

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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HEARING DATE: September 13, 2021
FILE NO.: 21-D-249

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority of Parkland County (the "Development Authority") refused a development permit application made by Meghan Polson to construct a 5,975 square foot structure for wedding receptions and ceremonies (the "Proposed Development"). The lands are located at 53113 Range Road 14, and are legally described as Plan 1324166, Block 1, Lot 5 within SE-8-53-1-W5M (the "Lands"). The Lands are located 0.88 kilometers south of Highway 16, 1.6 kilometers north of Highway 16A and west of Hubbles Lake.

[2] On July 16, 2021, the Development Authority reviewed the development permit application and refused it on the basis that the Proposed Development does not comply with the Land Use Bylaw 2017-18. On July 19, 2021, the Applicant, Meghan Polson, appealed the refusal (for the purposes of this decision, the Applicant will be referred to as the Appellant).

[3] The Subdivision and Development Appeal Board (the "Board") heard the appeal on September 13, 2021 in person at Parkland County Centre.

PRELIMINARY MATTERS

A. Board Members

[4] At the outset of the appeal hearing on September 13, 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, Dr. Kevin Worry asked the Board why the hearing was held in person. The Board advised that the hearing notices had been sent prior to the September recommendations for decreasing the size of in-person gatherings.

[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 refuses the appeal.

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 and materials filed in advance of the hearing.

Development Authority

[12] The Lands are located at 53113 Range Road 14, legally described as Plan 1324166, Block 1, Lot 5 within SE-8-53-1-W5M. The Lands are located 0.88 kilometers south of Highway 16 and 1.6 kilometers north of Highway 16A and are west of Hubbles Lake. The Lands are located within the CR-County Residential District of the County's Land Use Bylaw (the "Land Use Bylaw"). The Development Authority determined the Proposed Development to be a Home-Based Business Level 3. This use is a discretionary use within the CR-Country Residential District. Under the Land Use Bylaw, the use is prohibited from being located in a Multi-Parcel Residential Subdivision in accordance with the Fundamental Use Provisions under Section 5.3.2(a)(i)(4) of the Land Use Bylaw.

[13] The Lands are within the Country Residential Area, a High Priority landscape and Prime Recreation Tourism Area as identified in the County's Municipal Development Plan Bylaw 2017-14. The Lands are governed by the Glory Hills Area Structure Plan which accommodates country residential and public recreational use. The Lands are within the Hubbles Lake Environmentally Significant Area and are of Regional Significance.

[14] The development permit application was received June 8, 2021 and deemed complete June 25, 2021.

[15] In coming to its conclusion that the Proposed Development was a Home-Based Business Level 3, the Development Authority took into consideration:

- a. The scope of the business – the proposed activities for the Lands were limited to private wedding ceremonies and receptions;
- b. Frequency of events – the proposed activities were to occur once a week on

- Saturdays; and
- c. The business' secondary nature to the principal dwelling – there is an existing dwelling on the Lands, occupied by the Appellant, Meghan Polson.

[16] The Development Authority reviewed the Proposed Development against the definition for Community Recreation Services as well as comparing it against the definitions for Home-Based Business Level 2 and Home-Based Business Level 3 in accordance with Section 20.3 of the Land Use Bylaw.

[17] The Development Authority concluded that Community Recreation Services were intended to accommodate development for recreational, social or multi-purpose use for local community purposes. The proposed activities on the Lands were limited to private wedding ceremonies and receptions. Due to the nature of wedding events, the Development Authority considered that caterers, florists and other contractors would be frequent visitors to the Lands to prepare for an event. The venue is proposed to hold a maximum of one hundred (100) patrons. The Development Authority determined that the activities were in excess of a Home-Based Business Level 2. Therefore, the Development Authority concluded that the use fell within the definition of Home-Based Business Level 3.

[18] The Development Authority concluded, following a review of the Land Use Bylaw that the Lands are located within a Multi-Parcel Residential Subdivision. The Fundamental Use Provisions within the CR District (section 5.3.2(a)(i)(4)) prohibit a Home-Based Business Level 3 within a Multi-Parcel Residential Subdivision.

Multi-Parcel Residential Subdivision means a subdivision of land, registered by plan of survey or descriptive plan, containing a cluster of four (4) or more residential Parcels where the residential Parcels are predominantly 4.1 ha (10.0 ac) in size or less, and have been created for, or are being principally used for, residential purposes.

[19] The Development Authority, having concluded that the Proposed Development is located within a Multi-Parcel Residential Subdivision, is not able to vary the use. As a result, the Development Authority is unable to approve the Proposed Development and the development permit was refused.

