

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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HEARING DATE: March 9, 2020
FILE NO.: 20-D-008

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority of Parkland County (the "County") denied a development permit application made by Colleen and Kevin Boddez (the "Appellants") for a Bed and Breakfast Home located at Lot 4, Block 2, Plan 6116 KS Kenglened, NE-8-52-2-W5 and municipally described as 27, 2413 Township Road 522 (the "Site"). The Site is adjacent to Rosborough Road and Jackfish Lake.

[2] The Appellants have appealed the refusal of development permit 20-D-008 (the "Development Permit") by the Development Authority.

PRELIMINARY MATTERS

A. Board Members

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

B. Exhibits

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

[5] The Board accepted one additional exhibit, Exhibit 9, at the outset of the hearing. Exhibit 9 is a letter from Jean and Bill Dann withdrawing their email of March 2, 2020 (Exhibit 8). Having heard no objections from the parties, the Board allowed their letter to be withdrawn and as a result, the Board did not consider Exhibit 8.

C. Miscellaneous

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

[7] 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

[8] The Board denied the appeal and confirmed the Development Authority's decision to refuse the Development Permit.

SUMMARY OF HEARING

[9] 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.

Development Authority

[10] The Site is located within the Lakeshore Residential District under section 5.8 of the County's Land Use Bylaw 2017-18 (the "LUB"). A Bed and Breakfast Home is a discretionary use on the under section 5.8 of the LUB.

[11] The Appellants submitted a development permit application to the Development Authority on January 15, 2020. The Development Authority denied the application on January 31, 2020.¹

[12] The Development Authority considered the definition of "Bed and Breakfast Home" in the LUB:

means a development within and secondary to a single detached dwelling or modular home where temporary lodging or sleeping accommodation with no more than three (3) guest rooms is provided with a breakfast meal to the travelling public. This use does not include a boarding facility, hotel, motel, or guest house.

[13] The Development Authority determined that the proposed development fell within the definition of a Bed and Breakfast Home. Bed and Breakfast Home use is a discretionary use within the Lakeshore Residential District. The Development Authority submitted that the Appellants were entitled to the use if it complied with the provisions of the LUB and the use was appropriate based on planning rationales and land compatibility.

[14] The Development Authority submitted that the proposed development requires 3 parking spaces for the 3 guest bedrooms proposed for the Bed and Breakfast Home based on the definition of "Bed and Breakfast Home", specifically the number of guest rooms offered to the travelling public.

[15] The Development Authority determined that the proposed development had the required number of parking spaces for the residents of the single family dwelling on the Site.

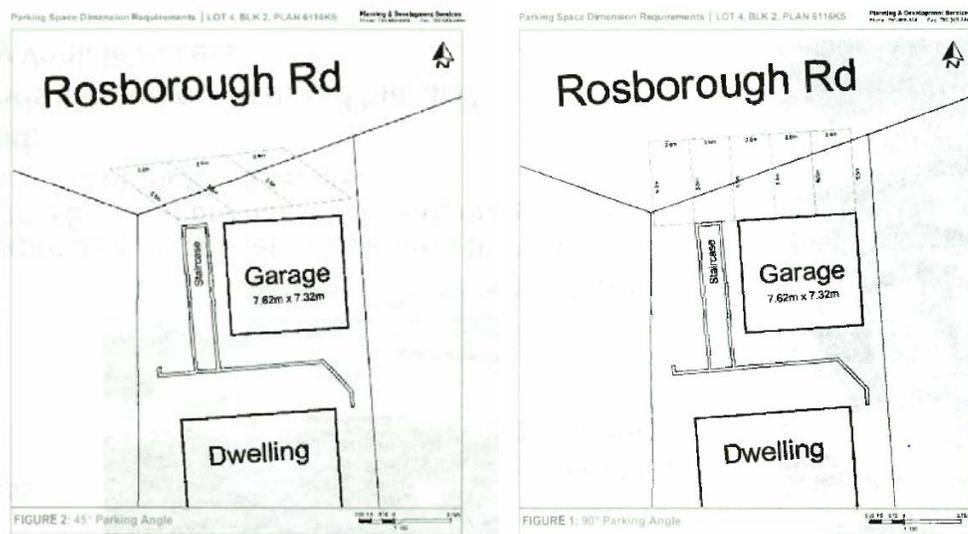
¹ Prior to issuing the refusal, the Development Authority contacted the Appellants to inform them that their development permit application would be refused based on inadequate parking. The Development Authority suggested that the Appellants withdraw their application; however, the Appellants directed that the Development Authority continue with the review. Therefore, the Development Authority issued the refusal. (Exhibit 3, page 3)

Under Section 14.3 of the LUB, a minimum of 2 parking spaces for the single family dwelling are required.

