

**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: January 14 and 28, 2019  
FILE NO.: 18-D-115

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

**INTRODUCTION**

[1] The Development Authority of Parkland County (the "County") refused a development permit application made by Samco Developments Ltd. (the "Appellant") for a Tourist Campground, Destination and Enroute located at 5022 Lakeshore Road, legally described as SW-13-53-5-W5 in Parkland County (the "Lands").

[2] The Appellant appealed the refusal of Development Permit Application 18-D-115. Although Samco was also the applicant for the development permit, in this decision, Samco will be referred to as the Appellant.

**PRELIMINARY MATTERS**

**A. Board Members**

[3] At the start of the hearing, the Board asked if anyone had an objection to the panel hearing the appeal. There were no objections raised regarding the panel members.

**B. Exhibits**

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

[5] At the hearing on January 14, 2019, the Board received documents which had been sent after the date for submission of evidence (see exhibits 15, 16, 17, 18, 19, 21, 22 and 23) which were distributed to all parties. No one objected to the inclusion of these documents. On January 14, 2019, the Board received the submission of Mr. Simpson (identified as exhibit 20). At the start of the hearing on January 28, 2019, the Appellant objected to the Board accepting the submission of Mr. Simpson on the basis that Mr. Simpson was not an affected person and therefore the Board should not hear from him or accept materials from him. Further, the Appellant's position was that the materials are irrelevant, as they relate to properties other than the Lands. No other party had any submissions in relation to the submissions of Mr. Simpson.

[6] Before the continuation of the hearing on January 28, 2019, the Board received 9 further submissions (exhibits 24-32) which were distributed to all parties. No one objected to

the inclusion of these documents. At the hearing on January 28, 2019, the Board received 2 further submissions (exhibit 33 and 34) which were provided to all parties. No one objected to the inclusion of these documents.

#### *Determination on the Inclusion of Documents*

[7] The Board has accepted into evidence all of the submitted exhibits to which there was no objection from anyone in attendance. In relation to exhibit 20 (received from Mr. Simpson) to which there was an objection, the Board has considered the objection of the Appellant, and agrees that the document is not relevant as it relates to properties other than the Lands. As a result of this determination, the Board has not considered these submissions at all in making its decision. The Board has denoted on the exhibit list (Appendix "B") that although it was submitted to the Board, the Board has not taken its contents into account.

#### **C. Miscellaneous**

[8] The appeal was filed in time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the "MGA").

[9] The Board is satisfied that it has jurisdiction to deal with this matter. There were no objections to the proposed hearing process. There were no preliminary matters raised at the beginning of the hearing.

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

[10] The appeal is denied.

#### **SUMMARY OF HEARING**

[11] The following is a brief summary of the oral and written evidence submitted to the Board. At the beginning of the hearing, the Board indicated that it had reviewed all the written submissions filed in advance of the hearing.

[12] The proposed development is located north of Lake Wabamun. In this decision, the lake is referred to as either Lake Wabamun, or the lake. Both references are to Lake Wabamun.

#### **Development Authority**

[13] The Board first heard from the Development Authority.

[14] The Development Authority provided the Board with a map showing the location of the Lands, legally described as SW-13-53-05-W5, Parkland County, Alberta with a municipal address of 5022 Lakeshore Road. The Lands are zoned Agricultural General District ("AGG").

[15] Tourist Campground, Destination, and Tourist Campground, Enroute are discretionary uses on the Lands as outlined in section 4.1 of the County's Land Use Bylaw 2017-18 (the "LUB").

[16] The Development Authority's decision was based on materials received when the application was deemed complete in October 2018. The further information received from the Appellant after the application was deemed complete was not the basis of the refusal.

[17] The Lands are north of Wabamun Lake and approximately 1 km east of Fallis. The Appellant originally submitted an incomplete application in March 2018, and between March and October 2018, it submitted further information. The Development Authority deemed the application complete on October 17, 2018, at which time the forty day period to consider the application started.

[18] The Development Authority indicated that due to the topography of the Lands, it is critical to have sufficient information to assess the development to ensure the stability of the development on the Lands. The Lands are very hilly and have steep slopes with 150 foot elevation differences. Due to the topography and removal of the vegetation from the Lands, there have been significant slides. Due to the topography and the cutting and filling on the Lands, the Development Authority must ensure that any potential erosion will not present a risk to the general public on the Lands. The documents submitted by the Appellant have numerous errors and the Development Authority would not provide approval on the information provided. The Development Authority's written materials (pages 92-93) outlined the concerns of the Development Authority.

[19] The Development Authority's written materials reviewed the County's Municipal Development Plan, Bylaw 2017-14 (the "MDP"). The Lands are within an Environmentally Significant Area and the MDP provides that a Biophysical Impact Assessment shall be required as part of any development where the proposed development is located within or adjacent to an ESA, (MDP ss. 7.1.4 and 8.2.5) The Environment Conservation Master Plan identifies the Lands as being within the Fallis Slopes ESA, with steep slopes (>15% in many locations) and with a high potential for erosion.

#### **Appellant Samco Development Ltd.**

[20] The Appellant brought with it the authors of the reports provided to the Development Authority, so that the Board would have the opportunity to ask questions of the authors.

[21] The Lands are 142 acres (see map on page 100) located on the north side of Lake Wabamun. There is a berm built by CN between the CN tracks and the lake built in 1980. The Lake shore has been disturbed and was many years ago. The proposed uses are discretionary, with the Appellant proposing to have 300 RV lots on the Lands. The uses will be seasonal, with it occurring generally in the summer months. The development will not be open in the winter, except to store RVs on the Lands, should the owners wish to do so. The Appellant is proposing to construct the development in four stages. The phasing plan is found at page 1866. The lake shore land was disturbed many years ago, but is not part of the proposed development.

[22] The Appellant outlined its efforts to work with Alberta Environment since 2012, and outlined the most recent order in May 2018, with the amendments to the order (see page 1400). The Appellant advised that it has been working with Alberta Environment, and it will need to satisfy Alberta Environment before any development can proceed on the Lands.

[23] The Appellant also outlined the County's previous enforcement activity in relation to the Lands, including a Stop Order issued in 2011 which then resulted in the Appellant applying for a development permit in 2012 (page 1423). The development permit was approved and permitted the removal of trees from the Lands and the recontouring of the Lands. The County issued a second development permit in 2016 for a house on the Lands (page 1426) which permitted some gravel that was stockpiled on the Lands to be crushed and used for an internal road. The County issued a second stop order in 2017 (page 1445) requiring the Appellant to stop natural resource extraction. The Appellant's position was that the work it was doing on the Lands was within the scope of the Alberta Environment Order, and it was doing no natural resource extraction beyond what was approved. The Subdivision and Development Appeal Board varied the Stop Order, directing that if more work was to be done to comply with the Alberta Environment Orders, then that work required a development permit.

[24] In early 2018, as a result of discussions with Alberta Environment, the Appellant was encouraged to consider its final use of the Lands and apply for a development permit for the final, intended use. By early 2018, the Appellant abandoned its plans to build a home, and applied to build a campground, which is what led to the application in question.

[25] Mr. Andruik and Mr. Quazi reviewed the site plans (page 1634-16 1646), and 1866) for the development, including the utility plans. Although the Appellant owns the lands south of the road, the development is located wholly north of Lakeshore Road and there is no direct lake access proposed for the development. Section 12.21 of the LUB requires a minimum area of 186 m<sup>2</sup> for each campground unit. The proposal has each unit with an area of 300 m<sup>2</sup>. The density is lower than permitted under the LUB. The intent is for mostly seasonal users, but users could enter year round, and could store their RVs on site during the winter months. The Appellant outlined the proposed campground rules (page 845). The sewer is a low pressure, gravity sewer collection system. Sewage will go into a holding tank, and then be hauled from the Lands. There is no septic field proposed. The Appellant proposes to provide water through wells, which should be sufficient. If not, then it will put cisterns on the Lands and truck water to the Lands. Electricity will come from the north, along the road allowance, if required. Garbage will be removed from the Lands via a third party contractor. In order to address concerns about trespass, the Appellant proposes to fence the Lands on all sides, and the Appellant is willing to accept fencing as a condition of approval.

