

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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HEARING DATE: January 11 and February 22,
2021
FILE NO.: 20-D-273

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority of Parkland County (the "Development Authority") approved a development permit for Horticultural Use (greenhouse to provide annuals, perennials, vegetables starters, fresh vegetables and honey) for Nadine Lapointe (the "Applicant") located at SE-3-53-2-W5, municipally described as 53012 Range Road 22 (the "Lands").

[2] On November 30, 2020, Percy and Shirley Schepp appealed the development permit. On December 2, 2020, Adam and Beverly Fisher appealed the development permit.

[3] The Subdivision and Development Appeal Board (the "Board") heard the appeal on January 11, 2021 and February 22, 2021 via teleconference in accordance with the *Meeting Procedures (COVID-19 Suppression) Regulation*, AR 50/2020. At the end of the hearing on January 11, 2021, the Board asked the Applicant to provide the revised plan for the site, which she indicated she was prepared to provide, but required time to provide it. The Board adjourned the hearing in order to receive the information. The Board received the Applicant's plan as well as other information from the Applicant. The Board also received further submissions from the Appellants, the Fishers and the Schepp's. Having received new materials, the Board decided to reconvene the hearing. The hearing continued on February 22, 2021.

PRELIMINARY MATTERS

A. Board Members

[4] At the outset of the appeal on both dates, 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.

[5] At the beginning of the hearing on February 22, 2021, Board Member Philpott advised that he had received a telephone call from the Applicant between the two hearing dates and therefore he was going to recuse himself from the remainder of the hearing. The Board Chair

accepted Member Philpott's recusal. The Board Chair confirmed that Board Member Philpott would not participate in the remainder of the hearing and would not participate in the deliberations arising from the hearing or in the Board's decision. The Board Chair confirmed with the moderator that Board Member Philpott had left the virtual meeting.

[6] Also, at the beginning of the hearing on February 22, 2021, the Board was advised that Board Member Morin, who had participated in the hearing on January 11, 2021 could not attend due to personal reasons. The Board Chair confirmed that Board Member Morin would not participate in the remainder of the hearing and would not participate in the deliberations arising from the hearing or in the Board's decision.

[7] The Chair confirmed that the Board continued to have quorum and that the appeal hearing would proceed on February 22, 2021.

B. Exhibits

[8] At the beginning of the hearing on January 11, 2021, the Board confirmed that everyone in attendance at the meeting had received the agenda package that was circulated via email prior to the hearing. At the continuation of the hearing on February 22, 2021, the Board confirmed that everyone in attendance at the meeting had received the additional materials that were distributed via email prior to the continuation of the hearing. There was no objection to any of the exhibits. The Board marked the exhibits as set out at the end of this decision.

C. Miscellaneous

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

[10] 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

[11] The Board upholds the appeals and denies the development permit for the reasons set out below.

SUMMARY OF HEARING

[12] 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

[13] The Lands are located at SE-3-53-2-W5, municipally described as 53012 Range Road 22 and are located within the AGG - Agricultural General District.

[14] The application for a proposed 9,000 ft² greenhouse on the Lands was received on August 31, 2020. The Development Authority determined that the proposed use met the definition of "Horticultural Use". The definition for Horticultural Use is the following:

Horticultural Use means a Commercial horticultural operation other than a Confined Feeding Operation that, due to the nature of the operation, requires smaller tracts of land. Without restricting the generality of the foregoing, this shall include horticultural uses like nurseries, greenhouses, market gardens, tree farms, and specialty crops (not including Cannabis).

[15] In making its decision, the Development Authority considered the purpose and intent of the AGG – Agricultural General District which is to protect and enhance agricultural production while accommodating a range of support and compatible land uses. The Development Authority considered section 12 of the County's Land Use Bylaw 2017-18 (the "LUB"), which does not specify any specific use regulations related to Horticultural Use developments. Therefore, the Development Authority examined regulations that could be applied to a large shop or an agricultural building on an agriculturally districted parcel.

