

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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HEARING DATE: August 22, 2022
FILE NO.: Stop Order Appeal

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority of Parkland County (the "Development Authority") issued a Stop Order for a development without a development permit and a Notice of Non-Compliance for development not in compliance with a development permit for property located at SW-1-50-34-W5M and municipally described as 50505 Range Road 13, Parkland County (the "Lands"). The recipient of the Stop Order was Urban River Adventures.

[2] On July 11, 2022, Kim Wakefield, Q.C. of Dentons LLP, Agent for Urban River Adventures filed an appeal of the Stop Order (the "Appellant").

[3] The Subdivision and Development Appeal Board (the "Board") heard the appeal on August 22, 2022 in person.

PRELIMINARY MATTERS

A. Board Members

[4] At the outset of the appeal 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 asked if everyone in attendance had the hearing package prepared for the hearing. All parties confirmed that they had received the materials previously received by the Board and marked as part of the Agenda package.

[6] In response to the Board's question about whether anyone wished to submit materials that were not part of the Agenda package, the Appellant stated that it wished to submit an email dated August 18, 2022 from the Development Authority to Urban River Adventures which was not available on August 16, 2022, the date by which materials were to be submitted to the

Board. In addition, the Appellant wished to provide two other documents, which were exchanges of emails between the Appellant and the Development Authority.

[7] Following a review of the documents, the Development Authority confirmed it had no objection to the new exhibits being accepted and considered by the Board. The Board marked all exhibits as set out at the end of the decision.

[8] There was no request for an adjournment of the hearing.

C. Miscellaneous

[9] There were no objections to the proposed hearing process.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[10] The Board upholds the Stop Order. The Board does not vary the timeline for compliance of the Stop Order.

SUMMARY OF HEARING

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

Development Authority

[12] The Appellant, Urban River Adventures, is appealing a Stop Order and a Notice of Non-Compliance issued on June 21, 2022, by the Development Authority of Parkland County (Exhibit A). The Lands are located at 50505 RGE RD 13, legally described as SW-1-50-34-W5 and are along the North Saskatchewan River.

[13] On April 21, 2022, a development permit was issued for "eco-tourism accommodation (8 camp sites equipped with a geodome and fire bowl). An inspection of the lands was conducted on June 7, 2022, which revealed that development had not been completed in accordance with the approved plans and conditions of Development Permit 22-D-019 and that further development on the lands occurred without Development Authority approval.

[14] A Stop Order and a Notice of Non-Compliance were issued in-person and via email on June 21, 2022, for which the Development Authority submitted were issued correctly. The Development Authority stated that the Stop Order and a Notice of Non-Compliance should be upheld, and this appeal be dismissed.

Land Use District and Use Class

[15] The Lands are located within the ANC – Agriculture / Nature Conservation District. Upon review of development permit application 22-D-019, the Development Authority determined the Use Class to be Tourist Campground, Destination. Tourist Campground, Destination is a discretionary use on the lands outlined in Section 4.3 of Land Use Bylaw 2017-18 (the "LUB").

Municipal Government Act (MGA) (Exhibit B)

[16] Section 616(b) of the MGA defines a "development" as follows:

- i. an excavation or stockpile and the creation of them; or
- ii. a building or an addition to or replacement or repair of a building, and the construction or placing of any of them in, on, over or under land; or
- 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; or
- iv. a change in the intensity 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 intensity of use of the land or building.

[17] The Development Authority provided an overview of the following sections of the MGA to the Board:

- a. Section 683;
- b. Section 645(1);
- c. Section 645(2); and
- d. Section 645(2.1).

[18] The Development Authority issued a Stop Order and a Notice of Non-Compliance for the development on the Lands.

Land Use Bylaw No. 2017-18 (LUB) (Exhibit C)

[19] Tourist Campground, Destination is a Discretionary use within the ANC District Section 4.3.2.

[20] Sections 1.3 and 16.1.1 of the LUB provide that, except as otherwise provided for in Subsection 16.2, no person shall commence or continue a development unless a development permit has been issued, the development permit has not expired, and the development is in accordance with the terms and conditions of a development permit issued pursuant to this Bylaw.

