

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
PARKLAND COUNTY**

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HEARING DATE: March 21, 2022

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

**INTRODUCTION**

[1] The Development Authority for Parkland County (the "County") issued a Stop Order on October 20, 2021 under section 645 of the *Municipal Government Act*, RSA 2000, c M-26 ("MGA"). The Stop Order was issued to Mr. Derek Prue (the "Appellant") for the unauthorized use of lands located at 0322088-001-017, municipally described as 99-26321 Hwy 627 (the "Lands").

[2] The Appellant has appealed the Stop Order.

**PRELIMINARY MATTERS**

**A. Board Members**

[3] 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**

[4] The Chair confirmed that everyone in attendance had the full hearing package prepared for the hearing. There were no additions or objections to the exhibits as presented. The Board marked the exhibits as set out at the end of this decision.

**C. Miscellaneous**

[5] The appeal was filed in time, in accordance with section 686 of the MGA.

[6] 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**

[7] The Board denies the appeal and upholds the Stop Order on the same conditions as set out in the Stop Order of October 20, 2021.

## **SUMMARY OF HEARING**

[8] 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**

[9] The Lands at issue are located at Plan 0322088 Block 1 Lot 17 and municipally described as 99-26321 Hwy 627 in Stoneridge Estates. The Lands are in a Country Residential district.

[10] On March 20, 2021, Parkland County Enforcement Services received a complaint regarding noise related to an outdoor event. The file was subsequently transferred to Land Use Enforcement as there were no permits in place for an event facility.

[11] Land Use Enforcement conducted a more detailed review, which revealed that events had been taking place on the Lands since 2018. They found evidence that "Stoneridge Mansion" was being advertised on Airbnb, with bookings available from March 2021 to October 2021. They further determined that activities on the Lands were consistent with Accommodation and Convention Services as defined in the County's Land Use Bylaw 2017-18 (the "LUB"). The LUB defines Accommodation and Convention Services as:

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

[12] Kayla Gunnarson, Peace Officer, Development Compliance, determined that the Lands were being used for Accommodation and Convention Services without development permit approval. She noted that the definition of "Development" in section 616(b) of the MGA includes a "change of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building".

[13] Section 18.2 of the LUB states that it is an offence for any person to commence a use or change the intensity of use, for which a development permit is required but has not been issued or is not valid under the LUB.

[14] On October 20, 2021, Peace Officer Gunnarson served the Appellant with a Stop Order by Registered Mail and Email. The Stop Order was issued pursuant to s 645 of the MGA for unauthorized use of lands located at 0322088-001-017; 99-26321 Hwy 627.

[15] The Stop Order required the Appellant to "Immediately cease and desist the use of the lands for Accommodation and Convention Services."

[16] The Development Authority argued that the role of the SDAB should be restricted to determining whether the Stop Order was issued correctly, pursuant to the MGA and the LUB.

[17] The Development Authority argued that the Stop Order correctly describes the Lands, identifies the land use infraction, gives a date for compliance, and was issued by a Designated Officer.

[18] In response to Board questions, the Development Authority confirmed that a change in use the Lands would require a development permit. For example, even the operation of a Bed and Breakfast on an occasional basis would require a development permit. The Development Authority confirmed that in this case, it has not received any application for a development permit.

[19] The Development Authority requested that the Appeal be dismissed.

### **Appellant – Derek Prue**

[21] The Appellant was represented at the hearing, by his agent Mr. Jamil Sawani.

[22] Mr. Sawani argued that the Development Authority failed to establish the grounds for issuing the Stop Order, and thus the appeal should be allowed and the Stop Order dismissed.

[23] Mr. Sawani argued that for the Stop Order to be properly issued, there must be evidence that the property was non-compliant with the MGA and LUB prior to the issuance of the Stop Order. Of the information before the SDAB, it is uncertain what information was before the Development Authority at the time they made their decision.

[24] Mr. Sawani argued that the Development Authority has not established that the property was being used in the manner set out in the Stop Order. Further, the use of the property is not contrary to the MGA or the LUB. He implied that some of the events at the property may have been personal events, or events of friends and family of the Appellant.

[25] Mr. Sawani stated that the property was Mr. Prue's primary residence, although he did travel for work which allowed him to rent out the property from time to time.