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

- a. In order to determine use, it looked to determine the closest and best use. For Community Recreation Services, the use must be open to a wide array of activities, for example recreational and multi-purpose uses. The Development Authority referenced a Girl Guide meeting. The application package was specific to a wedding and private reception and the Development Authority concluded that the use was closer to a Home-Based Business Level 3;
- b. In response to Board questions about whether the Development Authority would change its position having reviewed the appeal information, the Development Authority advised that it must take the application as received and it made its decision based on the information submitted as part of the original package received in June 2021. The Development Authority noted that the definition of

Community Recreation Services does not specify whether the use does or does not have to be for profit;

- c. The Development Authority confirmed that in the event there is a refusal, the Land Use Bylaw contains a twelve (12) month resubmission interval for the same or similar use. However, the Appellant could apply to Council to waive the twelve (12) month period; and
- d. The Development Authority stated that there is nothing in the Land Use Bylaw that says that because there is a home on the Lands that a home-based business must be the first chosen. However, the Development Authority advised that there is a home on the Lands which does provide grounds to conclude that this is a home-based business.

Appellant – Meghan Polson

[21] In her oral submissions, the Appellant, Meghan Polson, addressed three key findings by the Development Authority:

- a. the use does not meet the general intent for Community Recreation Services;
- b. the use is secondary to the dwelling; and
- c. the use class is or would be a Home-Based Business Level 3.

The Use does not Meet the General Intent for Community Recreation Service

[22] Community Recreation Services is defined as:

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

[23] The Appellant's general intention is to host weddings, but they would not be limited solely to weddings. The hall would host both private and community functions. They tried to address weddings in their comments to the neighbours, since that would be seen as the most disruptive; however, they would also host summer socials, community events, craft markets, and celebrations of life. Ms. Polson stated that this is a high-end barn, setting itself apart from community halls. They would like to donate two (2) events each year to the community. In terms of the frequency of events, their goal is to host ten (10) events a year. They will be focusing on weddings but will not limit the events because they need to generate income. They have done noise testing and traffic studies and feel the business will not be a disruption in the community. They have looked at other events in the community such as the paintball business. They have looked at the footprint of the event. There will be one event with a hundred people per time. They believe that the impact of a single event will not be significant. They have looked at the access to Range Road 14, which is not a neighbourhood road. If people are not parking on the road, there should not be an impact. They believe that the County should have an interest in a broad range of community services.

The Use is Secondary to the Dwelling

[24] The Appellant has their personal residence on the property, but it is not part of the use. There will be two uses. The Development Authority has said that the property is residential, and in the Appellant's view, Community Recreation Services was incorrectly applied. The Community Recreation Services is for the development only and not for the Lands. The whole parcel is not used for a community recreation purpose, and it should not matter if the residence is on the Lands since the Appellant is not using their home for the development. In the Appellant's submission, the Development Authority was wrong to consider other uses on the Lands. It is common for land to have multiple uses. If the Development Authority is correct, the interpretation would mean that there can be no Community Recreation Services on the same property with a dwelling.

The Use Class is or would be a Home-Based Business Level 3

[25] The Appellant advised that this is not a business in a home at all. The Appellant was advised to apply under the use class of Community Recreation Services. The Appellant stated that focusing on weddings was a mistake in the application because the use will be for weddings and special events. The Appellant submitted that there is a viable market for this venue and the County is missing an opportunity. This type of use is popular in other counties. Guests to the Lands will not be using the lake. There is adequate parking, and it will not disrupt the neighbours. In the Appellant's view, the use should be granted. The Appellant stated that the County had no objections to the noise or the impact on the ecosystem. The answers are solved in the engineering reports which have been submitted as part of the application process.

[26] In response to Board questions in relation to the difference between the community events and weddings, the Appellant stated that wedding users will use the backyard and it will be the only event allowed in the outdoors. Users of the Lands will not be allowed to access the lake. Ms. Polson advised that since she lives on the property, she will be able to enforce these conditions. The barn will have a double door exit system for soundproofing. Every other event will be within the soundproofed building. She stated that there will not be much difference between a Girl Guide event or a wedding. The Girl Guides will not be able to be outdoors in the yard. The difference would be the outdoor use which will be permitted only for weddings. The price will also be different. She stated that it would be a high-end wedding venue.

[27] In response to the question from the Board about what percentage of events would be weddings and what percentage would be community events, she stated that there would be ten (10) weddings a year and the availability would be on demand. It would be a first come first served basis.