[16] The Development Authority noted that the LUB does not provide a maximum building coverage for an accessory building in an agricultural district. Section 11.1.6 provides a maximum height of 8.0 meters (26.25 ft) when abutting a parcel in a multi-parcel residential subdivision. The Lands are adjacent to a parcel in a multi-parcel residential subdivision. In the present case, the Development Authority determined that the greenhouse structure would comply with the intent of the regulation as the gutter height is 4.87 meters (16 ft).

[17] The Development Authority considered the following in support of the development permit application:

- a. The business description;
- b. The site plan;
- c. Elevation drawings of the greenhouse from the manufacturer; and
- d. The floor plan of the greenhouse.

[18] The proposed use is discretionary within the AGG District. The Development Authority was of the view that the proposed development is compatible with surrounding land uses. In making its determination, the Development Authority considered the proposed hours of operation of the greenhouse, the anticipated number of patrons and the nature of operations. In making its determination, the Development Authority determined that the proposed development would not unduly affect the use and enjoyment of the adjacent agricultural and residential uses.

[19] In relation to transportation concerns, the Development Authority noted that Parkland Drive, which is adjacent to the Lands, is a Major Collector. Major Collectors have volume thresholds of approximately 3,000-9,000 vehicles per day. No new approach was required. The proposed development utilizes an existing approach.

[20] In considering setbacks from the property line, the Development Authority considered section 4.1.4(e) of the LUB which provides that the minimum building setback requirement is to be determined by the Development Authority. In exercising its discretion, the Development Authority took into consideration the proposed size of the structure. It determined that the setback distance align with section 4.1.4(b)(ii) which requires a minimum setback of 13 meters from the property line of an adjacent municipal road right-of-way. The Development Authority advised that this setback distance is specific to accessory buildings which can include detached garages and shops. It was the Development Authority's view that 13 meters was an appropriate setback for this particular structure.

[21] In response to questions from the Board, the Development Authority advised as follows:

- a. The initial drawing showed a setback of only 10 ft. This has been reviewed and the Applicant has agreed to provide a revised site plan showing a 13 meter setback.
- b. The Horticultural Use is discretionary within the AGG District; therefore, the Development Authority used its discretion regarding the size of the building. The structure is 75 ft x 120 ft. There is no maximum building size. However, in light of the size of the parcel and the proposed structure, the Development Authority deemed the size to be acceptable for the parcel.
- c. In relation to lighting and hours of operation, particularly in the winter months, the Development Authority advised that no lighting plan was submitted. The Applicant could install lighting but would be required to comply with the County's Dark Sky Policy.
- d. When the Development Authority was considering the completeness of the application, the application was circulated to the County's Transportation Department. The Transportation Department did not require a Traffic Impact Assessment. The Development Authority stated that the decision was based upon the amount of traffic proposed and the type of roadway.
- e. The County's LUB does not address permitting required to obtain a well and how much water can be drawn. These matters are provincially regulated. The Applicant will need to obtain provincial approval in order to do this. The County's LUB does not address water usage.
- f. The County does not require a letter from the landowner authorizing a non-owner applicant to apply for development approval. The County's form merely asks the Applicant to confirm that the Applicant has obtained landowner approval.
- g. The Development Authority advised that the name or type of form used by an Applicant for the development approval has no bearing on the decision of the Development Authority. The Development Authority considers the appropriate land use when making its decision.

- h. The setback is only for the structure and not the parking area. The Development Authority believes that the development can be set back the appropriate amount.
- i. The greenhouse is a principal building because there is no house. The setback is at the discretion of the Development Authority. The Development Authority viewed the greenhouse as an accessory building which is how she determined the setback. The Development Authority felt that 13 meters should be a sufficient setback although she recognized that the Board could impose a setback requirement of up to 23 meters.

