

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
PARKLAND COUNTY**

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HEARING DATE: June 21, 2021  
FILE NO.: 21-D-179

**Notice of Decision of Subdivision and Development Appeal Board**

**INTRODUCTION**

[1] The Development Authority of Parkland County (the "Development Authority") issued development permit 21-D-179 on May 7, 2021 for an Home Based Business Level 2 (off-site screw piling business) (the "Development Permit") located at Lot 12, Plan 3330 NY, Osborne Acres; S-8-53-26-W4, municipally described as 11175 Spruce Valley Road (the "Lands").

[2] On May 28, 2021, Anne and Gordon Symborski appealed the issuance of the Development Permit.

[3] On May 28, 2021, Dave Ealey, President of the Wagner Natural Area Society appealed the issuance of the Development Permit on behalf of the Wagner Natural Area Society.

[4] The Subdivision and Development Appeal Board (the "Board") heard the appeal on June 21, 2021 via videoconference in accordance with Meeting Procedures (COVID-19 Suppression) Regulation, AR 50/2020.

**PRELIMINARY MATTERS**

**A. Board Members**

[5] At the outset of the appeal hearing on June 21, 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**

[6] 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.

[7] Anne and Gordon Symborski stated that they wished to provide the Board with additional evidence in the form of photos and video through the use of the screenshare function. This evidence had not been provided to the Board by the deadline of June 15, 2021.

[8] The Board asked questions of Anne and Gordon Symborski to identify why this additional evidence was not provided to the Board by June 15, 2021. They stated they had technical difficulties.

[9] The Board determined that as these photos and videos had not been provided to the Board by the deadline of June 15, 2021 and as the Applicant had no opportunity to review these materials prior to the hearing, that the Board would not accept the additional evidence.

### **C. Miscellaneous**

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

[11] The Board is satisfied that it has jurisdiction to deal with this matter. There were no objections to the proposed hearing process.

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

### **DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

[13] The Board allows the appeals and overturns the Development Authority's decision to grant development permit 21-D-179.

### **SUMMARY OF HEARING**

[14] 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 and materials filed in advance of the hearing.

#### **Development Authority**

[15] The Lands are located within the Osborne Acres subdivision and are a corner lot bounded by the Wagner Natural Area to the north and west.

[16] The Lands are within the Rural Agriculture Area as identified in the Municipal Development Plan Bylaw No. 2017-14 (the "MDP") Development Concept.

[17] The Lands are within the Acheson Area Structure Plan.

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

[19] The Lands are located within the CR - Country Residential District. Home Based Business Level 2 is a Discretionary Use as listed in Section 5.3 CR –Country Residential District.

[20] A Home Based Business Level 2 is defined in Section 20.3 of the County's Land Use Bylaw 2017-18 (the "LUB").

- a. The employees of a Home Based Business Level 2 shall include only the resident and the resident's family who permanently reside in the dwelling on the subject parcel.
- b. The parking of only one commercial vehicle is allowed.

[21] The Development Authority cannot vary use class definitions in the LUB.

[22] Section 12.8 of the LUB identifies the regulations the Development Authority must consider when making their discretionary evaluation of a proposed Home Based Business Level 2.

- a. The employees of a Home Based Business Level 2 shall include only the resident and the resident's family who permanently reside in the dwelling on the subject parcel.
- b. The vehicle associated with the business must be either: One (1) commercial vehicle with one (1) accessory trailer, a tractor unit only (no trailer), or a three ton truck.

[23] The Development Authority reviewed the application and issued an approval on the basis that it complied with the LUB. However, information that was received by the County during the appeal period which indicated that the Proposed Development does not comply with LUB.

[24] In response to questions from the Board, the Development Authority stated that in their experience with the amount of equipment on-site, it would be very unlikely that only one individual would be loading and driving that equipment 100% of the time and as such, they would anticipate employees on-site.

[25] In response to questions from the Board in respect of the employees on-site, the Development Authority stated that any employees on-site, regardless of how frequently they were on-site, would be considered to be on-site employees.

[26] In response to questions of the Board regarding tree clearing, the Development Authority stated that tree clearing without a development permit is a separate development which would be handled by bylaw enforcement. He noted that the size of clearing undertaken by the Applicants indicates that the site is intended to be using large equipment and more equipment than what's currently been observed on the site.