[28] The Board noted that the traffic study was conducted on the basis that there would be one event per month. If the number of events was opened up, the Board questioned what the traffic would be or whether an update to the Traffic Impact Assessment would be required. The Appellant responded that the Traffic Impact Assessment had been done for a broad range of dates and not just Saturdays. She stated that Range Road 14 is rated for more traffic and the volume to capacity ratio is satisfactory. The daily number of vehicles is 540-640 vehicles per day, but Range Road 14 can accommodate 1,500 vehicles per day.

[29] In response to Board questions regarding the noise escaping from the Barn and a request to summarize the noise studies, the Appellant advised that there will be two doors spaced six (6) to eight (8) feet apart so no door would be left open. She stated that the engineer had a number of tips to make the venue soundproof. There will double doors; and there will be four (4) inch gaps between windows to act as a silencer. There will also be physical silencers on the heating ventilation and air conditioning unit. The Appellant stated that the noise impact assessment indicated that the noise would comply with the County's Noise Bylaw limits. She did tests from her house. She generated noise inside the house at eighty-five (85) decibels and went outside to see what noise generated. She did not face the source of the noise to a window. Then, as a test she did put the speaker towards the window and towards the lake. She indicated that there is no noise past one hundred twenty-three (123) feet from the house. Her nearest neighbours are three hundred twenty (320) feet away.

[30] In closing comments, the Appellant indicated that she was aware there would be many questions about noise, traffic and the ecosystem. She urged the Board to review the engineering reports that had been provided along with the application materials. She stated that the goal was initially to have ten (10) events a year and it was about weddings. If the County wants more services and if the community needs them, then they are prepared to provide it. They are open to having as many events as the community needs. This is not a typical community hall but a high-end hall.

[31] In her view, there would be very little noise from the parking lot. She compared the noise to be the same as that at the Hubbles Lake Resort which is not a constant hum. Even with sound over the water, she did not feel that noise should be a problem. There are no amenities like this in the County. The community halls were built twenty (20) to forty (40) years ago and cannot keep up with current designs. She is doing all they can to prevent disruption to the neighbours. The music and partying will be indoors in a soundproofed building. She submitted that it would be a benefit to the community and should be approved.

Those Speaking in Favour of the Appeal

[32] Doug Morrison stated that he has lived at Hubbles Lake since 1990. His daughter is Meghan Polson, the Appellant. He stated that he did not believe that the Appellant would do anything that would jeopardize the lifestyle around the lake. He was in support of the development proceeding and felt it would be an asset to community and local events.

Those Speaking in Opposition of the Appeal

Ray and Cheryl Anderson

[33] Ray and Cheryl Anderson live at the west end of Hubbles Lake across the road from the church. They are less than one hundred (100) meters from the boundaries of the property. They see the application as a commercial activity and not a residential one. They have concerns about policing the conduct of those who would attend functions on the Lands. They understand that the Appellant has received a traffic study but dispute the results. Mr. Anderson has been in the traffic business for fifty-eight (58) years. With one hundred (100) people attending weddings, there will be between fifty (50) to seventy (70) vehicles. He is concerned about road safety. He is concerned about people parking in the ditch and into a lane that is not

level. There is a corner. He has concerns about the location that is between Highways 16 and 16A. Their position is that this is a commercial activity which has no limits. There will be increased activity and if the business is popular, there will be an increased demand for the services leading to increased traffic and noise. Mrs. Anderson advised that her concern is for the safety of the people involved in the weddings, and now that there will be special events like Girl Guides and youth activities, she is concerned about how the Appellant would keep people inside the building and not allow them outside for a smoke or other activities. She also was concerned about people wandering around and going to the lake. The lake shore is not stable, and the floor of the lake is soft. She was concerned about accidents occurring. In addition, she was concerned that this was a commercial venture in a residential area.

Audrey Babonich

[34] Audrey Babonich lives in the area. She is concerned that what is currently being said at the hearing by the Appellant is different than what was contained in the application materials. She agreed with the traffic concerns raised by the Andersons. She has had concerns with regard to traffic and tires squealing from the Allen Beach Resort to the highway. There is a lot of traffic in the summer accessing Allen Beach. She is concerned about speeding, the turns on the road and the blind driveways. There are no ditches or sidewalks in this area so that pedestrians have to walk on the subdivision roads. While access to the Lands may be on Range Road 14, there will be a number of people using it as a shortcut from one highway to another. This traffic is already significant and will increase. There will be extra traffic on residential roads, and it will not be possible for the Appellant to control the roads that people use. She is also concerned about people touring the neighbourhoods and traffic increasing on the roads. Her big concern was with the additional traffic between the Lands and Beach Corner.