[21] The current development operating on the Lands does not align with Sections 1.3 and 16.1.1 as the development does not comply with the stamped, approved plans in Development Permit 22-D-019 and further development on the lands has occurred without a development permit.

[22] In accordance with Section 18.2, the tenant of the Lands has committed an offence by constructing a building or structure and commencing a use for which a development permit is required but has not been issued.

[23] In accordance with Section 18.3 the development is in non-compliance because Condition 1 imposed in development permit 22-D-019 has not been complied with. Condition 1 states that "the proposed development shall conform to the stamped approved plans and shall

not be moved, altered or enlarged except where authorized or directed through this permit approval.”

[24] On April 21, 2022, development permit 22-D-019 was issued for “eco-tourism accommodation (8 camp sites equipped with a geodome and fire bowl). On May 4, 2022, an application was received for “Eco-Tourism Accommodation Development”; however, as of the date of the report, the application remains incomplete, and no decision has been issued.

[25] In 2022, Parkland County received a complaint regarding a campground being constructed and operated on the Lands. An inspection of the Lands was conducted on June 7, 2022, by the Development Authority, a Community Peace Officer, a Safety Codes Officer and the Supervisor, Safety Codes Services. The inspection was to determine compliance with the approved Development Permit 22-D-019.

[26] During the site inspection the following deficiencies were identified:

- a. The five upper campsites are not sited as approved on the stamped site plan and do not meet the required 30 m setback from the top of slope for development adjacent to hazard lands (LUB s.11.3.6(a)).
- b. The sauna and hot tub are not sited as approved on the stamped site plan and do not meet the required 30 m setback from the top of slope for development adjacent to hazard lands (LUB s.11.3.6(a)).
- c. The two approved outhouses are not sited as approved on the stamped site plan and do not meet the required 30 m setback from the top of slope for development adjacent to hazard lands (LUB s.11.3.6(a)).
- d. The existing dwelling is not approved for accommodation use.
- e. The approved signage for emergency services / safety is not posted as indicated on the stamped site plan.

[27] Additionally, the following development is currently without Development Permit Approval:

- a. Four geodome camp sites on the lower portion of the property;
- b. Two cottages;
- c. Six Accessory Buildings:
 - i. Two shipping containers;
 - ii. One shed;
 - iii. Two showers;
 - iv. One outhouse;
- d. One outdoor kitchen area;
- e. Construction of access road to lower portion of property;
 - i. Clearing of trees and stripping and grading of land.

[28] Following a detailed review of the property file, the Land Use Bylaw, and the evidence gathered at the time of the inspection, the Development Authority determined that the development had not been completed in accordance with the approved plans and conditions of Development Permit 22-D-019 and that further development on the lands occurred without Development Permit approval. A Stop Order and a Notice of Non-Compliance were issued in-person and via email on June 21, 2022.

[29] The Stop Order ordered Urban River Adventures and Jill Provencal to:

1. Immediately cease all development and activities related to the Tourist Campground, Destination and not covered by Development Permit 22-D-019; and
2. Submit the following documentation required to apply for a Development Permit by August 19, 2022:
 - a. Site Plan, drawn to a professional standard, to scale, and including the following:
 - i. The location of all proposed and existing structures on site.
 - ii. 100-year floodplain elevation contour line, labelled.
 - iii. Setback measurements from the 100-year floodplain line to the nearest campsites and grade elevations of lower campsites.
 - iv. Setbacks from all structures to the nearest property lines.
 - b. Building elevation drawings of the front, rear, and two sides of each structure, including exterior dimensions and sizes of openings (i.e. windows and doors).
 - c. Floor plans for all developed floors, including the area of each floor (i.e. square footage) and labelled rooms.
 - d. Traffic Brief as per Land Development Engineering requirements.
 - e. Slope Stability Assessment for the entire upper slope, riverbank, and access road. The Slope Stability Assessment must be prepared by a qualified engineer and include:
 - i. The requirements laid out in Appendix 2 (2.12) of the Parkland County Municipal Development Plan 2017-14.
 - f. Geotechnical Evaluation of the access road. The Geotechnical Evaluation must be prepared by a qualified engineer and include:
 - i. Plan and profile of the road as-built.
 - ii. Typical cross-section of the road, indicating drainage patterns (i.e. center crown, center v, or cross-fall).
 - iii. Identify areas of major cut or fill, specifying back slope and/or retaining wall requirements.
 - g. Erosion and Sedimentation Control Plan for the access road, prepared by a qualified engineer and including:
 - i. Proposed erosion control measures around all disturbed areas (i.e. silt fencing, coconut matting, etc.).
 - h. Operational information outlining the anticipated number of daily visitors to site and number of campsites.

