

**SUBBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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HEARING DATE: February 8, 2021
FILE NO.: 20-D-408

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-408) for Alex (Ali) Yesilkaya for a scaffold and deck business with new storage shop, located at #13, 51511 Range Road 264, legally described as Block 13, Plan, 4688 RS Hilltop Acres, SW-33-51-26-W4. The Lands are located within the Hilltop Acres subdivision and are a corner lot bounded by internal subdivision roads to the north (Hilltop Dr) and to the east (Birch St) (the "Lands").

[2] On January 12, 2021, Kathy DaSilva, Bruce and Karen Bailie and William and Betty McCullough appealed the approval.

[3] The Subdivision and Development Appeal Board (the "Board") heard the appeal on February 8, 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 hearing on February 8, 2021, 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.

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.

[8] At the beginning of the hearing, the Clerk advised that the Appellant, Ms. DaSilva, had indicated that she would not be able to dial into the hearing until approximately 10:30 a.m., but that the other Appellants, Bruce and Karen Bailie and William and Betty McCullough, could speak on her behalf. The Board confirmed with Bruce and Karen Bailie and Betty McCullough that they were prepared to speak on Ms. DaSilva's behalf. Ms. DaSilva dialed into the hearing at approximately 10:30 am and provided her oral submissions to the Board and answered Board questions. There were no objections raised to this process.

[9] There were no other preliminary matters raised at the beginning of the hearing.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[10] The Board grants the appeal and revokes Development Permit 20-D-408.

SUMMARY OF HEARING

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

Development Authority

[12] The Lands are located at 13-51511 Range Road 264, legally described as Plan 4688 RS, Block 13. The Lands are located within the Hilltop Acres subdivision and are a corner lot bounded by internal subdivision roads to the north (Hilltop Dr) and to the east (Birch St). The Lands are south of Enoch and west of Highway 60.

[13] The Lands are within the Country Residential and Prime Recreation/Tourism Areas as identified in the Municipal Development Plan Bylaw No. 2017-14 (the "MDP") Development Concept.

[14] The Lands are within the Woodbend-Graminia Area Structure Plan.

[15] The Lands are not subject to an Environmentally Significant Area (ESA) as defined in the Environment Conservation Master Plan (ECMP).

[16] The Lands are located within the CR - Country Residential District set out in section 5.3 of the County's Land Use Bylaw 2017-18 (the "LUB").

[17] The Development Authority reviewed the application and deemed it complete on December 11, 2020. The Development Authority issued an approval on the basis that it complied with the LUB. The use which is the subject of the Development Permit (the "Development") is a scaffold and deck business with a new storage shop. The Applicant requested a variance so that the maximum cumulative coverage of the site could be increased from 376 m² to 478 m². The

Development Authority approved the Development Permit on December 22, 2020. However, the Development Authority subsequently learned information on January 27, 2021 and February 1, 2021 that was inconsistent with the information provided by the Applicant. Based on this subsequent information, it is the position of the Development Authority that the Development does not comply with LUB.

[18] The Development Authority reviewed the application, and initially determined the Use Class to be Home-Based Business Level 2. The Development included the construction of an Accessory Building. Home-Based Business Level 2 is a Discretionary Use on the Lands as outlined in Section 5.3 of the LUB - CR – Country Residential District.

[19] Home-Based Business Level 2 is defined in Section 20.3. Use class definitions may not be varied by the Development Authority.

HOME-BASED BUSINESS LEVEL 2 means an occupation, trade, or craft for gain or support, and is secondary to the principal residential use. It may include some client visits and the parking of one commercial vehicle and may not include on-site employees except the resident and the resident's family who permanently reside in the dwelling. Typical secondary uses may include massage therapy, spa/esthetics services, dog grooming, landscaping/snow removal, dressmaking, hairdressing, home crafts and handicrafts, picture framing, delivery services, mobile food vendors or caterers, individual instruction to students, off-site mobile repairs and installation, janitorial services, mobile entertainment services and the carrying out of minor household appliance repair and automotive repair (does not include autobody repair).

[20] Section 12.8 identifies the regulations the Development Authority must consider when evaluating a proposed Home-Based Business Level 2.

