

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
PARKLAND COUNTY**

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DATE: May 29, 2017  
FILE NO.: 17-D-159

**Notice of Decision of Subdivision and Development Appeal Board**

**INTRODUCTION**

[1] The Development Authority of Parkland County (the "County") approved, with conditions, a development permit No. 17-D-159 (the "Development Permit") for a Group Home, Limited on Lot 47, Plan 9825368, Lakeshore Estates, SE 23-53-26-W4, Municipal Address: 47, 53302 Rge Rd 261 (the "Site"). The Parkland Big Lake Area Community Association appealed the Development Permit.

**PRELIMINARY MATTERS**

**A. Board Members**

[2] At the outset of the appeal hearing on May 29, 2017, the Chair requested confirmation from all parties in attendance that there was no opposition to the composition of the Board hearing the appeals. None of the persons in attendance had any objection to the members of the Board hearing the appeal.

**B. Additional Materials**

[3] There were no new additional materials submitted at the beginning of the hearing.

**C. Miscellaneous**

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

[5] The appeal was filed on time, in accordance with Section 686 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.

## SUMMARY OF HEARING

[7] 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.

### Development Authority

[8] The Development Authority indicated that the Site is located within the Country Residential Estate District (CRE). The use of Group Home, Limited is a discretionary use in the Country Residential Estate District.

[9] The Site is subject to, and consistent with, the provisions of the County's Municipal Development Plan. The Site is subject to the Big Lake Area Structure Plan (ASP), Bylaw 17-91. The proposed development is consistent with the provisions within section 4.1 of the ASP.

[10] Section 20.1.3 of the Parkland County Land Use Bylaw defines Group Home, Limited as:

*GROUP HOME, LIMITED means development consisting of the use of a building as a facility which is recognized, authorized, licensed or certified by a public authority as a social care facility intended to provide room and board for six (6) residents or less, excluding staff, for foster children or disabled persons, or for persons with physical, mental, social or behavioural problems, and which may be for the personal rehabilitation of its residents either through self-help or professional care, guidance and supervision. The residential character of the development shall be primary with the occupants living together as a single housekeeping group and using cooking facilities shared in common. The use class does not include treatment facilities such as detoxification centres.*

[11] In granting its approval, the Development Authority found no valid planning reason to deny the use of Group Home, Limited. There is to be no variation to the external appearance of the dwelling or property. The Development Authority found the use to be compatible with surrounding properties for the following reasons:

- a) The proposed use meets the definition of Group Home Limited as found in the Land Use Bylaw.
- b) The use is Discretionary within the CRE District.
- c) The proposed use complies with the regulations set out in the Land Use Bylaw.
- d) The property is a corner parcel located at the north eastern access to the multi parcel subdivision. Therefore the proposed development will not generate excessive traffic due to the location, as it is the first property when entering the subdivision.
- e) The property is currently fenced and gated, which is compatible with a residential development.
- f) There are no exterior alterations proposed to the dwelling; therefore, it will continue to fit within a residential development.
- g) The dwelling is large enough to accommodate six residents and staff.
- h) There is sufficient onsite parking as there is an attached 3 car garage and a large parking area in the front and along the west side of the dwelling.
- i) The use is limited to up to six (6) seniors as permanent residents.

- j) The residents each have a private room with the remainder of the dwelling being shared common areas.

[12] In response to Board questions, the Development Authority advised that the CRE District, as any district, lists permitted and discretionary uses. The purpose of the CRE District is higher density residential development. The district allows Group Home, Limited as a discretionary use. The use should be reasonably compatible, and that is why it is in this District. The Development Authority has the discretion to approve the use, and the test is whether the use is compatible. In response to questions about whether the use meets the Building Code, the Development Authority advised that it only has jurisdiction under and for the Land Use Bylaw. There are other required regulatory regimes, which include the Building Code, which is separate from a development permit. The notes regarding restrictive covenants, the Building Code and the Fire Code are not enforceable under the Land Use Bylaw, and are meant to provide notice to the Applicant of these other requirements.

### **Appellant Parkland Big Lake Area Community Association**

[13] The Board heard from Gaylene Weidlich, President of the Parkland Big Lake Areas Community Association.

[14] Ms. Weidlich stated that she was speaking on behalf of the community as a whole. The Applicant is a for profit senior care facility. Ms. Weidlich advised the Board that the Applicant had applied to change the zoning in 2016 to permit a senior's facility for up to 14 clients. The Community opposed that rezoning. Their concerns include the fact that the Applicant left her dog wandering in the neighbourhood, which they felt indicated that the Applicant would not be able to take proper care of the residents. There was a recent fire in the community, which completely destroyed the home. It took the Fire Department 20-40 minutes to arrive at the property from Acheson. Ms. Weidlich felt that if there was group home at the Site, the Applicant would not be able to remove the staff and clients from the house in time.