[30] The Notice of Non-Compliance ordered Urban River Adventures and Jill Provencal to complete the development on the property in accordance with the approved plans and conditions of Development Permit 22-D-019 before July 21, 2022, and not recommence use until such time as the Appellant was in compliance with the approved development permit.

[31] The Designated Authority was of the view that the development on the lands contravenes Section 683 of the MGA and Section 16.1.1 of the LUB based on its consideration of:

- a. The structures on the Lands meet the definition of a "development" as per Section 616(b) of the MGA and Section 20.2 of the LUB.
- b. The development on the Lands is not in accordance with the approved plans and conditions of Development Permit 22-D-019 and additional development has been conducted without development permit approval.

[32] The Development Authority submitted that the Stop Order was properly issued based on the following reasons:

- a. The legal owner of the Lands was notified through the following means:
 - i. An emailed copy of the Stop Order and Notice of Non-Compliance were sent to Jill Provencal at jill@canadasurfs.net with a read and delivered receipt. A delivered receipt was received on June 21, 2022.
- b. The operator / tenant of the Lands was notified through the following means:
 - i. A copy of the Stop Order and Notice of Non-Compliance were hand-delivered by a Community Peace Officer to Steve Capp of Urban River Adventures on June 21, 2022.
 - ii. An emailed copy of the Stop Order and Notice of Non-Compliance were sent to Steve Capp at steve@fitfest.ca with a read and delivered receipt. A delivered receipt was received on June 21, 2022.
- c. The Stop Order & Notice of Non-Compliance correctly described the property subject to the Order and Notice.
- d. The Stop Order & Notice of Non-Compliance correctly identified the land use infraction:
 - i. Stop Order: That the development and land use is not in accordance with the County's Land Use Bylaw 2017-18; specifically, Section 1.3 which states, "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."
 - ii. Notice of Non-Compliance: That the development and land use is contrary to Section 16.1.1 of Land use Bylaw 2017-18 which states that "except as otherwise provided for in Subsection 16.2, no development shall be commenced or continued unless a development permit has been issued, the development permit has not expired and the development is in accordance

with the terms and conditions of a development permit issued pursuant to this Bylaw.”

- e. The Stop Order ordered Jill Provencal and Urban River Adventures to (in accordance with Section 645(2) of the MGA) to immediately cease all development and activities related to the Tourist Campground, Destination and not covered by Development Permit 22-D-019, and submit the following documentation required to apply for a Development Permit by August 19, 2022.
- f. The Notice of Non-Compliance orders Jill Provencal and Urban River Adventures to (in accordance with Section 645(1) of the MGA) complete the development on the property in accordance with the approved plans and conditions of Development Permit 22-D-019 before July 21, 2022, and not recommence use until such time as the Appellant was in compliance with the approved development permit.

[33] The Development Authority requested that the Stop Order and Notice of Non-Compliance be upheld and the use of lands for operation of a Campground cease immediately until the approved development is in compliance with Development Permit 22-D-019 and until further development is approved under pending development permit application 22-D-184.

[34] In response to Board questions, the Development Authority advised that the thirteen week process described to the Appellant included:

- a. A 20 day period within which the Development Authority determines if the application is complete;
- b. A 40 day period for the Development Authority to consider and decide the development permit application; and
- c. A 21 day appeal period.

The Development Authority advised that if the application is more comprehensive or requires revisions, the Development Authority can enter an agreement to extend the forty day period referenced in sub-paragraph b above.

