

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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HEARING DATE: October 5, 2020
FILE NO.: 20-D-201

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority of Parkland County (the “Development Authority”) refused a development permit (20-D-201) for Laine Goudriaan (the “Applicant”) for the repurposing of a trailer to a recreational cabin, located at 50511 Range Road 20, legally described as Plan 0720408, Block 1, Lot 3. The lands are located in the south-central portion of Parkland County, directly north of the North Saskatchewan River and approximately 10.5 kilometers south of Highway 627 and 0.1 kilometers east of Range Road 20 (the “Lands”).

[2] On September 14, 2020, Laine Goudriaan appealed the refusal.

[3] The Subdivision and Development Appeal Board (the “Board”) heard the appeal on October 5, 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] At the beginning of the hearing, the Chair confirmed that everyone in attendance had the hearing package. The Board marked the exhibits as set out at the end of this decision. At the beginning of the hearing, Ms. Killick advised that she wished to submit 3 letters in opposition to the appeal: one from herself, one from Leslie Boyer and one from Edward Ernst, which Mr. Goudriaan had not seen. Before seeing the letters, Mr. Goudriaan objected to the admission of the letters. The Board had the letters distributed to Mr. Goudriaan so that he

could be aware of their contents before being called upon to make submissions in relation to them. Following a brief recess to permit Mr. Goudriaan the opportunity to review the letters, the Board heard submissions from Mr. Goudriaan in relation to the three letters. Mr. Goudriaan stated that he objected to the admission of the letters, because they are not relevant. The site is not industrial or commercial. In response to the letter from Leslie Boyer, he stated that he is within his zoning. In response to the letter from Edward Ernst, he stated that this is not a recreational campground and there is no impact.

[6] The Board decided that it would admit the letters into evidence and make a determination as to their relevance. If the information included was not relevant, the Board would not place any weight on that evidence. If there was information relevant to the appeal, the Board would place the appropriate weight on that information.

C. Miscellaneous

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

[8] 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

[9] The Board refuses the appeal and upholds the refusal of the Development Authority.

SUMMARY OF HEARING

[10] 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

[11] The Lands are located at 50511 Range Road 20, legally described as Plan 0720408, Block 1, Lot 3. The Lands are located in the south-central portion of Parkland County directly north of the North Saskatchewan River and approximately 10.5 kilometers south of Highway 627 and 0.1 kilometers of east of Range Road 20.

[12] The Land are located within the ANC-Agriculture/Nature Conservation District.

[13] The Development Authority reviewed the submitted floor plan and determined that the use class was Accommodation and Convention Services. The Development Authority came to this conclusion because the floor plan depicts three individual sleeping units accessed by a common interior hallway with a shared kitchenette and laundry room. The Development Authority considered this to be consistent with section 20.3 which includes the definition of Accommodation and Convention Services. The definition for this use includes developments which are "primarily used for the provision of rooms or suites for temporary sleeping

accommodation such as hotels (rooms have access from a common interior corridor and are not equipped with individual kitchen facilities)."

[14] The Development Authority determined that Accommodation and Convention Services is not a listed land use on the Lands as outlined in section 4.3 of the Land Use Bylaw 2017-18 (the "LUB").

[15] The Development Authority noted that the Lands are within the Prime Agricultural Area South East and the Rural Area as identified in the MDP Development Concept. A small portion of the Lands are also within the Prime Recreation Tourism Area - Great Waters.

[16] The Lands are not governed by an Area Structure Plan.

[17] The Lands are within the Provincially significant North Saskatchewan Highway 770 to Edmonton Reach Environmentally Significant Area ("ESA") as defined in the Environment Conservation Master Plan ("ECMP"). The Lands are within the ESA which has the presence of erodible soils and is recommended to have maintained buffer zones of natural vegetation to prevent erosion.

[18] The Development Authority received the application on July 20, 2020, and deemed it complete on August 4, 2020. The development permit application was for a proposed recreational cabin on the Lands. The Development Authority received:

- a. the application form;
- b. a site plan;
- c. elevation drawings; and
- d. a floor plan.

