

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

Legislative Services, Parkland County Centre
53109A HWY 779
Parkland County, AB T7Z 1R1
Telephone: (780) 968-3234
Fax: (780) 968-8413

HEARING DATE: April 10, 2017
FILE NO.: 17-S-002

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Subdivision Authority of Parkland County (the "County") refused Subdivision Application No: 17-S-002, for a "lot line adjustment" at Plan 1424365 Block 1 Lot 1 & Plan 1524408 Block 1 Lot 5, SE-11-51-27-W4, Municipal Address 27110 Twp Rd 511 and 51114 Rge Rd 271. (the "Site").

[2] Harold and Lorraine Biittner, Richard and Rita Schultz appealed the Decision of the Subdivision Authority.

PRELIMINARY MATTERS

A. Board Members

[3] At the start of the hearing on April 10, 2017, the Board asked if anyone had an objection to the panel hearing the appeal. None of the persons in attendance had any objection to the members of the Board hearing the appeal.

B. Exhibits

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

C. Miscellaneous

[5] The appeal was filed in time, in accordance with Section 678 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.

D. Preliminary Matters

[7] At the beginning of the hearing, Ms. Biittner stated that the Applicants/Appellants had additional materials to submit. The Board reviewed the materials and marked the document as an exhibit for the hearing.

SUMMARY OF HEARING

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

Subdivision Authority

[9] The application for the Site proposes to adjust the lot lines of one large agricultural parcel and one residential parcel to create two agricultural parcels on a fragmented quarter in the Agricultural General District (AGG).

[10] The County's Municipal Development Plan 37-2007 (MDP) Section 2.7 and Land Use Bylaw 20-2009 (LUB) Section 4.1(3)(b) allow parcels in the AGG district to have either a maximum of four 16.2 ha (40.0 acre) parcels, or three residential parcels and one large remnant agricultural parcel that generally have equal length and width on a quarter section. The combination of residential parcels with forty acre parcels as proposed in this application is not allowed.

[11] The appellant indicated that they could create a 16.2 ha (40.0 acre) parcel, but the parcel proposed is not generally equal in width and length as prescribed under Policy 2.7(a) of the MDP and Section 4.1(3)(b) of the LUB.

[12] Section 4.1(3)(b) of the LUB requires extensive agriculture and extensive livestock parcels to have a minimum parcel frontage of 399.9 m (1,312 feet) more or less.

[13] Proposed Lot 6 has a parcel size of 16.0 ha (39.4 acres) with a parcel frontage of 200.1 m (722 feet). Both parcel size and parcel frontage are less than the minimum.

[14] Proposed Lot 7 has a parcel size of 22.7 ha (56.2 acres) with a parcel frontage of 358.5 m (1176 feet). The parcel frontage is less than the minimum.

[15] The Site is considered a fragmented parcel, and the appellant cannot meet the frontage requirements along Range Road 270 due to fragmentation of the quarter by the Crown parcel.

[16] The Government of Alberta is not willing to sell the Crown land to the Appellants.

[17] The application was found to conform to the relevant considerations as outlined in Section 7 of the Subdivision and Development Regulation. Adjacent landowners made no written submissions.

[18] The Subdivision Authority refused the application as the proposal does not meet the relevant considerations as outlined in Section 654 of the *Municipal Government Act*, and is not consistent with Policy 2.7(a) of the MDP and Section 4.1(3)(b) of the LUB.

Appellants

Harold & Lorraine Biittner, and Richard and Rita Schultz

[19] Ms. Biittner indicated proposed Lot 6 can meet the required 16.2 ha (40.0 acre) minimum by reducing proposed Lot 7 and increasing the number of acres on proposed Lot 6. This proposal keeps the south boundary line straight and the entire length creates a lot of 16.0 ha (39.4 acres); a shortfall of 0.2 ha (0.6 acres). Part of this shortfall is due to the fraction the County took for road widening in 1980. The frontage of the proposed Lot 6 is 200.1 m (722 feet) and cannot be increased due to the adjacent Crown land. This is not a normal quarter of land as 30 acres of Crown land is located in the center of it that forces them to plan around it. Her family has farmed the Crown land for almost 70 years. Each year they pay lease fees on the Crown land and property taxes to Parkland County.