[16] However, the Development Authority determined that in reviewing the application and in discussions with the Engineering Department and the Fire Marshal, the proposed development did not meet the parking requirements under the LUB for the reasons that follow.

[17] First, the Development Authority attempted to determine whether the Site could accommodate 3 parking spaces in accordance with the parking space dimensions and design standards set out in section 14.2 of the LUB. Specifically, this included the parking regulations set out in Table 14.2-1: Parking Stall Design Standards and Figure at 14.2-1: Illustration of Parking Design Standards (Exhibit 3, page 11). The required width for a 90 degree parking angle would be 5.5 metres (or 4.6 metres for a maximum of 15% of the total stalls provided).

[18] The Development Authority was unable to accommodate any guest parking that was contained entirely on the Site (Exhibit 3, pages 22 and 23) and consistent with the parking regulations in the LUB. The Development Authority found that the only way to accommodate guest vehicles would be to park them in front of the garage, but the guest vehicles would end up extending beyond the Site's property line and onto Rosborough Road, a municipal road as illustrated below.



[19] Second, the Development Authority considered if the situation could be resolved by way of an encroachment agreement that would allow the 3 required guest vehicle spaces to encroach on to the municipal road allowance onto Rosborough Road. However, the County's Engineering Department would not enter into an encroachment agreement with the Appellants, so the Development Authority was not prepared to approve the proposed development.

[20] Third, the Development Authority contacted the Chief Fire Marshal to consider if there would be any concerns with guest vehicles extending from the Site onto the municipal road.² The Fire Marshal conducted a site inspection. He advised the Development Authority that Fire Services had concerns obtaining access to the properties in the Kenglened subdivision due to the width of the Rosborough Road and vehicles being parked on Rosborough Road. Further, the Fire Marshal expressed his concerns regarding the safety issues with the proposed development on the Site, including that the Site was located on a curved road on a hill and emergency vehicle access would be limited because of parking congestion in the subdivision and because there is only one entry and exit for the subdivision.

[21] Having considered the Fire Marshal's advice, the Development Authority determined that the emergency vehicles would have difficulty reaching a property in the subdivision if guest vehicles were permitted to extend from the Site onto Rosborough Road and this would create a safety concern for the surrounding neighbours as well as the Appellants and the guests.

[22] Within the Municipal Development Plan Bylaw 2017-14 (the "MDP"), the Site is identified in the Prime Recreation/Tourism Area (Great Waters); High Priority Landscape; and the Rural Agriculture Area. The Site is also subject to the Jackfish Lake Area Structure Plan (the "ASP") and the Environment Conservation Master Plan (the "ECMP"). As defined in the ECMP, the Site is subject to the Jackfish Lake/Star Lake Complex Environmentally Significant Area.

[23] The Development Authority noted that section 16.9 of the LUB (Decisions on Development Permit Application) directs that the Development Authority may refuse a development permit application for a discretionary use on its merits even though it conforms to the LUB.

[24] The Development Authority requested that the Board uphold the decision of the Development Authority to refuse the Development Permit and find that the proposed development does not comply with the LUB.

Response to Questions from the Board

[25] In response to questions from the Board, the Development Authority explained that the single detached dwelling on the Site requires 2 residential parking spaces, and these 2 parking spaces are located in the garage on the Site.

[26] The Development Authority clarified that the distance from the front of the Appellant's garage to the edge of the road allowance on Rosborough Road is 4.6 metres.

[27] The Development Authority submitted that, despite the fact that it reached out to the Engineering Department to see if an encroachment agreement was possible, the use (which includes parking) needs to be wholly contained on the Site. The Development Authority was not prepared to grant a development permit where the parking for guests to the proposed development would be on the public road or on another property.

² The Development Authority asked the Fire Marshal to attend the hearing, but he was unable to attend due to his schedule. The Chief Fire Marshal took photos of the location of the Site which were put before the Board. See Exhibit 3, pages 24-28.