[26] With respect to the concerns raised by neighbours, Mr. Sawani suggested that certain individuals raising concerns may have vested interests. He also noted that there were only two complaints about the property, which was not significant given the extended amount of time at issue. He further noted that one neighbour had provided a letter of support for the Appellant.

[27] Mr. Sawani conceded that the property is listed on Airbnb and Vrbo, but that this was permitted as "Bed & Breakfast Home" is a permitted use in the Country Residential district. In response to questions from the Board, Mr. Sawani submitted that as Bed & Breakfast Home is a permitted use, as opposed to a discretionary use, there was no need for any additional permit to carry on Bed and Breakfast activities. He further submitted that the "pith and substance" of the use was as a single-family home, and the Bed and Breakfast use was incidental to that use.

[28] In response to further questions from the Board, Mr. Sawani confirmed that he was not aware whether any development permit had been issued to change the use of the property from single-family dwelling to a Bed & Breakfast Home.

[29] With respect to the advertisement for butler and maid services, Mr. Sawani noted that this would form part of any bed and breakfast operation. He also noted that Mr. Prue's family did reside at the property and would provide services if required.

[30] Mr. Sawani noted that the Development Authority has not brought any evidence forward of how many bedrooms are being used as part of the Airbnb rental.

[31] In his closing submissions, Mr. Sawani emphasized that the question before the SDAB is whether the Stop Order was validly issued. Concerns raised by the neighbours; whether there were investigations into noise complaints; and whether the property is listed on Airbnb are not relevant to the ultimate question for the SDAB. The onus is on the Development Authority to establish the basis for the Stop Order, and that basis has not been met.

#### **For the Appeal – Lennore and Jim Huddleston (written submissions only)**

[32] Lennore and Jim Huddleston live immediately next door the Appellant to the east. They indicated that while they understand there have been complaints of noise in the past, they have never felt the need to complain about noise levels. In their view, the Lands have not been used as a convention or conference centre.

[33] The Huddleston's indicated that they did not take issue with the continued use of the Lands as a home-share property.

#### **Speaking Against the Appeal – Lori and Brian Kinahan**

[34] Lori and Brian Kinahan live on an acreage immediately to the north of the Appellant with their children.

[35] They are concerned that the Lands are being treated as a community hall, and that the resulting noise is very disruptive to the use of their own property. In their written submissions, they detailed their interactions with Parkland County Bylaw Officers to deal with noise complaints, including on school nights.

[36] They noted that the Lands have been rented out as far back as 2019, based on reviews from the Airbnb website which they provided to the Board.

#### **Speaking Against the Appeal – Roger Kuntz**

[37] Roger Kuntz made submissions on behalf of himself, his wife Cindy, and his in-laws Claude and Rita Kleefman. He lives immediately to the south of the Lands.

[38] Mr. Kuntz gave evidence that he has dealt with Peace Officers at 3 a.m. in the past. He submitted that the Lands are not being used as a Bed and Breakfast.

[39] Mr. Kuntz also provided the Board with written submissions, which included copies of screenshots taken from the Airbnb website. He noted that the owners do not appear to live at the site, and that there are 8 bedrooms available for rent on the Airbnb website, which is more than the permissible number of rooms for a Bed and Breakfast.

### **Speaking Against the Appeal – David Nelson**

[40] David Nelson has lived next door to the Lands for the past two years. He noted that living next to the Lands was as if he was living next to a community hall. He stated that there is significant noise throughout the summer, mostly on weekends.

[41] Mr. Nelson noted that he does not have any prior relationship to any of the other individuals who came to speak, with the exception of Lori Kinahan.

### **FINDINGS OF FACT**

[42] The Lands are located at Plan 0322088 Block 1 Lot 17, and municipally described at 99-26321 Highway 627.

[43] The Lands are in a Country Residential district.

[44] The Appellant who is subject to the Stop Order is an affected person.

[45] Those speaking against the appeal are affected persons.

[46] On October 20, 2021, Kayla Gunnarson, Peace Officer, Development Compliance with Parkland County issued and served a Stop Order on Derek Prue for unauthorized use of the Lands.

[47] The Appellant is using the Lands in a manner for which he does not have a development permit.

### **REASONS**

#### **Jurisdiction**

[48] The Board's jurisdiction is found in section 687(3) of the MGA. The Board has the authority to confirm, vary or revoke the Stop Order or any condition attached to it.

