

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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HEARING DATE: July 13, 2020
FILE NO.: 20-D-070

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority of Parkland County (the "Development Authority") approved a development permit (20-D-070) for Marissa Aslin and Lorne Gehlert (the "Applicants") for a Tourist Campground, Destination (15 stall campground with event facility), located at 51109 Range Road 272, and legally described as Lot 2, Block 1, Plan 0926137 within SW-11-51-27-W4M (the "Lands").

[2] On June 10, 2020, Ross and Christin Williams appealed the development permit. On June 15, 2020, Dan and Kristy Horneman also filed an appeal of the development permit.

[3] The Subdivision and Development Appeal Board (the "Board") heard the appeal on July 13, 2020 via teleconference in accordance with Meeting Procedures (COVID-19 Suppression) Regulation, AR 50/2020.

PRELIMINARY MATTERS

A. Board Members

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

B. Exhibits

[5] The Board marked the exhibits as set out at the end of this decision. The Board marked as an exhibit the speaking notes of Mr. Poffenroth. There were no objections to the Board marking the additional exhibit.

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 GRANTS the appeal and revokes the Development Authority's decision to approve development permit 20-D-070. The development permit for Tourist Campground, Destination (15 stall campground with event facility) is denied.

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 Lands are located within the AGG - Agricultural General District of Parkland County ("AGG District"). The Lands are municipally described as 51109 Range Rd 272, and are legally described as Lot 2, Block 1, Plan 0926137 within SW-11-51-27-W4M.

[11] Development Authority received a development permit application for a Tourist Campground, Destination (15 stall campground with event facility) on April 1, 2020. The Development Authority approved the development permit on May 27, 2020 (the "Proposed Development") subject to 12 conditions (see page 41/629).

[12] The Development Authority determined that the Proposed Development was a Tourist Campground, Destination (15 stall campground with event facility), which is a discretionary use within the AGG District as outlined in Section 4.1 of the County's Land Use Bylaw 2017-18 (the "LUB").

[13] Tourist Campground, Destination is defined in the LUB 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 Vehicles, and is not used as accommodation for residential use.

[14] The Proposed Development is a 15 stall campground and event hall.

[15] Section 12.21 of the LUB sets out the regulations that the Development Authority must consider when evaluating a Tourist Campground use. It states:

12.21 Tourist Campground

1. For the purposes of this Section, tourist campgrounds may be considered as falling into two category types, Enroute and Destination. Enroute campgrounds are designed primarily for short-term occupancy for those travelers on their way to another destination. Destination campgrounds are intended for prolonged visits, located near amenity areas and accompanied by a range of ancillary and recreational facilities.

2. Roads leading to a proposed campground may be required as a condition of development approval, to be brought into a condition necessary to sustain the volume and type of traffic to be generated by the proposed campground.

3. In determining the appropriateness and suitability of a site for a proposed campground development, the Development Authority shall consider such factors as accessibility, compatibility with adjacent land uses, environmental sensitivity and physical suitability/serviceability of the site itself.

4. There shall be a minimum distance separation of 300.0 m between any tourist campground facility and the boundary of a Multi-Parcel Residential Subdivision or Confined Feeding Operation.

a) Notwithstanding the foregoing, tourist campground facilities within 300.0 m of the boundary of a multi-parcel subdivision, may be considered on SW 18-52-2-W5M.

b) Notwithstanding the foregoing, tourist campground facilities within 300.0 m of the boundary of a multi-Parcel subdivision, may be considered on Lot A, Plan 3803NY (NW 03- 53-4-W5M) where the property owner shall meet the following:

i) There shall be no Recreational Vehicles located within 3m of the north Property Line of the subject site and appropriate visual screening shall be installed and maintained to the satisfaction of the Development Officer, within this 3 m separation between the Recreational Vehicles and the north Property Line.

ii) The property owners shall ensure that the septic system is inspected by a qualified plumbing inspector at three (3) year intervals and that these reports are forwarded to the County's private sewage inspector for review.

iii) The property owners shall enter into a Road Maintenance Agreement with Parkland County.