[22] During the February 22, 2021 portion of the hearing, the Development Authority responded to concerns at page 3 of 29 of the supplementary agenda package raised by the Fishers regarding the review of the development permit application. The Development Authority advised that when the Development Authority receives a development permit application, the nature of the form upon which the application is contained does not dictate the use. It is up to the Development Authority to review the submitted materials and to make a decision of the use. The Development Authority determined that the use was Horticultural. By definition, this use is commercial as the applicant seeks to make a profit. The development permit application does not require any review by Council. It is a decision made by Development Authority. Further, the circulation to the neighbours is not based upon the application form used, but is based upon the determination of use. In this case, the circulation would not have changed if the application had been made on a different form.

[23] The Development Authority noted that the location of the greenhouse at page 12 of 29 and 13 of 29 of the supplementary agenda package shows the greenhouse is located further south and west than on the plan attached to the original application. The Board can determine if it wishes to accept that drawing as part of this hearing process and does not require a new development permit application.

Appellants Percy and Shirley Schepp

[24] The Appellants Percy and Shirley Schepp are adjacent landowners who have lived on their property for 31 ½ years. They live across Parkland Drive east and north of the proposed location for the greenhouse.

[25] The Schepps are concerned that the application was completed on a form called "Cottage Industry Development". In their view, a 9,000 ft² greenhouse is not a Cottage Industry and the development does not comply with section 11.2 of the LUB because the predominant building material is not durable. Further, they do not believe that the design is consistent with the purpose of the LUB, in particular as specified in section 11.2.c. The Schepps were particularly concerned about the compatibility of poly-covered buildings and a lit-up greenhouse. Their submission was that the finish and appearance does not complement other buildings as required by section 11.2(d) of the LUB.

[26] The Schepps are concerned about lighting which they argue will need to be a 24 hour a day operation. Further, they are concerned about the noise from fans which will need to operate 24 hours a day.

[27] They argued that if the Board is prepared to allow the development, it should consider moving it away from the residential dwellings located in the multi parcel residential subdivision north of Parkland Drive.

[28] In their concluding comments on January 11, 2021, the Schepps advised that they are not opposed to small businesses. However, in their view this use is not compatible. They are concerned that the business plan is vague and that there will need to be light in the greenhouse in the winter. They are concerned about the water issues. They urged the Board to direct the Applicant to put the development on a different property. They were of the view that no fence would be able to hide the building. It is a commercial development that does not belong. They are very concerned about the noise impacts from the generators and the fans. They were concerned about the removal of the structure and the restoration of the property in the event that the business fails. They are not opposed to the development, but they do not want it in their yard. Carvel Park has 11 lots, and they believe it is for residential only and that the proposed development is not suitable in its current location.

[29] At the February 22, 2021 hearing, they expressed further concerns about the need for supplemental lighting in the greenhouse, referencing a Government of Alberta study which indicated the need for supplemental lighting. Ms. Schepp stated that this study was contrary to the statements made by the Applicant that there would not be supplemental lighting in the greenhouse. Ms. Schepp stated that the information submitted by the Applicant in the supplemental agenda package showed lights after dark. Ms. Schepp was concerned with the impact supplementary lighting would have on their dark sky enjoyment.

[30] Ms. Schepp expressed concerns about the level of noise, indicating that at 82 decibels hearing protection is required.

[31] In relation to property values, she advised that there was a significant cost to obtaining an appraiser's report. She expressed concerns about the property values.

[32] She noted that the letters provided by the Applicant were not from people living adjacent to the proposed greenhouse. In her view, the greenhouse is not compatible and does not comply with the LUB.

[33] In response to Board questions, she advised that if the Board approves the greenhouse, it would need to be as far south and west from her house so that it would not affect her. She indicated that the location is close enough to her yard that she could throw a ball into the site. She indicated that no trees or berm could fix the impact of the greenhouse, as it interferes with their line of sight for sunsets, etc. Any trees placed on a berm would have to be large to provide a barrier.

[34] In final closing, the Schepps stated that they are not opposed to the business, but rather its location. They believe that other locations would be more suitable. They expressed concerns about their view should the business not succeed and they be left with a view of a greenhouse that is not being operated.