[35] The original application advised there would be ten (10) events per year and only on Saturday. The information now coming from the Appellant is that the venue will now be open three hundred sixty-five (365) days a year which changes its nature. There are already community halls for community events and a basement in the church that people can rent. In her view, there was no need for this development.

[36] She was concerned about the wildlife in the area and the impact that the additional traffic will have on the wildlife.

[37] She was also concerned about what will occur in the event that there is an approval, and the business is sold and someone else takes it over. She was not certain how it would be managed. The area is densely populated and approving the development would have an impact on the quality of life of the residents. There are already parking issues for people who wish to access the lake. If there are infractions, it will be difficult to get in contact with the County's Bylaw Enforcement staff.

Gordon Janssen

[38] Gordon Janssen designs and looks after the construction of County roads between Darwell Highway and Wabumun. He lives in the area. He provided clarification on comments made in relation to the road. He advised that a previous development permit application for a use on Range Road 15 at the junction of the Yellowhead Highway was turned down because the intersection from the highway could not handle the additional traffic. He is concerned about the impact of additional traffic at that intersection.

[39] His second point was that the driveway to the Lands is located on the inside of a corner resulting in poor sight lines. The subdivision was approved approximately thirty (30) years ago and if the subdivision application had been made today it would likely not be approved because the sight lines do not meet standards. In his view, the corner is dangerous and could be a traffic hazard. He wished to keep everyone safe.

Dr. Kevin Worry

[40] Dr. Kevin Worry lives on the northeast part of the lake. He had challenges with the Appellant's logic in the response to why the Development Authority's denial of the application should be reconsidered.

[41] He stated that there are other venues in the area. They may not be identical, but there is a community hall two (2) kilometers away. There are two other venues which support Community Recreation Services. He stated it is not a fair assertion that there are no other venues like this in the area.

[42] In response to the Appellant's comments about why the use should be considered a Community Recreation Services use, he stated that Community Recreation Services is to be primarily for local community purposes. In reading the application, the Appellant's words are that this is a business and must generate income, it is not for local purposes. Events have been indicated to be on a first come first served basis. This is fundamentally different than a Community Recreation Services use for local community purposes and there are already two (2) such venues in the area.

[43] The scope of what had been proposed was originally ten (10) events a year and is now three hundred sixty-five (365) days a year. The scope has dramatically changed. It is a business and must make money. The definition of Community Recreation Services comments that it must be "primarily intended" for local purposes. The use proposed by the Appellant is not primarily intended for local use. It is primarily a commercial business.

[44] In addition, Dr. Worry indicated that he had concerns about traffic and now has more concerns having heard other submissions by other speakers. Based on his personal experience, there is a lot of traffic on the roads, particularly on Range Road 14. There will be traffic increases and the speed on the road will increase. The lack of proper sidewalks in the subdivision means that there is no easy way to walk around the lake. An increase in volume and traffic will increase risk. The risk increases when part of the activities, particularly for high end wedding venues, includes alcohol. He stated that approval of the Proposed Development will add to the safety risk for local residents on the roads.

[45] In his view, the noise assessment is incomplete and does not recognize the nature of the venue in relation to the water. Sounds will carry across a closed body of water significantly. He can hear conversations across the lake. Having a development across the body of water is disruptive, particularly if there can be events three hundred sixty-five (365) days a year. Even with the double doors, he questioned whether they might be left open, and the noise would then be worse.

[46] He stated that there is a subjective nature that the Land Use Bylaw did not capture.

This is a quiet nature filled area. There are no gas motors on the lake. Life is at a slower pace. There is lots of nature and wildlife. The traffic and the noise will affect wildlife and their property values will drop. This will take away from reasons to move to the area.

Jody Kyfiuk

[47] Jody Kyfiuk spoke for the Hubbles Lake Stewardship Society. She lives by Allen Beach. She read an excerpt from the Watershed Report from the Watershed Alliance and Lake and Management Society. She indicated that there are concerns about the riparian impact of the Proposed Development. Forty (40%) percent of the shoreline of Hubbles Lake is developed and less than fifty (50%) percent of the riparian area is intact. As a stewardship society, they are concerned about what will happen to the riparian area. While the Appellant may have the best interests of the neighbourhood at heart, if they sell, any subsequent purchaser may destroy the riparian area. This is an ecologically sensitive area which should be protected.