[35] In response to Board questions about whether the revised Flood Risk and Slope Stability Assessment Report has been reviewed by the County, the Development Authority advised that the County’s Land Development and Engineering department is to review it. There is no processing timeline for the review of this revised report because the development permit has already been issued for the Phase 1 development. The Development Authority advised that it did not have the qualifications to comment on whether a five meter setback is a reasonable setback as compared to a 30 meter setback. The Development Authority will obtain input from the Land Development department within the County.

[36] In response to Board questions, the Development Authority indicated that there are still items outstanding for Phase 2 and the development permit has not yet been issued. In regard to Phase 1, if the Appellant is proposing a five meter setback, the County’s Land Development and Engineering department must look at the study.

[37] In final submissions, the Development Authority stated that the Notice of Non-Compliance did not provide an opportunity to justify the five meters. If the Appellant wishes to have a five meter setback which deviates from the original development permit, they will need to apply for a new development permit. The County has not yet received any documents in that regard.

[38] The Development Authority advised that on May 24, 2022, the Development Authority provided an itemized list of outstanding items. The Appellant stated that the appeal was not just about whether the Stop Order was properly issued, but goes to the question of the variance of the time for compliance.

Appellant

[39] The Appellant advised that there are two separate issues which were initially joined:

- a. The Phase 1 of the development addressed the upper portion of the development area. A development permit was issued on April 21, 2022 following an application being made on November 21, 2021. The Appellant conceded that the development was not built according to the plans. The Appellant asked the Board to suspend the issuance of the Stop Order for Phase 1 until the Development Authority has completed its review of the materials sent to the Development Authority at various times.
- b. The second issue is a stop order issued for Phase 2. The Appellant clarified that a letter sent by Parkland County to the Appellant on June 21, 2022 is in relation to building permits and other safety codes issues which are not before the Board at this appeal hearing.

[40] The Notice of Non-Compliance listed five items. The first three items relate to the 30 meter setback:

1. The five upper campsites are not sited as approved on the stamped site plan and do not meet the required 30 m setback from the top of slope for development adjacent to hazard lands (LUB s.11.3.6(a)).
2. The sauna and hot tub are not sited as approved on the stamped site plan and do not meet the required 30 m setback from the top of slope for development adjacent to hazard lands (LUB s.11.3.6(a)).
3. The two approved outhouses are not sited as approved on the stamped site plan and do not meet the required 30 m setback from the top of slope for development adjacent to hazard lands (LUB s.11.3.6(a)).

[41] Items 4 and 5 on the Notice of Non-Compliance deal with the following:

4. The existing dwelling is not approved for accommodation use.
5. The approved signage is not posted as indicated on the stamped site plan.

[42] The Appellant advised that Items 4 and 5 have been addressed to the satisfaction of the County (see Exhibit 6).

[43] The Development Authority requested revisions and items that needed to be addressed in the report on flood risk and slope stability. On July 17, 2022, the Appellant provided to the Development Authority a revised report prepared by River Engineering Consulting (Mr. Bob Quazi) dated July 6, 2022 dealing with flood risk and slope stability assessment. The other items requested by the Development Authority are attached to the email of August 22 from Mr. Capp.

[44] The opinion of River Engineering Consulting was that a five meter setback was sufficient. The Appellant confirmed that it was not asking for the Board to issue a development permit. Rather, it was asking the Board to suspend the Stop Order on the basis that the River Engineering Consulting report addressed the question of the setback and advised that the five meter setback is sufficient.

[45] The report was provided to the Development Authority at least a month ago and that the Appellant needs to hear back from the Development Authority as to whether the revised report is acceptable. The Appellant advised that the Appellant has received bookings from people in various areas of the province and it would be catastrophic to their business if they had to cancel the bookings.

[46] In relation to the Stop Order, the Appellant advised that the area which is the subject of Phase 2 and the Stop Order was part of the original application for a development permit in November, 2021. This area was split out from the area covered by the development permit issued in April, 2022 when the application was approved.