[27] When asked about section 12.8.2(g), which allows a gravel truck with pup trailer, while not allowing a tractor with a trailer, the Development Authority stated that he could not speak to the intent of the LUB only what it stated. The Development Authority stated that section 12.8.2(g) of the LUB clearly stated that where there is a tractor unit, no trailer can be associated with that business and parked on the Lands.

[28] The Development Authority further stated in response to questions from the Board that based on section 16.14 of the LUB, the Development Authority would be eligible to review this development permit after this appeal and may cancel the Development Permit based on section

16.14. Due to the operation of section 16.14.12 of the LUB, the Development Authority cannot cancel a Development Permit that has been appealed to this Board. The recommendation from the Development Authority at this time was to have the Board allow the appeals and cancel the Development Permit.

[29] In response to questions from Keith Percy, the Development Authority stated that the Proposed Development was not a Home-Based Business Level 2 but that if a Home-Based Business Level 2 was approved and was storing materials inside a shop that would be acceptable.

[30] The Development Authority stated that what is on the Lands is a major development and that if the full scope of facts has been available to the county at the time of the application, the Development Authority would not have approved the Development Permit.

## **Appellants**

### **Anne and Gordon Symborski**

[31] The appellants Anne and Gordon Symborski live in the Osborne Acres subdivision.

[32] The appellants object to the number of commercial vehicles on-site. They state there are two trucks, a tractor and trailer units for the screw piling business on-site, and additional commercial vehicles such as a large cube van with attached trailer also on the site.

[33] They stated that since the arrival of the Applicant to the neighborhood the road conditions have significantly deteriorated. They further noted that the large units present danger and concern in respect to turning radius on the corners within the acreage area. They noted that when the longer trailer is used with the tractor unit, it uses the entire roadway and corner to turn, completely obstructing oncoming traffic.

[34] The Appellants object to Applicant clearing all the trees on the Lands and beyond. They stated that the Applicant likely breached the boundaries of the Lands and entered into the Wagner Natural Area to remove trees.

[35] The Applicant's use of the roads causes significant dust and noise.

[36] The appellants have been living in the Osborne Acres subdivision for 42 years and have noticed a significant deterioration in the roads in the subdivision since March of 2021 – when the Applicants acquired the property.

[37] Anne Symborski stated that in her opinion this is a big business operating in a residential area. As the Applicant's business expands it may need many more employees and more vehicles. The Appellants stated this business is more appropriate for areas such as Acheson Industrial Park.

## **Dave Ealey, Wagner Natural Area Society**

[38] The Wagner Natural Area Society was established in 1982 under the *Societies Act* and has served as the steward of the area since that time. Mr. Ealey is the president of the Wagner Natural Area Society and spoke on behalf of the Wagner Natural Area Society.

[39] The Wagner Natural Area Society works in protecting, preserving the Wagner Natural Area as well as acquiring lands to protect the Wagner Natural Area. The Wagner Natural Area Society has a recreational lease to manage access to the Natural Area and works with the scientific community and conducts programs for the public to educate them on the Wagner Natural Area.

[40] The Wagner Natural Area Society has significant concerns about the numbers of trees that the Applicant has removed from the Lands and surrounding area. The Applicant's claim that the trees were removed due to the infestation of carpenter ants is not correct because the ants belong in the forest and are part of the flora and fauna. Approximately 75% of the Lands were forest prior to the clearing. The Applicant should only have removed the trees necessary for the addition of the shop and a tree clearing permit should have been required for any additional trees.

[41] The Wagner Natural Area Society also has concerns about the Applicant working in the ditch alongside the road which has a significant impact on the Wagner Natural Area water.

[42] The speed of which the Applicant dispatched the forest covering concerns the Wagner Natural Area Society, in particular in respect of the potential impact on the ecosystem as well as on the water.

[43] The Wagner Natural Area Society's position is that this development is an industrial operation that belongs in an industrial commercial park.

## **Speakers**

[44] Keith Percy spoke in favour of the appeals. Mr. Percy is a resident of the Osborne Acres Subdivision, and his property is close to the Lands. He stated he has no issues with a Home-Based Business Level 2, but that the Proposed Development is a commercial business that is trying to fit into a residential subdivision. He also asked questions regarding outside storage and storage of drill pipe on the Lands in the case of a Home Based Business Level 2. These were answered by the Development Authority.