12.8 Home Based Business

2. The following provisions shall apply to all Home-Based Business Level 2:
 - a) no outside storage of goods, materials, commodities or finished products shall be permitted;
 - b) no variation from the external appearance and residential character of land or buildings shall be permitted;
 - c) the use shall not generate excessive or unacceptable increases in traffic within the neighbourhood or immediate area;
 - d) the display or placement of signage on the premises of a Home-Based Business Level 2 shall be in accordance with Subsection 15.3;
 - e) the Home-Based Business Level 2 use shall not generate noise, smoke, steam, odour, dust, fumes, exhaust, vibration, heat, glare or refuse matter considered offensive or excessive by the Development Authority;
 - f) at all times the privacy of the adjacent residential dwellings shall be preserved

and the Home-Based Business shall not unduly offend neighbouring or adjacent residents by way of excessive lighting, late calling of clients of an unreasonable number, traffic congestion, or excessive on-street or off-street parking, etc.;

- g) the parking of one (1) commercial vehicle with one (1) accessory trailer such as dual axle gravel truck with pup, trailer carrying a small backhoe, bobcat, or similar, tractor unit only (no trailer), or a three (3) ton truck or like type vehicle may only be allowed by the Development Authority on a discretionary basis; and
- h) *only the resident and the resident's family who permanently reside in the residential dwelling on the subject Parcel may be permitted as employees. (emphasis added)*

[21] Home-Based Business Level 3 is more intensive and cannot be located in a multi-parcel subdivision. The Lands are located in a multi-parcel subdivision, so a Home-Based Business Level 3 cannot be located on the Lands.

HOME-BASED BUSINESS LEVEL 3 means trade or craft for gain or support and is secondary to the principal residential use. A Home-Based Business Level 3 includes all home-based businesses not considered Home Based Businesses, Level 1 or Level 2. It must include the resident who permanently resides in the dwelling and may include up to four (4) employees who do not reside on the property. Typical secondary uses may include contractor services, parking of commercial vehicles in excess of Home-Based Business Level 2, automotive and autobody repair and on-site fabrication. This use class does not include more intensive Industrial type of uses that present exterior impacts such as noise, smoke, steam, odour, dust, fumes, exhaust, vibration, heat, glare, refuse matter, and storage of hazard or combustible materials which should be located in an industrial district.

[22] The Applicant submitted the following to the Development Authority in support of the Development Permit Application:

1. Site Plan
2. Floor Plan of the proposed shop (open space).
3. Elevation drawings of the proposed shop.

[23] The application received by the Development Authority indicated there were no employees other than the resident and the resident's family who permanently reside in the dwelling. The application was received and deemed complete on December 11, 2020 and was issued approved on December 22, 2020.

[24] In approving the Development Permit the Development Authority varied the maximum cumulative floor area for Accessory buildings on site, from 375 m² to 478 m².

[25] The key points on the December 11, 2020 application form (see page 67/87) were that there were no employees associated with the business, and the application revealed that the Applicant resided in Edmonton. The location of the Applicant was overlooked by the Development Authority.

[26] Information provided to the County on January 27, 2021 and February 1, 2021 contained facts that do not support the Home-Based Business Level 2 determination and render the Development non-compliant under LUB. The information provided by the Applicant on January 27, 2021 indicated:

- a. the Applicant does not reside on the subject parcel,
- b. the Development has three employees, and
- c. one of the employees is not a resident on the subject parcel.

[27] The information received following the approval caused the Development Authority to reassess the Development Permit. Feedback from residents caused the Development Authority to engage with Enforcement services and additional information was obtained.

[28] Information was provided to the County on February 1, 2021 by the Applicant's agent which indicates:

- a. there are no employees associated with the proposed Home-Based Business Level 2 (see page 22/87 -the initial development permit application, see also page 34/87);
- b. the Applicant resides on the subject parcel. However, see page 21/87 and page 27/87 - the certificate of title showing an Edmonton address for the Applicant. See also pages 30-32/87, showing information provided by the Applicant to Enforcement Services regarding the Applicant's address. See also pages 33-36/87 (Exhibit C) for the information provided to the County by the Applicant's agent on February 1, 2021.

[29] Section 16.14.11 of the LUB identifies the regulations the Development Authority must consider when cancelling a development permit following approval. Material facts that were not disclosed in the application for Development Permit 20-D-408 and render the Development non-compliant with the LUB have subsequently been provided by the Applicant and the Applicant's agent.

