of Land Titles. An endorsement fee of \$250.00 is payable when the final plan is submitted for endorsement by Parkland County. If applicable, the Alberta Land Surveyor shall ensure all required setbacks from existing principal and accessory buildings and new property lines are maintained in accordance with Parkland County Land Use Bylaw No.20-2009.

SUMMARY OF HEARING

[8] The following is a brief summary of the oral and written evidence heard by the Board. The Board has also reviewed all written submissions filed with the Board.

Subdivision Authority

[9] The Board first heard from the Subdivision Authority.

[10] The Parcel is a 116.61-acre parcel zoned Agricultural (AG) in the County's Municipal Development Plan No 37-2007 (the "MDP") and Agricultural General District (AGG) in the County's Land Use Bylaw 20-2009 (the "LUB"). The Parcel is not governed by an area structure plan.

[11] In 1961, the southern half of the NW-18-52-26-W4 was subdivided, creating two 40-acre parcels and an 80-acre remnant. In 1976, the southernmost 40-acre parcel was subdivided into 8 residential lots, which were later redistricted as Country Residential (CR) in 1994 (the "CR Subdivision"). In 2002, the County approved a lot line adjustment to the northernmost parcel and the other 40-acre parcel. This adjustment resulted in the creation of Plan 0224681 Block 1 Lot 1, which is a 2.75-acre residential parcel adjacent to the CR Subdivision ("Lot 1"), and the Parcel, which comprises the remainder of the 40-acre parcel and the northernmost 80-acre parcel. In 2012, the Subdivision Authority and the SDAB refused an application to subdivide a 7.04-acre parcel from the Parcel. This appeal concerns a further application to subdivide a 7.045-acre parcel from the Parcel, which would accommodate the existing residence and yard site in the northwest corner of the Parcel (the "Proposed Lot 3") [see pages 18 to 20 of Agenda Package]. The remnant parcel would be used for agricultural purposes (the "Remnant Lot"). The proposed subdivision would result in the creation of the eleventh parcel from the NW-18-52-26-W4.

[12] Aside from the residential development in the northwest corner of the Parcel, the Parcel is fairly flat and cleared for agriculture. There are no Environmentally Significant Areas on the Parcel. There is an existing deferred reserve caveat in the amount of 4.8 ha (11.9 ac) on the Parcel. There is an abandoned well bore on the Parcel and four utility rights of way registered

on title. A Preliminary Groundwater Potential Study dated July 7, 2017 [see pages 48 to 57 of Agenda Package] prepared on behalf of the Applicants indicates that there is inadequate groundwater available to support an additional residential parcel. There are currently three approaches to the Parcel, two of which lead to the Proposed Lot 3. The other approach leads to the Remnant Lot [see pages 20 to 21 of Agenda Package].

[13] No objections or written submissions with respect to the proposed subdivision were received from referral agencies or adjacent landowners.

[14] The Subdivision Authority refused the application because it does not conform with Policy 2.7 of the MDP and Section 4.1(3)(b) of the LUB, both of which permit a maximum of three subdivisions in addition to the remnant of the original quarter section. The proposed subdivision would result in the creation of the eleventh parcel from the NW-18-52-26-W4, which is not in keeping with the parcel density allowed within the Agricultural designation in the MDP or the Agricultural General District in the LUB [see page 22 of Agenda Package].

[15] In response to Board questions, the Subdivision Authority advised that there is currently adequate groundwater from an existing well for the existing residential development on the Parcel, and a cistern could be installed on the Remnant Lot in the event that a residence was constructed on that portion of the Parcel. The concern with respect to inadequate groundwater only applied to the Remnant Lot.

[16] In response to Board questions, the Subdivision Authority advised that the limit on the number of permitted subdivisions applies to the original quarter section, but could not point to any definitions of "original quarter section" in any planning document.

[17] In response to Board questions, the Subdivision Authority advised that the Applicants could apply to rezone the Proposed Lot 3 to Country Residential (CR) in order to facilitate the proposed subdivision, but that such an application would not likely be approved by the Capital Region Board due to policies that limit the rezoning of agricultural land.

Appellants Lewis Farms 1 Ltd., David Arcand, and Tracy-Ann Young

[18] The Board next heard from the Appellants' agent, Yvon Brochu, as well as Ken Lewis of Lewis Farms 1 Ltd., and David Arcand, who spoke on his own behalf and that of his wife, Tracy-Ann Young.