**687(3)** In determining an appeal, the subdivision and development appeal board [...]

(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

[...]

[49] In making this decision, the Board considered the MGA, the LUB and the oral and written submissions provided by the Development Authority, the Appellants and the affected persons.

### **Affected Person**

[50] The Board finds that the Appellant is an affected person because he was the recipient of the Stop Order and is therefore entitled to file the appeal. Those speaking in opposition to the appeal (Mr. & Ms. Kinahan, Mr. Kuntz, and Mr. Nelson) all live in close proximity to the Lands. Therefore, the Board finds that they are affected.

### **Was the Stop Order Validly Issued?**

#### *Technical Requirements*

[51] The first question the Board must address is whether the Stop Order was validly issued. The onus is on the Development Authority to establish that the Stop Order was valid.

[52] The Board first considered whether the Stop Order met the technical requirements set out in Section 645 of the MGA. The Board notes that the Appellant did not argue that there was a breach of the requirements in the MGA; however, the Board must still be satisfied that the requirements for the Stop Order were met.

[53] A copy of the Stop Order was in evidence before the Board. The Stop Order includes the date it was issued (October 20, 2021), and indicates that it was delivered to the Appellant via Registered Mail, and Email. The Stop Order also states what must be done by the Appellant, and indicates that the action must be taken "immediately". The Board further notes that the Stop Order was signed by Kayla Gunnarson, Peace Officer, Development Compliance with Parkland County.

[54] In light of this evidence, and noting that there was no argument or evidence to the contrary, the Board is satisfied that the Stop Order meets the requirements of the MGA.

#### *Was the use of the Lands authorized?*

[55] The next question before the Board is whether the Stop Order was validly issued for a breach of the MGA, development permit, or condition of subdivision. In this case, the question before the Board is whether there has been an unauthorized development on the Lands.

[56] The Development Authority argued that the Appellant was using the Lands for Accommodation and Convention Services, contrary to the LUB. Accommodation and Convention Services is neither a Permitted, nor Discretionary use within a CR – Country Residential district.

[57] As set out above, the definition of Accommodation and Convention Services includes developments to serve the traveling public for temporary sleeping accommodations, or

development which provides permanent facilities for meetings, seminars, conventions, product and trade fairs and other exhibitions; but does not include Boarding Houses.

[58] The Appellant's Agent admitted that the Lands were being rented out from time-to-time on Airbnb and Vrbo; however, argued that Bed & Breakfast Home is a permitted use in the Country Residential district. In any event he argued, the Bed & Breakfast Home is ancillary to the use of the home as a dwelling.

[59] In assessing whether the Stop Order was validly issued, the Board reviewed the text of the MGA, the LUB, and the Stop Order itself. The re: line of the Stop Order reads "Unauthorized Use of Lands located at 0322088-001-017; 99-26321 Hwy 627". The Stop Order goes on to cite section 1.3 of the then LUB, that states:

*1. No developments, other than those described in Subsection 16.2 of this Bylaw as "deemed approved", shall be undertaken within the County unless a development application has been approved and a development permit has been issued.<sup>1</sup>*

[60] Part 17 of the MGA deals with Planning and Development. Section 616(b) defines "development", and includes the following:

*(iii) a change of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building [...]*

[61] The uncontroverted evidence before the Board is that the Lands are being rented out from time-to-time on Airbnb and Vrbo. While the Development Authority and the Appellant characterized the events taking place on the Lands differently, there was no dispute that the Lands were being rented out for use on these websites. The Board accepts the unchallenged evidence of the Development authority that Parkland County Peace Officers investigated the Lands, and found that the Lands were being used to host parties, and that Stoneridge Mansion is listed on the Airbnb website. Based on this evidence, the Board is satisfied that, in accordance with the definition of "development" in the MGA, there is a development on the Lands. There has been a change of use for the Lands. Regardless of whether the Lands are being used as Accommodation and Conventions Services, or Bed & Breakfast Home, the use of the Lands has changed.

### **Whether the Change in Use Requires a Development Permit?**

[62] The Development Authority and the Appellant took irreconcilable positions with respect to whether a change in use required a Development Permit.