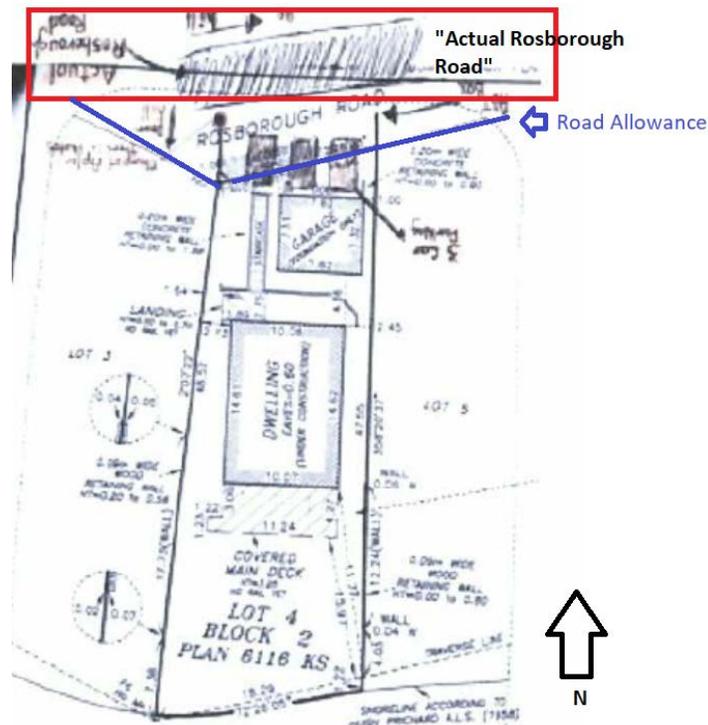
Appellants

[28] The Appellants submitted that they have applied for a small home-based bed and breakfast business that they would like to run out of their home on Jackfish Lake. They would like to have a bed and breakfast, so that up to 6 guests can come and spend time at the lake and take in the view.

[29] Ms. Boddez acknowledged that parking was an issue. However, Ms. Boddez submitted that parking was a bigger issue that involved the larger subdivision. Ms. Boddez also suggested some alternatives to the parking situation on the Site, which are set out below.

[30] Ms. Boddez explained the history and current parking situation of the subdivision where the Site is located. She submitted that the subdivision is unique. It was originally created in the 1960s. She explained that while Rosborough Road is narrow and there are vehicles parked on it, gravel trucks do not have any problems going up or down the road. She also stated their excavator has had no problems getting up or down the Rosborough Road.

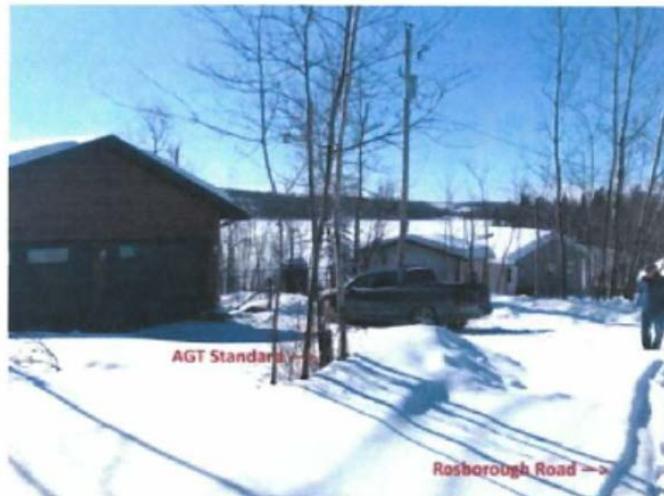
[31] Throughout their submissions, the Appellants drew a distinction between the actual Rosborough Road alignment and the Road Allowance. The road allowance is located between the Site and Rosborough Road. This can be illustrated by the following diagram provided in the Appellants' submissions (Exhibit 4, page 43) where Rosborough Road is identified as "Actual Rosborough Road" (outlined in red to assist the reader) and the road allowance is identified in blue.



[32] Mr. Boddez noted that most landowners in the subdivision cannot park on their own property, so most landowners either park on the road allowance or on Rosborough Road. Ms. Boddez added that she and Mr. Boddez are able to park in their garage and do not have to park on Rosborough Road.

[33] Ms. Boddez further explained that the south side of Rosborough Road (closest to the lake) is on a steep decline, and she is of the opinion that the south side of Rosborough Road is undevelopable. Ms. Boddez submitted that if Rosborough Road is expanded in the future, the south side will never be used for road widening. By contrast, Ms. Boddez submitted that the parking issue could be resolved by the County widening the north side of Rosborough Road.