[19] The Development Authority noted that there were inconsistencies between the submitted application details, the site plan and the floor plan in the proposed development size:

- a. The application identifies a total building size of 12 ft x 60 ft (720 ft²).
- b. The site plan indicates the building size of 35 ft x 63 ft (2,205 ft²).
- c. The floor plan indicates the proposed building size of 17 ft 10 inches x 60 ft (1,070 ft²).

The Development Authority relied on the submitted building floor plan, which was professionally prepared and drawn to scale.

[20] The Development Authority determined that the use was Accommodation and Convention Services because the floor plan was inconsistent with the general intent of a Dwelling or Dwelling Unit. There are a series of individual sleeping units accessed by a common interior corridor, but no shared living or dining facilities which are common in a Dwelling or Dwelling Unit. The floor plan provides a similar layout to that of a dorm-style development.

[21] The Development Authority examined the definition of Cottage as defined in the LUB and did not consider the proposed development to be a cottage because the submitted floor

plan would exceed the allowable square footage for a cottage. Under the LUB, the allowable square footage for a Cottage is 70 m² (section 20.2 of the LUB). The Development Authority determined that a Cottage is more typical of the Tourist Campground, Destination or Enroute land use. If this were the use applied for, the application would require a more detailed and comprehensive application package to be submitted.

[22] In response to Board questions, the Development Authority stated that:

- a. she did not consider the use of Manufactured Home in relation to the proposed development;
- b. in response to the question of why the proposed use was not a dwelling unit or Dwelling, Single Detached, she stated that she used the floor plan to inform her decision. The plan (page 49) showed a hallway with rooms. There was no dining area, and no living area which would be typical of a single-family dwelling. The absence of these typical features in a family dwelling, particularly when the proposed development was described by the Appellant as a recreational dwelling caused her to evaluate the proposed development as accommodation services.

Appellant Laine Goudriaan

[23] Mr. Goudriaan stated that he wants this to be his "perfect home". He does not need a very large house, because he is on his own.

[24] In response to Board questions, he advised:

- a. The size of the accommodation is 60 feet x 20 feet (finished) plus a deck.
- b. It will be located in the centre of the Lands, 1,000 feet from Range Road 20.
- c. The proposed development is a manufactured unit, which would be added onto, and modified with piles and a peaked roof. It would be skirted and sided as a log cabin. The existing manufactured unit is 60 feet x 12 feet.
- d. This is one of the existing structures on the Lands.
- e. In relation to page 49 of the Exhibits before the Board, the Board asked if that was the plan that he will be building. He stated that the plan at page 49 reflected what he will be building on the Lands.
- f. The Board clarified that in the plan at page 49, there appeared to be a laundry room with 3 dryers. He confirmed that the plan did show 3 dryers because they are existing, and everything is up to Code. He then stated that he might move the kitchenette into the area identified in the plan as the laundry room and he might remove one or more of the dryers.
- g. He advised that the kitchenette shown in the plans at page 49 is not currently in place, but he will be putting it there. There are currently 4 bedrooms in the trailer.
- h. He advised that the plans show a tank for water storage, but he has 2 wells on the property. The servicing will be a septic field and well water.

[25] In response to further questions, he advised:

- a. He is using one modular building to build his house. He made an error in what he called the proposed development and is seeking to rectify that error through this appeal process. The building will be his personal dwelling.
- b. The hallway will be his living space.

[26] In his concluding remarks, Mr. Goudriaan stated that he wants to live on the Lands. The units are compliant with the 2005 Building Code.

Those Speaking in Opposition to the Appeal

Andy Mariage

[27] Mr. Mariage lives directly north of the Lands. He spoke in opposition to the appeal. He is concerned that the proposed development is a recreational cabin that could be rented out. He has concerns about the potential impact if there were to be forest fires. He is concerned about the potential use of firearms and the impact on wildlife. He is especially concerned about possible fires because he lives in the treed area adjacent to the Lands, and there may be forest fires which are caused by people who are not used to being in the area.