[26] In response to Board questions, Mr. Andruik advised that the holding stands will hold a week's worth of sewage, but that honey wagons will be removing sewage before they are full. The Alberta standard is for 180 litres per lot per day. The Appellant will ensure that there is sufficient capacity in the holding tanks for the weekends.

[27] The Appellant noted that the Development Authority set out a list of studies required (pages 608-609), which the Appellant provided. Most of what was required were clarifications and questions. The County had a good sense of what the proposal was and its impacts. In July 2018, the Appellant provided the requested reports (page 843). There were later informal requests that the Appellant hold an open house, which it did in September 2018 (page 1870) and the open houses were coordinated by Aspen and Leslie Foy. The results of the open house have been summarized. While most of the attendees were opposed to it, some were not (see page 1378 and 1380, see also exhibit 17)

[28] The Development Authority refused the application on the basis of insufficient information to make a decision, but took no issue with the substance of the application.

[29] The authors of the DGE report reviewed their reports (starting at page 1089). Mr. Fenton confirmed he had reviewed the development and the Lands are suitable for the proposed development. He clarified that although his previous report indicated there would be 328 sites and asphalt roads, the site remains suitable with 300 RV sites and gravel roads. His conclusion is that the site is suitable from a geotechnical perspective, and he has provided a number of recommendations in his report (pages 1093-1096) which the Appellant would be prepared to have as conditions of approval. In answer to Board questions about the absence of compaction testing, Mr. Fenton advised that compaction testing was not required unless there was to be development with a rigid foundation.

[30] Mr. Ocejo of Sweettech reviewed his slope stability report (page 925). He provided a number of recommendations to ensure slope stability which the Appellant was prepared to have as conditions of approval. He stated that the slope stability report was done after the geotechnical and storm pond reports. There are recommendations regarding the slopes (3:1 slopes) and the report calls for regrading to ensure there is no ponding water on top of embankments. The report also calls for more vegetation and more erosion and sediment control measures. Where there are slopes into the neighbouring property at greater than 3:1, those are to be cut back to 3:1.

[31] In regard to the traffic study, Mr. Paulichuk (page 242 and 303) reviewed the conclusions of his report. He concluded that at full capacity, there would be 720 trips per day, with 63 trips per hour in the morning and 81 trips per hour in the afternoon peak. At less than full capacity, there would be fewer trips. He recommended that signs be installed so that traffic takes the quickest and least impactful way. He reviewed road width and the intersections. The roads are suitable for the development and with one exception do not require any upgrades. The site line of RR 52 at Fallis should be upgraded by removing trees (page 1191). This upgrade would benefit all road users, regardless of whether the development proceeds because it would increase the sight lines. The numbers of estimated trips includes service vehicles (water, sewage, garbage, etc.) and is based on trip generation rates from the Institute of Engineers. In response to questions, he noted that although there is a reference to 160 units in his report, the calculations are based on 300 stalls. These typographical errors have been updated in the most recent version of the report.

[32] In response to Board questions, Mr. Paulichuk advised that the preferred route is RR 52, which can handle the increased traffic.

[33] Mr. Quazi spoke to his storm water management and erosion control report (page 1652). The plan is to have 11 storm ponds handle the run off (see page 1667 and 1668) with the direction of the flows as outlined in the report. The outflow is limited to pre-development rates. He also spoke to the erosion and sediment control (page 1928, 1932). There will be ongoing monitoring (page 1934) to ensure that the measures are being followed and working. The Appellant has no objection to the conditions in the report being made conditions of approval.

[34] Mr. Quazi indicated that the ponds will release water at the pre-development rate. There will be an orifice installed so that the maximum release rate is maintained to prevent erosion where the water exits. Drainage will go to the south. He reviewed the information at page 578, 96, 1548, 1549, 1551 and the email from Mr. Ocejo of November 28, 2018 as well as pages 1652, 1634, 1650 and 1651. In response to board questions, he stated that the size of the ponds and the side slopes are in the report, but the detailed design is not included. He confirmed that most of the ponds will drain to the south.

[35] The Appellant confirmed that the traffic impact assessment was revised to confirm that all calculations have been based on 300 stalls. At page 1866, the phasing is set out. The complete summary of all responses are found at page 1870. The Appellant's position is that the Development Authority had all of the information it required, and the Development Authority requested only clarifications and corrections. The Appellant's position was that the proposed uses are discretionary, and the development regulations are met. The development concept conforms to the provisions of the MDP (page 1486 and 1487), including the policies for recreation and tourism found in section 8 of the MDP (section 8.1.b., 8.2) which support campgrounds in the present location. The Appellant's position is that a biophysical assessment is not required for this type of development and that policy 7.1.4 does not apply because this is not a residential subdivision and policy 8.2.5 does not apply because it speaks of a seasonal resort development which is a multi-parcel subdivision which is seasonal in nature with non-permanent accommodation. Further, there was no previous mention by the Development Authority of the need for a biophysical assessment. The MDP does not identify the Lands as high priority landscape, and although it is an environmentally sensitive area in the County's Conservation Master Plan, it is a local area only (page 191). The strategy speaks to gravel pits and not campgrounds. Further the evidence provided by the Appellant is that the development is suitable from a geotechnical perspective and there is an erosion and sediment control plan. In response to Board questions about the Fallis Slopes ESA, the Board noted that page 193 indicates there should not be clear cutting on the slopes. The Appellant stated that the reality is that the site was cleared in 2011, and so the Board has to address the site as it currently is. There is planting occurring as part of the work with Alberta Environment. There will be no further tree clearing.

[36] The Appellant addressed the question of standing, arguing that only people who own or reside in property in the immediate vicinity of the Lands are affected. If a person's use, value and enjoyment are not impacted, then they are not affected. Those persons who have general concerns about the lake are not affected, even though their concerns are sincere and genuine. Further, incorporated bodies, like Wabamun Area Strategic Alliance and Wabamun Watershed Management Council don't have standing to make submissions. The Appellant's position is that the Paul First Nation is unlikely to have standing because although it has concerns about the lake, there are no land use impacts on their lands. Further there is no general duty to consult with the Paul First Nation, other than to the extent that they are affected. The Appellant argued that while it is possible to hear what the speakers have to say and then determine if they have standing, the Board should determine if there is standing first, and if not, then the Board should not hear from them. The Appellant urged the Board to grant the appeal and approve the development permit with conditions, which could include all of the recommendations in the reports be met and additional conditions about lighting and fencing.

[37] In response to Board questions, the Appellant advised that the total build out time for all 4 phases is 6 years. The plan is to have erosion control during construction (page 1928-1932).

[38] In rebuttal, the Appellant reminded the Board that despite the criticisms raised against the reports and their authors, each of the authors are professionals who have professional obligations in the drafting of their reports. The Appellant reminded the Board about the concerns about submissions from parties who are not affected including Mr. Simpson, Wabamun Area Strategic Alliance and Wabamun Watershed Management Council and the submissions made by Ms. Munro who had no authorization to speak for CN, Fish and Wildlife, etc. and the camp east of the Lands, who indicated Ms. Munro did not speak for it.

[39] The Appellant urged the Board not to consider irrelevant information and also urged the Board to ignore the statements in relation to the previous conduct of the Appellant and suggested that the cases referenced by Mr. Wachowicz were cases from permission to appeal applications and may not represent the law in Alberta.

[40] The Appellant argued that there had been a significant amount of irrelevant information presented, which the Board should not consider, including:

- a) the CN derailment,
- b) the risk of crime (presented without evidence or support from the RCMP);
- c) the absence of evidence that effluent will discharge into the lake;
- d) the comments made regarding the lighting were made by a person with no expertise in the field of lighting and was speculative;
- e) the use of that portion of the Lands south of Lakeshore Road;
- f) the Appellant did not destroy a CN berm; and
- g) the history of the development on the Lands and the involvement of Alberta Environment. The Appellant provided an overview of the development history of the Lands including the involvement of Alberta Environment.