16.14.11. The Development Authority may cancel a development permit following its approval if:

- a) any person undertakes development, or causes or allows any development to take place on a Parcel that is contrary to the development permit;
- b) the application for the development permit contained a material misrepresentation;
- c) material facts were not disclosed during the application for development permit;
- d) the development permit was issued as a result of a material error; or
- e) the landowner requests, by way of written notice to the Development Authority, the cancellation of the development permit.

[30] The Development Authority may cancel the Development Permit if any one of the 5 items in section 16.14.11 are met. Here, Development Authority deemed 4 of the 5 items were met. Contrary to the Development Permit, the Development listed in the application was not in line with the discussion the Applicant had with Enforcement (Section 16.14.11.a). There was a material misrepresentation. There was an inconsistency of information received and facts were not disclosed and facts in the initial application were not the full version of facts received. (Section 16.14.11.b and Section 16.14.11.c). Finally, there was a material error. There was an oversight on identifying the Applicant's place of residence based on the title (Section 16.14.11.d)

[31] The Development Authority stated that the intended development on the Lands does not meet the intent of the regulations and definitions for Home-Based Business Level 2. The following points were considered in reaching this opinion:

- a. Proposed Land Use, based on initial information:
 - i. The Development was for a scaffold and deck business, including the construction of a new storage shop. The application indicated there were no employees other than the resident and the resident's family who permanently reside in the dwelling.
 - ii. The Development Authority deemed the proposed shop to be an Accessory Building to the principal residence and issued a variance to the maximum cumulative floor area for Accessory buildings on site, from 375 m² to 478 m².
 - iii. Based on this information the Development Authority deemed the land use to be Home-Based Business Level 2.
- b. Non-conforming determination based on subsequent information:
 - i. As standard practice, the Development Authority does not engage with Parkland County Enforcement Services in the review of a development permit application. After issuing the Development Permit, inquiries from neighbouring residents led the Development Authority to open communications with Enforcement Services.
 - ii. On January 27, 2021 the Applicant provided information to Enforcement Services indicating that the Applicant does not reside on the Lands and that one of three employees in the proposed business are also not residents on the Lands.
 - iii. On February 1, 2021, the Applicant's agent provided contradicting information to the Development Authority indicating there are no employees associated with Development and the Applicant resides on the subject parcel.
 - iv. The Development does not satisfy the regulations for Home-Based Business Level 2 because it includes employees that are not residents on the Lands.

[32] The Development Authority concluded that the Development does not meet the regulations and definitions relevant to a Home-Based Business Level 2 and requested that the SDAB uphold the appeal and cancel Development Permit 20-D-408.

[33] In response to Board questions, the Development Authority advised:

- a. The decision was based on the plans and there had been no additional plans submitted or approved for additions to the residence.

- b. A permit is required for additions to the residence. The Development Authority had not received a development permit application for this work. The only development permit application was for the construction of the shop.
- c. There were only two possible uses for what is occurring on the Lands, either a Home-Based Business 2 or a Home-Based Business 3. If it is a use other than those two, it must be in an area districted for commercial or industrial. The Development Authority did not confirm that it was a Home-Based Business 3. Rather, he stated that they have deemed it to not be a Home-Based Business 2. The recommendation for cancellation is based upon the determination that the Development does not meet the original parameters applied for.
- d. Contractors who bring a cube van back to the Lands would be recognized by the municipality as employees for the purposes of the LUB.

Appellants – Bruce and Karen Bailie

[34] Bruce and Karen Bailie referred to their written submissions. Their concerns include the unsightliness of the Lands, the noise, the amount of traffic, the burning of garbage and work materials left on the Lands. They noted that the Applicant is building onto the residence, but not in the locations where the plans show the location of the new shop.

[35] In response to Board questions, they advised:

- a. The noise that they referenced in the written materials was the backup beepers of construction vehicles. They can hear this in the morning.
- b. They saw 1 or 2 cube vans on the site daily with employees.
- c. They live directly across the street to the Lands.
- d. The garbage and noise started after the Applicant took possession of the Lands.