Appellants Adam and Beverly Fisher

[35] Adam and Beverly Fisher live north of Parkland Drive immediately across from the proposed building site. They referred the Board to their written submissions. In addition, they advised that the structure is too big for its proximity to the residential neighbours.

[36] They are concerned about the amount of water which would be used by a greenhouse.

[37] They are also concerned about the scale of the building, stating that it would be an eyesore for them.

[38] They stated that if there were trees or if the building was located further west, it may be better.

[39] The Fishers were also concerned about the amount of light which would be required for the greenhouse, and stated that the noise from the greenhouse would not stop after 6 pm.

[40] Mr. Fisher stated that the plan that Ms. Lapointe was required to submit as part of the original conditions of approval should include topographical information and the location with a to scale estimation of the size of the buildings.

[41] In response to questions from the Board, the Fishers stated:

- a. there is a 2-3 meter row of trees in their yard, but the trees are shrub and poplar, so in winter there are no leaves. A fence would not assist in reducing the visual impact of the greenhouse because the eave height is 4.8 meter and the building is of significant size - the full length of their backyard.

[42] In his closing statement, Mr. Fisher agreed with the submissions from the Schepps. His main concern is that this proposed greenhouse will be located right outside his bedroom window and he does not want to look at it. He does not believe that it can be camouflaged.

[43] At the hearing on February 22, 2021, Mr. Fisher again confirmed his concurrence with the submissions of the Schepps. He stated that they are not opposed to the business, but to the location.

[44] In response to Board questions, he stated that there would be a benefit to have the greenhouse further west. He questioned whether a berm would work given the size of the setback area (13 m) and the grade for the slopes of the berm. He stated that trees take time to mature and that a fence would not be of benefit. There would be no difference in looking at a 16 foot fence, as compared to the sides of the greenhouse.

Applicant – Nadine Lapointe

[45] The Applicant, Nadine Lapointe, stated that there will be no light pollution coming from the development because she will have no grow lights in the greenhouse. During the majority of the summer, there will be no grow lights. She will install yard lights to create a deterrent to

anyone coming onto the Lands. There will be lights inside the greenhouse, but these will be indoor lights for the purpose of allowing staff to move around inside.

[46] There will be 2 heating units installed, but they will be movable to allow her to direct airflow. They will not be installed on the building. Ms. Lapointe submitted that people will not be able to hear the fans outside of the building and they will not be on 24 hours a day.

[47] All greenhouses are large plastic buildings, but it will be engineered and be strong enough to withstand the snow load.

[48] She is considering natural gas generators in order to be self-sufficient or, alternatively, geothermal energy which would not create a lot of noise.

[49] The building will be cooled by roof and wall vents which are also not noisy. The pumps for the water tanks will be only for the size of garden hoses and not commercial pumps. She submitted that they will not make a significant amount of noise.

[50] She obtained information that suggested that in the hottest days the water usage would be only as much as used by an eight-person household. For the rest of the months, there will be less water used. She submitted that the water table should not be affected.

[51] She stated that the Lands are Class 2 soil due to the significant slopes and the soil depth being less than 12 inches. In her submission, the greenhouse is a better use and will create a smaller footprint.

[52] She will not be using fertilizers at the greenhouse and will use limited pesticides. There are some small greenhouses in the area. She is not trying to compete with big box retailers but is trying to bring jobs into the community and fresh produce in the winter as well as floriculture for weddings etc.

[53] She stated that she has five letters in support from neighbours.

[54] In response to questions from the Board, Ms. Lapointe stated:

- a. Although she is not a horticulturalist, she has her landscapers red seal and has worked at a big greenhouse for several years and therefore has knowledge in the subject area.
- b. In relation to growing produce in the winter, she would not be running a generator 24/7, but would be downsizing the area in which produce grows. Further, she would be looking at obtaining micro generators which are not much louder than a car idling.
- c. She stated that the Lands are owned by her mother and that she has a lifetime lease agreement with her mother which ensures that she will own the Lands for her lifetime unless she gives them up.
- d. She confirmed she will not use supplemental grow lights.