[41] The Appellant stated that the Wanner property is wetland and part of an existing drainage network, stating that the Wanner property is already low land and has always been susceptible to flooding and the flooding is not just due to the Appellant. The Appellant referenced LIDAR maps (Exhibit 27) in support of its position and stated that the drainage plan is to control discharge to pre-development rates. The Appellant had the authors of the reports submitted (Mr. Ocejo and Mr. Paulichuk) speak to specific concerns, including slope stability, and traffic concerns. The Appellant advised that the concerns in relation to unauthorized boat launches exists independently of the proposed development and the County has a plan to address them. The concerns about degradation of the lake pre-exist this proposed development as there have been other developments and concerns in the area, like gravel extraction operations, TransAlta operations, and the Ironhead golf course. The Appellant urged the Board to note that the YWCA is already operating a busy camp, which operates year round. Further, the concerns about traffic raised in relation to the Appellant are already existing due to a pre-existing gravel operation in the area.

[42] The Appellant argued that the Fallis Slopes ESA should not be a reason to deny the approval, because any necessary limitations can be made a condition of approval. The Board could also make it a condition that there would be no camping in the winter or that only the

clubhouse should be available in the winter for day use. The Appellant argued that the proposed development is 300 units over 142 acres which is approximately .5 acres per unit, which is a lower density than some summer villages or subdivisions around the lake. The units are significantly larger than the minimum requirement and the Board must consider the size of the site.

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

### **Donnie Rain**

[43] Mr. Donnie Rain of the Paul First Nation spoke in opposition to the appeal. He stated that there was no official engagement by any of the regulatory bodies for this proposed development. The Paul First Nation is concerned about the impact of the development on the overall health of Lake Wabamun. He stated that there has been no environmental impact assessments or wildlife studies. The Paul First Nation has had no involvement with provincial or federal regulators and feels that they should have had involvement as a major stakeholder on the lake. He stated there have been identifiable gaps in the process. He stated that the development will cause adverse impacts on watershed and the lands and the waterfowl and wildlife, as well as the ecosystem surrounding lake. He reviewed the letter from Chief Arthur Rain and closed with his support of the refusal of the development permit application.

### **Jerry Simpson**

[44] Mr. Jerry Simpson stated that he and his son owned the property to the west of the Lands, but sold the property two years after the clear cutting of the hill started. He stated that the Appellant's final intention was not to build a single family dwelling when it obtained a permit for that use. He left material for the Board to review.

### **WASA and Shirley Munro**

[45] Mr. Ian Wachowicz stated he represented Ms. Munro and Ms. Wanner, who are both immediately adjacent landowners. In addition, he represents the Wabamun Area Strategic Alliance (WASA), an incorporated society. Mr. Wachowicz disagreed with the Appellant's categorization of standing, arguing that the test for standing is not ownership, but is whether a person is affected. WASA was created by nearby landowners, including Ms. Munro and Ms. Wanner for the purposes of stewardship of environmental issues around the lake. Mr. Wachowicz likened WASA to community leagues which are routinely given standing. While people who are from far away, or who are officious meddlers, are not affected, he submitted that anyone around the lake, near the Lands in the watershed will be affected. The watershed is not only the lake area. He stated that section 687(1) provides that the Board must hear from those who are affected and the Board can make a determination of who is affected. People can be affected by the impacts on the road, increased pressure on the boat launch, etc.

[46] Ms. Munro read from a portion of her materials, which suggested that she was speaking on behalf of three entities: Alberta Environment, CN Rail, and Tanner Scout Camp. As set out in the reasons below, the Board has not taken into account her submissions on behalf of these three entities and will not, therefore, summarize these submissions.



[47] Ms. Munro and WASA have similar concerns. Ms. Munro read out loud to the Board her written submissions (pages 2039 – 2040 and 2044-2048). Ms. Munro stated that there will be personal impacts to her including property devaluation, property sales, noise, dust, safety, air pollution, garbage, crime risk, light pollution, lake and boat congestion, quality of life, fire safety and property tax increase. She reviewed her powerpoint presentation with the Board (Exhibit 22) advising of concerns in regard to her property values due to the proximity of the campground given its size and the increase in population from campground residents and their visitors. She was concerned about the increased noise, stating she can already hear people on the lake. She was concerned about safety, because RR 52 is a high impact area. She was concerned about air pollution from the campfires and safety risks from fires, without adequate fire protection. She was concerned about an increase in garbage from the increased number of people coming to the area, with the limited hours of the transfer station. She was concerned about the security risk due to the proximity of more people, including alcohol and drug risk. She stated that the two boat launches on the lake are already over congested, and the proposed development will increase that congestion.

[48] Supplementing Ms. Munro's submissions, Mr. Wachowicz stated that what has been applied for does not match the definitions of tourist campground, destination and tourist campground, enroute. Both definitions require the use to be seasonal. However, neither permits the year round storage of RVs. Mr. Wachowicz stated that in addition to the seasonal use, the Appellant indicated that it will also have a full year use with day use during the winter months, thus resulting in 12 months's use of the property. The definition of tourist campground, enroute prohibits the storage of RVs. The Appellant's proposed use is neither permitted nor discretionary and should be denied on that basis. If the Board does accept that the use is discretionary, then the Board must determine if the use is compatible with surrounding uses. He submitted that a 300 unit campground is not compatible with surrounding land uses. He urged the Board to review section 12.21.5 of the LUB when making its decision. That section contains 4 criteria. Each of those criteria suggest that the density for the proposed development should be lower (natural amenities, little natural vegetation, terrain sensitive to development, long term occupancy campgrounds) (page 106). Further, the land is environmentally sensitive as mandated in the MDP and has been the subject of serious environmental degradation which remains outstanding (see Alberta Environment Orders – Exhibit 32). There are concerns about the route to access the proposed development. The preferred route requires reduced speed, or the removal of a number of trees along RR 52, but the trees are not the Appellant's trees. The speed limit hasn't been decreased and there is no evidence that the Appellant has received permission to remove the trees. Therefore, there is a serious traffic impact. The proposed development has 300 units which is a significant density, and is more dense than Fallis. He stated that the Board should have the materials before making a decision, rather than making a decision conditional on the recommendations found in the reports submitted by the Appellant. He suggested that the Board could look at the behaviour of the Appellant to determine if the conditions are likely to be satisfied. He indicated that if the Board determines that the proposed development is not compatible, the Board has the discretion to deny the appeal.

### **Shelley Ross – Lazy DR Ranch**

[49] Ms. Shelley Ross of the Lazy DR Ranch lives immediately north of the Lands. She was concerned about the potential for the proposed development to devalue her property and to

destabilize the slope. She was concerned about the impact of the proposed development on the flow of water into Merriweather Creeks, which feeds into Lake Wabamun. She stated that due to the work done on the Lands, she no longer sees wildlife on her property. She draws water from the aquifer and is concerned about the impact on her water if the proposed development draws underground water for its use. She stated she was also concerned about the use and enjoyment of her land. She was concerned that users of the campground will trespass onto her property. She did not see how the Appellant will be able to control where the users of the campground will go.

**Skye Wenscel on behalf of Bonnie Wenscel, Susan Allen, Brian Allen, Marjorie Hitger and Shirley Nesbitt**

[50] Mr. Wenscel spoke on behalf of his wife's family, who own land in Whitewood Sands, which is in proximity to the proposed development. He was concerned about the possibility of future train derailments and the impact of such, including the need to remediate their lands following a derailment.

**Mark Gunderson on behalf of YWCA (Mr. Terry Konye)**

[51] Mr. Gunderson spoke on behalf of Mr. Konye, who is the Director of Camp Yowochas, YWCA. He advised that the YWCA runs 165 programs per year at Lake Wabamun and has 50 staff with thousands of participants. The main concern was the impact on Camp Yowochas' programs should users of the campground use the lake in the area used by Camp Yowochas. There was also a concern about more lake users seeking bathroom facilities at Camp Yowochas and leaving garbage or using Camp Yowochas property as an outdoor toilet. He raised concerns about noise from increased numbers of lake vehicles (boats, seadoos, etc.) and the potential impact on camp user safety. Since the Appellant will not be developing a marina or boat launch, the concern is that the campers will go into the water wherever they wish, causing safety issues. He also raised concerns about safety issues for youth learning to paddle board and canoe in the bay.