5. The following criteria and standards may be used by the Development Authority in determining an appropriate density for a proposed campground development:

a) Areas with natural amenities (e.g. wilderness, water bodies, and vegetation) shall be developed at a lower density.

b) In areas where there is little natural vegetation, densities shall be lower to provide more privacy between sites.

c) Where terrain is sensitive to development, the Permitted density shall be lower to preserve the natural balance.

- d) Long-term occupancy campgrounds shall be at a lower density because the Recreational Vehicles tend to be larger and contain accessory uses; in most cases, the on-location activities will have more impact on the environment.
6. The following criteria and standards may be used by the Development Authority in determining an appropriate site design for a proposed campground development:
- a) The site plan for a proposed campground shall detail internal circulation requirements, street widths, pedestrian circulation, site access and egress, emergency access, parking areas, storage areas, toilet and laundry areas, recreational areas and campsite areas.
 - b) The number of access points to the campground shall be limited to control the entry and departure of vehicles and to minimize interference with neighbouring uses and traffic flow.
 - c) The location of access points shall not route traffic through residential areas.
 - d) Access points shall be designed to accommodate two-way traffic and shall provide a clear unobstructed view for traffic and turning vehicles. The provision of acceleration and deceleration lanes may be required.
 - e) All campgrounds and sites shall have clear access and identification for firefighting, ambulance and police.
 - f) For campgrounds proposed to be open year-round, provision shall be made in the design of internal roads for snow removal and snow storage.
 - g) For Destination campgrounds, particularly long lease arrangements, parking space is required for visitors. The location of visitor parking shall not interfere with pedestrian safety.
 - h) Each campsite shall have a minimum area of at least 186.0 m² with an open and graded parking space sufficient to permit a clearance of 4.5 m between sides and 3.0 m between ends of adjacent recreation vehicles.
 - i) Notwithstanding the foregoing, each campsite within the tourist campground facilities on Lot A, Plan 3803NY (NW 03-53-4-W5M) shall have a minimum area of at least 42.5 m² with an open and graded parking space sufficient to permit a clearance of 4.5 m between sides and 3.0 m between ends of adjacent recreation vehicles.
 - i) Campsites shall be accessible by means of a driveway at least 3.0 m wide where the driveway is for one-way traffic, or at least 6.0 m wide where the driveway is for two-way traffic, and so constructed that automobiles and trailers will not become mired.
 - j) Recreational facilities shall not be located where they would intrude on the privacy of adjacent campers.
 - k) Noise control measures may also be required and may include the use of berms, natural barriers and screens and locating noise-insensitive aspects of the campground closest to the noise source.
 - l) Within the campground development, a circular one-way system with gently curving roads, sensitive to topography and site characteristics is preferred, and shall be "signed" to avoid confusion.
7. A site plan with clearly identified streets, site numbers, and parking areas may be required to be provided for camper convenience and in cases of emergency.

[16] The Development Authority identified that the Municipal Development Plan, Bylaw 2017-14 (the "MDP") shows that Lands are within the Rural Area and Prime Agricultural Area South East. The Development Authority indicated that the Proposed Development complies with section 5.0 of the MDP (Economic Competitiveness and Employment), which supports economic and employment opportunities throughout the County where supported by adequate infrastructure and transportation networks (See page 57/629 and 58/629). The Development Authority noted the Lands are not subject to an area structure plan, nor are they subject to an environmentally significant area as defined in the Environment Conservation Master Plan.

[17] The Applicants submitted nine documents in support of their application, including a site plan, stall plan, floor plan, and Traffic Impact Assessment (see page 38/629). The Development Authority determined the Proposed Development met the definition and regulations for Tourist Campground, Destination. The Development Authority took into account that the Proposed Development was an allowable use in the AGG District and meets the requirements of the regulations found in section 12.21 of the LUB. There will be natural barriers for noise control (existing mature vegetation and new tree plantings). The site design should also assist in noise control.