- e. She could pipe in water, but it be more expensive. She will conduct water testing before she drills the well to ensure that the water from the well would be a viable source.
- f. The Board asked about the customer mix to determine how much traffic would be coming to the facility. She stated that she has not done any studies but went by the experience she had from her previous employment. There was a maximum of 10 customers at a time during busy days. She will have between two to five staff members. She stated that she should be sustainable if she sells 50% of her produce, but the most greenhouses are able to sell 90%.
- g. She lives immediately to the west of the Lands.
- h. She picked the Lands as the location for the proposed development because there is already an approach to the Lands which has been approved by the County and Alberta Transportation. Further, there is a turning lane available. If she moved the development to her parcel or closer to her parcel, there is a curve, so it is not as safe. Moreover, the topography of her land is sloped. If the proposed development moved to the east, there is a huge hill which then goes to flatter land, but the approach would be difficult.

[55] At the hearing on February 22, 2021, the Applicant provided an overview of her qualifications and training in regard to running the greenhouse. She denied that she had spoken with Member Philpott.

[56] She advised that she moved the greenhouse further to the west so that it won't be seen by the neighbours to the north. She indicated a willingness to put a berm with different types of conifers on it to provide a barrier.

[57] She advised that she cannot locate the greenhouse onto other lands because of development constraints, including the cost to bring in utilities (for example she does not have natural gas on the parcel where her residence is), access to the parcel, etc.

[58] She indicated that the water required for the greenhouse use will not exceed the limit of 1,250m³ for the parcel. She stated that there will be horizontal air flow fans which will not be heard outside the greenhouse and fans will only be used as necessary. She submitted that she will not need supplemental lighting for the greenhouse, but there will be yard lights. She stated that the greenhouse fits perfectly as shown at page 13 of 29 of the supplemental agenda package and that it is not feasible to move the greenhouse due to the topography of the Lands.

FINDINGS OF FACT

[59] The Lands are located at SE-3-53-2-W5 and are municipally described as 53012 Range Road 22.

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

[61] The proposed development falls within the definition of Horticultural Use as defined within the LUB. The proposed development is in compliance with the provisions of the County's Municipal Development Plan, Bylaw 2017-14.

[62] Horticultural Use is a discretionary use.

[63] The proposed development is not compatible with the neighbouring uses.

[64] The appellants, Percy and Shirley Schepp and Adam and Beverly Fisher, are affected persons.

[65] The applicant, Nadine Lapointe, is an affected person.

REASONS

Jurisdiction

[66] 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 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

[67] 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.

[68] In regard to the Appellants, both the Schepps and the Fishers live across Parkland Drive from the Lands. Due to their proximity to the proposed development, the Board finds them affected by the proposed development.

[69] Because the Applicant's development permit is under appeal, the Applicant is also affected by this appeal.

Issues to be decided

[70] The Board must determine:

- a. whether the proposed development complies with the statutory plans;
- b. the nature of the use;
- c. whether, having determined that the use is discretionary, whether that use is compatible with surrounding uses; and
- d. if there are any additional conditions which are required in order to assist in ensuring the compatibility of the use.

Statutory Plans

[71] The information before the Board indicates that the provisions of the County's Municipal Development Plan Bylaw 2017-14 (the "MDP") applies (see pages 5 of 48 and 6 of 48). Those provisions identify the Lands as being within the Rural Area and the Prime Recreation and Tourism Area. The Board finds that the proposed development of Horticultural Use is in compliance with policy 4.1.3 which supports agricultural - based businesses throughout the Rural Area. Further, the Board finds that the proposed development conforms with policy 5.0.1 in that it encourages economic competitiveness and employment opportunities within the County.

[72] The Board notes that there is no area structure plan which applies to the Lands.