[34] Ms. Boddez further submitted that there is adequate space for 3 guest vehicles to park on the Site and the road allowance such that no vehicle would extend onto Rosborough Road, as shown in the diagram above in paragraph [31]. Ms. Boddez described to the Board that the driveway on the Site traverses the road allowance and is bordered by trees on the west side and a Telus transformer (AGT standard) on the east side. Both the trees and the Telus transformer are on the road allowance. Ms. Boddez clarified that the placement of the trees and Telus transformer make it impossible for anyone to visually mistake the area for anything other than a driveway.³ She submitted that it is not apparent that the area in front of the garage is the road allowance. The above can be illustrated by the following picture provided in the Appellants' submissions (Exhibit 4, page 49):



[35] Ms. Boddez explained that the width of the parking area in front of the garage is 48 feet wide, less 4 feet on each side to account for 3 vehicles parked side by side. From the garage door to the Telus transformer, it is approximately 32 feet. From the garage door to the edge of Rosborough Road, the distance measures approximately 40 feet. Based on these numbers, Ms. Boddez submitted that there was no risk that 3 vehicles parked on their driveway in front of their garage would be on Rosborough Road.

[36] Ms. Boddez drew the Board's attention to pictures 11 and 12 in their submissions (Exhibit 4, page 48). Ms. Boddez noted the trees at the bottom right of picture 11 shows the trees on the road allowance. Both pictures 11 and 12 provide a visual of the gravel driveway that Ms. Boddez had described to the Board. From these pictures (extracted below for ease of reference), she explained that the space directly in front of the garage door would be the space that 3 vehicles could be parked side by side without encroaching onto Rosborough Road.

³ Ms. Boddez pointed out an error at Exhibit 3, page 21. She explained that the property line in yellow on that page should be closer to the Rosborough Road (north) than what is shown.



[37] Ms. Boddez informed the Board that she contacted the Fire Marshal and left a message for him but did not hear back. She was hoping to speak with him about what they could do as a subdivision about the parking problem.

[38] Ms. Boddez expressed that it was not their intention to have a party house or an Airbnb. The proposed development was not intended to offend their neighbours. It was actually the opposite. They were hoping to share their property with others, to bring business in to the area and provide the Boddez's with some income. The use of the lake or the presence of noise from guests on the Site would be no different than if the Appellants entertained their family – four children, their spouses and eight grandchildren -- on the Site. She noted that the family guests would create the same impact and noise on the Site as the bed and breakfast guests.

[39] In response to the Development Authority's conclusions that there is not enough parking onsite, Ms. Boddez noted that the Appellants are willing to have guests brought in by limousine or Uber, should that be necessary. In the alternative, Ms. Boddez suggested creating a joint community parking area for the subdivision. In the further alternative, Ms. Boddez stated that they would be willing to have their guests driven to the Site and dropped off without the guests' vehicles.

[40] In response to the landowners who wrote letters in opposition, Ms. Boddez submitted that there was nothing that would change with respect to the lake. They were not getting an extra dock and were not getting any more boats. In response to the concern about children swimming, Ms. Boddez noted that the landowner who raised this concern (Traci Bednard) lives at the beginning of the subdivision and would not be close by. Nonetheless, the guests that they would host would not be doing anything that would harm children swimming. Ms. Boddez noted that the neighbours' opposition to the proposed development comes from a lack of information.

Questions from the Board

[41] In response to questions from the Board, Ms. Boddez noted that as of February 1, 2020, under the new Alberta Food Regulation, a bed and breakfast can serve guests meals any time of the day.⁴

⁴ See Exhibit 4, page 56.

[42] Ms. Boddez clarified that Mr. and Mrs. Boddez have resided on the Site for “more than half the time”. Their future intention is to be at this Site all the time; however, until the economy improves and they sell their current house, this will not happen.

[43] In response to questions about offsite parking, Ms. Boddez explained that they have relatives in Villeneuve, Alberta, that could accommodate offsite parking and both their family and friends have chauffeur licenses. Ms. Boddez confirmed that there is no public parking in the area.

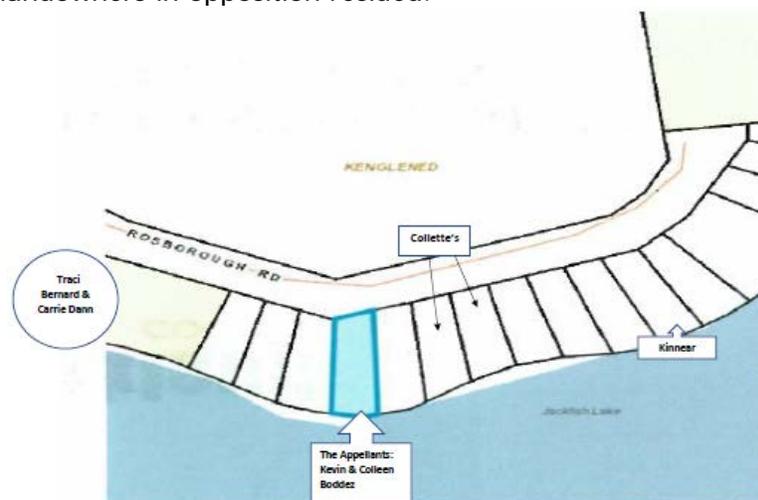
Opposition to the Proposed Development

[44] The Board heard from Michael Evans, who spoke on behalf of his in-laws. David and Colleen Collette own summer cabins two doors east of the Site. The Collettes have been at this location since 1986.