**Sandy Gunderson**

[52] Ms. Gunderson has lived in the hamlet of Fallis (population 90) for many years. She provided the Board with an overview of the area to the east and west of Fallis. She was concerned that locating a campground with 300 units may increase the possibility of blue-green algae in Lake Wabamun. She also expressed concern about the impact that the proposed development would have on wildlife and waterfowl at the lake. She showed the Board what had happened in relation to users accessing the lake at unauthorized points, and the negative impact it had on vegetation (Exhibit 23). She was concerned about the number of people who might come to Fallis to launch their boats, causing damage to the lakefront and negatively impacting the wildlife. There is already a high volume of traffic trying to launch boats, without the increased number from 300 units from the proposed development. She was concerned about the road access advising that the road near Fallis is steep. There are already significant numbers of school buses, as well supply trucks, and school buses and supply trucks going to Camp Yowochas. She was concerned at the density of the proposed development and its impact on the residents of Fallis.

### **Norm Mackie on behalf of Kyle Dinsmore, and on his own behalf**

[53] Mr. Mackie presented submissions on behalf of Mr. Dinsmore (exhibit 9) and himself (exhibit 34). They reside in Freeman, which is east of the proposed development. He was concerned with the reports submitted by the Appellants and concerns in relation to the impact due to increased traffic. He questioned what amount of traffic would go east or west, citing inconsistencies in the report. He was concerned about increased numbers of users on the waterfront, and the impact on the lake. He was concerned about the impact of increased traffic along the road and did not agree that the access roads would support increased traffic.

### **Ed Polukoshko (Whitewood Ranch)**

[54] Mr. Polukoshko lives immediately to the west of the Lands and has owned that property for 20 years. He opposes the proposed development because a 300 unit campground is incompatible with his agricultural use of horse ranch lands (see page 1492). He stated that his use, value and enjoyment will be affected by having an estimated population of 1,000 persons next to his modest ranch. Further, he is concerned about siltation from the Lands going onto his property. The proposed development will affect his horses, including from fireworks which are permitted by the County. He is concerned that children will bother his horses, and campground dogs will chase his horses. He is concerned about excessive noise from dirt bikes and ATVs. He stated horses don't like kids, dogs or rowdy campers. Further, if the proposed development requires a power line, it will be built near his property, thus disturbing his use. He was concerned about police response time if something were to occur at or as a result of the proposed development. The road is not sufficient for the increased traffic, and the Fallis hill is very steep, and it will be unsafe for the number of long, wide trailers proposed. He was concerned about the increase in traffic. He was concerned his property value will decrease due to potential negative impacts on the quality of the lake, and felt the size of the development was excessive given the stability of the slope and the Fallis ESA.

### **Stan Franklin – Wabamun Watershed Management Council (WWMC)**

[55] Mr. Franklin provided an overview of the history of the WWMC and its work as a steward of the health of Lake Wabamun. For the reasons set out below, the Board has found that WWMC is not an affected party, and therefore has not summarized its evidence and has not taken into account its written submissions (pages 2012-2021).

### **David Nordheimer**

[56] Mr. Nordheimer lives on the south shores of Lake Wabamun. He was concerned about the impact on his use and enjoyment of his property arising from the lights which would come from the proposed development. He provided calculations of the amount of light which may come from the proposed development based upon an estimate of 5,000 lumens per site X 300 sites. Due to the absence of trees, he indicated that the impact of the lights will be significant. He can already see lights from cars going into Fallis and felt this would be significantly worse.

## **Barbara Wanner and Ian Wachowicz**

[57] Ms. Wanner lives immediately west of the proposed development. She is concerned at the impact that the proposed development will have on her lands due to run off and potential flooding. She stated that she complained to Alberta Environment about run off from the Lands to her property. An investigator came to the Lands and placed a dye into the water on the Lands, which were then traced flowing over her lands and into the lake. She has suffered erosion between the tree lines and sediment coming onto her lands. Her powerpoint presentation (Exhibit 33) showed the state of her lands in 2017 and 2018, showing the flow of water, which she stated originated from the Lands and then ended up on her lands, and then through to the lake. She advised that she has contacted Alberta Environment many times, as a result of the run off from the Lands onto her property. She had significant concerns about the proposed development and the risk of flooding onto her property and the safety of her driveway. She stated that development of this magnitude cannot create holding ponds to hold water without compromising the aquifer and the stability of the lands.

[58] She is also concerned about safety and dust on Lakeshores Road due to the increase of traffic. The road is gravel and more traffic will create increased traffic. She is unsure how noise from the proposed development will be managed.

[59] If the proposed development needs an upgrade to the electricity, the work will have to occur on her land, causing disruption. Although the work will be done in the road allowance which is between the properties, more trees will have to be removed, causing more erosion and more flooding. This is an important environmentally sensitive area and her use and enjoyment will be affected.

[60] Mr. Wachowicz, counsel for Ms. Wanner stated that the legal submissions he made on Ms. Munro's behalf applied in relation to Ms. Wanner as well. The environmental sensitivity of the lands has been demonstrated and the Wannans are seriously affected. He stated that if the engineering in regard to the ponds and basins does not work out, the damage to the Wannans would be extreme.

[61] He suggested that this is one of the types of cases where the Board can take into account the past conduct of an applicant. He referred the Board to three cases: *Dallinga*, *McGinn* and *Keephills v. Parkland*. (See Exhibit 33).

## **John Shearer**

[62] Mr. Shearer lives 1 kilometer east of the Lands. He is concerned about the impact of 300 sites (which he estimates to result in 900 people). He was concerned that those campers would attempt to use the small beach at Whitewood sands. He was concerned about the impact on the roads, and safety concerns for the children in his community due to the increase in traffic, and the possible speed at which the drivers would drive. He also expressed concerns about the number of truckloads of sewage being hauled out. He questioned the impact on the aquifer due to the amount of water needed. He was concerned there would be negative impacts on noise, dust and air quality from the proposed developments that he would have to deal with as a nearby resident.

## Jeff Richardson

[63] Mr. Richardson lives east of the proposed development. He has previously worked on subdivisions and is familiar with the development processes of the County. He is generally pro-development but he suggested that the process for development must be adhered to and suggested that the proposed development requires a biophysical assessment. He suggested that the Board should not issue a permit with all of the conditions suggested by the Appellant. The reports should have been submitted first, then reviewed by the County to ensure that they have been reviewed by the experts employed by the County.

## FINDINGS OF FACT

[64] The Lands, located in Parkland County, are owned by Samco Developments Ltd.

[65] The Lands are zoned Agricultural General District ("AGG").

[66] Tourist Campground, Destination, and Tourist Campground, Enroute are discretionary uses on the Lands as outline in section 4.1 of the County's Land Use Bylaw 2017-18 (the "LUB").

[67] The Lands are not subject to any area structure plan.

[68] The Appellant is an affected person.

[69] The following speakers are affected persons:

- a) Mr. Donnie Rain;
- b) Ms. Shirley Munro, as a neighbouring resident to the Lands;
- c) Shelley Ross of the Lazy DR Ranch;
- d) Skye Wenscel on behalf of Bonnie Wenscel, Susan Allen, Brian Allen, Marjorie Hitger and Shirley Nesbitt
- e) Mark Gunderson on behalf of YWCA (Mr. Terry Konye);
- f) Sandy Gunderson;
- g) Norm Mackie on behalf of Kyle Dinsmore, and on his own behalf;
- h) Ed Polukoshko (Whitewood Ranch);
- i) David Nordheimer;
- j) Barbara Wanner;
- k) John Shearer and
- l) Jeff Richardson.

[70] The following are not affected and the Board has not taken into account any of their written or oral submissions:

- a) Mr. Jerry Simpson;
- b) WASA; and
- c) Stan Franklin - Wabumun Watershed Management Council.

## REASONS

### Jurisdiction

[71] The Board's jurisdiction is found in section 687(3) of the MGA. In making its decision, the Board has examined the provisions of the MDP, LUB, the oral and written evidence and exhibits submitted.

*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 any applicable land use policies;*

*(a.2) subject to section 638, must comply with any applicable statutory plans;*

*(a.3) subject to clause (d), must comply with any land use bylaw in effect;*

*(a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;*

*(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.*

### Affected Persons

[72] The first question the Board must determine is whether the persons who spoke and submitted materials are affected. In making the determinations below, the Board does not question the sincerity of the positions advanced by those speaking. However, the Board is

required to hear from and consider information from only those persons whom it determines to be affected. The determination of affected status is one for the Board to make, weighing the evidence. The Board's conclusions in relation to the affected status of those who appeared are set out below.