Nature of The Use

[73] The Board notes that the Development Authority identified the proposed development as Horticultural Use. The definition of Horticultural use is:

Horticultural Use means a Commercial horticultural operation other than a Confined Feeding Operation that, due to the nature of the operation, requires smaller tracts of land. Without restricting the generality of the foregoing, this shall include horticultural uses like nurseries, greenhouses, market gardens, tree farms, and specialty crops (not including Cannabis).

[74] The Board notes that the definition of Horticultural Use expressly lists greenhouses as a type of Horticultural Use. The evidence before the Board was that the use will be a greenhouse. Therefore, based upon the clear language of the definition and the evidence before the Board, the Board finds that the use is a Horticultural Use.

[75] The Board has reviewed the provisions of section 4.1 of the LUB and notes that Horticultural Use is a discretionary use in the AGG District - Agricultural General District. Therefore, the Board finds the fact that Horticultural Use is a discretionary use within this District.

Compatibility

[76] As the proposed development is a discretionary use, 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.

[77] In order to assess the compatibility of the proposed development, the Board will consider the concerns raised by the Appellants, which are all factors of compatibility:

- a. visual aesthetics/architectural considerations;
- b. lighting;
- c. noise pollution;
- d. traffic;
- e. impact on surrounding wells;
- f. impact on property value; and
- g. impact arising from the life expectancy of development.

Visual Aesthetics/Architectural Considerations

[78] Both Appellants argued that the greenhouse will not blend in with the neighbouring uses. They both expressed concerns about the view of the greenhouse from their respective properties. The Schepps also expressed concern about the impact that the size of the greenhouse will have on their view of the skyline and expressed concerns both about the amount of light to be emitted as well as the size of the building. The Appellants also stated that a berm alone would not be sufficient, and if trees are installed, they would have to be of a sufficient size to block the view of the greenhouse. The Fishers expressed concern that a fence

would have to be of a sufficient size to block the view of the greenhouse, but that a 16 foot fence would be no better than viewing the greenhouse.

[79] The Appellants were concerned about what will happen with the structure, should the business close or not succeed. They were concerned that they would be left with an unused structure that they can see and that would impair their view.

[80] The Applicant advised that nature of a greenhouse is that the building is a poly-covered structure. In relation to the ability of the Appellants to view the greenhouse from their respective properties, the Applicant advised that she was prepared to install trees along Parkland Drive to form a buffer. However, the Applicant advised that she had contemplated doing this at a later stage.

[81] The Board notes that the structure which is being contemplated for the greenhouse will be 120 ft long and that the wider side of the building will be parallel or approximately parallel to Parkland Drive. The Board notes that the Applicant has suggested that she will move the building to a new location (see page 13 of 29) in an attempt to minimize the visual impact of the greenhouse on the Appellants.

[82] The Board notes that this impact – the visual one – is a key factor in the compatibility of the proposed use. The Board has considered that the Appellants are living in a multi-parcel country residential area. The photographs submitted (pages 27-29 of 29 of the supplemental agenda package) show that the area is not “built-up”. While there are houses on the north side of Parkland Drive, there is not a lot of other development visible in the area. Having looked at the relatively undeveloped nature of the area, the Board questions whether putting a 9,000 ft² greenhouse next to the country residential subdivision across the road is compatible.

[83] The Board notes that there will be an impact on the Appellants from the proposed greenhouse, even if it is moved further south and west as indicated by the Applicant. The greenhouse will have a significant building mass facing the Appellants given the size of the greenhouse structure. There will be an impact on the views of the appellants. The Board finds that having this commercial greenhouse across from the country residential subdivision is not compatible. The Board accepts the evidence that the Appellants are not opposed to the development, but to its location within their view. The Board also accepts that the Applicant cannot move the development any more than has already been done. Despite the Applicant’s attempts to move the greenhouse to minimize its impact on the Appellants, the Board finds that having a commercial greenhouse across the road will be a disruption on the life and lifestyle of the Appellants.