[18] The Development Authority determined that the Proposed Development was compatible with surrounding land uses as it is approximately 320 m away from the nearest residential dwelling and approximately 725 m from the nearest Multi-Parcel Residential Subdivision. After considering hours of operation, the number and location of camping stalls, and the screening measures, the Development Authority determined the proposed development would not unduly affect the use of the adjacent agricultural and residential uses.

[19] The County's Engineering Services reviewed the Proposed Development. In their opinion, the Proposed Development met the County's Engineering Design Standards. They reviewed the Traffic Impact Assessment and determined that no improvements are warranted due to the Proposed Development. The approach location was reviewed and determined to comply with the County's Engineering Design Standards.

[20] In response to questions from the Board, the Development Authority stated:

- a. If the application lacked the campground component and they had to reevaluate the application based on the event facility, it would most closely be classified as a "community and recreation service" or "cottage industry".

Community recreation service is defined in section 20.3 of the LUB as: a "development for recreational, social, or multi-purpose use primarily intended for local community purposes. Typical facilities would include community halls and community centres operated by a local residents' organization."

Cottage industry is defined in section 20.3 of the LUB as: "one or more low intensity activities of a gainful nature demanding a skilled trade or craft or related to an agricultural and/or horticultural operation on a parcel. Cottage Industry shall maintain, and be compatible with, the rural residential and/or agricultural character of the surrounding landscape. Cottage Industry may be

the principal use of the parcel, or secondary to existing principal uses such as residential dwelling. A Cottage Industry use shall not be located within a Multi-Parcel Residential Subdivision. Typical Cottage Industry requiring skilled trade may include workshops or storefronts selling custom made products or offering related services. Typical agriculture and horticulture related Cottage Industry may include growing, packing and sale of food products, small-scale wineries and breweries, and minor food establishments including cafes and diners.”

However, because the event facility was not related to an agricultural or horticultural operation, it would be unlikely to fit within the definition of a Cottage Industry;

- b. It is not unusual to evaluate the Proposed Development application as a Tourist Campground, Destination. Other campground developments in Parkland County have ancillary facilities and have been evaluated as a Tourist Campground, Destination;
- c. If the Applicants wished to expand the current development, they would be required to submit another development permit application; and
- d. Camping at community halls would not be permitted unless stipulated in the development permit.

Appellants Ross and Christine Williams

[21] Mr. Williams spoke for himself and Christine Williams (the “Williams”). They included written and oral submissions in support of their appeal. The Williams have a 40-acre parcel of land on the north side of Township Road 511 (“Graminia Road”). The northern edge of their property borders the Proposed Development.

[22] The Williams moved to the country for “peace and quiet”, where fewer non-traditional developments would be constructed. Previously, they lived near a community hall in central Alberta. They stated that they were the “unwelcome ‘guests’ to every event” and were often “unable to fall asleep until dawn”. When looking to buy a house, they deliberately avoided available real estate because of its proximity to a community hall.

[23] The Williams are concerned that the events held at the proposed facility and increased local traffic would bring unwelcome noise. While the Applicants plan to reduce noise by maintaining natural foliage and constructing a partial six-foot-high solid fence, Mr. Williams was skeptical towards the effectiveness of these methods.

[24] The increase in local traffic increase would also worsen noise and present a safety risk. The Williams were not persuaded by the Applicants’ Traffic Impact Assessment (see pages 403/629 to 628/629), which predicted a minimal traffic increase along Graminia Road, Range Road 272, and Range Road 273. Mr. Williams disputed the accuracy of the findings of the Traffic Impact Assessment based on its underlying facts. While the assessment was based on a 20-week operating period, the event facility would operate year-round. Additionally, the event

facility has an actual maximum capacity of 250 guests, rather than 200. Mr. Williams submitted that these discrepancies are significant.