[73] The Appellant is the applicant for the permit and as such is affected by the appeal.

[74] The Board finds that Mr. Donnie Rain is an affected party. Mr. Rain spoke on behalf of the Paul First Nation, who have historically and currently use the lake. The Board finds that the proposed development may affect Lake Wabamun. Since the Paul First Nation use the lake, the Board finds that Mr. Rain, and the Paul First Nation are affected by the proposed development.

[75] The Board noted that Mr. Simpson used to own the property to the west of the Lands, but sold it a number of years ago. Mr. Simpson did not provide any evidence that he continued to live in the area. As a result of the sale of his property and the fact that there is no evidence of how he is affected by the proposed development at the current time, the Board finds that Mr. Simpson is not affected and has not taken into account any of his oral or written submissions.

[76] The Board finds that the Wabamun Area Strategic Alliance is not an affected party. The Board agrees with the submissions of Mr. Wachowicz that the test for standing is not ownership of land, but whether a person is affected. In addition, the Board accepts that community leagues can be given standing at subdivision and development appeal board hearings. The Board is mindful that it must make a determination of affected status on the evidence presented to it. In this case, the Board was told that WASA was created by nearby landowners, including Ms. Munro and Ms. Wanner for the purposes of stewardship of environmental issues around the lake. However, the Board was not presented with any evidence as to who the members of WASA were or specifics about the objects of the society, or any specific evidence of impact or affect on WASA. The Board was mindful of Mr. Wachowicz's comments that people who are from far away, or who are officious meddlers, are not affected. Therefore, to find WASA affected, the Board would have needed to see some evidence that it was affected by the proposed development, such as evidence that the Society's members were comprised of people who live around the lake, or people who use the lake or the watershed area. In the absence of this evidence, the Board does not have sufficient evidence to find WASA is affected. Therefore, although the Board does not doubt the legitimate concern that Ms. Munro had as a member of WASA for Lake Wabamun, the Board did not have sufficient evidence to distinguish WASA from the "officious meddler" Mr. Wachowicz referenced. Due to its finding that WASA is not affected, the Board did not take into account the oral or written submissions made on behalf of WASA (pages 2039-2042). The Board also notes that Ms. Munro's presentation suggested that she was speaking on behalf of Alberta Environment and Tanner Scout Camp (Page 2101 to 2104). However, both of these entities provided direct submissions to the Board that Ms. Munro did not speak on their behalf (Exhibits 17 and 32). As a result, the Board has not taken into account any of the submissions made by Ms. Munro on behalf of Alberta Environment or Tanner Scout Camp, preferring the evidence received directly from these parties.

[77] The Board's determination in relation to WASA does not apply to Ms. Munro in her personal capacity as a neighbour, or Ms. Wanner who is also a neighbour. Due to their proximity to the Lands and the possible impact due to run off to the Wanner property, the

Board finds that Ms. Munro and Ms. Wanner are affected and received their submissions and those of their counsel Mr. Wachowicz, as they related to Ms. Munro and Ms. Wanner personally.

[78] Shelley Ross of the Lazy DR Ranch is an affected person because her property abuts the Lands.

[79] Skye Wenscel on behalf of Bonnie Wenscel, Susan Allen, Brian Allen, Marjorie Hitger and Shirley Nesbitt are affected persons due to their ownership of land in relatively close proximity to the proposed development.

[80] Mark Gunderson spoke on behalf of YWCA (Mr. Terry Konye). The YWCA is located very near to the proposed development (as shown on the map located in Exhibit 22). Due to the proximity of Camp Yowochas and the potential impact of the proposed development on Camp Yowochas' use of the Lake, the Board finds that YWCA Camp Yowochas) is affected.

[81] Sandy Gunderson lives in Fallis, which is a small hamlet near to the proposed development. Due to the proximity of the proposed development to Fallis (the nearest "urban" centre), and the potential impact of the proposed development on the hamlet, as well as the lakeshore, the Board finds Ms. Gunderson is affected.

[82] Norm Mackie spoke on behalf of Kyle Dinsmore, and on his own behalf. The Board notes that both are residents in the nearby subdivision and are affected by the impact of the proposed development on the road. The Board finds both affected.

[83] The property of Ed Polukoshko (Whitewood Ranch) borders directly on the Lands to the west. As a result of the proximity between the Lands and Mr. Polukoshko's property, the Board finds that Mr. Polukoshko is affected by the proposed development.

[84] As set out above in relation to WASA, the Board finds that Wabumun Watershed Management Council is not an affected party. As set out above, the test for standing is not ownership, but whether a person is affected. The Board was not presented with any evidence that WWMC was affected by the proposed development, except in its general role relating to the conservation of the lake. Therefore, to find WASA was affected, the Board would have needed to see some evidence that its members were comprised of people who live around the lake, or who use the lake or the watershed area. In the absence of this evidence, the Board does not have sufficient evidence to find WWMC is affected. Therefore, although the Board does not doubt the legitimate concern that members of WWMC may have for Lake Wabamun, the Board did not take into account the oral or written submissions made on behalf of WWMC (pages 2012-2021).

[85] David Nordheimer is an affected party because of the impact on him arising from light coming from the proposed development.

[86] John Shearer spoke on behalf of Whitewood Sands residents. The Board finds that Mr. Shearer is affected due to the proximity of Whitewood Sands to the proposed development, and the impact of increased traffic.



[87] Jeff Richardson lives east of the proposed development. The Board finds Mr. Richardson affected due to the proximity of his residence to the proposed development.

### **Questions for the Board to Determine**

[88] Based on the written and oral submissions, the Board must answer the following questions:

- a) Does the description of the proposed use fall within the definition of Tourist Campground, Destination, and Tourist Campground, Enroute? Or does the proposed use fall within another use definition, for example, Recreational Vehicle Storage?
- b) If the proposed uses are Tourist Campground, Destination, and Tourist Campground, Enroute, are those uses discretionary in the AGG District?
- c) If the proposed uses are discretionary in the AGG District, are those uses compatible with the neighbouring uses?
- d) If the proposed uses are compatible with the neighbouring uses, do the proposed uses comply with the applicable statutory plans?

### **Does the description of the proposed use fall within the definition of Tourist Campground, Destination, and Tourist Campground, Enroute? Or does the proposed use fall within another use definition, for example, Recreational Vehicle Storage?**

[89] The uncontradicted evidence presented on behalf of the Appellant was that the intent was for mostly seasonal users, but users could enter the Lands year round, and could store their RVs on site during the winter months.

[90] Mr. Wachowicz, on behalf of Ms. Munro and Ms. Wanner, argued that the definitions of tourist campground, destination and tourist campground, enroute do not permit the use of the Lands on a year round basis. Therefore, he argued that the proposed uses did not meet the definitions and the Board should refuse the appeal on that basis alone.

[91] The Appellant argued that the Board could impose a condition that there be no winter camping should this be a concern.

[92] The Board has reviewed the definitions of Tourist Campground, Destination and Tourist Campground, Enroute which are defined as follows:

Tourist Campground, Destination means development of land which has been planned and improved for the seasonal use of holiday trailers, motor homes, tents, cottages, campers and similar Recreational Vehicle, and is not used as accommodation for residential use.

Tourist Campground, Enroute means development of land which has been planned and improved for the seasonal short term occupancy of holiday trailers, motor homes, tents,

campers and similar Recreational Vehicles for those travelers on their way to another destination and is not used as year round storage, or accommodation for residential use.

[93] The Board notes that Tourist Campground, Destination indicates that the use of holiday trailer is "seasonal use". The definition prohibits "accommodation for residential use", which the Board interprets to mean that this use does not permit someone to live in their holiday trailer on a year round basis. It does not provide specific guidance to the question of whether the users of the proposed development can leave their trailers on the Lands on a year round basis. However the definition of Tourist Campground, Enroute does specifically prohibit the year round storage of Recreational Vehicles on the Lands. Therefore, to the extent that the Appellant is proposing to have patrons leave Recreational Vehicles on the Lands on a year round basis, this use is not encompassed within the definition of Tourist Campground, Enroute.