[45] Gary Kessler spoke in regard to the appeals but stated that he was not in favour of or against the appeals. He lives adjacent to the Lands. His family has lived there for 20 years and has stated that the road in front of the property is very poor. The road is not suited for the use it is seeing now and the road has been particularly rough in the past couple of months. He stated that the Applicant has done its part when asked but he is concerned about the quality of the road and the impact of the Proposed Development on the road. He noted the Applicant had spoken to the County and stated that the County intends to address the road when the construction on the property is complete. He stated he did not want to comment on any

encroachment into the Wagner National Area or into other individual's properties as he had no personal knowledge of this.

## **Applicant**

[46] Ed Clague and Anna Marocco spoke on behalf of the Applicant, Impact Screw Piling Inc. They purchased the property in January 2021.

[47] They are renovating the existing dwelling on the Lands and hope to move in by October. They submitted that many of their neighbours' complaints relate to the construction on the Lands. This is a temporary disruption including the traffic caused while they renovate their home and property. This is not caused as a result of Impact Screw Piling Inc.

[48] They stated that the previous owner of the Lands was a hoarder and there was significant scrap metal and other items in and amongst the trees. They took down the trees due to the significant infestation of carpenter ants and that the trees were dead and dying. They stated they didn't know they needed a permit to take down trees but that they were doing their due diligence to remove all the scrap metal to make it a better piece of property.

[49] They both stated that if all their neighbours would give them more time, they would have a beautiful piece of property.

[50] In respect of the number of commercial vehicles on the Lands, Mr. Clague stated that he has a 2013 International Tractor which is a tandem axel truck as well as a tandem axel trailer which is a 53-foot step deck trailer. They also have a 14' Enclosed Trailer that has a welding unit which has the Applicant's decal on it. This rarely goes anywhere and will be stored in the shop building once it is constructed.

[51] On the day that bylaw enforcement went out to tour the property, there was a dually pickup truck attached to the 14' Trailer. Ms. Marocco said this was because the 14' trailer was being moved on the Lands but that the 14' trailer usually does not go anywhere and does not move off the Lands.

[52] Impact Screw Piling Inc. owns Ed Clague's daily commuter half ton pickup truck.

[53] Mr. Clague stated that there was a gray area between his tractor unit and 53' trailer and a gravel truck hauling a pup, which is allowed for a Home-Based Business Level 2. He also noted that if the enclosed 14' trailer was an issue, he could pull the decals off or sell it.

[54] In respect to the number of employees on the Lands, Ms. Clague stated that they have three employees who do not work on-site. These are seasonal employees. These employees meet at the job site or will come to the property only to get into the 2013 international tractor with Mr. Clague to go to site. In response to questions from the Board, Anna Marocco clarified that about half the time the three staff members would be coming to the Lands to drive to a site with Mr. Clague.

[55] Mr. Clague noted that a Home Based Business Level 2 can have some client visits and questioned the difference between clients visiting his property and his employees visiting his

property. He stated that, if necessary, they would agree to have no employees on-site and he would pick them up outside the residential subdivision.

[56] In respect of the impacts on the roads, Mr. Clague said that he agreed that the roads were in bad condition. He stated that there have been a number of trucks going in and out of the Lands and the road has not been designed for that level of traffic. He stated that he spoke to the County and that when construction on the Lands finished, the County will grade and gravel the road.

[57] Mr. Clague says he tries to go as slow as possible on the road to prevent dust but still finds there is significant dust caused by his use of the trailer and tractor unit due to the prevailing winds from the west. He stated that where gravel trucks were attending on the property as part of the construction, he has sent gravel trucks home where their drivers were going too fast.

[58] In respect of allegations that they removed trees that were either in the Wagner Natural Area or on their neighbouring property, Mr. Clague said that the first thing he did was get surveys to put markers in so that they knew the boundaries of their property. He stated that if he did go into the Wagner Natural Area, it was maybe only 3 feet in, where they were removing trees which had fallen over from the Wagner Natural Area onto the Lands. He stated that the tree cutting and mulching was done prior to April, before nesting, and did not interfere with any birds.

[59] Anna Marocco and Ed Clague also stated that the neighbours have been trespassing onto the Lands and harassing their contractors. They asked that anyone who had an issue with how they were using the Lands come talk to them.