[25] The Williams were also concerned with the risk of trespassers that the Proposed Development would bring. In their experience, they found that people often do not know where land boundaries are, and that urban people perceive rural land as communal space. The Williams live near a horse barn and have had difficulties in the past dissuading visitors from riding onto their land.

[26] They also stated that the increased human presence would have a negative influence on wildlife presence.

[27] The Williams expressed worry about the Proposed Development's approval as a Tourist Campground, Destination permit and the conditions related to that classification. While the Proposed Development is proposed as a campground, the event facility would operate year-round and host significant crowds. Mr. Williams suggested that there is a different clientele drawn to campgrounds and event facilities.

[28] The Applicants promised that guests would not be able to stay at the campground for longer than four days. However, this promise was not listed as an enforceable condition of the development permit. The Williams were concerned about whether new owners would be bound by the Applicants' promises. Mr. Williams expressed worry about potential expansion in this context as well, and the impact that such expansion would have on the local rural community.

[29] In response to questions from the Board, Mr. Williams:

- a. stated that the development permit should contain conditions that reflect the event facility's primary operation rather than the campground; and
- b. demonstrated the Applicants' intent to expand development, referring to the diagram "Sparrow Lodge: Landscape Concept" (page 372/629) of the written materials. Points 9 and 10 in this document refer to both a "Campground (Phase 1)" and "Campground (Phase 2)".

Appellants Dan and Kristy Horneman

[30] Ms. Horneman spoke for herself and Dan Horneman (the "Hornemans"). They included written and oral submissions in support of their appeal. Ms. Horneman stated that the Proposed Development would create significant negative impacts for them.

[31] The Hornemans moved to enjoy the privacy, peace, and quiet of rural living. They consider the wildlife presence to be one of the best aspects of living in the country. Had they known there would be a new development nearby, they would not have bought the property.

[32] The Hornemans state that the Proposed Development will be less than 350 m from their residence. Due to the proximity, they have concerns about trespassers, increased unwelcome

noise, and the effect of each on local wildlife. The Hornemans were not persuaded by the findings of the Applicants' noise tests that sound from the event hall would be minimal (see pages 385/629 to 390/629).

[33] Ms. Horneman noted that the noise tests had not been conducted by an independent or professionally trained third party and presented risk for bias. Ms. Horneman also expressed concern regarding discrepancies in the Applicants' other written submissions. The event facility has been referred to as both "Sparrow Lane Lodge" and "Riverside Ridge" (see, for example, page 26/629 and page 360/629). The maximum capacity of the event facility was shown to be 200 guests on early documents, while the Applicants later confirmed a maximum of 250 guests. She stated that the development permit should not be upheld when it is based on incorrect calculations and problematic evidence.

[34] The Hornemans are also trying to sell their property. The Proposed Development will decrease the value of their property and fewer people will want to buy it. Mr. John Connor, who is a Professional Real Estate Associate and representing Mr. and Mrs. Horneman in the sale of their home, provided a statement that he believes that the Proposed Development will negatively impact the ability of the Hornemans to sell their home (see pages 357/629 to 359/629).

[35] In response to questions from the Board, Ms. Horneman stated:

- a. her property is located at the corner of Range Road 272 and Graminia Road. The property is 40 acres, 10 acres of which is workable and farmed by a neighbour, 30 acres of which is brush;
- b. the Applicants' intent to expand development is evidenced by the diagram "Sparrow Lodge: Landscape Concept" (page 372/629) of the written materials. Points 9 and 10 read "Campground (Phase 1)" and "Campground (Phase 2)"; and
- c. she would like to see a condition included on the development permit requiring the Applicants to construct a full fence instead of the planned partial fence that will be used to fill gaps in the natural foliage.