[19] The Parcel is co-owned by Lewis Farmlands 1 Ltd. as to an undivided 64.78% interest and David Arcand and Tracy-Ann Young as joint tenants as to an undivided 35.22% interest [see pages 45 to 47 of Agenda Package].

[20] Mr. Brochu advised that Mr. Arcand and Ms. Young were a military couple and a farm family. The proposed subdivision would permit Mr. Arcand and Ms. Young to own the Proposed Lot 3 outright. The proposed subdivision would not take any good agricultural land out of production, as only the Proposed Lot 3 would be subdivided. The Proposed Lot 3 is not used for agricultural purposes.

[21] Ken Lewis advised that the Parcel was initially owned by the Paul family, who rented the northernmost 80-acre portion of the quarter section to Lewis Farms. Mr. Arcand also rented the Proposed Lot 3 from the same landowner. In 2000, Lewis Farms, Mr. Arcand, and Ms. Young purchased the Parcel from the previous landowner.

[22] David Arcand advised that he and his wife agreed to jointly purchase the Parcel with Lewis Farms because they were advised by the County that subdivision of the Parcel would likely be possible in five years. They made an application in 2012, but it was refused. They were told to try again in another five years. Mr. Arcand also advised that he and Ms. Young purchased the property because it offered peace and quiet for Ms. Young, who suffers from PTSD as a result of her military service. Due to the recent increase in air traffic at the Parkland Airport, the property no longer provides the peace and quiet it once did, and Ms. Young would like to move. The co-ownership with Lewis Farms makes it difficult, if not impossible, to sell the Proposed Lot 3.

[23] In response to Board questions, Mr. Brochu advised that the Preliminary Groundwater Potential Study indicated that there was insufficient water for an additional residence on the Remnant Lot. It would not be an issue to build a cistern for an additional residence, as this is quite commonly done. He also advised that the existing well on the Proposed Lot 3 has sufficient water.

[24] Mr. Lewis and Mr. Arcand advised that the conditions recommended by the Subdivision Authority were acceptable to both of them.

FINDINGS OF FACT

[25] The Parcel is located at Plan 0224682 Block 1 Lot 2, municipally described as 52229 Rge Road 270.

[26] The Parcel is zoned Agricultural General District (AGG) in the County's Land Use Bylaw 20-2009, as amended.

[27] The Proposed Lot 3 is 7.045 acres and is greater than the minimum parcel size required by the LUB. The Remnant Lot is 116.61 acres and is greater than the minimum parcel size required by the LUB.

[28] As the applicants for subdivision, the Appellants are entitled to appeal the decision of the Subdivision Authority under section 678(1)(a) of the *Municipal Government Act*.

REASONS

[29] The Board notes that its jurisdiction is found in section 680(2) of the *Municipal Government Act*. In making this decision, the Board has examined the provisions of the LUB, and has noted the provisions of LUB and MDP as referenced in the Subdivision Authority's Report. The Board has also considered the oral and written submissions made by Mr. Brochu, Mr. Lewis, Mr. Arcand and the Subdivision Authority.

680(2) *In determining an appeal, the board hearing the appeal*

- (a) must act in accordance with any applicable ALSA regional plan;*
- (a.1) must have regard to any statutory plan;*
- (b) must conform with the uses of land referred to in a land use bylaw;*
- (c) must be consistent with the land use policies;*
- (d) must have regard to but is not bound by the subdivision and development regulations;*
- (e) may confirm, revoke or vary the approval or decision or any condition imposed by the subdivision authority or make or substitute an approval, decision or condition of its own;*
- (f) may, in addition to the other powers it has, exercise the same power as a subdivision authority is permitted to exercise pursuant to this Part or the regulations or bylaws under this Part.*

ALSA Regional Plan

[30] There is no ALSA regional Plan.

Statutory Plans

[31] The Board notes that it is required to have regard for statutory plans under Section 680(2)(a.1) of the *Municipal Government Act*. The County's MDP governs the Parcel, and designates the Parcel Agricultural (AG). Policy 2.7 of the MDP states that a maximum of three subdivisions in addition to the remnant of the original quarter section shall be permitted per quarter section designated Agricultural.