## **FINDINGS OF FACT**

[60] The Lands are located at Lot 12, Plan 3330 NY, Osborne Acres; S-8-53-26-W4, municipally described as 11175 Spruce Valley Road.

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

[62] The Proposed Development Use Class is a Home Based Business Level 3.

[63] The use of the Proposed Development is a not permitted in the CR – Country Residential District.

[64] Anne and Gordon Symborski are affected persons.

[65] The Wagner Natural Area Society is an affected party.

[66] Keith Percy is an affected person.

[67] Gary Kessler is an affected person.

## **REASONS**

### **Jurisdiction**

[68] 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 and oral submissions made by the Appellants and the Applicant.

**687(3)** *In determining an appeal, the board hearing the appeal referred to in subsection (1)*

*(a) repealed 2020 c39 s10(52);*

*(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 clauses (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.*

### **Issues to be decided**

[69] The Board recognizes that under section 687(3) of the MGA, the Board must determine the Proposed Development's compliance with the applicable statutory plans and the LUB.

### **Affected Persons**

[70] 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.

[71] The Appellants Anne and Gordon Symborski live near the Proposed Development. The Board finds that due to their proximity to the Lands, they are affected by the appeals.

[72] The Appellant, the Wagner Natural Area Society is a Society incorporated for purpose of protecting the Wagner Natural Area and educating the public. The Lands are bordered by the Wagner Natural Area. The Board finds that due to the Wagner Natural Area Society's interest in the Wagner Natural Area, the Wagner Natural Area Society is affected by the appeals.

[73] Keith Percy lives near the Proposed Development. The Board finds that due to his proximity to the Lands, he is affected by the appeals.

[74] Gary Kessler lives near the Proposed Development. The Board finds that due to his proximity to the Lands, he is affected by the appeals.

[75] As the person whose development permit is under appeal, the Applicant is affected by the appeals.

### **Statutory Plans**

[76] The Board heard submissions from the Development Authority that the proposed use was in compliance with the Municipal Development Plan Bylaw No. 2017-14 (the "MDP") s 4.1. The Board heard no evidence contradicting these submissions and finds that the application is in compliance with the MDP.

[77] The Lands are within the plan area of the Acheson Area Structure Plan (the "ASP"). The Development Authority that the Proposed Development complies with s. 2.2 of the ASP. The Board heard no evidence contradicting these submissions and finds that the application is in compliance with the ASP.

### **Land Use District**

[78] The Site is zoned as County Residential (LUB section 5.3).

### **Is the Use Home Based Business Level 2 or Home Based Business Level 3**

[79] The first question that the Board must determine is whether the Proposed Development is a Home Based Business Level 2 or a Home Based Business Level 3. This determination is critical because under section 5.3.2(a)(i)(4)) of the LUB, Home Based Business Level 3 cannot be located in a multi-parcel residential subdivision. The evidence of the Development Authority was that the Lands are located in a multi-parcel residential subdivision and there was nothing contradicting that evidence. The Board accepts as a fact that the Lands are within a multi-parcel residential subdivision.

[80] As a result of the Board's determination that the Lands are within a multi-parcel residential subdivision, if the Board determines that the Proposed Development is a Home

Based Business Level 3, then the Board cannot approve the Proposed Development because Home Based Business Level 3 cannot be located in a multi-parcel residential subdivision.

[81] The two keys distinctions between a Home Based Business Level 2 and a Home Based Business Level 3 that the Board has considered in this appeal are the number of on-site employees and the number of commercial vehicles:

<b>HOME BASED BUSINESS LEVEL 2</b>	<b>HOME BASED BUSINESS LEVEL 3</b>
<p>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 <b>the parking of one commercial vehicle</b> and <b>may not include on-site employees except the resident and the resident’s family who permanently reside in the dwelling...</b> [emphasis added]</p>	<p>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 <b>include up to four (4) employees who do not reside on the property.</b> Typical secondary uses may include contractor services, <b>parking of commercial vehicles in excess of Home Based Business Level 2,</b> 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. [emphasis added]</p>

**Number of Commercial Vehicles**

[82] The Board has considered the parties submissions on the number of commercial vehicles on the Lands.