[84] The Board considered whether the placement of a berm and trees, or a fence along Parkland Drive would be sufficient to make the proposed development compatible. The evidence was that a berm would have to be sufficiently large and the trees sufficiently mature to provide a screen for the buildings. However, a large berm and trees would also create a barrier to the views of the Appellants. The Board accepts that a large fence, while creating a screen of the building, would be no different than viewing a building. The Board finds that a greenhouse might be an acceptable use in the AGG District, but the current location (almost across the road from the Appellants) makes it incompatible with those uses.

Lighting

[85] The Appellants both raised concerns about the amount of light which would be generated by the greenhouse, particularly during the winter months. They challenged the Applicant's assertion that supplementary lighting would not be required. They raised concerns about the yard lights and the impact the light would have on them, as well as their enjoyment of "dark sky" views.

[86] The Applicant stated that she would not be using grow lights for the operations. In addition, she stated she would not be using any form of supplementary lighting.

[87] The Board recognizes that the concerns of the Appellants in relation to the amount of light generated by a greenhouse with supplemental lighting, particularly during the winter months in Alberta, can create an impact, thus leading to compatibility. Despite the Applicant's statement that she was not going to be using supplemental lighting or grow lights, the Board notes that one of the pictures submitted by the Applicant (page 26 of 29 of the supplemental agenda package) showed an unnamed greenhouse in the evening with lights on.

[88] Given the short days in the winter and the Applicant's desire to grow some plants in the winter, the Board is concerned that the Applicant will need to use supplemental lighting, if not at the start of the use, then at some later time. The Board had initially considered whether it might be possible to impose a condition preventing supplemental lighting, in order to limit the impact of the lighting on the Appellants. However, the Board's view was that the imposition of such a condition would ultimately result in a potential future hearing to adjust the condition, should the Applicant need to have supplemental lighting. Thus, the question of the impact of the lighting would just be deferred.

[89] The Board also notes that the Applicant has indicated that there will be yard lights and accepts that yard lights are either necessary or desirable for security. However, given the proximity of the proposed development to the Appellants' lands, the Board finds that the yard lights will impact on the Appellants. The Applicant did not indicate that there could be some form of directed light or even a low light to mitigate the impact of the yard lights on the Appellants. In the absence of this information, the Board finds that the impact from the lighting results in the proposed development being incompatible.

Noise

[90] The Appellants both raised concerns about the amount of noise which would be generated by the fans and heaters to be used in the operation of the greenhouse. The Applicant advised that she would be using micro generators as well as having the fans located within the greenhouse building itself, rather than being wall mounted.

[91] The Board was presented with no expert evidence in relation to the noise level to be generated by the various equipment. The Applicant stated that the decibel level would be someplace between 70-80 decibels. The Appellants argued that this would still be a significant noise impact given that noise over 82 decibels would require hearing protection.

[92] The Board did not hear any expert evidence nor receive any reports to assist the Board in making its decision. The Board does have concerns about the potential amount of noise, but was not given sufficient information to find that there will be no or limited impact from the noise. In light of the Board's conclusions in relation to the visual concerns and the lighting, the Board does not need to make a final conclusion on the impact of the noise on the compatibility of the proposed development.

Traffic

[93] The Appellants raised concerns about the amount of traffic to be generated by the greenhouse.

[94] The Development Authority advised that the application had been reviewed by the County's Transportation Department which had no concerns in relation to traffic.

[95] The Applicant advised that the Lands had been selected as the location for the proposed development because of the already existing access, the turning lane at the intersection and the sight lines which were straighter than near lands further to the west.

[96] The Board notes that the information provided by the Development Authority indicates that Parkland Drive is a major collector which is designed to handle between 3,000 and 9,000 vehicles per day.

[97] The Board finds, based on the evidence before it, that there is no evidence to support a finding that the road cannot handle the traffic generated by the proposed development. Moreover, the location of the proposed development with the existing access and turn lane are adequate. The Board declines to find that any issues of traffic would result in the incompatibility of the proposed use with the surrounding areas.