[45] Mr. Evans explained to the Board that there are only 4 full-time residents in the subdivision out of 27 properties.

[46] Mr. Evans informed the Board that due to the way Rosborough Road was constructed in the 1950s, no one is able to park on the north side of the road. Rosborough Road is a single lane road. Due to its narrow construction, one vehicle passing another is difficult. Fire trucks cannot get down to the end of the road without a problem. Rosborough Road needs improvement and it is not ideal but everyone is learning to live with it.

[47] To assist the Board, Mr. Evans identified on the map located at Exhibit 3, page 16 where the below noted landowners in opposition resided.



[48] Although not in attendance at the hearing, 3 landowners wrote letters in opposition of the proposed development setting out concerns that can be summarized as follows:

- a. Greg and Sheri Kinnear wrote a letter dated March 2, 2020 (Exhibit 5). Their property is located adjacent to Rosborough Road and approximately 7 lots to the east of the proposed development. They opposed the proposed development for the following reasons:
 - i. property rezoning;

- ii. impact on privacy;
 - iii. limited parking; and
 - iv. increased traffic.
- b. Traci Bernard wrote an email dated March 2, 2020 (Exhibit 6). Her property is located at the entrance of the subdivision to the west of the Site and adjacent to Rosborough Road. She is concerned about the commercial nature of the proposed development. She also noted concerns about increased traffic, children swimming combined with heavy boat traffic and that the proposed development would negatively impact the ecosystem and safety of the community.
- c. Carrie Dann wrote an email dated March 2, 2020 (Exhibit 7). Carrie Dann's property is located at the entrance of the subdivision to the west of the Site and adjacent to Rosborough Road. Her concerns included:
- i. rezoning;
 - ii. Airbnb applications;
 - iii. increased recreational lake use including boats;
 - iv. increased traffic; and
 - v. dust concerns.

FINDINGS OF FACT

[49] The Site is located at Lot 4, Block 2, Plan 6116 KS Kenglened, NE-8-52-2-W5 and municipally described as 27, 2413 Township Road 522. The Site is located in the Kenglened subdivision.

[50] The Site is located between Rosborough Road and Jackfish Lake.

[51] The Site is zoned Lakeshore Residential District.

[52] The proposed use is "Bed and Breakfast Home". The use, Bed and Breakfast Home, is a discretionary use in the Lakeshore Residential District under section 5.8 of the LUB.

[53] There is only one entry and exit point for the subdivision. The Appellants and guests of the proposed subdivision access the Site via Rosborough Road. Rosborough Road is a narrow, single lane road.

[54] The Appellants are affected persons.

[55] Mr. Evans who spoke in opposition and represented David and Colleen Collette are affected persons as are the 3 landowners who wrote letters in opposition of the proposed development.

[56] The Bed and Breakfast Home is not compatible with the neighbouring uses and will further negatively impact the current parking situation in the subdivision.

[57] The Bed and Breakfast Home does not meet the parking requirements of the LUB.

REASONS

Jurisdiction

[58] The Board notes that its jurisdiction is found in section 687(3) of the MGA. In making this decision, the Board has examined the provisions of the LUB as well as considered the oral and written submissions made by the Development Authority, the Appellants and the affected persons.

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 (a.4) and (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

[59] The first question the Board must determine is whether those appearing and speaking before the Board are affected persons. The Board notes that there was no objection made to the Appellants or Mr. Evans, who spoke in opposition, on the basis that they were not affected.

[60] The Board finds the Appellants, as applicants of the Development Permit and who reside on the Site, are affected persons.

[61] The Board also finds that those who wrote in opposition (Gregg and Sheri Kinnear, Traci Bednard and Carrie Dann) and Mr. Evans, who spoke on behalf of his in-laws, Mr. and Mrs. Collette, are affected by the appeal due to their location in the subdivision and because they are impacted due to the fact that there is only one entry and exit point for the subdivision.