Those Speaking In Favour of Appeal

Ken Poffenroth

[36] Ken Poffenroth gave written and oral evidence in support of the Horneman appeal. He lives with his wife next to the intersection of Graminia Road and Range Road 272. His daughter and son-in-law live at the same address.

[37] Mr. Poffenroth expressed several concerns including the increased risk of crime activity, the increased risk of noise, and the increased traffic resulting from the Proposed Development. He specifically expressed concern over the increased safety risks for his grandchildren, who live at the same address he does. It is possible that they could wander onto Graminia Road. If they were hit by a vehicle, he would be willing to examine his legal liability options.

[38] Furthermore, Mr. Poffenroth discussed the potential for anticipated growth of the development. He stated that the control of the Proposed Development is likely to change in the future, and that it is possible that the expansion and control by future owners would be inconsistent with the rural lifestyle of local people.

[39] Mr. Poffenroth is also a licensed realtor and supports the Hornemans' concerns regarding decreased property value.

The Applicants – Marissa Aslin and Lorne Gehlert

[40] Ms. Aslin spoken on behalf of the Applicants. The Applicants included written and oral submissions. Written submissions included photos, diagrams, letters, a Traffic Impact Assessment, and a noise test they conducted themselves. They maintain that the Proposed Development will not create significant negative impacts.

[41] The Applicants' vision for the Proposed Development was of a "premium event facility" primarily used to host weddings, as well as charity events, business events and Christmas parties. The event facility would have 92 parking stalls available for guests and would be open year-round. It would be constructed of materials such as natural wood timbers and stone pillars to blend into the landscape. The event facility would provide a campground as an overnight option for guests. The campground has 15 stalls and would be open seasonally. The campground would not be available for use without rental of the event facility.

[42] To promote the privacy of their neighbours, they would construct a six-foot-high fence where the natural brush has left gaps. The fence would also assist in reducing noise.

[43] Security cameras would be installed to deter mischievous activity. A security guard would also be present when guests are on location. Furthermore, the Applicants planned to partner with local businesses and provide shuttles to guests to local accommodations, which would deter trespassing. Guests would be allowed to stay a maximum of four days, which would also deter mischief.

[44] The Applicants sent out a series of letters to engage community members regarding the Proposed Development.

[45] In response to noise concerns, the Applicants conducted a series of noise tests. The Applicants also consulted a local sound specialist, who recommended sound panels be installed on the event facility's interior. To test sound levels emitted from the event facility, the Applicants played music at the site of the Proposed Development, at an average volume of 95-100 decibels. They determined this volume appropriate as the sound equipment expected to be used for facility events emitted a maximum volume of 95 decibels. The Applicants then measured the music volume at points on adjacent roadways. The Applicants noted that other noises, such as lawn mowers, birds and traffic measured an average of 35-45 decibels. In contrast, they found that in most locations where readings were taken, the music level was "not discernable at all" and in one location was "barely discernable".

[46] In response to neighbours' concerns regarding the depreciation of property value, the Applicants consulted three local realtors. The realtors stated that it was unlikely that the Proposed Development would decrease local property values. The Applicants provided a letter of support from Arlie Jespersen, an Associate Real Estate Broker, dated July 2, 2020, in which he states that "there would be no detrimental devaluation of the adjacent or other neighbouring properties" (see page 391/629).

[47] In response to neighbours' concerns regarding increased traffic, the Applicants provided a Traffic Impact Assessment completed by D&A Paulichuk Consulting (see pages 403/629 to 628/629). Based on the findings of the Traffic Impact Assessment, traffic would increase by an average of 66 vehicles per event held at the facility. The Appellants submit that this would be a minimal traffic increase. The Traffic Impact Assessment recommends that the roads would not require improvement for 20 years and therefore the safety risk created by the Proposed Development will be minimal. Furthermore, the Appellants submitted that traffic is expected to increase on Graminia Road despite the Proposed Development (see Traffic Impact Assessment at page 417/629).