Water

[98] The Appellants argued that a greenhouse use would have an impact on the water table and the amount of water available for their residential uses.

[99] The evidence of the Applicant was that the greenhouse, in the height of the summer when the plants need the most water, would utilize the equivalent amount of water as an eight-person household, but that at other times of the year, the greenhouse would need less water. The Applicant also advised that the use would use less than the yearly amount of 1,250 m³ permitted.

[100] The Board is not tasked with approving water usage. Based on the information put forward, the Board prefers the information provided by the Applicant. There was no evidence presented about the amount of water to be utilized, except that provided by the Applicant. The amount of water to be utilized does not seem to be excessive and there was no evidence that the aquifer from which the wells draw their water could not accommodate the use for the proposed development. Therefore, the Board concludes that water is not a sufficient ground to find an incompatibility of the use with the surrounding uses.

Property Values

[101] The Appellants argued that the placement of a greenhouse on the Lands will have a negative impact on their property values. However, the Appellants provided no expert evidence or other hard evidence, aside from their assertion, about the impact on their property values.

[102] The Board noted the concerns, but in the absence of any evidence supporting the allegations of a decrease in property value, the Board is not prepared to find that there will be an impact on their property values. The Board finds that the allegations are not sufficient to support a finding of non-compatibility.

[103] As indicated above, the Board has concluded that the proposed development is incompatible with the surrounding uses based upon the visual impact (see paragraphs [78] to [84] above), and based upon the potential impact of lighting (see paragraphs [85] to [89] above). As a result of its conclusion that the proposed development is incompatible, the Board grants the appeal and overturns the development permit.

Alternate locations for proposed development

[104] The Board notes that there was a significant amount of discussion by the Appellants suggesting that the Board should compel the Applicant to move the greenhouse to other properties owned by her or to which she might have access. While the Board understands the desire of the Appellants to have the proposed development moved to an alternate location, the Board can only consider the application that is before it, which has the Horticultural Use on the Lands. The Board has no authority to compel the Applicant to move the proposed development to an alternate location.

[105] Issued this 8th day of March, 2021 for the Parkland County Subdivision and Development Appeal Board.



B. Williams, Clerk of the SDAB, on behalf of S. Whitehouse, Chair
SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This decision may be appealed to the Court of Appeal of Alberta on a question of law or jurisdiction, pursuant to Section 688 of the Municipal Government Act, RSA 2000, c M-26.

APPENDIX "A"
REPRESENTATIONS

PERSON APPEARING

1. Rachele Trovato, Team Lead, Development Planning
2. Percy and Shirley Schepp, Appellants
3. Adam and Beverly Fisher, Appellants
4. Nadine Lapointe, Applicant

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

January 11, 2021 Agenda Package			
Exhibit	Description	Date	Pages
1.	Agenda Coversheet	January 7, 2021	1
2.	Table of Contents	January 7, 2021	2
3.	Notice of Appeal – Percy & Shirley Schepp	November 30, 2020	3
4.	Notice of Appeal – Adam & Beverly Fisher	December 2, 2020	4
5.	Submission of the Development Authority	January 5, 2021	5-41
6.	Submission of the Appellant - Percy & Shirley Schepp	January 4, 2021	42-46
7.	Submission of the Appellant - Adam & Beverly Fisher	January 4, 2021	47-48
February 22, 2021 Agenda Package			
Exhibit	Description	Date	Pages
8.	Additional Submission of the Appellants – Adam & Beverly Fisher, Percy & Shirley Schepp	January 18, 2021	3-10
9.	Additional Submission of the Applicant – Nadine Lapointe	January 19, 2021	11-21
10.	Additional Submission of the Appellants – Percy & Shirley Schepp	February 16, 2021	22-23
11.	Additional Submission of the Applicant – Nadine Lapointe	February 16, 2021	24-29