Martine Babcock

[28] Ms. Babcock lives in the subdivision near to the Lands. She stated that the area is a residential area, and that a recreational cabin is a place to go hunting, fishing or camping and so does not fit into the residential area. She stated that people on the Lands walk across their lands to go to the North Saskatchewan River. She was also concerned about the risk of fire, particularly as her property is far away from the nearest firehall.

Amy Henning

[29] Ms. Henning lives southwest of the Lands, and shares Range Road 20 as her access to her property. She did not understand why there would be an approval for any of the trailers on the Lands, when they were to be removed last year. She stated that she had concerns because people from the Lands were trespassing onto her property to access the North Saskatchewan River. She was opposed to the proposed development.

Glenna Killick

[30] Ms. Killick lives in the residential subdivision and uses Range Road 20 as her access point. She is opposed to the proposed development and submitted one letter on her own behalf, as well as the letters from Mr. Ernst and Ms. Boyer who are also in opposition to the appeal.

FINDINGS OF FACT

[31] The lands are located at 50511 Range Road 20, legally described as Plan 0720408, Block 1, Lot.

[32] The Lands are located within the ANC-Agriculture/Nature Conservation District.

[33] The proposed development is not a Cabin.

[34] The Use of the proposed development is an Accommodation and Convention Services Use.

[35] The use of the proposed development is not a permitted or discretionary use in the ANC District.

[36] The Appellant is an affected person.

[37] Mr. Mariage, Ms. Babcock, Ms. Henning and Ms. Killick are affected persons.

REASONS

Jurisdiction

[38] 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 Appellant, those speaking in favour of the appeal and those speaking in opposition of the appeal.

- 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

[39] 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.

[40] As the person whose development permit is under appeal, the Appellant is affected by this appeal.

[41] In relation to Mr. Mariage, Ms. Babcock, Ms. Henning and Ms. Killick, all of them live in the same subdivision near the Lands. Mr. Mariage is adjacent to the Lands. Due to their proximity, the Board finds them all affected by the proposed development.

Additional Letters (Exhibits 8, 9 and 10)

[42] The Board received three letters into evidence at the start of the hearing, on the basis that it would assess whether any of the information contained in those letters was irrelevant to the appeal, and then not take into account that evidence. In that regard, the Board has made the following determinations:

- a. The Board notes that Mr. Ernst is a resident in the subdivision and is, therefore, affected by the proposed development. Therefore, the Board can accept his evidence due to his status as an affected person. Mr. Ernst's letter (Exhibit 10) objects to the development of a "recreational campground" and provides comments about the impact of a recreational campground on the value of a property. Since Mr. Ernst's comments are in relation to a recreational campground, which was not the use proposed by Mr. Goudriaan, nor is it the use as characterized by the Development Authority, the Board notes Mr. Ernst's concerns, but places little, if any, weight upon the submissions.
- b. The Board has found Ms. Killick to be affected by the proposed development. Therefore, the Board can accept her evidence due to her status as an affected person. In examining the letter she provided (Exhibit 8), the Board notes that she supports the decision of the Development Authority. She comments that the road is not designed for commercial or industrial use and requests that the trailer located on the Lands be removed. The Board notes Ms. Killick's comments in relation to the road. However, the question is whether the appeal should be granted, and the Board notes that the comment about the road does not draw a specific comment on the proposed development. For that reason, the Board will put little weight on that statement. In relation to her request concerning the removal of the trailers, the Board has placed no weight on this comment. The issue of a stop order is not before this Board and the Board has not taken into account any statements (made by Ms. Killick or otherwise) in relation to a previous stop order as that is not relevant to the question before this Board.