[15] Ms. Weidlich stated that the permit notes which are set out at the bottom of the permit should be conditions, because there is no ability to enforce them. She also stated that they have no issue with small businesses, but have a concern with a care facility.

### **Those Speaking in Favour of the Appeal**

#### **Barbara Costacha**

[16] Barbara Costacha lives within the area, but not near to the Site. Her concerns are that she did not wish to live near to a for profit business. She had concerns about the approval process because it is based upon a "paper process system". She stated that there was no expressed need by the community for the use and no community support for the use. She submitted that the Application was a for profit venture and was not a home based business, which did not fit with the County's Municipal Development Plan or the Area Structure Plan or the Land Use Bylaw. She noted that the use was discretionary and should not be automatically approved. She stated that the development is a senior care facility, and not a group home. It would be a nursing home, and there would be significant immediate and future impacts. She

was concerned that there were "notes" at the end of the Development Permit. She questioned who would be responsible to monitor for compliance.

[17] This was not "smart growth", which should be only for new development. It is "smart growth" to ensure that there is appropriate infrastructure to manage the growth.

[18] She stated that there were safety issues with the development, including security for residents leaving the residence. She was concerned that they would not be supervised 24 hours a day, and that the fence and gate are ornamental only, and will not function as security features. She stated that vehicles and animals are in and out of the property at all times, and that it is not secure for the type of resident that the Applicant will have on the site.

[19] Ms. Costacha was also very concerned about egress onto the Site. She stated that there is insufficient parking on site. If there was an emergency, the emergency vehicles could not get onto the Site. She had concerns about the bio-hazard waste, as well as other waste being generated by the proposed development.

[20] She noted that the Application did not request any alterations for internal or external changes. She stated that this is a red flag, because the Applicant cannot use the Site for the proposed development without making further changes, which have not been requested.

[21] She acknowledged that senior health care is an issue, but felt that there was a lack of integrity in attempting to put a for profit facility into the community which would put the burden onto the community. She did not object to development in the community, but felt that this use was not appropriate

[22] Ms. Costacha presented the final argument on behalf of the Appellant. The Appellant is concerned about the proposed development because the Applicant does not operate a facility today, but is projected to open two facilities, of which this is one. The Appellants are concerned about the level of staffing because the Applicant's website is requesting volunteers, and not trained staff. The Appellants remain concerned about egress to the site and the safety of the residents, as well as how the proposed development will be operated. She stated that there would need to be changes to the exterior of the building to meet licensing standards, but no changes have been requested. She believes that ratio of caregivers to residents is not acceptable. She restated the concern about the 5 notes in the Development Permit, indicating they should be a requirement and not a note. She is concerned about the potential impact on property values.

### **Rob Selby**

[23] Mr. Rob Selby lives immediately west of the Site. He had concerns about the ability of the Applicant to operate the development citing previous instances where the Applicant did not respond to his concerns regarding her use of the property (noisy party) in an appropriate manner, and he had to call the police. He was concerned about what would happen if there was an event at the Site, and he had to speak with the person in charge.

[24] Mr. Selby stated that the Applicant's use of the Site has had an impact on the community and was concerned about the impact of the use on the neighbourhood. He stated that the fence is comprised, in part, of plastic and the rest is chain link.

### **Brent Slater**

[25] Mr. Brent Slater lives directly across the street from the Site. He has been impacted by the Applicant, particularly parking from the Site, and dogs from the Site running loose. He stated that the community mail box is near the Site and there are often cars double parked when people stop to pick up their mail. He was concerned about the impact of parking due to increased amounts of traffic arising from the proposed development. His main concerns are the impact of traffic, noise and parking from the proposed development.

### **Ida Duncan**

[26] Ms. Ida Duncan lives one block from the proposed development. She had questions about the nature of the permitted and discretionary uses in the CRE District. She questioned whether the proposed development meets the Building Code. Further, she was concerned that the notes at the end of the Development Permit were not conditions.

### **Tanya Dundass**

[27] Tanya Dundass lives 7 houses from the proposed development. She stated that the County does not have control over Range Road 261 (231 Street) and she is concerned about overflow parking from the proposed development along RR 261. If there are such concerns, the City of Edmonton does not respond quickly. She is concerned about who will police concerns arising from the development, particularly, noise, traffic and double parking.