Paul Curcio

[48] Paul Curcio lives on the north end of the lake. He echoed the concerns that had been previously stated. He had concerns about noise on the lake and concerns about safety at the lake. He believes that people will be drawn to the lake, even if there are attempts to keep them in the building.

Claire Callbeck

[49] Claire Callbeck lives near the Lands. She had concerns about the information contained in the application. She has increased concerns hearing the Appellant advise that the scope and size of the proposed development has expanded. She supports the concerns of the neighbours that have been expressed at the hearing. In her view, the people who would attend events do not live in the area and therefore have no vested interest in the community. She indicated that having the possibility of events three hundred sixty-five (365) days a year with one hundred (100) people attending will be significant for neighbourhood residents. She recognizes the work and expenses that the Appellant has incurred in relation to the application, but respectfully asks the Board to deny the appeal.

Heather Rohachuk

[50] Heather Rohachuk lives near the Lands. She supports the comments made in opposition to the Proposed Development. She indicated that there is a significant density of people living around Hubbles Lake. She is concerned about the volume of sound over the water. She is also concerned about the increase in scope from ten (10) events per year to possibly three hundred sixty-five (365) events a year. She stated that the church is a busy venue. She lives across from its parking lot and sees the comings and goings. She is concerned that there will be a significant increase in traffic due to the Proposed Development. She is also concerned about how the Appellant would control where people go on the Lands. People may want to go to the lake. They may also travel down the roads to get snacks or a drink in the time between ceremonies and dinner. This will impact outdoor noise.

[51] She is concerned about the environment. There are animals that surround the area. She is concerned about how the proposed development will affect them.

[52] She agreed with the concerns raised about traffic especially people stopping on the road. There is a hidden intersection at Range Road 14 and it is on the curve of a hill. She

stated that this will increase the danger. Further, the parking lot may not be sufficient, and it is not clear how the parking will be addressed. She understands that the Appellant was not able to reach an agreement with the church to address overflow parking. She is concerned that people would park on the road to get to the venue.

[53] She is also concerned about the potential increase in fire hazard. There are no fire hydrants in the area.

Jamie Wall

[54] Jamie Wall lives near the Hubbles Lake Resort. He agrees with all of the comments made. He believes that the environment should be held sacred. His wife was in a road accident on Range Road 14 twenty (20) years ago. He is concerned about traffic safety. He thinks that there will be an increase of traffic and noise.

FINDINGS OF FACT

[55] The Lands are located at 53113 Range Road 14, and are legally described as Plan 1324166, Block 1, Lot 5 within SE-8-53-1-W5M (the "Lands"). The Lands are located 0.88 kilometers south of Highway 16, 1.6 kilometers north of Highway 16A and west of Hubbles Lake.

[56] The Lands are located within the CR – County Residential District of the Land Use Bylaw.

[57] The Lands are located within a Multi-Parcel Residential Subdivision.

[58] Section 5.3.2(a)(i)(4) of the Land Use Bylaw prohibits Home-Based Business Level 3 developments within a Multi-Parcel Residential Subdivision as a Fundamental Use Provision.

[59] The Appellant, Meghan Polson, is an affected person.

[60] Those speaking in favour and opposed to the appeal (Doug Morrison, Ray and Cheryl Anderson, Audrey Babonich, Gordon Janssen, Dr. Kevin Worry, Jody Kyfiuk, Paul Curcio, Claire Callbeck, Heather Rohachuk and Jamie Wall) are affected persons.

[61] The Proposed Development is not compatible with neighbouring uses.

REASONS

Jurisdiction

[62] 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 Appellant.

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

[63] The Board has determined that the following issues must be decided:

- a. Are those speaking affected?
- b. Is the Proposed Development compliant with the relevant statutory plans?
- c. What is the Land Use District?
- d. What use is the Proposed Development?
- e. If the Proposed Development is a Home-Based Business Level 3, can the Board approve the application for a development permit?
- f. If the Proposed Development is a Community Recreation Services use, is the use compatible with neighbouring uses?

Affected Persons

[64] The first question for the Board is to determine whether those speaking before the Board are affected.

[65] The Appellant applied for the development permit. Since it is the Appellant's permit that is being appealed, the Appellant is an affected person.

[66] In relation to those speaking both in favour of the appeal and in opposition to the appeal, the Board notes that all of the speakers live in relatively close proximity to the Proposed Development. The Board finds that due to their proximity to the Proposed Development, they are affected, and the Board has heard and considered their evidence.