- c. The Board notes that Ms. Boyer is a resident in the subdivision and is, therefore, affected by the proposed development. Therefore, the Board can accept her evidence as an affected person. The Board notes that her letter (Exhibit 9) sets out Ms. Boyer's support for the decision of the Development Authority, and claims there would be a negative impact from the recreational cabin, but does not specify what the negative impact would be. She also requests the removal of the trailers. As set out above, in relation to her request concerning the removal of the trailers, the Board has placed no weight on this comment. The issue of the removal of the trailers is not before this Board and the Board has not taken into account this statement as that is not relevant to the question before this Board.

Issues to be decided

[43] 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 Development Authority has questioned the nature of the use set out in the development permit application. The Appellant has stated that he did not properly name the nature of the use.

[44] 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 the use may be neither permitted nor discretionary in the ANC District. If the Board determines that the use is a use which is neither permitted nor discretionary in the ANC 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.

[45] 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 ANC 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 4.3 of the LUB?

[46] 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.

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

[47] The Development Authority refused the development permit. The Development Authority characterized the use as Accommodation and Convention Services due to the common interior hallway, with a shred kitchenette and laundry room, which is similar to that of a dorm style development. Since this use is neither permitted nor discretionary in the ANC District, the Development Authority refused the application.

ACCOMMODATION AND CONVENTION SERVICES means development to serve the traveling public primarily used for the provision of rooms or suites for temporary sleeping accommodation such as hotels (rooms have access from a common interior corridor and are not equipped with individual kitchen facilities), motels (temporary lodging or kitchenette where each room or suite has its own exterior access), country inns (more rooms than bed and breakfast); or, development which provides permanent facilities for meetings, seminars, conventions, product and trade fairs and other exhibitions with or without eating and drinking facilities. This use class does not include Boarding Houses.

[48] The Development Authority considered the use of Cottage, but since the development area exceeded the maximum allowable square footage, this use was not applicable.

COTTAGES means a development of a Parcel consisting of a group of recreational cottages, cabins and yurts providing self-contained living quarters for the purpose of temporary accommodation, but does not include summer homes. The maximum square footage for a cottage, cabin or yurts shall not exceed 70.0 m².

[49] Further, Cottage is typical of Tourist Campground or Enroute and the information submitted did not support these two uses.

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.

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.

[50] The Appellant advised that he had misnamed the nature of the use, and that he wants to have a residence on the Lands.

[51] The Board must consider what the evidence concerning the nature of the use, and whether the proposed development falls within a permitted or discretionary use under the ANC District.

[52] The Board first notes that it agrees with the Development Authority's analysis of "Cottage". The proposed development cannot be a Cottage because regardless of whichever

dimension is selected (and there are 3 to choose from), the square footage exceeds that of Cottage. As a result, the proposed development cannot be a Cottage.

[53] The Development Authority found the proposed use to be an Accommodation and Convention Services Use because of the shared corridor and the lack of the amenities that are typically found in a Dwelling, such as a shared kitchen and living space. The Appellant argued that he is a single person and would be living in this location by himself. He suggested that he would use the hallway as his dining space and shared living area.

[54] The Board notes that Dwelling, Single Detached is a permitted use in the ANC. If the Board finds, as a fact, that the proposed development is a Dwelling, Single Detached, then the development permit may be issued.

[55] In examining the definition of Dwelling, Single Detached, the Board notes that it must be a residential building containing one dwelling.

DWELLING, SINGLE DETACHED means a Development consisting of a residential Building containing one Dwelling with or without an attached garage and/or attached carport and is separated from any other Dwelling. Modular Homes, Double wide Manufactured homes and a dwelling constructed onsite are all considered Single Detached Dwellings. Where a Secondary Suite is a Permitted or Discretionary Use within a District, a Dwelling, Single Detached may also contain a Secondary Suite.

[56] Dwelling is defined as follows:

DWELLING OR DWELLING UNIT means a building or a portion of a building containing one or more habitable rooms that constitute a self-contained living accommodation unit having sleeping, cooking and toilet facilities and intended as a permanent residence.