[20] Further Ms. Biittner indicated the frontage of proposed Lot 7 is 358.56 m (1,176 feet); a shortfall of 41.3 m (136 feet). The parcel frontage was increased by adding existing Lot 1 to the south part of existing Lot 5. The original farm yard site was located in the center of the quarter, which restricts their options for establishing the eastern boundary of existing Lot 1.

[21] Lastly Ms. Biittner indicated the application does not change the number of parcels on the quarter. Adjacent landowners provided letters of support for the application. The lands will continue to be part of their farming operation, much of the land is soil classification 4 and 5 and not high quality for producing cereal or oilseed crops. Dividing the present odd shaped existing Lot 5, and adding existing Lot 1, allows proposed Lots 6 and 7 to more closely follow the County's focus of encouraging more value added types of agricultural use on 40 acre parcels. There are presently seven 40 acre parcels in the area that have the same 4 to 1 ratio as the proposed Lot 6 would have. Four of the parcels are only one mile west from the subject area property line.

[22] When questioned by the Board, Ms. Biittner stated that on Golden Spike Road there are seven parcels the same shape as the proposed Lot 6.

[23] When questioned by the Board, Mr. Schultz said that in 1965 his father began leasing the Crown land from the government. His father requested to buy the land but was denied. The family submitted a request to have the Crown re-evaluate the sale of the Crown land and were turned down.

[24] When questioned by the Board, Ms. Biittner said that the Crown land was designated improperly years ago. The Crown Land sits at the highest point of the land, not the lowest with poor drainage as they have been told.

[25] When questioned by the Board, Mr. Biittner stated that his belief is that the similar lots on Golden Spike Road have the same frontage as the proposed lot 6.

[26] When questioned by the Board, Ms. McInnes, Planning Intern, stated that the reason for the frontage requirements is to keep parcels square shaped and equal in size.

[27] When questioned by the Board, Mr. Schultz said that he will continue farming this land if the Appeal is granted.

[28] When questioned by the Board, Ms. Biittner answered that she and her brother, Mr. Schultz, inherited the property and wish for the property for be equally divided and passed along to their children.

[29] When questioned by the Board, Ms. Biittner said that proposed Lot 6 has no residence on the property.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[30] The Board upholds the Appeal. Subdivision Application 17-S-002 is approved subject to the following conditions:

a) Pursuant to Section 654(1)(d) of the Municipal Government Act, all outstanding property taxes to date are to be paid. Pursuant to Parkland County Policy C-PD03, if the subdivision is registered at Land Titles after December 31 and prior to the tax payment deadline (normally June 30), the applicant must prepay the property taxes that would be due on or before the above noted deadline.

b) 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 Clerk at 780-968-8443, ext. 8380 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.

c) 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 is required pursuant to the Private Sewage Disposal Systems Regulation. Please contact Parkland County Safety Codes at 780-968-8443 to obtain the Private Sewage Checklist for Subdivision Approval, pay any fee(s), 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.

d) Pursuant to Section 4.1 and Section 16.4 of Land Use Bylaw No. 20-2009, the landowner shall complete and sign the Agricultural Building Information Form for the agricultural accessory building constructed on the lands in 2016. Please contact a Development Planner at 780-968-8443.

e) Pursuant to Parkland 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 deferred proportionately to the two remnant agricultural parcels.

f) 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.

FINDINGS OF FACT

[31] The Site is located at Plan 1424365 Block 1 Lot 1, Plan 1524408 Block 1 Lot 5 SE-11-51-27-4.

[32] Proposed subdivisions are to be consistent with Policy 2.7 of the MDP and Section 4.1(3)(b) of the LUB. The MDP and LUB require parcels in the AGG district to have either a maximum of four 16.2 ha (40.0 acre) parcels, or three residential parcels and one large remnant agricultural parcel, of generally equal length and width, and have a minimum parcel frontage of 399.9 m (1,312 feet) more or less.