Statutory Plans

[67] The Board notes that any proposed development must comply with the relevant statutory plans. In relation to whether the Proposed Development complies with the County's statutory plans, the only evidence provided was that provided by the Development Authority (page 10/395, 31/395-36/395). The evidence before the Board is that the Proposed Development complies with the County's Municipal Development Plan or the Area Structure Plan which applies to the Lands.

[68] Although the Board has concluded that the Proposed Development complies with the statutory plans, compliance with the statutory plans is necessary, but not sufficient. The Board must also consider the nature of the Proposed Development and determine whether it can, and should be, approved.

Land Use District

[69] The Land is within the CR-County Residential District. Within that District, Community Recreation Services is listed as a discretionary use (see section 5.3.2(e)). A Home-Based Business Level 3 is a discretionary use. However, under section 5.3.2(a)(i)(4), a Home-Based Business Level 3 cannot be located within a Multi-Residential Subdivision. The Board notes that this provision of the Land Use Bylaw is located within a Fundamental Use Provision of the Land Use Bylaw. Since it is a use provision, the Board is mindful of its authority under Section 687(3)(a.3), which provides that the Board must comply with any Land Use Bylaw in effect. The Board is aware that it has no authority to vary uses. Therefore, if the Board concludes, as a matter of fact, that the Proposed Development is a Home-Based Business Level 3, then the Board must refuse the appeal as the Board cannot approve a use which is neither permitted nor discretionary within the district.

What Use is the Proposed Development?

[70] The Development Authority considered the information provided in the development permit application and concluded that the Proposed Development was a Home-Based Business Level 3. The Development Authority's determination was based on the nature of the development and the fact that it was going to be private events (weddings). In contrast, the Appellant stated that despite the information they had submitted as part of their development permit application, they were going to open the hall for community use, whether that be for Girl Guides or for high end weddings. However, the Appellant confirmed that they need to make money, as this facility is a business. The Appellant argued that the Proposed Development was a Community Recreation Services use.

[71] The Board has examined the definition of a Community Recreation Services use. Community Recreation Services means:

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

[72] The definition of Community Recreation Services contains three elements. The

development must be:

- a. For recreational, for social or multi-purpose use;
- b. Primarily intended;
- c. For local community purposes.

[73] The evidence before the Board supports the fact that the Proposed Development will be recreational, social or multi-purpose uses. The Appellant has indicated that there will be wedding events or other social events such as Girl Guides or community socials. Therefore, the Board finds that the Proposed Development meets the first element of the definition for Community Recreation Services.

[74] However, in order to meet the definition of Community Recreation Services, the Board must be convinced that the recreation, social or multi-purpose uses are "primarily intended" for local community purposes. The Board is not convinced on the evidence presented that the Proposed Development is primarily intended for local community purposes. The application and appeal materials submitted by the Appellant indicated that there would be ten (10) events a year and that those would be geared to high end weddings. There was no evidence presented either in the application package, or in the appeal materials or the oral submissions as to how the high-end wedding events would focus on the local community. Given the submissions made by the Appellant, the Board infers that the weddings would be for people seeking to use the facility where those people may not be local to the community. The Board was not convinced by the information provided by the Appellant indicating that local groups, such as the Girl Guides or others could use the facility that the Appellant's primary intention was to focus the Proposed Development for local community purposes. Rather, the Appellant stressed the fact that there would have to be some business use to fund the cost of the development. While the Board recognizes and accepts the desire of the Appellant to run a high-end event facility, in order to meet the definition of Community Recreation Services, the development must be primarily intended for local community purposes. The Board is not convinced that the evidence shows this primary intention. Rather, the Board concludes that the addition of the local community events is an add-on to what would primarily be a business venture designed to attract couples from places elsewhere in the County or in the larger region to the venue. In this regard, the Board noted the Appellant's comments about other counties having similar facilities. The Board views this as an indication of the intention of the Appellant to look beyond the immediate community around Hubbles Lake or within the County.

[75] In addition, the Board noted that the plans show that the building has bride and groom rooms, which also suggests an intention to focus on weddings, and not local community events of a more generalized nature.

[76] Having found that the Proposed Development does not fall within the definition of Community Recreation Services, the Board is then left with the requirement to determine what use the Proposed Development is.

[77] The Board was presented with only two options of proposed development: Community Recreation Services and Home-Based Business Level 3. In looking at the other permitted and discretionary uses within the Country Residential District, the Board notes that none of the other listed uses would be applicable and that the only two possible uses are Community

Recreation Services and Home-Based Business Level 3.