[48] In support of their appeal, the Applicants submitted letters of support signed by six local families. The Proposed Development will bring job opportunities to the local economy and support the intention of the Parkland County Strategic Plan to diversify the local economy.

[49] In response to questions from the Board, the Applicants stated:

- a. the campground is only available when the hall is being rented;
- b. the event facility is the primary development;
- c. the correct maximum capacity of the event facility is 250 guests;
- d. the noise tests were performed by playing music outside rather than inside of a building;
- e. the diagram on page 372/629 was outdated, and that there would not be a Campground Phase 2 development; and
- f. the Robsons' property was close to the event facility. W. Lance Robson had given a letter in support of the Proposed Development (see page 378/629).

FINDINGS OF FACT

[50] The lands are located at 51109 Range Road 272, and legally described as Lot 2, Block 1, Plan 0926137.

[51] The Lands are located within the AGG – Agricultural General District.

[52] The Proposed Development is not a Tourist Campground, Destination use.

[53] The principal use of the Lands is not Tourist Campground, Destination.

[54] The event facility use does not fall within the definition of Cottage Industry.

[55] The use of the Proposed Development is not a permitted or discretionary use in the AGG District.

[56] The Williams are affected persons.

[57] The Hornemans are affected persons.

[58] Mr. Poffenroth is affected person.

[59] The Applicants are affected persons.

REASONS

Jurisdiction

[60] 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 and has considered the oral and written submissions made by and on behalf of the Development Authority, the Williams, the Hornemans, those speaking in favour of the appeal (Mr. Poffenroth) and the Applicants.

- 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

[61] 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 those making submissions to the Board. However, the Board will address this issue in its reasons.

[62] The Williams live immediately south of the Proposed Development and the north boundary of their property borders the Proposed Development. The Board finds that due to their proximity to the Lands, they are affected by the appeal.

[63] The Hornemans also live immediately south of the Proposed Development and the north boundary of their property borders the Proposed Development. The Board finds that due to their proximity to the Lands, they are affected by the appeal.

[64] Mr. Poffenroth lives near the Proposed Development and his property is located at the intersection which is the main access point to the Proposed Development. The Board finds that due to his proximity to the Lands and the location of his lands on the main access to the Proposed Development, he is affected by the appeal.

[65] As the person whose development permit is under appeal, the Applicants are affected by this appeal.

Issues to be decided

[66] The Board recognizes that section 687(3) of the MGA provides that the Board must determine the Proposed Development's compliance with a number of items, including its compliance with applicable statutory plans and the land use bylaw. The Board also notes that in this case, the Appellants have raised a question as to whether the categorization of the use is correct. The Appellants have questioned whether the use is a Tourist Campground, Destination (which suggests that the principal use is a campground) or whether the principal use is the event facility. If the event facility is the principal use, the question is what use definition under the LUB it would fall under, and if that use definition is permitted or discretionary in the AGG District.

[67] The question of the characterization of the use is critical in this appeal. Depending upon which use the Proposed Development falls into may determine this appeal because while a Tourist Campground, Destination is a discretionary use in the AGG District, other possible uses are neither permitted nor discretionary in the AGG District. If the Board determines that the use is a use which is neither permitted nor discretionary in the AGG district, the Board must deny the development permit since under section 687(3)(a.3) and 687(3)(d), the Board cannot vary the use.

[68] The Board would ordinarily start its analysis of the Proposed Development to determine the compliance of the Proposed Development with the applicable statutory plans (see section 687(3)(a.2)).¹ However, if the proposed use is neither permitted nor discretionary in the AGG

¹ There is applicable ALSA regional plan for this area, so the Board does not need to start at section 687(3)(a.1).

district, the Board cannot grant the development permit. Since the determination of the use is key to deciding this appeal, the Board will start its analysis with a determination of the use.

What is the Use and is the Use listed in section 4.1 of the LUB?