[94] The Board notes that this aspect of the proposed use: the year round storage of Recreational Vehicles, falls within the definition of "Recreational Vehicle Storage", which specifically contemplates the outdoor storage of Recreational Vehicles.

Recreational Vehicle Storage means development of a yard for the outdoor storage of more than five Recreational Vehicles or Recreational Equipment or combination thereof. This use does not include the sale, service, restoration, inspection and/or mechanical repair of the recreational units.

[95] While this aspect of the proposed development (the year round storage) does not fall within the Tourist Campground definitions, the Board finds that this alone is not sufficient to deny the appeal. Recreational Vehicle Storage is a discretionary use in the AGG District. Therefore, the Board could consider the compatibility of this use (Recreational Vehicle Storage), in addition to the compatibility of the uses of Tourist Campground, Destination and Tourist Campground, Enroute. However, the evidence before the Board was that the main uses were the Tourist Campground, Destination and Tourist Campground, Enroute uses. Therefore, the Board will focus the balance of the decision in relation to these two uses, which were the subject of the majority of the evidence before the Board.

[96] The evidence before the Board was that the Appellant is seeking to create a campground for 300 units as shown in the site plans submitted to the Development Authority and which were in evidence before the Board. Aside from the discussion about year round parking, there was nothing in the evidence before the Board contesting that use. On the basis of the evidence, the Board finds that the uses fall within the definition of Tourist Campground, Destination and Tourist Campground, Enroute.

**If the proposed uses are Tourist Campground, Destination, and Tourist Campground, Enroute, are those uses discretionary in the AGG District?**

[97] There was no dispute that the Lands are zoned as AGG. There is no dispute that Tourist Campground, Destination and Tourist Campground, Enroute are discretionary uses within the AGG District and the Board makes that express finding.

**If the proposed uses are discretionary in the AGG District, are those uses compatible with the neighbouring uses?**

[98] Having found that the proposed uses are Tourist Campground, Destination and Tourist Campground, Enroute, and that those uses are discretionary uses in the AGG District, the Board must now determine if those uses are compatible with neighbouring uses as referenced in *Rossdale Community League (1974) v. Edmonton (Subdivision and Development Appeal Board)*, 2009 ABCA 261:

[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.

[99] The Board has summarized the evidence and arguments it heard above in paragraphs [13] to [63]. Therefore, the Board will not re-state that evidence here, but will reference the key portions of the evidence as it makes its findings.

[100] The people speaking in opposition to the appeal raised a number of concerns in relation to the compatibility of the proposed use. Those concerns included the following:

- a) The impact of the proposed development on erosion, risk of flooding on neighbouring properties;
- b) Concerns relating to the noise from the proposed development;
- c) The impacts on the neighbours' use and enjoyment of their own lands and the lake, including privacy and trespass and the impact on the lake and access to the lake;
- d) Concerns relating to the light from the proposed development; and
- e) The impact of the proposed development on the neighbouring roads and traffic concerns.

[101] In considering the above issues (see out in paragraph [100]), the Board has considered carefully the reports submitted by the Appellant, including the site plans, the DGE Geotechnical reports (May 28, 2018 at page 628, July 16, 2018 – page 866), the River Engineering Consulting Reports (May 28, 2018 – page 684 and July 20, 2018 – page 933), the Traffic Impact Assessments (May 30, 2018, Revised July 20, 2018 page 713 and 964), and the Sweettech Engineering Consultants Slope Stability Report (August 8, 2018 – page 925). In determining the compatibility of the proposed development on the neighbouring uses, the Board finds that these reports support the proposed development, and indicate that the proposed development *can* occur on the Lands. What these reports cannot do is determine if the proposed development *should* occur on the Lands. The Board must weigh the concerns about the potential impact from the development to determine if these concerns result in the incompatibility of the proposed development which would result in the Board denying the appeal, and thus, denying the development permit.

**Erosion, Risk of Flooding on Neighbouring Properties**

[102] A number of speakers before the Board raised the concern about the potential risk of erosion from the proposed development and the risk of flooding, either onto private property,

or into the lake. The Board notes here the evidence of Ms. Wanner, who lives immediately west of the Lands, and whose evidence included a powerpoint presentation about the run off from the lands. The Board noted that the Appellant provided evidence from that the surface water from the proposed development would be captured in ponds, and then discharged at pre-development rates to prevent flooding. The Board noted the evidence of the LIDAR maps presented by the Appellant, which suggested that water naturally drained to the Wanner property. However, the Board notes that now that the Lands have been cleared of vegetation, the impact of drainage and run off is likely to increase the impact to the west, which is where the Wanner lands are.

[103] The Board notes that the evidence of Ms. Wanner is of the impact to her property at the pre-developments rates. Ms. Wanner's evidence, as supported by the powerpoint and embedded videos is that at this time (pre-development), there is a significant impact on her property from run off, and sedimentation coming from the Lands. Further, the Board is particularly convinced by her evidence that a representative of Alberta Environment placed a dye into water on the Lands, and that dyed water travelled across the Wanner property and into the lake. The question for the Board is one of compatibility. Based upon the current impact of the lands upon the Wanner property, the Board has determined that the approval of further development would either have the same amount of impact on the lands (since the discharge would be at its current, pre-development rate), or would potentially increase the impact on the Wanner lands. The Board notes that although the Appellant would be prepared to accept as conditions the recommendations found in the DGE Civil Engineering Consultants Reports, the Board is concerned that the risk of a greater impact to erosion and flooding to the Wanner property cannot be adequately mitigated by the imposition of conditions. As indicated by Mr. Wachowicz, if something were to go wrong with the storm ponds, Ms. Wanner would be significantly affected.

[104] Further, the Board notes that there was no compaction testing done in relation to slope stability on the basis that it was not necessary since there were no permanent structures contemplated in the proposed development. The Board notes that the comments made disregarded the permanent "club house" structure proposed by the Appellant. The Board questions the absence of compaction testing in light of the proposed permanent structure. The absence of compaction testing raises a concern for the Board about the risk of slope failure and the impact of that failure on Lakeshore Road and the neighbours. The Board finds that this risk reduces the compatibility of the proposed development with the neighbouring uses.

### **Impact of Noise**

[105] A number of the speakers before the Board, particularly those in close proximity to the proposed development, for example, Ms. Wanner, Ms. Munro, Ms. Ross and Mr. Polukoshko, spoke about the concerns about noise. The Board is persuaded by the evidence of Mr. Polukoshko, who stated that he has been raising horses on his land and that the horses would be negatively affected by the increase in noise. The Board notes that there are 300 units proposed for the development. The Board notes that it is possible that there would be only one person per unit. However, the Board finds it more likely that there would be at least 2 people per unit and perhaps more, resulting in 600 or more people using the Lands at full development. The Board notes that the area is currently not heavily populated. The nearest hamlet is Fallis, which has only 90 residents. The proposed development would be, at the

smallest increase of population (one person per unit), approximately 3 times the number of people in Fallis. Such a significant increase in the number of people in the area is very likely to increase the amount of noise, even if it is just everyday conversations. However, it is possible that there would be other noises arising from the campground use, such as fireworks or parties, etc. The Board finds that the increase in noise is incompatible with the neighbouring uses, which are residential or agricultural in nature.

### **Impact on Use and Enjoyment, including privacy, trespass and impact on lake and access to the Lake**

[106] The Board heard a number of concerns about the impact that the proposed development would have on neighbouring uses, including the risk of trespass and the attendant negative impact of the privacy of the neighbours. Ms. Ross stated that she was concerned about campers trespassing onto her property, as did Mr. Polukoshko. The Board notes that although the Appellant has indicated it will have campground rules, it will not be possible for the Appellant to ensure that all of the campers stay within the Lands. This is particularly true since the Appellant has indicated that there will be no recreation facilities on the Lands themselves. Without some form of recreation on the Lands, it is more likely that the users of the proposed development will go for walks, and the potential for them to go onto other lands increases. The Board finds that the increased risk of trespass onto the neighbouring lands makes the proposed development incompatible with the neighbouring uses. Although the Appellant indicated that it would place a fence around the Lands, the Board is not convinced that a fence would sufficiently reduce the risk of trespass to make the proposed use compatible with the neighbouring uses, especially the agricultural (horse) ranch.