[63] In response to questions from the Board, the Development Authority stated that if the Appellant wished to operate a Bed & Breakfast Home, the County would require a development

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<sup>1</sup> The Board notes that section 1.3 of the current LUB reads "1. No person shall commence or continue a development, other than a development described in Subsection 16.2. without a Development Permit issued in accordance with this Bylaw." No party took issue with the updated wording during the course of the hearing. In any event, the Board notes that the update to the language does not change the intention of the sub-section, that is that a development requires a development permit.

permit for the change in use from a single family home, even if the Bed & Breakfast Home was only operating on an occasional basis.

[64] The Appellant's agent argued that a permit is not required under the bylaw, because Bed & Breakfast Home is a permitted use under the LUB. He did note that the residence on the Lands was a single-family dwelling, and approved as such.

[65] In this case, the Board prefers the argument presented by the Development Authority; in the Board's view, the change in use of the Lands required a development permit. In reaching this conclusion, the Board considered s. 1.3 of the LUB that expressly provides that no developments shall be undertaken in the County unless a development application has been approved and a development permit issued. The Board notes that the exceptions provided for in s. 16.2 of the LUB are not relevant in this case.

[66] In the Board's view, the intention and language of the LUB is clear: a change in the use the Lands requires a development application and a permit from the County.

### **Do the Appellants have a development permit?**

[67] The evidence of the Development Authority was that there was no development permit to use the Lands as a Bed & Breakfast Home, or as Accommodation and Convention Services. In response to Board questions, the Appellant's agent confirmed that the Appellant did not have a development permit for a Bed & Breakfast Home. The Appellant's justification was that it was not necessary to obtain a development permit for a permitted use.

[68] As indicated above, renting the Lands out on Airbnb and Vrbo is a development and thus requires a development permit. Regardless of the characterization of the change in use, the Appellant is not excused from the obligation to obtain a permit. The failure to obtain a permit is breach of the County's LUB.

[69] Based on the evidence before it, the Board finds that the Appellant has no development permit.

### **Other Justifications**

[70] The Board notes that the Appellant did not argue that the use of the Lands was lawfully non-conforming. The evidence of the Development Authority was that a Parkland Peace Officer investigated a complaint of a bachelor party on the Lands on March 20, 2021. The LUB requires that a development requires a development permit, and this requirement has been in place since at least the time when the Stop Order was issued on October 20, 2021.

[71] Therefore, there is no need to consider whether the use was a lawful non-conformity.

## Remedy

[72] The Board has found that there is a development on the Lands, and that there is no development permit for that development. The Stop Order was issued for the unauthorized use of Lands. In light of these conclusions, and for the reasons set out above, the Board finds that the Stop Order was validly issued and upholds the Stop Order.

[73] Having upheld the Stop Order, the Board must assess whether it will extend the time for compliance, and if so, by how much.

[74] The Board notes that the Appellants did not ask for an extension of time to continue to use the Lands for an unauthorized use. The Stop Order specifies that the unauthorized use of the Lands must cease "immediately".

[75] The Board did not entertain an extension of time in this case. The Board notes that the Stop Order was issued on October 20, 2021 and that Parkland County Peace Officers were investigating the use of the Lands as far back as March, 2021. In the Board's view, the Appellant has had notice of the unauthorized use since at least that time and has had sufficient time to take any steps necessary to comply with the Stop Order.

[76] Issued this 1<sup>st</sup> day of April, 2022 for the Parkland County Subdivision and Development Appeal Board.



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Barb Williams, SDAB Clerk, 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**

**PERSONS APPEARING**

1.	Kayla Gunnarson, Development Authority
2.	Rachelle Trovato, Development Authority
3.	Jamil Sawani, Agent for Derek Prue
4.	Roger Kuntz, Speaking Against the Appeal
5.	Lori and Brian Kinahan, Speaking Against the Appeal
6.	David Nelson, Speaking Against the Appeal

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

Exhibits	Description	Date	Pages
March 21, 2022 Agenda Package			
1.	Agenda Coversheet	March 16, 2022	1
2.	Table of Contents	March 16, 2022	2
3.	Notice of Appeal – Derek Prue	November 24, 2021	6-7
4.	Submissions of the Development Authority	March 15, 2022	8-51
5.	Submissions in Support of the Appeal – Jim and Lenore Huddleston	March 14, 2022	52
6.	Submissions in Opposition to the Appeal – Roger and Cindy Kuntz, Claude and Rita Klefman	March 15, 2022	53-71
7.	Submissions in Opposition to the Appeal – Brian and Lori Kinahan	March 14, 2022	72-74