[78] The Development Authority identified Home-Based Business Level 3 as the potential development. The Appellant refuted the suggestion that the use is a Home-Based Business Level 3. However, aside from asserting that the Proposed Development is a Community Recreation Services use, the Appellant did not argue in support of any other use.

[79] The Board has examined the definitions of Home-Based Business Level 2 and Home-Based Business Level 3.

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).

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.

[80] The definition of Home-Based Business Level 2 requires that there may be some client visits and the parking of one commercial vehicle. Given the number of potential vendors who may travel to the Lands and given the proposed number of attendees at wedding events (one hundred (100) people), the Board is of the view that the intensity of the Proposed Development exceeds that contemplated in Home-Based Business Level 2.

[81] In considering whether the definition of Home-Based Business Level 3, the Board notes that the definition requires a trade or craft for gain or support. Although the proposed development is not necessarily a trade or craft, the Board believes that the Proposed Development falls within the definition of Home-Based Business Level 3 because there is the intention to have a business operation at the Lands. The definition of Home-Based Business Level 3 includes all home-based businesses not considered other levels of home-based business.

[82] Having looked at the evidence, the Board concludes that the Proposed Development is a

Home-Based Business Level 3. It is a commercial enterprise on a site that is already used for a residential purpose. The starting information of the Appellant was that there would be ten (10) events per year, which the Board considers to be secondary to the residential use. Although the evidence of the Appellant at the hearing was that there could be as many as three hundred sixty-five (365) events (one (1) per day), the Appellant indicated several times that she will be living on the property. The Board concludes from this that the Proposed Development would be secondary to the residential nature of the Lands.

If the Proposed Development is a Home-Based Business Level 3, can the Board approve the application for a development permit?

[83] The Board reads the Fundamental Use Provisions the Land Use Bylaw as setting out use criteria. The Board notes that the Fundamental Use Provisions of the Land Use Bylaw provides that a Home-Based Business Level 3 is not permitted within a Multi-Parcel Residential Subdivision. Multi-Parcel Residential Subdivision is defined as:

MULTI-PARCEL RESIDENTIAL SUBDIVISION means a subdivision of land, registered by plan of survey or descriptive plan, containing a cluster of four (4) or more residential Parcels where the residential Parcels are predominantly 4.1 ha (10.0 ac) in size or less, and have been created for, or are being principally used for, residential purposes.

[84] The Lands are located within a Multi-Parcel Residential Subdivision. There are four (4) or more parcels meeting the size restrictions and the definition which have been created for and are principally used for residential purposes.

[85] Having concluded that the Lands are located within a Multi-Parcel Residential Subdivision and that the use is a Home-Based Business Level 3, the Board is not able to approve the development permit for the Proposed Development, given the restrictions in Section 687(3)(a.3) of the Municipal Government Act. The Board is not able to approve a use where the use is neither permitted nor discretionary in the District. The Board does not have the authority to vary use. As a result, the appeal must be dismissed.

If the Proposed Development is a Community Recreation Services use, is the use compatible with neighbouring uses?

[86] Having concluded as a question of fact that the use is a Home-Based Business Level 3, the Board must dismiss the appeal. However, to provide a complete review of the development permit application, the Board has considered the question of whether it is compatible in the District, should the use be determined to be a Community Recreation Service. While the Board is not required to conduct this determination given its findings above, the Board is doing so for completeness.

[87] Had the Board found the Proposed Development to be a Community Recreation Services use, 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 SDAB), 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.

[88] The neighbours have raised the following concerns which the Board needs to explore to determine if the Proposed Development is compatible with the neighboring uses:

- a. Traffic;
- b. Noise;
- c. Environment and wildlife;
- d. Fire Risk; and
- e. General suitability

Traffic

[89] In looking at the Proposed Development, the Board notes that the Traffic Impact Assessment provided by the Appellant was based upon the assumption that there would be ten (10) events per year. Given the current evidence of the Appellant that it would be expanding the number of times during the year there could be events on the Lands to as many as three hundred sixty-five (365), the Board is of the opinion that the Traffic Impact Assessment does not fully cover the impact of the Proposed Development. The Board also notes that the Traffic Impact Assessment was done in 2020, during COVID-19, which may not be reflective of the traffic outside of the pandemic.