Statutory Plans

[62] The Board finds that the proposed development complies with the applicable statutory plans.

[63] The Site is identified within the Prime Recreation/Tourism Area (Great Waters), High Priority Landscape, and the Rural Agriculture Area under the MDP. The Board also finds that the Site is subject to the Jackfish Area Structure Plan and the Jackfish Lake/Star Lake Complex Environmentally Significant Area as defined in the ECMP.

Land Use District

[64] The Site is located within the Lakeshore Residential District under section 5.8 of the LUB.

Nature of Use

[65] The Board finds the proposed development is for a Bed and Breakfast Home. The Board finds this use is a discretionary use in the Lakeshore Residential District.

[66] As the proposed development is a discretionary use, the Board must assess the compatibility of the proposed development with the 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.

[67] The Board summarized the concerns about the proposed development as follows:

- a. parking and emergency services accessibility;
- b. boat traffic and children swimming;
- c. noise;
- d. privacy; and
- e. the proposed development becoming an Airbnb.

[68] The Board will now turn its analysis of the concerns raised in the hearing to assess whether the proposed development is compatible with the neighbouring uses.

Parking and Emergency Services Accessibility

[69] After hearing from all of the parties, the Board finds that the most significant concern is parking and the accessibility of emergency services to properties in the subdivision, which includes both parking at the Site for guests of the proposed development and parking for

residents and visitors to this subdivision. For the purposes of its reasons, the Board has made a distinction between Rosborough Road and the municipal road allowance that is located between the Site and Rosborough Road.

[70] The Board considered that the Development Authority required 1 parking stall for each guest room offered; however, the Site is unable to provide any guest parking that is contained entirely on the Site and consistent with the parking regulations in the LUB. The Board notes that the Appellants conceded that parking at their Site and in the subdivision is an issue, and more specifically the Appellants acknowledged that parking for guests could not be contained entirely on the Site without vehicles extending onto the municipal road allowance.

[71] The Board finds that the proposed development (Bed and Breakfast Home) is not compatible with the neighbouring uses (single family dwellings in the subdivision) for the following reasons.

[72] The Appellants have suggested that they can accommodate 3 vehicle parking spaces in front of their garage, albeit partly on the road allowance but not on Rosborough Road.⁵ However, the Fire Marshal raised safety issues with the proposed development, including that:

- a. the Site was located on a curved road on a hill and emergency vehicle access would be limited because of parking congestion in the subdivision. The Board understands this concern to be that the location and orientation of the road causes restrictions for the access of emergency vehicles and the pre-existing parking on the road allowance further restricts the access.
- b. there is only one entry and exit point for the subdivision which the Board understands to be a concern that the limited access to the subdivision should not be negatively affected by further restricting the ability of emergency vehicles to access the properties in the subdivision.
- c. access to the properties in the Kenglened subdivision due to the width of Rosborough Road and vehicles being parked on Rosborough Road would be affected if the Board were to allow the Appellants to park some or all of the guest vehicles on the road allowance.

[73] The Board notes that the Appellants provided no evidence to contradict the concerns identified by the Fire Marshall. In fact, the Appellants confirmed the concerns about the width of the road and the fact that many people already park in the road allowance. The Board accepts the concerns identified by the Fire Marshall and finds that these are legitimate concerns which affect the compatibility of the proposed development with the neighbouring uses.

[74] The Board carefully considered the Fire Marshal's concerns and reviewed the aerial subdivision pictures and the pictures of the Site, road allowance and Rosborough Road provided by the parties. The Board finds that Rosborough Road is a narrow, single lane road that would create a safety concern for the surrounding neighbours, the Appellants and the guests of the proposed development if guest vehicles were permitted to park such that the vehicles extended onto the road allowance. The Board accepts the Fire Marshal's concerns and is of the view that

⁵ See the diagram at Exhibit 4, page 43.

allowing guest vehicles to extend from the Site into the road allowance could negatively impact emergency services being able to respond and access properties in the subdivision.

[75] The Board also considered that the County's Engineering Department would not consider entering into an encroachment agreement with the Appellants to allow guest vehicles to encroach onto the municipal road allowance. Due to this, the Board is not prepared to approve the proposed development with a condition (an encroachment agreement) that the Engineering Department is not prepared to give.

[76] The Board has considered the Appellants' suggestion that they be permitted to park on the road allowance. The Board notes that its authority is in relation to the use of the Site, and that it is not the road authority. Since the Board is not the road authority, and cannot, by the issuance of a development permit, authorize activities which are on the road or road allowance, the Board finds that the Appellants' suggestion that they be authorized to park in the road allowance does not address the concerns that have been raised and the Board is not prepared to issue a development permit on this basis.