[36] In their closing summary, they stated that Mr. Yesilkaya has owned the Lands there since 2012 and has been operating his business with the cube van since that time. No one appears to live on the Lands. They see that no one appears to be living on the Lands. They see employees coming and going regularly enough to think that there are two vans. The garbage and noise come from the business operations.

Appellants – Betty and William McCullough

[37] Ms. McCullough spoke on behalf of William and Betty McCullough. These Appellants live directly north of the Bailies and kitty corner from the Lands. She confirmed the statements that were included in her written submissions. They had concerns with cube vans driving in and out of the property even though only 1 commercial vehicle is to be allowed. She advised that the

Lands have been in a state of disrepair with industrial materials and scaffolding and building equipment spiled all over the yard.

[38] There has been burning of unknown items causing offensive odours and black smoke. The Fire Department has been called to address this.

[39] She stated that not all of people driving in and out of the Lands live there. In her view there was a commercial or industrial business operating from the Lands, which is not appropriate for a residential subdivision. The traffic is causing potholes on the road.

[40] She questioned whether a permit is required to build onto the primary residence.

[41] In her closing summary, Ms. McCullough stated that she has had emails from the County as far back as April 25, 2012 dealing with this situation. She also confirmed that there has been no change to the exterior of the house since the house went up for sale in 2012.

[42] She stated that one person cannot lift all of the scaffolding, nor can one person pack it into a van. Several people are needed to lift the scaffolding and the materials. There must be employees coming and going. She personally has seen two vans on the Lands. She commented that there are inconsistencies in the Applicant's materials. Page 67/87 indicates that mail goes to the Lands. However, Mr. Levesque advised that mail goes to the Edmonton address.

Appellant – Kathy DaSilva

[43] Ms. DaSilva confirmed her written submissions. She lives next to the Bailies. The Appellants live in the 3 properties immediately in front of the Lands. She indicated that for a number of years, she has been concerned that the business has been operating at Lands, but the Development Permit has only recently been applied for. In her view, there has been business operations at the Lands for many years.

[44] There has been lots of traffic at the Lands. However, the traffic has subsided recently due to Covid. This is a residential subdivision which is not a place for trucks to be in and out. There are children who play on the roads and horse traffic. She has picked up lots of garbage strewn across the cul-de-sac. The situation on the Lands has been stressful and has caused her to want to leave the area. She wants peace and quiet. In her view the business should be operating out of Acheson. She recognizes that the rent in Acheson is higher, but the Applicant should not be able to get away with running a construction company out of a country residential site to save taxes.

[45] In response to Board questions, she stated:

- a. The sensitive waterfowl nesting area has not been earmarked by Alberta Wildlife. However, it is a body of water which should not be contaminated with garbage and Styrofoam. Whether officially designated or not, it is a wetland and the number of birds nesting in the area is significant.
- b. She believes there is no one living in the home because the majority of the days of the week there are no lights on in the house. There used to be a vehicle parked on

- the Lands. However, the vehicle never left and was covered with snow. She stated that the neighbours have monitored the house and have not seen evidence of people living there.
- c. She is not certain whether there is a fire pit or something else burning on the Lands. The Fire Department has been called when the fire appears to be out of control. The neighbours are concerned because there had been a fire in the subdivision about 10 years ago which burned a house. The area is very treed, so all of the neighbours are concerned about fire.
 - d. In relation to a question about what was stored on the Lands, she stated that there has been wood and other items. It is more than scaffolding. There are large pieces of wood not used in home renovations. From her perspective, it does not seem logical based on the types of lumber arriving at the Lands and stored there that it is house renovations being undertaken.
 - e. There is Styrofoam all over the yard, and she has been picking it up. The fence being constructed by the Applicant will stop some of it blowing, but there is lots of it, perhaps due to the unpacking of construction materials. She has found architectural designs related to another property, not related to the Lands.

Those Speaking in Opposition to the Appeal

Applicant – Parnell Levesque and Alex (Ali) Yesilkaya

[46] Mr. Levesque spoke for himself and Mr. Yesilkaya. Mr. Yesilkaya has owned the land since 2012. Mr. Yesilkaya has only been contacted officially by Enforcement 2 times: last October in relation to cutting the grass, and December in relation to the issue of the scaffolding.