[83] The Board finds that based on the evidence before it, the following are commercial vehicles on the Lands:

- a. The 2013 International Tractor and 53’ trailer;
- b. The 14’ trailer with the Applicant’s logo on the side pulled by the dually pickup truck (one ton Dodge).

[84] These vehicles are parked on the Lands. The Board understands that the Applicant does not frequently use the 14’ trailer, however, based on the information from the Applicant that it has been used for commercial purposes, and that it is parked on the Lands, the Board finds it to be a commercial vehicle. It is a vehicle associated with the business.

[85] The Board notes that the definition of a Home Based Business Level 2 does not require that the commercial vehicle be moved from the Lands regularly, but speaks to the “parking of one commercial vehicle”. Even if the 14’ trailer is parked on the Lands, it is still a commercial vehicle and the Proposed Development exceeds the number of commercial vehicles for a Home Based Business Level 2.

[86] The Applicant identified that there are other vehicles associated with the Lands, including a half ton pickup truck that Mr. Clague uses as his personal commuter vehicle and also takes to inspect sites. This vehicle is registered to the Applicant. The Development Authority submitted that this vehicle is also a commercial vehicle. The Board notes the half ton pickup truck may be considered a “commercial vehicle” but has not conducted the analysis based on its findings above.

[87] The Board also notes that the regulations for a Home Based Business Level 2 only allow the parking of a tractor unit without a trailer as the one commercial vehicle permitted. As the Board has found that the Proposed Development is a Home Based Business Level 3, it has not considered if it would be appropriate to vary this regulation.

[88] The Board has also considered the statements by Mr. Clague that he could pull the logo off the 14’ trailer or sell it. The Board must make a decision on the facts it has before it which includes photographs showing the 14’ trailer parked on the Lands pulled by the Dually pickup truck.

[89] Based on the information before it, the Board finds that the Applicant has more than one commercial vehicle parked on-site. As such, the Proposed Development must be a Home Based Business Level 3.

### **Number of On-Site Employees**

[90] The Applicant agrees it has three seasonal employees. These employees are not residents of the Lands or family members who permanently reside in the residential dwelling on the Lands. On its own evidence, the Applicant has stated that these employees will come to the Lands when the Applicant is doing an out of town job. The employees will meet on the Lands and then all drive together in the tractor unit to the job site. The Applicant stated that out of town jobs made up approximately half of the work they do.

[91] The Board has considered if these employees are “on-site” employees. The Board finds these employees are on-site employees as they attend on the Lands a portion of the time and their vehicles travel in the neighbourhood and are parked on the Lands.

[92] The Board has considered the Applicant’s position that these are not “on-site employees” because they only come to the Lands to travel with Mr. Clague.

[93] The Board has also considered the statements by Mr. Clague that he would have the employees stop coming to the Lands if required. The Board must make a decision on the facts it has before it. On the facts before it, the Home Based Business has employees attend at the Lands at least a portion of the time. This is despite the condition on the Development Permit that provides:

4. Only the resident and the resident's family who permanently reside in the residential dwelling on the subject parcel may be permitted as employees.

[94] Based on the information before it, the Board finds that the Applicant has three on-site employees.

[95] As such, the Proposed Development is a Home Based Business Level 3 as it has three on-site employees.

## **CONCLUSION**

[96] In considering all the evidence before it in its totality, the Board finds that the Proposed Development does not comply with the LUB. Accordingly, the Board allows the appeals.

Issued this 30<sup>th</sup> day of June for the Parkland County Subdivision and Development Appeal Board.



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B. Williams, Clerk of the SDAB, on behalf of Dylan 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. Thomas Lippiatt – Development Authority
2. Anne and Gordon Symborski - Appellants
3. Dave Ealey – President of the Wagner Natural Area Society, Appellant
4. Ed Clague and Anna Marocco - Applicants
5. Keith Percy
6. Gary Kessler

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

Exhibit	Description	Date	Pages
1.	Notice of Appeal - Anne and Gordon Symborski	2021-04-27	9-11
2.	Notice of Appeal - Wagner Natural Area Society	2021-05-28	12-15
3.	Submission of the Development Authority	2021-06-15	16-72
4.	Submission of the Applicant – Impact Screw Piling Inc.	2021-06-15	73-79
5.	Submissions in Support of the Appeals	2021-06-11	80-85