### **Ron Krulak**

[28] Ron Krulak lives in Phase 2 of the development. He is concerned about the double parking that currently exists in the neighbourhood. He is concerned that there will be parking along the road, which will have an impact for snow removal or emergency vehicles. He does not believe the development is suitable for the neighbourhood.

## **Those Speaking in Opposition to the Appeal**

### **Applicant**

[29] Mr. Scott Mackie, a representative of the Applicant, WSP/MMM Group Ltd. which applied for the Development Permit on behalf of A House, A Heart, A Home spoke in opposition to the appeal.

[30] He stated that there is need for this type of development. Seniors make up an increasing percentage of the population, and it is best for them to live in a community when living alone is not an option. Many hospital beds are taken up by seniors who do not have a

place to return to. Although there are concerns about the company, an operation would have to go through the provincial licensing and monitoring process.

[31] The area is zoned Country Residential Estates, which is a lower density use. This area is auto oriented and there are larger homes with plenty of parking, but no direct access to transit or shopping. There are usually about 8.5 to 12.5 car trips per day in areas with access to transit, and higher trip rates in country residential areas. He has been to the Site on 4 occasions. The road is 7.5 to 8 meters in width. It is not wide enough for cars to park on both sides of the road and for traffic to move on the road; however, the traffic moves slowly and the residents are careful about their neighbours. He stated that there is some parking on the road, mostly on the weekend. There is also parking on driveways in the area. The Site is attractive for the development because it is a country residential setting with access to amenities. The area is quiet with little traffic or parking issues.

[32] His client has been approached by people who would like this kind of setting for their elderly parents. Seniors with cognitive degradation, such as dementia or Alzheimer's, can be secure, but have free movement without being constrained. The large lot provides amenities, such as the swimming pool, gardens and green house. The Site is fully fenced and gated, and residents would not be allowed off site without accompaniment. Provincial licensing requires this, and if those requirements are not met, then the Applicant would be shut down.

[33] He believes that the proposed development complies with the County's MDP. The land use impact of the proposed development is like that of a family dwelling. Physically it will not look different from the other dwellings in the neighbourhood. None of the residents will be driving. There will be 2 full time staff on site. There is a 3 car and 2 car garage on site, plus 6 cars can park on the drive. The proposed development will not generate any different traffic than is typical for a country residential property.

[34] The parking will be on site. There will be no additional noise generated by the proposed development. Emergency vehicles (ambulances) have protocols about the use of lights and sirens, and they will be used only when needed. The residential services are the same for residences and for the group home. The proposed development does not need specialized garbage pick-up. The Province regulates the protocols for bio-hazard waste.

[35] In response to Board questions, Mr. Mackie indicated that the proposed development will be staffed by professionals, which is part of the provincial standards. The level of training is also dictated by the provincial standards. There will be 2 full time staff on the Site at all times. With shift changes, there will be 2 staff leaving their shift, and 2 starting their shift. Mr. Mackie advised the Board that the Applicant will have to meet the provincial licensing standards in order to keep operating and the provincial licensing standards prevail over the County's ability to license the operation.

[36] The fence is 6 feet or over around the entire property and the gate does close. There are 20 cameras on site which can monitor the Site. There will be minimal parking required for staff. If there are resident events, there may be spill over parking on the road. If there were emergency vehicles, the staff would need to ensure that they had passage through the driveway, which is no different from other residences with a large event.

[37] In closing, he stated that group homes are discretionary in residential districts because they are a residential use. The character of the proposed development is to create a residential environment which would provide opportunities for people to live in a country residential area.

### **DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

[38] The Board denies the appeal and upholds the Development Permit and the conditions imposed by the Development Authority, but adds the following additional conditions:

- a) All parking for the Development, including all staff and visitor parking, must be on Site.
- b) The Applicant must, at all times, keep the driveway clear for emergency vehicle access.
- c) The Applicant must obtain a social care facility license for the operation of the Group Home, Limited before starting the operation of the Group Home, Limited.
- d) The Applicant must keep the social care facility license for the operation of the Group Home, Limited in good standing at all times.
- e) This Development Permit is for Group Home, Limited only. Any renovations or changes required to the Site require separate development approval.
- f) There shall be no greater than 6 residents in the Group Home, Limited at any time.

### **FINDINGS OF FACT**

[39] The Site is located at Lot 47, Plan 9825368, Lakeshore Estates, SE 23-53-26-W4, Municipal Address: 47, 53302 Rge Rd 261.