[47] Once Mr. Yesilkaya received information from Enforcement about what was required, he proceeded to submit his application. There was some confusion regarding construction taking place on the Lands. Mr. Yesilkaya was doing aesthetic updates to his house. He made changes to the kitchen and during the course of that construction, he found that more work was required. The renovations to the house are a much larger project than Mr. Yesilkaya anticipated. Drawings have been submitted and they will continue with the application.

[48] The shop is on the Development Permit which is the subject of the appeal.

[49] Mr. Yesilkaya understands that material was burned on the Lands. He had understood that no permit was required to burn. However, if he does require a permit to burn, he will not permit burning of materials on-site.

[50] Mr. Levesque stated that Mr. Yesilkaya is attempting to abide by the laws of the County by putting up a building so that the materials currently located on the Lands will be housed and out of view. The majority of the work will be outside of view once the shop is constructed. The noise will be further reduced or eliminated if the work is done while the doors of the shop are closed.

[51] Mr. Yesilkaya's business operates only 1 van. It is not a construction business. The business is to store scaffolding when it is not needed. The materials can be off-site for a lengthy period of time when they are being used at a job site. Mr. Yesilkaya must make trips to bring the material and equipment to the job site and the van is used for that purpose.

[52] The fence is being constructed so that the neighbours are not viewing the Lands. To be a better neighbour, Mr. Yesilkaya is preparing to move the building away from the property line so that there will be less noise for the neighbours.

[53] There are two people at the house who are doing the residential modifications which started as minor in nature. The people living there are not part of the scaffolding business. They are there to do construction on the house.

[54] The moment Mr. Yesilkaya understood that for a Home-Based Business 2 he could not have employees who were not family members, he is now working to have a family member be part of the business as well as to reside at the Lands.

[55] In response to Board questions, Mr. Levesque stated:

- a. The nature of Mr. Yesilkaya's business is that Mr. Yesilkaya spends a significant amount of time out of Town working. When he is out of Town, he does not live at the residence. When he is in Town, he does make use of the property.
- b. He has been at the residence since he bought it.
- c. In response to a question about why Mr. Yesilkaya listed an Edmonton address for his residence on the Development Permit application, Mr. Levesque stated that Mr. Yesilkaya does have mail forwarded to that Edmonton address. Mr. Yesilkaya does his accounting at that address so some of the mail goes to that address. The Board asked about the relationship between the residential address in Edmonton and Mr. Yesilkaya's accountant. Mr. Levesque advised that the individual living at the Edmonton address does the accounting so the mail would be sent to that address. The accountant is not a firm but an individual.
- d. The scaffolding is used for the business. The Applicant intends to store scaffolding equipment in the building. The scaffolding is used on construction sites.
- e. The Board asked if acrylic stucco coating is used at his job sites (see page 72/87 and 73/87). Mr. Levesque stated the photograph shows an empty pail that was probably used for purposes on the Lands.
- f. Mr. Levesque stated that Styrofoam is used for Mr. Yesilkaya's home renovations on the Lands and in the shop because Mr. Yesilkaya will be updating the exterior of the house.

- g. The Board asked where Mr. Yesilkaya's residence is (see page 32/87). Mr. Yesilkaya advised that, in response to questions from Enforcement, he gave the mailing address where someone looks after his papers. He is out of Town many times and that is the address when he registers. He told Enforcement that the mail goes to Edmonton and it does not go to Parkland because he is not there. He has tried to renovate the house. The people living in the house are two guys from Calgary who stay there temporarily to fix the house.
- h. Mr. Yesilkaya advised that he had told the two people living on the Lands not to burn items, but they did anyway. They are staying at the Lands temporarily and doing renovations.
- i. Mr. Yesilkaya advised that he has been renovating his house for two years. He denied that there is a business going on there, except the storage of the scaffolding.
- j. The Board asked who is driving the cube van. Mr. Levesque advised that it is Mr. Yesilkaya's cousin. Until Mr. Yesilkaya realized he needed to apply for a development permit, he was not aware of the conditions for a Home-Based Business Level 2 in relation to the use of a Lands. Mr. Yesilkaya was contacted officially in November or December 2020 and made an application to operate the business on his property. In future, it will be a family member living on the Lands.
- k. The Board asked how many vans Mr. Yesilkaya owned and how, if there was only one van and Mr. Yesilkaya is working out of Town, could there be any vans on the Lands. In response, Mr. Levesque advised that Mr. Yesilkaya is a supervisor and has a number of sub-trades. There is construction taking place, but these are other projects that Mr. Yesilkaya is working on. Mr. Yesilkaya is not a labourer on the projects; he is managing those projects.
- l. The Board asked who lives in the house, particularly when Mr. Yesilkaya is out of Town. Mr. Levesque stated that there are two people who are working at the house. There are a number of family members who travel to the Lands to check it, but no one else is officially living there.