[77] The Board also considered that most landowners in the subdivision either park on the road allowance or on Rosborough Road, as most landowners do not have parking on their own properties. Having heard evidence as to the limited parking in the subdivision, the Board finds that the current parking situation would be further exacerbated by allowing up to 3 guest parking spaces on the Site that extend beyond the Site and onto the municipal road allowance.

[78] Based on the evidence above, the Board finds the Fire Marshal's submissions compelling. The Board finds that the proposed development would interfere and negatively impact the neighbouring uses. The Board also finds there would be a safety concern to surrounding neighbours and create potential liability issues, as emergency vehicles would have difficulty reaching properties in the subdivision.

[79] Therefore, the Board finds that the Bed and Breakfast Home use is not compatible with the neighbouring uses and will further negatively impact the current parking congestion in the subdivision.

Boat Traffic and Children Swimming

[80] The Board reviewed a letter in opposition where a landowner was concerned about increased boat activity on the lake and that increased boat traffic could pose a safety risk to children swimming in the lake.

[81] The Board considered these concerns and finds that there is no evidence before it that the proposed development would cause increased boat traffic or pose a safety risk to children. In fact, the Board heard evidence to the contrary from the Appellants. The Board accepts the Appellants evidence that they were not getting an extra dock, were not getting any more boats and the guests that the Appellants would host would not be doing anything that would harm any children swimming.

[82] The Board finds that this concern was speculative and merely suggesting such concern without evidence of how the proposed development would increase boat activity and pose a

safety risk to children swimming in the lake makes it unfounded. Accordingly, the Board finds that the proposed development would not have a negative impact on boat traffic on the lake or children safety in the lake. The Board notes that the lake is open to the public.

Noise, Privacy and Airbnb

[83] The Board reviewed letters in opposition where landowners were concerned about the prospect of noise from the Site, a reduction in privacy, and the proposed development becoming an Airbnb.

[84] Based on the evidence provided by the Appellants regarding noise, the Board finds that the noise level would not increase. The Board accepts the Appellants' evidence that they entertain their large family at the Site (four children, their spouses and eight grandchildren) and that the up to 6 guests of the proposed development would create the same or less noise than the family guests.

[85] The evidence before the Board from both the Development Authority and Appellants is that there would be 3 rooms offered for a total increase of 6 guests at the Site. The Board does not find that the noise from 6 guests would increase such that it would make the Site incompatible with other lake lots.

[86] Although privacy is raised as a concern, the Board observed from the pictures provided by the parties that the Site is a well-treed area. The Board examined the pictures and specifically the aerial pictures (Exhibit 4, pages 44-46) which show that the trees on the Site and the layout of the lake, eliminates the view of their neighbours such that the neighbours privacy will not be impacted by the proposed development.

[87] The Board also considered the concern about the proposed development becoming an Airbnb. The Board finds that there is no evidence before it that the proposed development would become an Airbnb while the Appellants were the owners of the Site.

[88] While the Board accepts the Appellants evidence that they have no plans to have an Airbnb, the Board recognizes that a development permit runs with the land and can transfer from landowner to landowner.

[89] With respect to the above listed concerns (noise, privacy and Airbnb), the Board gave little weight to these concerns given that the concerns were general in nature and no specifics were provided to substantiate the concerns. Without more, the concerns are speculative.

[90] For the reasons above, the Board refuses to issue a Development Permit for the proposed use. However, in the interest of completeness of the Board's decision, the Board went on to consider whether the proposed development was in compliance with the parking regulations of the LUB.

Land Use Bylaw

[91] The LUB contains a definition of a "Bed and Breakfast Home". Bed and Breakfast Home use

“means a development within and secondary to a single detached dwelling or modular home where temporary lodging or sleeping accommodation with no more than three (3) guest rooms is provided with a breakfast meal to the travelling public. This use does not include a boarding facility, hotel, motel, or guest house.” [emphasis added]

[92] Section 12.3 of the LUB provides the regulations for a Bed and Breakfast Home and section 14.2 of the LUB provides the parking regulations applicable to a Bed and Breakfast Home. Section 14.2 of the LUB sets out parking space dimension requirements, Table 14.2-1 sets out the Parking Stall Design Standards and Figure 14.2-1 contains an Illustration of the Parking Design Standards.

[93] The Development Authority determined that the Bed and Breakfast Home use would require 3 parking spaces for guest vehicles, that comply with the parking space dimensions and design standards set out in section 14.2 of the LUB, as there would be up to 3 guest rooms occupied by guests of the proposed development.