[107] The Board also heard concerns about the absence of amenities on the Lands and the possible negative impact that would arise as a result. The Board notes that since the Appellant is not proposing to build a marina or dock on the lands south of Lakeshore Road, the users of the proposed development will have to have access the lake at some other point. The evidence before the Board was that the boat launch at Fallis is busy. There was no evidence about how many users would have a boat, but the Board infers that a campground near a lake would be placed there so that users would be able to access the lake. If every unit had one boat or watercraft, there would be 300 more users in the lake, with no increase in the boat launches or marinas. Particularly in light of the evidence of Sandy Gunderson, the Board finds that such an increase would have a negative effect on the nearby residents, especially those in Fallis as well as other areas along the lake, resulting in the incompatibility of the proposed development.

[108] The Board is also concerned about the impact of an increase in the number of users along the lake and the impact this might have on the Yowochas camp. The Board did note that there are a significant number of campers at Yowochas, but they are under the guidance of the Camp workers. If there are 300 units, there is an increase in the number of users, but who are not under one central direction, which could lead to increased safety risks for the groups at Yowochas. Further, this is a significant increase on what the evidence indicated was a relatively quiet bay.

[109] The Board also heard evidence that if the proposed development requires upgrading for electricity, the work will have to be done in the right of way between the Wanner property and

the Lands. The Board accepts the submissions that for the work to be done, trees will have to be removed, which may have a negative impact on the Wanner property.

[110] In examining the impact on the use and enjoyment of the neighbours, the Board accepted the evidence of the Appellant that the proposed development was less dense than the maximum possible density with each unit having an area of 300 m<sup>2</sup>, rather than the minimum area of 186 m<sup>2</sup> for each campground unit permitted under Section 12.21 of the LUB. The Board accepts that each unit is larger than the minimum and that the proposed development could be more dense than what was proposed. However, the Board has also noted section 12.21.5. provides for considerations regarding density. Section 12.21.5.a provides that areas with natural amenities should be developed at a lower density. The Lands are close to a natural amenity – namely the lake, thus supporting lower densities. Section 12.21.5.b provides that areas with little natural vegetation should have lower densities. The evidence was that the Lands have been stripped of their natural vegetation, which also supports lower density. Section 12.21.5.c provides that where the terrain is sensitive to development, the density is to be lower to preserve the natural balance. The Board finds that the Lands are sensitive to development based upon the evidence that erosion is a significant concern, the evidence of erosion and sediment from the Lands flowing into the Lake, and the photographs showing the effects of erosion on the Lands. All of these support lower density on the Lands. Section 12.21.5.d states that long-term occupancy campgrounds should be at lower density because RVs tend to be larger and have accessory uses. The evidence of the nature of the Appellant's use supports lower density.

[111] While the Board accepts the Appellant's evidence that the proposed use is less dense than it could be under the LUB, the Board finds that the proposed use is still very dense given the considerations of sections 12.21.5 and that density, while authorized by the LUB, is causing incompatible effects on the neighbouring lands.

### **Impact of Light**

[112] The Board heard concerns about the amount of light which would come from the proposed development. The Board accepts that there may be a negative impact from the lighting from the proposed development, but did not accept the methodology set out by Mr. Nordheimer on the basis that he has no specific expertise in calculating the number of lumens.

[113] The Board notes that, at least initially, there would be a greater impact due to light from the proposed development due to the lack of trees on the Lands and the fact that the absence of trees means that light from campfires, or the RVs would not be absorbed or shaded by trees. Although the Appellant indicated it would agree to a condition requiring it to comply with the County's Dark Sky policy, the Board finds that there was insufficient evidence about what impact that policy would have on lights being reflected on the water, as Mr. Nordheimer stated, or on close neighbours, who would possibly have the lights from 300 fires on the adjoining property.

### **Roads and Traffic Concerns, including dust**

[114] A significant number of speakers were concerned with the impact that a 300 unit campground would have on the roads and traffic. The Board noted that the Appellant provided

a Traffic Impact Assessment which indicated that, based upon the trip generation rates, there would be approximately 720 trips per day at full build out and that the roads in the area are able to handle that number of trips.

[115] The Board accepts Mr. Paulichuk's calculations regarding the number of trips at full build out, as well as his conclusions that the roads can handle that increase in traffic. The Board was concerned that some of the road slopes are greater than TAC standards. However, the Board notes that the number of trips and the construction of the roads are not the only considerations in terms of compatibility. The evidence before the Board was that the neighbours were concerned about the increase in traffic and the attendant impact on safety, particularly for children in the area. The Board finds that at full build out, an increase of 720 trips per day would be a significant increase and would have a significant negative impact on the neighbours, who would have to deal with a significantly increased volume of traffic on the road. The Board notes that the nearest "urban centre" is Fallis, with only 90 residents. If the users of the proposed development drove to Fallis for supplies, this would be a significant increase. Further, the evidence was that road traffic creates dust. Such a significant increase in traffic would increase the dust from that traffic. These negative impacts are incompatible with the neighbouring uses.

[116] Further, the evidence was that the sight line on RR 52 needed to be upgraded by removing trees. However, the Board heard no evidence that the Appellant had approached the landowner to obtain consent to remove the trees, so there was no guarantee that this necessary upgrade could be accomplished, leading to an increased risk for users of the road.

[117] The Board notes that the absence of a boat launch on the lands south of the road means that any campground user will have to drive their boat to a boat launch, which means there will be traffic on the road, and longer units (both vehicle and trailer with boat).

### **Other concerns**

[118] The Board noted other concerns which were raised by those speaking in opposition to the appeal. The Board heard concerns about the impact on the aquifer (Ms. Ross) from the proposed development. The Board notes that the Appellant's evidence was that it would use well water or truck in water, but the evidence about the impact of using water from the aquifer was not adequately addressed.

[119] The Board notes that a number of speakers raised concerns of safety arising from the increase in population (a minimum of 300 more people in the area, and perhaps as many as 900). While the Board accepts the comments from the speakers, there was no statistical evidence regarding crime rates or statements from the RCMP, so the Board is not persuaded by these statements of concern.

[120] The Board also noted the concerns raised about the impact on wildlife and waterfowl from the proposed development. However, the evidence in support of this point was anecdotal and was not persuasive.

[121] The Board noted that each of the authors of the reports referenced in para [101] above indicated that the Appellant would be prepared to have the recommendations made in their

respective reports made a condition of the approval. In considering this suggestion, the Board reviewed the recommendations provided by each of the authors. These recommendations include the recommendations found at pages 633-646 for the DGE Report (in the updated report at pages 873-887) and those found in the Sweettech Report at pages 928-929. The Sweettech Report included 13 recommendations. The DGE Report contains 15 pages of recommendations, which the Appellant has indicated could become conditions of approval. It is difficult to specify the number of recommendations as some of the subheadings contain numerous points in each (see for example 6.2.1.3 End Bearing Piles page 877, which has 8 points under the heading).

[122] The Board notes that if it were to impose these recommendations as conditions, there would be potentially several dozen conditions on the approval. The fact that an approval would require so many conditions causes the Board concern. If so many conditions are required on an approval, it suggests to the Board that the proposed development is not compatible. If it were compatible, it would not require so many conditions imposed.

[123] For the reasons set out above, the Board finds that the proposed development is not compatible with the neighbouring uses.

**If the proposed uses are compatible with the neighbouring uses, do the proposed uses comply with the applicable statutory plans?**

[124] As a result of the Board's conclusion in relation to the compatibility of the proposed use, the Board does not need to address the issue of compliance with statutory plans. However, the Board did wish to address the question of the need for a biophysical assessment.

[125] The Appellant argued that a biophysical assessment is not required for this type of development and that policy 7.1.4 of the MDP does not apply because this is not a residential subdivision and policy 8.2.5 does not apply because it speaks of a seasonal resort development which is a multi-parcel subdivision which is seasonal in nature with non-permanent accommodation and there had been no previous mention by the Development Authority of the need for a biophysical assessment.