[56] In closing comments, Mr. Levesque stated that it was unfortunate that the issues which were the subject of the hearing today arose. The first time that Mr. Yesilkaya was asked to conform to the County's LUB, he acted almost immediately and submitted his application. The first time that he heard that a permit was required is in November or December of last year. Had he known earlier; he would have acted quickly. Mr. Yesilkaya has an interest in complying with the requirement of having only family members working from the Lands, so that he can get his approval.

FINDINGS OF FACT

[57] The Lands are located at 13, 51511 Range Road 264 and legally described as Block 13 Plan 4688RS, Hilltop Acres, SW-33-51-26-W4.

[58] The Lands are located within the CR-Country Residential District of the LUB.

[59] The use of the Lands is not a Home-Based Business 2.

[60] The Development is not a permitted or discretionary use in the CR District.

[61] The Appellants are affected persons.

[62] The Applicant is an affected person.

[63] The Applicant does not reside on the Lands, nor do members of his family.

REASONS

Jurisdiction

[64] 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 the Development Authority, the Appellants and the Applicant.

- 687(3)** *In determining an appeal, the subdivision and development appeal board*
- (a) must act in accordance with any applicable ALSA regional plan;*
 - (a.1) must comply with 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

[65] 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, for completeness the Board will address this issue in its reasons.

[66] As the person whose Development Permit is under appeal, the Applicant is affected by this appeal.

[67] The Appellants all live across the road from the Lands. Due to their proximity to the Lands, the Board finds them all to be affected by the Development.

Issues to be decided

[68] The Board recognizes that section 687(3) of the MGA provides that the Board must determine the Development's compliance with a number of items, including its compliance with applicable statutory plans and the LUB. 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.

[69] The question of the characterization of the use is critical in this appeal. Depending upon which use the Development falls into may determine this appeal because the use may be neither permitted nor discretionary in the CR District. If the Board determines that the use is a use which is neither permitted nor discretionary in the CR 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.

What is the Use and is the Use listed in section 5.3 of the LUB?

[70] 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 based on:

- a. the merits of the Applicant's 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.

[71] The Applicant has applied for a Home-Based Business Level 2 which is defined as:

HOME-BASED BUSINESS LEVEL 2 means an occupation, trade, or craft for gain or support, and is secondary to the principal residential use. It may include some client visits and the parking of one commercial vehicle and may not include on-site employees except the resident and the resident's family who permanently reside in the dwelling. Typical secondary uses may include massage therapy, spa/esthetics services, dog grooming, landscaping/snow removal, dressmaking, hairdressing, home crafts and handicrafts, picture framing, delivery services, mobile food vendors or caterers, individual instruction to students, off-site mobile repairs and installation, janitorial

services, mobile entertainment services and the carrying out of minor household appliance repair and automotive repair (does not include autobody repair).

- [72] To be a Home-Based Business Level 2, the Development must meet the following criteria.
- a. It must be an occupation, a trade or craft for gain or support.
 - b. It must be secondary to the principal residential use.
 - c. There may be parking of only one commercial vehicle.
 - d. The only on-site employees have to be the resident and the resident's family who permanently reside in the dwelling.

Occupation, Trade or Craft for Gain or Support

[73] A Home-Based Business Level 2 must be an occupation, trade or craft for gain or support. No one at the hearing challenged this element of the Use. The evidence was that the Applicant was running a scaffolding business. Therefore, the Board finds that this component of the definition is met.

Secondary to The Principal Residential Use

[74] The Home-Based Business Level 2 must be secondary to the principal residential use.

[75] The Appellants stated that based on their observations, there was no-one living in the residence on the Lands. They stated that there are no lights on in the residence and that a vehicle has sat on the Lands but not moved.