[40] The Parkland County Municipal Development Plan Bylaw 37-2007 governs the Site and the development complies with the Municipal Development Plan.

[41] The Site is subject to the Big Lake Area Structure Plan (ASP), Bylaw 17-91. The proposed development complies with the provisions within section 4.1 of the ASP.

[42] The Site is zoned Country Residential Estate (CRE) District in Parkland County Land Use Bylaw 20-2009, as amended.

[43] The use Group Home, Limited is a discretionary use within the Country Residential Estate (CRE) District.

[44] The use of Group Home Limited is compatible with the neighbouring uses.

[45] The Appellant and those speaking in support of the Appeal are affected persons.

[46] The Applicant is an affected person.

## REASONS

[47] The Board notes that its jurisdiction is found in section 687(3) of the Municipal Government Act. In making this decision, the Board has examined the provisions of the County's Land Use Bylaw ("LUB"), and has noted the County's Municipal Development Plan and the Big Lake Area Structure Plan as referenced in the Development Authority's Report. The Board has also considered the oral and written submissions made by the Appellant, Parkland County Big Lake Area Community Association, as represented by Ms. Gaylene Weidlich, those speaking in support of the appeal, and the Development Authority, and Mr. Mackie, speaking on behalf of the Applicant.

*687(3) In determining an appeal, the subdivision and development appeal board*

- (a) must act in accordance with any applicable ALSA regional plan;*
- (a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;*
- (b) must have regard to but is not bound by the subdivision and development regulations;*
- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;*
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,*
  - (i) the proposed development would not*
    - (A) unduly interfere with the amenities of the neighbourhood, or*
    - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,*
  - and*
  - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.*

### **Appellant and Affected Person**

[48] The Appellant, Parkland County Big Lake Area Community Association, spoke on behalf of the residents of the community. The Board finds the Appellant is affected by the proposed development as the community association, and its role as speaking for the residents.

[49] The other speakers who spoke in favour of the appeal all live in the area. While some are very close to the proposed development (Mr. Selby and Mr. Slater – who are next door and across the street), the speakers were all in the area of the proposed development. The Board finds that they are affected due to their proximity to the proposed development and due to the fact that they may be impacted by traffic and parking arising from the proposed development.

[50] The Board believes that it goes without saying that the Applicant is affected as the person whose development approval is under appeal, but in order that there be no ambiguity on this point, the Board expressly finds that the Applicant is affected.

## **Municipal Development Plan**

[51] The Board has reviewed the Municipal Development Plan Bylaw 37-2007 and notes that the guiding principles in section 1 provide policies for social sustainability and economic development. The Board is of the view that the proposed development complies with the provisions of the Municipal Development Plan.

## **Area Structure Plan**

[52] The Site is subject to the Big Lake Area Structure Plan (ASP). The development objectives at section 4.1 include providing diversified rural residential development opportunities. The Board is of the view that the proposed development complies with the provisions of the ASP as it will diversify the residential development opportunities.

## **Land Use**

[53] The property is zoned Country Residential Estate (CRE) District.

## **Nature of Use**

[54] The use of Group Home, Limited is a discretionary use in the Country Residential Estate (CRE) District. Therefore, as referenced in *Rossdale Community League (1974) v. Edmonton (Subdivision and Development Appeal Board)*, 2009 ABCA 261, the Board must assess the compatibility of the use applied for with the neighbouring uses.

[14] The object and purpose of a discretionary use is to allow the development authority to assess the particular type and character of the use involved, including its intensity and its compatibility with adjacent uses.

[55] In looking at the definition of Group Home, Limited, the Board notes that the proposed development meets the definition in the Land Use Bylaw. There will be up to 6 residents and the character of the site is residential in nature. At this time, the Applicant has not asked for any alterations to the exterior of the residence, which means that the building will continue to look like other residences in the area.

[56] The Appellant and those speaking in favour of the appeal raised a number of issues in regard to the behavior of the Applicant, most notably her handling of requests not to let her noise disturb her neighbors, and concerns about her dogs being off the site. The Board notes the concerns, but it must make a decision based upon land use considerations.

[57] The Board heard comments that the community did not request the proposed development, nor does it support the development. The Board has noted the concerns expressed, but notes that the Applicant is entitled to make an application for the uses which are either permitted or discretionary in the CRE District, and to have the application considered on relevant planning considerations. The Board accepts the comments made by Mr. Mackie and others about the need for places for seniors. The Board has considered the concerns of the residents, as set out below.