[33] The Site is zoned as AGG – Agricultural General District.

[34] The Site is considered a fragmented parcel under the MDP and LUB.

[35] The Appellants are affected parties.

[36] With the conditions imposed, the proposed subdivision is consistent with the County's Land Use Bylaw, the County's Municipal Development Plan, and the Subdivision and Development Regulations.

REASONS

[37] 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 MDP as referenced in the Subdivision Authority's Report. The Board has also considered the oral and written submissions made by the Appellants, Harold & Lorraine Biittner, and Richard & Rita Schultz.

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.

Appellants and Affected Person

[38] The Appellants, Harold & Lorraine Biittner and Richard & Rita Schultz live on the Site and are affected.

Land Use District

[39] The Site is zoned as Agricultural General (AGG) District.

Regulatory Considerations

Municipal Development Plan

[40] Pursuant to Section 680(2) of the *Municipal Government Act* the Board must have regard to any statutory plan, however, as referenced in *Strathcona (County) v. Allan*, 2006 ABCA 129, the Board is not bound by the provisions of the MDP, but need only have regard to them.

[41] The Board notes that although Policy 2.7 of the MDP allows a maximum of four 16.2 ha (40.0 acre) parcels or three residential parcels and one large remnant agricultural parcel in the AGG district, the Site currently has five parcels due to a fragmented parcel being located on the Site. The subdivision application proposes to adjust the lot lines of one large agricultural parcel and one residential parcel to create two agricultural parcels of 16.0 ha (39.4 acres) and 22.7 ha (56.1 acres), but does not change in the number of parcels on the Site. Further, the Board heard from the appellants that on Golden Spike Road there are seven parcels the same shape as proposed for Lot 6 with four of the parcels being only one mile west from the property line of the Site. The Board finds that adjusting the lot lines with no change in the number of parcels, and having congruent parcel configurations as proposed for Lot 6 in the immediate area of the Site, the application as varied is compatible with the MDP.

[42] Policy 2.7 of the MDP requires parcels in the AGG district to generally have parcels of equal length and width. The application proposes to keep the south boundary line of proposed Lot 6 straight the entire length creates of lot of 16.0 ha (39.4 acres). The Board heard from the appellants that the Site is not a normal quarter of land as 30 acres of Crown land is located in the center of it and that forces them to do their subdivision planning around this land. Further, the Board heard from the appellants that on Golden Spike Road there are seven parcels of the same shape proposed for Lot 6, some parcels have the same 4 to 1 ratio as proposed Lot 6, and four of the parcels are only one mile west from the property line of the Site. The Board finds the subdivision of fragmented land requires a variance to equal length and width of the parcels to support evident land uses that are congruent with parcel configurations in the immediate area of the Site, the application as varied is compatible with the MDP.

[43] The Board heard from the Subdivision Authority that the combination of forty acre residential parcels proposed in this application is not allowed. The Board heard from the appellants that the Site is fragmented by 30 acres of Crown land, the lands will continue to be part of their farming operation, proposed Lots 6 and 7 will more closely follow the County's focus of encouraging more value added types of agricultural use on 40 acre parcels, and proposed Lot 6 has no residence on the property. Further, the Board heard from the appellants that on Golden Spike Road there are seven parcels of the same shape, some parcels have the same 4 to 1 ratio, and four of the parcels are only one mile west from the property line of the Site. The Board finds that the subdivision of fragmented land requires the creation of a combination of unique agricultural parcels to support evident land uses that are congruent with parcel configurations in the immediate area of the Site, therefore, the application as varied is compatible with the MDP.

Land Use Bylaw

[44] Pursuant to Section 680(2) of the *Municipal Government Act* the Board must conform with the uses of land referred to in a LUB, however, as referenced in *Strathcona (County) v. Allan*, 2006 ABCA 129, the Board is bound by the LUB only to the extent that it must conform with the specified uses of the land. Therefore, the Board may approve a subdivision notwithstanding its lack of compliance with any specified uses of the land in the LUB.