[76] Mr. Yesilkaya and Mr. Levesque stated that Mr. Yesilkaya does live at the Lands, but has his mail addressed to the Edmonton address for accounting purposes. Mr. Yesilkaya and Mr. Levesque did not mention the name of the accountant.

[77] The Board notes that the Applicant's information is inconsistent. In speaking with the Enforcement Officers, Mr. Yesilkaya stated his address was the Edmonton address, which is the same address listed on the development permit application as his residence and which is the same address shown on the Certificate of Title for the Lands.

[78] Mr. Yesilkaya has confirmed that when he is away there are no family members living in the house on the lands. He stated that the two people living in the residence are contractors doing residential renovations on the house. When asked directly, he stated that he did not have family living in the house. He stated that he was out of town a significant amount of time. He stated that he went to the house, but he did not directly state that he lived in the house.

[79] The Board is not satisfied that there is a principal residential use of the Lands. In light of Mr. Yesilkaya's statements that he travels a significant amount of the time, and family members only travel to the site to check on it, there does not appear to be a residential component to the

Lands at all. The two contractors who are in the residence currently are only temporary. The Board heard evidence only about the business use of the Lands. Based on the lack of evidence in support of a principal residential use of the Lands, the Board finds that this element of the definition of Home-Based Business Level 2 is not established.

[80] As a result of this evidence and the Board's findings, the Board concludes that there is no principle residential use. Mr. Yesilkaya stated that he is often away from Town and that there are no family members living in the house. Rather it is two contractors from Calgary. Therefore, because there is no principle residential use, the business, which is operating on the lands, is not secondary to the principal residential use, but is in fact the primary use of the Lands. On this basis, the proposed development does not fall within the definition of Home-Based Business level 2.

Parking of Only One Commercial Vehicle.

[81] A Home-Based Business Level 2 allows for the parking of one commercial vehicle. The Board heard evidence from the Appellants that there are two vehicles on site. The Applicant indicated that the business had only 1 cube van. The Board prefers their evidence to that of the Applicant. The Appellants were straightforward and directly answered questions. The Applicant did not respond directly to Board questions about how he could be out of town on business, but the van remained in Edmonton. He failed to provide specifics about the vehicles. For that reason, the Board prefers the evidence of the appellants. The Board finds that there has been more than one vehicle on the Lands.

Only Resident and Family as On-Site Employees

[82] The final element for a Home-Based Business Level 2 is that the only on-site employees permitted must be the resident and the resident's family who permanently reside in the dwelling.

[83] The Board has set out in paragraphs [74] to [80] the evidence in relation to the residents in the dwelling. The uncontroverted evidence provided by the Applicant is that the only people living in the residence are two contractors from Calgary and that Mr. Yesilkaya does not have family living in the residence.

[84] Based upon the Applicant's statement, the Board finds that there is no family living (permanently or otherwise) in the residence. As set out above, the Board has concluded that Mr. Yesilkaya does not live at the Lands. The Board has reviewed the insurance statement and the bank statement, which the Applicant argues shows proof that Mr. Yesilkaya lives at the Lands. However, the Board notes that the bank statement shows an opening balance dated December 17, 2020, which is after the date of the development permit application. Mr. Yesilkaya did not provide any evidence that this account had been opened before the date of the application.

[85] The insurance statement (page 35/87) shows the insurance period from January 29, 2021 to September 21, 2021. This document is also for a period after the date of the development permit application, and in fact after the date that the appeal had been filed. These documents are equivocal, and the dates on the documents leads the Board to question whether these documents were created after the Applicant learned of the requirement to establish residence on

the Lands. The Certificate of Title shows the registration date of August 28, 2018, but there was no evidence before the Board supporting the Applicant's residency on the Lands before December 2020.

[86] The Board accepts the evidence of Ms. McCullough that the nature of this scaffolding is such that one person cannot lift the materials themselves. Based upon this, the Board cannot conclude there is only one person who would be on the Lands at anyone time.

[87] The Board prefers the evidence of the Appellants. There were inconsistencies in the Applicant's evidence which the Board did not feel was properly explained. The Board finds as a fact that Mr. Yesilkaya does not live on the Lands, nor does he have family living on the Lands.

[88] For the above reasons, the Board finds that the Development is not a Home-Based Business Level 2.