[126] The Board has reviewed the two provisions of the MDP. The Board notes that the proposed development is not a true "residential" development, even though people will be living on a temporary basis in the units. Therefore, policy 7.1.4 does not require the need for a biophysical assessment.

[127] However, the Board has examined section 8 of the MDP. The Board notes at page 72 of the MDP, "seasonal resort development" is defined:

Seasonal Resort development provides recreational opportunities that are seasonal in nature, offers non-permanent accommodation and is focused around a local or regional amenity. These developments must be sensitive to their local context. New seasonal resort developments shall be located within the County's Prime Recreation and Tourism Areas and adequately supported by infrastructure, community services, and transportation networks.



[128] There is no other definition of “seasonal resort development” in the MDP. Although the Appellant argued that the proposed development is not a “seasonal resort development”, the Board notes that the proposed development is seasonal, and would offer non-permanent accommodation. The Board finds that the proposed use is a seasonal resort development. Therefore, policy 8.2.5.f applies and requires a biophysical impact assessment.

#### 8.2.5 Seasonal Resort Development

...

f. New Seasonal Resort Development shall have regards [sic] to provincial or municipally designated Environmentally Significant Areas (see Figure 5: Environmentally Significant Areas). A Biophysical Impact Assessment process shall be required as part of any Conceptual Scheme, Area Structure Plan, redesignation, subdivision or development permit application.

#### Other Comments

[129] The Board notes that during the hearing, a number of the speakers questioned the contents of the reports which were submitted. In making its decision, the Board in no way questions the credentials or *bona fides* of the writers of those reports. However, the Board has looked carefully at the contents of the reports in weighing the concerns raised by those speaking in opposition to the appeal and, as set out above, has drawn conclusions about whether the contents of the reports sufficiently address the concerns raised.

[130] Further, the Board notes that many speakers provided significant commentary about the history of development on the Lands, and referenced the history with Alberta Environment including the Orders which were issued against the Appellant. In making this decision, the Board did not rely upon the Alberta Environment Orders, except as an explanation of the background leading to the hearing before this Board. The Board agrees with the Appellant that had the Board approved the proposed development, the Appellant could not develop the Lands without satisfying Alberta Environment, and it is likely that the Appellant will still have to satisfy Alberta Environment and the requirements in the last Order issued by it. However, the concerns of Alberta Environment are not those of this Board. This Board examined the questions of compatibility, and based on the evidence provided to it has made its decision.

[131] Finally, the Board notes that some speakers have requested that the Board take into account the likelihood of compliance by the Appellant, and urged the Board to do so by reference to cases such as *Dallinga*, etc. The Board did not consider the character of the Applicant or its likelihood of compliance in making this decision. Rather, the Board considered the question of the compatibility of a 300 unit campground with the neighbouring uses and drew the conclusions as set out above.

[132] Issued this 12th day of February, 2019 for the Parkland County Subdivision and Development Appeal Board



---

Barb Williams for  
Dylan 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, RSA 2000, c M-26.*

**APPENDIX "A"**  
REPRESENTATIONS

**PERSON APPEARING**

---

- |     |                                    |  |
|-----|------------------------------------|--|
| 1.  | Janice Agrios, Kennedy Agrios LLP  | Counsel for the Appellant, Samco         |
| 2.  | Scott Harwardt, Kennedy Agrios LLP | Counsel for the Appellant, Samco         |
| 3.  | Russell Dolanz                     | Representative of the Appellant, Samco   |
| 4.  | Leslie Foy                         | Senior Agrologist                        |
| 5.  | Reed Fenton                        | DGE Civil Engineering Consultants        |
| 6.  | Darcy Paulichuk                    | D&A Paulichuk Consulting Ltd.            |
| 7.  | Andres Ocejo                       | Sweettech Engineering Consultants        |
| 8.  | Ron Andriuk                        | Altime Engineering                       |
| 9.  | Bob Quazi                          | River Engineering Consulting             |
| 10. | Donnie Rain                        |  |
| 11. | Jerry Simpson                      |  |
| 12. | Ian Wachowicz, Dentons             | Counsel for WASA, S. Munro and B. Wanner |
| 13. | Shirley Munro                      |  |
| 14. | Shelley Ross                       | Lazy DR Ranch                            |
| 15. | Skye Wenscel                       |  |
| 16. | Mark Gunderson                     |  |
| 17. | Sandy Gunderson                    |  |
| 18. | Norm Mackie                        |  |
| 19. | Ed Polukoshko (Whitewood Ranch)    |  |
| 20. | Stan Franklin                      | Wabamun Watershed Management Council     |
| 21. | Barbara Wanner                     |  |
| 22. | David Nordheimer                   |  |
| 23. | John Shearer                       |  |
| 24. | Jeff Richardson                    |  |

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

Exhibit	Description	Date	Pages
1.	Agenda Package Table of Contents and Agenda	January 10, 2019	N/A
2.	Notice of Appeal – Kennedy Agrios LLP (Agent for Samco)	November 28, 2018	83-85
3.	Waiver Form	November 30, 2018	86
4.	Submission of the Development Authority	January 8, 2019	87-590
5.	Submission of Kennedy Agrios LLP – Summary Document	January 2, 2019	591-593
6.	Submission of Kennedy Agrios LLP – Exhibit Index and Exhibits	January 2, 2019	594- 1547
7.	Submission of Kennedy Agrios LLP – Samco Response and Attachments	January 2, 2019	1548-1927
8.	Submission of Kennedy Agrios LLP – Erosion and Sediment Control Plan from River Engineering Consulting	January 4, 2019	1928-1984
9.	Submission of Kyle Dinsmore – in opposition	December 4, 2018	1986-1995
10.	Submission of Shelley Ross (Lazy DR Enterprises Ltd. – in opposition	December 28, 2018	1996-1999
11.	Submission of Ed Polukoshko (Whitewood Ranch) – in opposition	January 3, 2019	2000-2004
12.	Submission of Alastair Henderson – in opposition	January 4, 2019	2005-2007
13.	Submission of Rob Martin (Edmonton Yacht Club) – in opposition	January 7, 2019	2008-2010
14.	Submission of Shirley Munro – in opposition	January 7, 2019	2022-2190
15.	Additional Submission of Kennedy Agrios LLP	January 11, 2019	N/A
16.	Submission of Chief Arthur Rain (Paul First Nation)	January 11, 2019	N/A
17.	Submission of Garth Hatch (Tanner Youth Camp)	January 14, 2019 – at hearing	N/A
18.	Submission of Kennedy Agrios – Fallis Slope ESA	January 14, 2019 – at hearing	N/A
19.	Submission of Kennedy Agrios – Court Document 0503-0363-AC	January 14, 2019 – at hearing	N/A
20.	Submission of Jerry Simpson (Contents of Exhibit not taken into account in Board's determination of appeal)	January 14, 2019 – at hearing	N/A

Exhibit	Description	Date	Pages
21.	Submission of WASA (Shirley Munro) PowerPoint	January 14, 2019 – at hearing	N/A
22.	Submission of Shirley Munro – PowerPoint	January 14, 2019 – at hearing	N/A
23.	Submission of Sandy Gunderson - PowerPoint	January 14, 2019 – at hearing	N/A
24.	Submission of Kennedy Agrios – Objection to Submissions at January 14, 2019 Hearing	January 25, 2019	N/A
25.	Submissions of Kyle Dinsmore – in Opposition	January 25, 2019	N/A
26.	Submission of Kennedy Agrios – Letter & Rebuttal Materials	January 25, 2019	N/A
27.	Submission of Kennedy Agrios – Letter Introducing Dolanz Video	January 25, 2019	N/A
28.	Submission of Kennedy Agrios – Dolanz Video	January 25, 2019	N/A
29.	Submission of Kennedy Agrios – Lidar Maps	January 25, 2019	N/A
30.	Submission of Curtis & Shannon Ryll – in Support	January 25, 2019	N/A
31.	Submission of Brownlee LLP for the Development Authority	January 25, 2019	N/A
32.	Submission of Government of Alberta – Legal Division	January 25, 2019	N/A
33.	Submission of Barbara Wanner – PowerPoint with embedded video	January 28, 2019 – at hearing	N/A
34.	Submission of Norman Mackie – in Opposition	January 28, 2019	N/A