[45] The Board notes that although Section 3(b) of the LUB allows the subdivision of land in the AGG district by either a maximum of four 16.2 ha (40.0 acre) parcels, or three residential parcels and one large remnant agricultural parcel, of generally equal length and width, five parcels currently exist due to a fragmented parcel being located on the Site. The subdivision application proposes to adjust the lot lines of one large agricultural parcel and one residential parcel to create two agricultural parcels but does not change the number of parcels on the Site. Further, the Board heard from the appellants that on Golden Spike Road there are seven parcels of the same shape, some parcels have the same 4 to 1 ratio, and four of the parcels are only one mile west from the property line of the Site. The Board finds that the subdivision of fragmented land necessitates the creation of a combination of unique agricultural parcels to support evident land uses that are congruent with parcel configurations in the immediate area of the Site, therefore, the application as varied is compatible with the LUB.

[46] Section 3(a) of the LUB requires extensive agriculture and extensive livestock parcels to have a minimum parcel frontage of 399.9 m (1,312 feet) more or less, however the Board notes that some of the existing parcel frontages on the Site vary from LUB provisions. The application creates parcel frontages of 200.1 m (722 feet) on proposed Lot 6 and 358.6 m (1,176 feet) on proposed Lot 7, a variance of 199.8 m (590 feet) and 41.3 m (136 feet) respectively. The Board heard from the appellants that the parcel frontage of proposed Lot 6 is restricted due to 30 acres of Crown land fragmenting the quarter, the parcel frontage of proposed Lot 7 was increased by consolidating existing Lot 1 into proposed Lot 7, and the eastern boundary line of proposed Lot 7 cannot be moved due to existing Lot 3 containing the original farm yard site. The Board finds that the subdivision of fragmented land with existing parcel development requires the variance of parcel frontages on the Site to improve existing parcel frontages and support evident land uses, therefore, the application as varied is compatible with the LUB.

Subdivision and Development Regulations

[47] The Board notes that in accordance with Section 680(2), it must have regard to but is not bound by the Subdivision and Development Regulations. The Board heard from the Subdivision Authority that the application was found to conform to the relevant considerations as outlined in Section 7 of the Subdivision and Development Regulation.

Issued this 21st day of April 2017, for the Parkland County Subdivision and Development Appeal Board



Phyllis Kobasiuk, 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. Stephen Fegyverneky, Manager, Current Planning
2. Mary McInnes, Planning Intern
3. Lorraine Biittner
4. Richard Schultz
5. Harold Biittner
6. Rita Schultz

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

Exhibit	Description	Date	Pages
1.	Table of Contents and Agenda		1 – 2
2.	Notice of Appeal	March 22, 2017	2-6
3.	SDAB Clerks Report	April 3, 2017	7-25
4.	Submission of the Subdivision Authority	April 3, 2017	93-102
5.	Submission of the Applicants/Appellants	April 3, 2017	26-92
6.	Applicants/Appellants Submission - Cover page for letters	April 3, 2017	103
7.	Letter in support of the Applicants/Appellants – Darcy & Carmen Freemark	April 3, 2017	104
8.	Letter in support of the Applicants/Appellants – Marc & Vanessa Goudreau	April 3, 2017	105
9.	Letter in support of the Applicants/Appellants – Kevin & Kansas	April 3, 2017	106
10.	Letter in support of the Applicants/Appellants – David & Jerry Hennig (Sunnyview Dairy Farms Ltd)	April 3, 2017	107
11.	Letter in support of the Applicants/Appellants Steven & Carol Kennedy	April 3, 2017	108
12.	Letter in support of the Applicants/Appellants – Steven & Carol Kennedy	April 3, 2017	109
13.	Letter in support of the Applicants/Appellants – Ross & Christine Williams	April 3, 2017	111
14.	Letter in support of the Applicants/Appellants - Darcy & Nicole Zaft	April 3, 2017	112
15.	Applicants/Appellants Submission received at hearing April 10, 2017	April 10, 2017	N/A