[69] Under section 16.9 of the LUB, the Development Authority must review each application for a development permit to determine the type of use which the development constitutes, and is to make this determination base on the merits of the application submission:

- a. the merits of the application submission, regardless of the use applied for by the applicant;
- b. the definitions of the use as expressed within Part 6 of the LUB; and
- c. the spirit and intent of the defined use in the LUB.

[70] The Development Authority approved the development permit. The Development Authority characterized the application as a "15 stall campground and event hall (Tourist Campground, Destination)" (see page 37/629 and 41/629), having had regard for other campground developments in the County having ancillary facilities and thus falling with Tourist Campground, Destination.

[71] The Development Authority responded to Board questions regarding the nature of the use, stating that if the application was based solely on the event facility, it would likely be classified as a Community And Recreation Service or Cottage Industry as defined in section 20.3 of the LUB.

Community Recreation Service means development for recreational, social, or multi-purpose use primarily intended for local community purposes. Typical facilities would include community halls and community centres operated by a local residents' organization.

Cottage industry means one or more low intensity activities of a gainful nature demanding a skilled trade or craft or related to an agricultural and/or horticultural operation on a parcel. Cottage Industry shall maintain, and be compatible with, the rural residential and/or agricultural character of the surrounding landscape. Cottage Industry may be the principal use of the parcel, or secondary to existing principal uses such as residential dwelling. A Cottage Industry use shall not be located within a Multi-Parcel Residential Subdivision. Typical Cottage Industry requiring skilled trade may include workshops or storefronts selling custom made products or offering related services. Typical agriculture and horticulture related Cottage Industry may include growing, packing and sale of food products, small-scale wineries and breweries, and minor food establishments including cafes and diners.

[72] The Development Authority confirmed that since the event facility was not related to an agricultural or horticultural operation, it would be unlikely to fit within the definition of a Cottage Industry.

[73] When questioned by the Board, the Applicant confirmed that the event facility is the primary development, and not the campground. This is confirmed by the following:

- a. the site plan shows the event facility having 92 parking spaces, while the campground has only 15 spaces;
- b. the Applicants confirmed that the campground was to be open seasonally, and would not be available without the rental of the event facility, which would be open year round;
- c. the campground was to be available only to those persons using the event facility; and
- d. the Traffic Impact Assessment states “[t]his report is a Traffic Impact Assessment (TIA) report for an Event Facility with an accompanying Campground business....” (see pages 78/629, 79/629 and 130/629).

[74] Thus, although it appears that the Development Authority considered the use to be primarily a campground with an accessory event facility, the intention of the Applicants as supported by the information provided to the Development Authority is that the use is primarily an event facility with an accessory campground. The Board finds as a fact that the principal use for the Proposed Development is not Tourist Campground, Destination. The principal use is the event facility. The next question is to determine what use definition under section 20.3 the event facility falls under.

[75] The Board has reviewed the definition of Tourist Campground, Destination. That use encompasses only the seasonal use of lands for trailer, motor homes, etc. While this use does describe the 15 stall campground use, it does not describe the event facility, which encompasses a building to hold events(see pages 66/629 to 71/629 and 367/629 to 371/629).

[76] The Board has considered the two other alternatives offered by the Development Authority: Cottage Industry and Community Recreation Services.

[77] The Board has reviewed the definition of Cottage Industry and agrees with the submissions of the Development Authority that the event facility does not fall within the definition of Cottage Industry because there is no evidence before the Board that the use of the event facility demands a skilled trade or craft or related to an agricultural or horticultural operation on a parcel. As a result, the Board finds as a fact that the event facility is not a Cottage Industry.

[78] The Board next examined whether the event facility would fall within the definition of Community Recreation Service (the definition is set out again below for ease of reference).

Community Recreation Service means development for recreational, social, or multi-purpose use primarily intended for local community purposes. Typical facilities would include community halls and community centres operated by a local residents' organization.