[58] The Board notes that the Appellant and those speaking in favour of the appeal raised concerns about the safety of the residents. The fence and gate provide a measure of protection for the residents. As stated by Mr. Mackie, the Applicant must obtain licensure from the Province and the Province sets the standards. The Board has made it a specific condition of this approval that the Applicant obtain and maintain a social care facility license for the operation of the Group Home, Limited. Although the Board noted the Development Authorities comments that the "notes" were there to provide notice to the Applicant, in light of the stated concerns about resident safety, the Board believes that making it an express condition that the Applicant obtain and maintain its provincial license should alleviate some of the residents' concerns about the operation of the Group Home, Limited.

[59] The Board also heard the concerns expressed by the Appellant and those speaking in favour of the appeal that the development approval did not reference any structural changes which may be required for the operation of the Group Home, Limited. The Board is of the view that specifying that the Development Permit does not include any exterior alterations should address the concerns that the proposed development will detract from the visual character of the neighbourhood. If the Applicant does, in future, wish to make alterations, those alterations are not covered by this Development Approval, and will require the Applicant to contact the Planning Department and make a separate application for the changes, should approval be required. If a separate development permit is required, the Land Use Bylaw provides for notification to the neighbours, who can take whatever action they feel appropriate at that time.

[60] The Board heard the concerns of the residents about parking and accepts Mr. Mackie's comments that traffic is impeded if there is parking on both sides of the road. The Board also accepts his comment that there is ample parking on Site for all vehicles generated by the proposed development. The Board has therefore imposed a condition that all parking for the proposed development be off the road, and be on Site. This is to include the employees and visitors for those residents on Site.

[61] The Board has heard the concerns of the neighbours about the access of emergency vehicles to the Site. Since the future residents of the Group Home, Limited are likely to be suffering from dementia or Alzheimer's, they may need emergency medical care. In order that the access of emergency vehicles not be impeded, the Board has ordered that the driveway be kept clear at all times for emergency vehicle access.

[62] The Board heard concerns about parking along the Range Road. The Board has addressed parking as set out above. The Board accepts the submissions that the County is not the road authority for this road and therefore has limited ability to address this concern.

[63] Although the Appellant raised questions about staffing ratios, the Board does not have the jurisdiction to license the facility. The Province is the licensing authority and will deal with the required staffing ratios and training requirements.

[64] The Board noted the concerns of the Appellant and those speaking in favour of the appeal about the notes at the end of the Development Permit. The authority of this Board is under the Land Use Bylaw. Section 1.8 of the Land Use Bylaw requires applicants to comply

with other requirements. The Board has no authority over the Building Code or Fire Code, or the enforcement of restrictive covenants and is satisfied with these as notes to the Applicant.

1.8. *Compliance with Other Legislation*

*1. A person applying for, or in possession of, a valid development permit is not relieved from the responsibility of ascertaining and complying with, or carrying out development in accordance with:*

- a) the requirements of any statutory plan;*
- b) the requirements of the Alberta Safety Codes Act, R.S.A.2000, Chapter S-1;*
- c) the Parkland County Building Permit and/or Business License Bylaw;*
- d) the requirements of any other appropriate federal, provincial and/or other municipal legislation;*
- e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land;*
- f) the Community Standards Bylaw; and*
- g) any Animal Control Bylaw.*

[65] With the imposition of the conditions as originally provided for by the Development Authority, and as added to by the Board, this Board is satisfied that the proposed development is compatible with the neighbouring uses.

[66] It is so ordered.

Issued this 9<sup>th</sup> day of June, 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. Karen Kormos, Development Planner
  2. Craig Thomas, Manager, Development Planning
  3. Gaylene Weidlich, Parkland Big Lake Area Community Association, Appellant
  4. Barbara Costacha
  5. Rob Selby
  6. Brent Slater
  7. Ida Duncan
  8. Tanya Dundass
  9. Ron Krulak
  10. Scott Mackie

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

Exhibit	Description	Date	Pages
1.	Table of Contents and Agenda	May 23, 2017	N/A
2.	Notice of Appeal	May 11, 2017	1-6
3.	SDAB Clerks Report	May 23, 2017	7-11
4.	Submission of the Development Authority	May 23, 2017	12-43
5.	Appellant Submission	May 23, 2017	44-92
6.	Letter in support of the appeal – Maeve Starchuk	May 21, 2017	93
7.	Applicant Submission	May 23, 2017	94-128
8.	Letter in opposition to the appeal – Matt Jeneroux	May 23, 2017	129
9.	Letter in opposition to the appeal – Rob Kroetsch	May 23, 2017	130-131