[32] The Board has considered the provisions of the MDP when deciding whether to approve the subdivision. The Board heard evidence that the Subdivision Authority refused the subdivision application because the proposed subdivision would exceed the three subdivision maximum permitted by Policy 2.7 of the MDP. The Board recognizes that the Subdivision Authority was required to refuse the subdivision under section 654(1)(b) of the *Municipal Government Act*. Although there was no direct evidence on point, the likely objective of Policy 2.7 of the MDP is to preserve agricultural land in Parkland County and avoid the fragmentation of agricultural parcels.

[33] The Board noted that the Subdivision Authority was clear that the provisions of the MDP, particularly Policy 2.7, prevented it from approving the proposed subdivision. However, the Subdivision Authority presented no additional argument or evidence why the proposed subdivision should not be approved. While the provisions of the MDP are binding on the Subdivision Authority, they are not binding on the Board, which must consider whether the circumstances of the case support the subdivision application.

Preserve Agricultural Land In Parkland County

[34] The Board heard evidence that the Proposed Lot 3 currently is not used for agricultural purposes, but the Remnant Lot continues to be used for agriculture. If the subdivision application is approved, the Remnant Lot will continue to be farmed. The Board heard no evidence that would suggest the uses of either the Proposed Lot 3 or the Remnant Lot would be changed by the proposed subdivision.

[35] Although the subdivision in question will create another lot, the subdivision will not be taking land out of agricultural production because the area contained within the Proposed Lot 3 is not currently nor in future will be used for agricultural production. By contrast, the Remnant Lot will continue to be farmed with or without a subdivision. The Board heard no evidence that would suggest the uses of either the Proposed Lot 3 or the Remnant Lot would be changed by the proposed subdivision, and therefore, creating Proposed Lot 3 will not negatively impact the preservation of agricultural land in Parkland County.

Fragmentation of Agricultural Parcels

[36] The second possible rationale limiting the number of parcels in a subdivision is to prevent the fragmentation of agricultural parcels. The Board notes that the "original quarter section" has been the subject of previous subdivisions. In the earliest subdivision, 9 lots (8 lots plus a reserve lot) were created on the southernmost portion of the original quarter section. The quarter section was then the subject of a boundary line adjustment, which, in effect, subdivided the remainder and created Lot 1 [see page 33 of Agenda Package]. Ten parcels have already been created from the original quarter section. In its submissions, the Subdivision Authority asks the Board to overlook the creation of these previous lots, and to hold to a rigid application of Policy 2.7 of the MDP, which permits only 3 parcels on a quarter section. However, the Board heard no evidence to prevent the creation of an eleventh parcel on the NW-18-52-26-W4. The Board notes that there are no objections to or concerns with the proposed subdivision from adjacent owners.

[37] During the hearing, the Board questioned the Subdivision Authority about the meaning of "original subdivision" and was advised that it was not defined. The Board notes that Policy 2.7 applies specifically to land which is zoned as Agricultural in the MDP, and the Board also notes that the 9 parcels created on the southernmost portion of NW-18-52-26-W4 are zoned County Residential (CR). While the Board does not need to specifically determine the point, it is unclear whether the CR Subdivision was intended to be caught by the limit found in Policy 2.7.

[38] The Board has considered Policy 2.7 of the MDP. On the evidence before it, the Board is not persuaded that it should prevent the creation of an eleventh parcel on the NW-18-52-26-W4 based upon Policy 2.7 of the MDP.

Land Use Bylaw

Uses for the Proposed Lots

[39] Section 680(2)(b) of the *Municipal Government Act* requires the Board to conform with the uses of land referred to in a land use bylaw. In the LUB, the Parcel is zoned Agricultural General District (AGG). The proposed use of Proposed Lot 3 is residential, which is in accordance with the uses in the Agricultural General District (AGG), meeting the requirements of section 680(2)(b).

LUB Regulations

[40] The Board notes Section 4.1.3(a) of the LUB requires a minimum parcel area in the Agricultural General District (AGG) of 2.0 acres for residential parcels and 40 acres for agricultural parcels. The Board heard evidence that the proposed subdivision conforms with the uses of land and the minimum parcel areas permitted in the Agricultural General District (AGG).