[57] The Board has examined these definitions in light of the evidence presented to it. The Appellant initially stated that he was going to be constructing the development in accordance with the plans set out at page 49 and confirmed that there were 3 dryers in the room labelled "Laundry Room". When pressed by the Board about why a Dwelling, Single Detached needed three dryers, he advised that he would likely be removing one or more of the dryers. He then stated that he might move the location of the kitchenette to the location currently stated to be "Laundry Room". In response to the concerns raised by the Development Authority about the lack of a shared space (which the Development Authority noted was a significant factor in its assessment of the use), he stated that as a single person, he would use the hallway as the shared space.

[58] The Board notes that the characterization of the use is not dependent on the Appellant's ownership of the Lands. The Appellant could sell the Lands and the next owner may not be a single person. The characterization of the use, therefore, must be assessed regardless of who is the owner and whether they are a sole owner or not.

[59] The Board has concerns about the evidence that it has received. The first concern the Board has is in relation to the size of the proposed development. The development permit

application (page 42) states that the structure is 60 feet x 12 feet for a total area of 720 ft². But at page 44, the area is shown to be 63 feet x. 35 feet for a total area of 2,205 ft². At page 49, the dimensions are 60 feet x 18 ft for a total area of 1,080 ft². The number of possible dimensions leads the Board to question the actual size and use.

[60] The Board noted that the Appellant offered at least two options about what was going to be built inside the building. The plans, as submitted, show three dryers and what appear to be 2 washers. The Board finds that the number of washers and dryers is not consistent with a Dwelling, Single Detached and the Appellant offered no explanation of why they would be included in the plans. The Board also has difficulty accepting that the hallway would be used as a shared space (such as for a dining area or living space). The Appellant advised that the existing manufactured unit is 60 feet x 12 feet, and the hallway is to be added. If the Appellant wished to develop a Dwelling, Single Detached, he could have made the "hallway" wider, particularly since it is to be located in the middle of the Lands, where there is ample space to make a wider space which could be used as shared space. A subsequent user is unlikely to use a six foot wide hallway (see the dimensions at page 49) as a dining space or living space.

[61] Due to the conflicting evidence, the Board has focussed on what is set out at page 49: a 60 feet x 18 foot structure with a hallway of 6 feet wide and bedrooms of approximately 12 feet wide. The Board does not accept that a structure as set out on page 49 is reflective of a Dwelling, Single Detached. The Board notes that while it is not strictly speaking necessary for a Dwelling to have a dining area or shared space, these are extremely common. In the absence of such an area, particularly when combined with the changing version of what would actually be constructed within the building, the Board does not accept that the proposed development represents a Dwelling, Single Detached.

[62] In light of the hallway, and the shared kitchenette and shared laundry space, the Board finds that the proposed development is Accommodation and Convention Services. Since that use is neither permitted nor discretionary in the ANC District, the Board cannot grant the development permit.

Statutory Plans

[63] 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").

[64] Issued this 16th day of October 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

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1. Rachelle Trovato, Development Authority
 2. Laine Goudriaan, Appellant
 3. Andy Mariage
 4. Martine Babcock
 5. Amy Henning
 6. Glenna Killick

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

Exhibit	Description	Date	Pages
1.	Agenda Coversheet	October 1, 2020	1
2.	Table of Contents	October 1, 2020	2
3.	Notice of Appeal – Laine Goudriaan	September 16, 2020	10
4.	Submission of the Development Authority	September 29, 2020	11-60
5.	Submission in Opposition of the Appeal – Amy & Douglas Vincent	September 25, 2020	61
6.	Submission in Opposition of the Appeal – Miranda & Andy Mariage	September 28, 2020	62-63
7.	Submission in Opposition of the Appeal – Angela Doerksen	September 28, 2020	64
8.	Letter from Glenna Killick	October 5, 2020	
9.	Letter from Leslie Boyer	October 5, 2020	
10.	Letter from Edward Ernst	October 5, 2020	