[94] The Board notes that the LUB set out minimum parking space requirements per sleeping unit or bedroom for select residential and commercial land uses (see Table 14.3-1 and Table 14.3-2 in the LUB). This can be illustrated with the inclusion of minimum parking requirements for:

- a. Dwelling, Duplex (residential) -- 1 parking space per 1 bedroom Dwelling Unit; and
- a. Accommodation and Convention Services (commercial) -- 1 parking space per sleeping unit.

The Board was unable to find minimum parking space requirements per sleeping unit or bedroom for a Bed and Breakfast Home

[95] Although there is no explicit requirement in the LUB for a Bed and Breakfast to have 1 parking space per guest room as there is for residential parking (see Table at 14.3-1 of LUB), the Board finds that it is appropriate in the circumstances and consistent with the parking regulations in the LUB for the Site to have 3 parking spaces for guests of the proposed development. The Board considered the definition of “Bed and Breakfast Home”, and specifically that no more than 3 guest rooms can be offered to the travelling public. Given the remote location of the Bed and Breakfast, the Board finds that it would attract guests who would be required to travel to the Site by vehicle.

[96] For these reasons, the Board finds that the proposed development requires 3 parking spaces on the Site for guest vehicles but that the Site is unable to accommodate the required parking without the vehicles extending onto the municipal road allowance. Given the information from the Fire Marshal and Engineering Department, the Board is not prepared to allow the Appellants to have guest parking that would extend beyond the Site’s property line and onto Rosborough Road, a municipal road.

[97] The Site does not have 3 parking spaces for guests of the Bed and Breakfast Home entirely on the Site, which is required under the LUB. Since the proposed development does

not comply with parking regulations, the Board went on to determine if it should exercise its variance powers under section 687(3)(d) of the MGA. The Board was not prepared to exercise its variance powers for the reasons set out in paragraphs [69] to [77] above with respect to parking and the accessibility of emergency services to the subdivision, the Board finds that the proposed development would unduly interfere with the amenities of the neighbourhood, materially interfere with or affect the use or enjoyment of neighbouring parcels of land.

Other Alternatives Proposed by the Appellant

[98] The Board is sympathetic to the Appellants and recognizes their entrepreneurial spirit. However, the Board recognizes that parking is an issue and went on to consider the Appellants' alternative options to parking.

[99] The Appellants submitted that they were willing to pursue offsite parking options. The Appellants suggested the following offsite parking options to mitigate the parking concerns:

- a. having their guests driven to the Site by family and friends who have chauffeur licenses;
- b. a limousine or Uber; or
- c. creating a joint community parking area for the subdivision.

[100] The Board was prepared to consider the Appellants' alternative options; however, the Appellants did not provide the Board with information as to how the Appellants proposed implementing the alternative parking options. For example, the Board was not provided with information as to where in Villeneuve the designated parking off-site might be for shuttling guests to and from the Site or whether ride-sharing options were available to the Site. Based on the submissions, the Board cannot make a determination regarding the merit the offsite parking, as the submissions were vague and even with additional information, the Board notes that the options are likely unenforceable. Therefore, the Board is unable to consider the alternative options for parking.

[101] Issued this 20th day of March, 2020 for the Parkland County Subdivision and Development Appeal Board



Barb Williams, Board Clerk, on behalf of
Sam Whitehouse, 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. Kim Kozak, Development Officer
2. Karen Kormos, Supervisor, Development Planning
3. Nancy Domijan, Manager Development Planning and Safety Codes
4. Kevin Boddez, Appellant
5. Colleen Boddez, Appellant
6. Michael Evans, appearing on behalf of David and Colleen Collette

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

Exhibit	Description	Date	Pages
1.	Agenda Package Table of Contents and Agenda		n/a
2.	Notice of Appeal	February 13, 2020	1
3.	Submission of the Development Authority	February 28, 2020	2-30
4.	Submission of the Appellant – Kevin and Colleen Boddez	March 2, 2020	31-73
5.	Letter of Objection of the Appeal – Greg and Sheri Kinnear	March 2, 2020	74
6.	Letter of Objection of the Appeal – Traci Bednard	March 2, 2020	75
7.	Letter of Objection of the Appeal – Carrie Dann	March 2, 2020	76
8.	Letter of Objection of the Appeal – Jean and Bill Dann	March 2, 2020	77
9.	Letter of Withdrawal of Exhibit 8 – Jean and Bill Dann	March 6, 2020	n/a