[79] Clearly the event facility is meant for recreational or social purposes. The Board notes that the intention is to host events, including weddings (see page 367/629). It is unclear if the phrase “primarily intended for local community purposes” is meant to modify “multi-purpose

use” only, or if it is meant to apply to the recreational and social use. To clarify, the Board notes that either of the two options below are possible on the current wording of the definition:

Option 1	Option 2
development for: recreational use, social use, or multi-purpose use primarily intended for local community purposes	development for: recreational use primarily intended for local community purposes, social use primarily intended for local community purposes, or multi-purpose use primarily intended for local community purposes

[80] In other circumstances the Board may have to pick either option 1 or option 2. However, for the reasons set out below, the Board does not need to resolve this question, and so the Board simply notes the issue.

[81] The reason that the Board does not need to resolve the issue is that Community Recreation Services is neither a permitted nor discretionary use within the AGG District (section 4.1 of the LUB). If the event facility is a Community Recreation Service, that use is not allowed in the AGG District. Since the Board cannot approve a use that is not allowed by the LUB, the Board cannot approve a Community Recreation Services use for the Lands.

[82] If the event facility use is not a Community Recreation Service use, then it does not appear to fall within any defined use within section 20.3 of the LUB. The absence of a use definition puts the Board in the same position as provided for in paragraph [82] above: the Board cannot change uses or allow uses which are not provided for in the applicable district.

[83] The evidence before the Board was that the campground was only in support of the event facility. If the event facility does not proceed, the campground cannot proceed, since only those who used the event facility were to be able to use the campground. Having concluded that the event facility is neither a permitted nor discretionary use in the AGG District, the Board is not prepared to approve only the campground portion of the development permit. The Board does note that if the Applicants wish to apply for a Tourist Campground, Destination use as a primary use, they are able to make a development permit application for that use as Tourist Campground, Destination is listed as a discretionary use in the AGG District.

[84] While the Board understands the Applicants’ desire to proceed with its development, under section 687(3) of the MGA, the Board cannot approve the development permit.

Statutory Plans

[85] Having concluded that it cannot approve the Use, the Board does not need to determine whether the Proposed Development is in compliance with the Municipal Development Plan Bylaw No. 2017-14 (the “MDP”).

Other considerations

[86] Having concluded that it cannot approve the Use, the Board does not need to determine whether the Proposed Development is compatible with the neighbouring uses.

[87] Issued this 22nd day of July, 2020 for the Parkland County Subdivision and Development Appeal Board.



B. Williams, Clerk of the SDAB, on behalf of D. 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. Rachele Trovato, Development Authority
2. Ross and Christine Williams, Appellants
3. Dan and Kristy Horneman, Appellants
4. Ken Poffenroth
5. Marissa Aslin and Lorne Gehlert, Applicants

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

Exhibit	Description	Date	Pages
1.	Agenda Coversheet	July 9, 2020	1
2.	Table of Contents	July 9, 2020	2
3.	Notice of Appeal – Ross & Christine Williams	June 10, 2020	3
4.	Hearing Date Waiver Form – Ross & Christine Williams	June 11, 2020	4
5.	Hearing Date Waiver Form – Marissa Aslin & Lorne Gehlert	June 17, 2020	5
6.	Letter of Appeal – Dan & Kristy Horneman	June 16, 2020	6-36
7.	Submission of the Development Authority	July 7, 2020	37-353
8.	Submission of the Appellant – Ross & Christine Williams	June 29, 2020	354-356

Exhibit	Description	Date	Pages
9.	Submission of the Appellant – Dan & Kristy Horneman	July 4, 2020	355-357
10.	Submission of the Applicants – Marissa Aslin & Lorne Gehlert	July 7, 2020	359-628
11.	Letter of Objection of the Appeal – Richard & Rita Schultz	July 6, 2020	629
12.	Letter of Objection of the Appeal – Jean & Bill Dann	March 2, 2020	77
13.	Speaking Notes, Ken Poffenroth	July 13, 2020	n/a