[41] Section 4.1.3(a) of the LUB also requires that extensive agriculture and extensive livestock must have a minimum parcel frontage of at least 399.9m. The Board received evidence that the Remnant Parcel does not meet the minimum parcel frontage of at least 399.9m [see page 21 of the Agenda Package]. However, the Board heard no evidence of the Remnant Lot's frontage length, other than the maps found at pages 32 and 33 of the Agenda Package, which do not indicate the length of the Remnant Lot's frontage. The Board notes that, due to the CR Subdivision and Lot 1, the Parcel's frontage, even without the proposed subdivision, is already less than the required 399.9 m. The Board heard no evidence of any negative impact caused by the existing deficient frontage of the Parcel or how the deficient frontage would cause a negative impact if the proposed subdivision is approved. Therefore, the Board is prepared to exercise its variance powers under Section 680(2)(f), which give the Board the power of the Subdivision Authority under Section 654(2) in relation to the frontage of the Remnant Lot.

[42] Section 4.1.3(b) of the LUB also states that a maximum of three subdivisions in addition to the remnant of the original quarter section shall be permitted per quarter section. As set out in paragraphs [32] through [38] above, the Board has considered the potential reasons for such a limitation. Having heard no evidence that the proposed subdivision would unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, the Board is prepared to exercise its variance powers regarding the subdivision limit to permit the proposed subdivision.

Land Use Policies

[43] The Board heard no evidence that the proposed subdivision was in conflict with the Land Use Policies.

Subdivision and Development Regulations

[44] Section 7 of the *Subdivision and Development Regulations* states that the Subdivision Authority must consider the following characteristics of the land that is the subject of the application in making a decision as to whether to approve an application for subdivision:

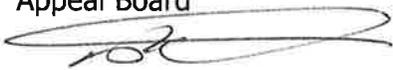
- (a) its topography,
- (b) its soil characteristics,
- (c) storm water collection and disposal,
- (d) any potential for the flooding, subsidence or erosion of the land,
- (e) its accessibility to a road,
- (f) the availability and adequacy of a water supply, sewage disposal system and solid waste disposal,
- (g) in the case of land not serviced by a licensed water distribution and wastewater collection system, whether the proposed subdivision boundaries, lot sizes and building sites comply with the requirements of the Private Sewage Disposal Systems Regulation (AR 229/97) in respect of lot size and distances between property lines, buildings, water sources and private sewage disposal systems as identified in section 4(4)(b) and (c),
- (h) the use of land in the vicinity of the land that is the subject of the application, and
- (i) any other matters that it considers necessary to determine whether the land that is the subject of the application is suitable for the purpose for which the subdivision is intended.

[45] The Board heard evidence that the Parcel is suitable for subdivision, but there was a question of the sufficiency of the water supply. The Board heard evidence that the Parcel has insufficient groundwater to support a further residential development on the Remnant Lot. The Board also heard evidence that the well on the Proposed Lot 3 provides sufficient water for the existing residential development and that a cistern can be installed on the Remnant Lot to provide water if and when a residence is constructed there. The Board also heard the evidence of the Applicants that they understood that if the subdivision was approved, there would be a condition requiring a cistern, and they agreed with the condition.

[46] Based on the evidence provided, the Board is persuaded that the Proposed Lot 3 has an adequate water supply and that the Remnant Lot can be supplied with adequate water if and when a water supply is required, based upon the imposition of Condition 6 of the Subdivision Approval. Therefore, the Board is satisfied that the proposed subdivision meets the conditions set out in Section 7 of the *Subdivision and Development Regulations*.

[47] For the above reasons, the appeal is allowed and the subdivision application is approved.

Issued this 6th day of October, 2017 for the Parkland County Subdivision and Development Appeal Board



 Jane Smith, Chair

SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This decision may be appealed to the Court of Appeal of Alberta on a question of law or jurisdiction, pursuant to Section 688 of the Municipal Government Act, R.S.A. 2000, c.M-26. This section requires an application for leave to be filed with the Court of Appeal of Alberta within 30 days of receipt of this decision.

APPENDIX "A" REPRESENTATIONS

PERSON APPEARING

1. Mary McInnis, Parkland County
2. Yvon Brochu, on behalf of Appellanta
3. Ken Lewis, on behalf of the Appellant Lewis Farms 1 Ltd.
4. David Arcand

APPENDIX "B" **DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:**

Exhibit	Description	Date	Pages
1.	Table of Contents and Agenda	Sept 20, 2017	1
2.	Notice of Appeal	Sept 1, 2017	9-11
3.	SDAB Clerks Report	Sept 15, 2017	12-16
4.	Submission of the Subdivision Authority	Sept 14, 2017	17-105
5.	Applicant/Appellant Submission	Sept 19, 2017	106-113