What is the Use?

[89] The Board asked the Development Authority what the use the Development might be if it was not a Home-Based Business Level 2. The Development Authority did not provide a specific use, merely stating that if the use was not a Home-Based Business Level 2 or Level 3, it would be some form of industrial or commercial use.

[90] The Board has concluded the Development is not a Home-Based Business 2. The Board did not hear sufficient submissions to make a determination of the use. The Board notes a Home-Based Business Level 3 also requires a resident who permanently resides in the dwelling. Given the Board's finding that the Applicant does not live in the residence on the Lands, the Board finds that the Development cannot be a Home-Based Business Level 3.

[91] Having found that the Development is not a Home-Based Business Level 2, the Board cannot approve the Development since commercial and industrial uses are not permitted in the CR District and the Board cannot vary use.

Is the Development compatible with neighbouring uses?

[92] Having found that the Development is not a Home-Based Business Level 2 use, which is discretionary within the CR District, and with no evidence as to the nature of the use, the Board need not go further. However, for completeness, the Board provides below its assessment of the compatibility of the Development with neighbouring uses, assuming that the Development is a Home-Based Business Level 2. The Board notes that it has expressly found the Development not to be a Home- Based Business Level 2.

[93] Had the Board found the Development to be a Home-Based Business Level 2, that use is a discretionary use in the CR District. For discretionary uses, the Board must assess the compatibility of the use applied for 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.

[94] The neighbours have raised the following concerns:

- a. Traffic;
- b. Noise; and
- c. Garbage.

Traffic

[95] The evidence of the Appellants was that there was a significant amount of traffic generated from the Development which has already been operating on the Lands. There is pedestrian as well as horse traffic on the roads in the area. The Applicant stated that there was only one cube van. However, based on the evidence provided, the Board finds that the level of traffic generated by the Development is more than is customary for the residential neighbourhood in which the Lands are located. As a result, the Board finds that due to concerns in relation to traffic, this Development is not compatible with the neighbouring uses.

Noise

[96] The Appellants stated that the sound from the backup beepers of the vehicle disturbed their sleep and caused a disturbance.

[97] The Applicant did not provide any contradictory evidence, The Applicant did not indicate any steps that he would take to address the noise concerns raised by the Appellants or to limit or minimize the disruption caused by the back up beepers.

[98] Based upon the evidence of a disturbance to the neighbours based upon the noise, the Board finds that the Development is incompatible with the neighbouring country residential uses.

Garbage

[99] The uncontroverted evidence provided by the Appellants was that the Development has been operating on the Lands since 2012. The Appellants all stated that the Development generates a significant amount of garbage, both Styrofoam as well as other garbage and that some of this garbage has gotten into the wetlands near the Lands.

[100] The Applicant provided no evidence in response to this, except indicate that he was constructing a fence to prevent the view by the Appellants of the Lands. There was no evidence about any steps to limit the garbage from the Lands.

[101] The Board finds as a fact that the Development has generated a significant amount of garbage for the neighbourhood and finds that some of the garbage has been located in the nearby wetlands. As a result, the Board concludes that the garbage generated by the Development result in the Development being incompatible with the neighbouring uses.

Statutory Plans

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

[103] Issued this 18th day of February 2021 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
•	Thomas Lippiatt, Development Planner
•	Bruce & Karen Bailie, Appellants
•	William & Betty McCullough, Appellants
•	Kathy DaSilva, Appellant
•	Parnell Levesque, Agent, Alex (Ali) Yesilkaya, Applicant

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

Exhibit	Description	Date	Pages
1.	Agenda Coversheet	February 4, 2021	1
2.	Table of Contents	February 4, 2021	2
3.	Notice of Appeal – Kathy DaSilva, Bruce & Karen Bailie, William & Betty McCullough	January 12, 2021	6-10
4.	Submission of the Development Authority	February 2, 2021	11-69
5.	Submission of the Appellant Kathy DaSilva, Bruce & Karen Bailie, William & Betty McCullough	January 20, 2021	70-80
6.	Submission in Support of the Appeal – Barry & Pat Delano	January 19, 2021	81
7.	Submission of the Applicant – Alex (Ali) Yesilkaya, Agent: Parnell Levesque, Buildtech	February 2, 2021	82-87