[90] In considering the evidence that was provided by all of the people giving evidence before the Board, both in support and in opposition to the appeal, the Board notes that a number of the speakers spoke of the site lines in relation to the roadway and the fact that the driveway to the Lands is located on a curve. While the Board accepts the evidence contained within the Traffic Impact Assessment that the road is able to accommodate the volume of traffic, the Board has concerns about the impact of adding additional traffic. The number of vehicles traveling on the road may increase from the Proposed Development. The Board has concerns about the safety on the roads given the site lines and the hidden driveway. The Board also notes in this regard that the evidence of the neighbours was that there are no sidewalks in the neighbourhood and that pedestrians wishing to walk in the area must walk on the subdivision roads. The Board does have concerns about how increased traffic would impact on neighbourhood safety. The Board is also concerned about the potential impact of increased traffic at the Yellowhead and Range Road 14, particularly given the significant increase in the projected volume of business now that the Appellant has indicated that there would not be only ten (10) events per year. The Board finds that the impact arising from the increased traffic makes the Proposed Development incompatible with neighbouring uses.

Noise

[91] In relation to the noise, the Board understands that the Appellant has gone to significant efforts to attempt to address the impact of the noise. The general concern of the neighbours was with regard to noise over the lake. The Appellant indicated that they would not allow events to occur outdoors (except wedding ceremonies) and that they will be taking steps to soundproof the building (double doors and four (4) inches of space between the windows). However, the Board questions how the Appellant will be able to enforce keeping one hundred (100) guests inside the building. The Board understands that the Appellant intends to keep

people inside, but is concerned that once there are that many people at an event, particularly where alcohol is served, all attendees will not stay inside the building. Once attendees leave the building, the Board is concerned about the impact of noise across the lake.

Lake Environment and Wildlife

[92] In relation to the concerns about the environment, the lake and wildlife, the Board notes that the Proposed Development is not encroaching upon the riparian areas of the lake and therefore does not find this to be an issue of compatibility. The concerns about wildlife were general. While there may be some impact on wildlife due to the increased traffic, the Board was not provided with specific information about this concern. The Board is not convinced that the evidence presented was sufficient to indicated a lack of compatibility based upon concerns about lake health or wildlife impact.

Fire Risk

[93] In regard to concerns of personal safety and fire, the Board recognizes that there are no fire hydrants in the area. However, based upon the plans provided, this building is separate from other buildings and is in a clearing. The Board is not convinced on the evidence presented that there would be a fire safety from the Proposed Development, or sufficient of a fire safety risk that it is incompatible with surrounding uses.

General Suitability

[94] Based upon general suitability, the Board has looked at the proposed location being a draw for up to one (100) hundred people in the venue. The Board is of a view that having such a high density of users in a Multi-Parcel Residential Subdivision is not compatible given the overall residential nature of the subdivision and the intensity of the commercial development.

Conclusion regarding Compatibility

[95] As a result of the Board's analysis, the Board finds as a matter of fact that the impact on traffic and noise makes this Proposed Development incompatible with the surrounding uses.

Conclusion

[96] The Board has concluded that the Proposed Development falls within the definition of Home-Based Business Level 3. Since a Home-Based Business Level 3 is not permitted within a Multi-Parcel Residential Subdivision and the Lands are within a Multi-Parcel Residential Subdivision, the Board cannot approve the use because it is neither permitted nor discretionary within the District. As a result, the appeal is denied.

[97] The Board concluded that the proposed use is not Community Recreation Service because it is not primarily intended for local use. To provide a complete decision, the Board conducted an analysis of the compatibility of a Community Recreation Service and determined that the Proposed Development is incompatible due to the potential impacts on traffic and noise on the surrounding properties.

Issued this 27th day of September for the Parkland County Subdivision and Development Appeal Board.



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

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

APPENDIX "A"
REPRESENTATIONS

	PERSON APPEARING
1.	Rachelle Trovato, Development Authority, Parkland County
2.	Doug Morrison
3.	Meghan Polson, Appellant
4.	Ray and Cheryl Anderson
5.	Audrey Babonich
6.	Gordon Janssen
7.	Dr. Kevin Worry
8.	Jody Kyfiuk
9.	Paul Curcio
10.	Claire Callbeck
11.	Heather Rohachuk
12.	Jamie Wall

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

September 13, 2021 Agenda Package			
Exhibit	Description	Date	Pages
1.	Table of Contents	September 9, 2021	1
2.	Agenda Coversheet	September 9, 2021	2
3.	Notice of Appeal – Meghan Polson	July 19, 2021	6-8
4.	Submission of the Development Authority	September 7, 2021	9-202
5.	Submission of the Applicant/Appellant– Meghan Polson	September 6, 2021	203-283
6.	Submissions in Opposition of the Appeal	September 7, 2021	284-395