[47] The Appellant acknowledges that there is no development permit for the development that has taken place in the Phase 2 area. However, not all of the development is development installed by the Appellant. Some of the development pre-dated the Appellant's involvement. For instance, the road was not part of the Appellant's construction and was put in by the owner. The Appellant advised that River Engineering Consulting addressed the setback requirements for both Phase 1 and Phase 2 of the development and commented upon the five meter versus 30 meter set back.

[48] Although eight small geodesic domes are shown on the plan at page 58 of 173 of the Agenda package, only four have been built. The Appellant advised that these four are built outside of the 1:100 year flood plain.

[49] The Appellant called three witnesses: Steve Capp, the owner and principal to speak to various matter; Daniel Clark, an engineer to speak about matters relating to the appeals; and Mr. Bob Quazi of River Engineering Consulting to speak to the setback issues.

Steve Capp

[50] Mr. Capp stated that he is originally from the County and believes that this development provided a good opportunity for business within the County. He was initially told by the County that the development permit application process would be a thirteen-week process. The

Appellant started selling experiences in 2022 and felt they would have lots of time to complete the process. However, as time progressed, he indicated that the issues which required addressing were all taking time and it was determined the best approach was to separate the development into Phase 1 and Phase 2. Mr. Capp stated that the Phase 1 development was to be approved at a 30-meter setback. The Appellant obtained the report from Mr. Quazi which stated that five-meter setback was sufficient. The Appellant started building at the five-meter setback based upon the report. Mr. Capp acknowledged that he ought to have waited for development approval before doing his construction. However, he started operations and it has been huge success.

[51] Mr. Capp advised that there are no roads into the development. Those participating in the outdoor adventure backpack in or hike in. There is parking at the top of the development (see page 59 of the Agenda package).

[52] He has 2,000 people who have taken advantage of the camping experience. Mr. Capp stated that the warning for the clients has now been posted (Item 5 of the Notice of Non-Compliance) and has been posted for one month.

[53] Mr. Capp confirmed that the geodesics show the nature of the accommodations which are very popular (see page 60 of the Agenda package). The geodesic domes on the lower level do not have a foundation but are placed on skids. Those in Phase 1 have screw piles. Mr. Capp stated that these geodesic domes minimally disturb the land. They have a steel structure with a PVC plastic cover. The cover is open to the top to allow the patrons to see the Northern Lights and are insulated for year round use. Some of the outhouses shown at page 64 and following of the Agenda package were located on the lands before he started his business. Some were built following the Appellant's taking over the lands. The cabins are shown at page 164 and following. These cabins are located within the five-meter setback.

[54] Condition 4 of the Notice of Non-Compliance notes that the existing dwelling is not approved for accommodation use. Mr. Capp stated that the house is used for reception purposes where patrons obtain a wristband, sign a waiver and check in for their time period. The building houses staff who stay overnight to deal with emergencies or guest issues. Mr. Capp advised condition 4 has been met by his sending an email to the Development Authority advising that the house is used only for accommodation for staff (see exhibit 6).

[55] Mr. Capp referenced pages 89 through 93 of the Agenda package to show that there have been guests from both inside and outside of Alberta, and from places all over the world. Mr. Capp advised that for the lower level (Phase 2) the bookings will end as of September 30. For Phase 1, the Appellant is booking throughout the year. He stated that Travel Alberta is pleased that there are winter activities. In response to a question from the Appellant's counsel, about the effect of what an immediate shutdown would do, Mr. Capp advised that a Stop Order would destroy his business and that if the Appellant has to stop the bookings and refund the monies already paid out, they could not afford to refund all of the monies paid and it would destroy their online business. Mr. Capp confirmed that Phase 2 would not be operating past September, but that Phase 1 would continue to be used throughout the winter and that they have bookings until January of 2023 because the domes are insulated and heated and can continue to be used.

[56] Mr. Capp stated that there is minimal traffic in relation to this development (see page 87 of the Agenda package).

[57] Mr. Capp stated that the Appellant obtained a flood risk and slope stability assessment which was required by the County (see page 95 and forwards of the Agenda package). The Appellant decided to do the development in phases for financial reasons. He obtained the report from River Engineering Consulting and did his construction at five meters setback without a development permit.

[58] The revised report was sent to the Development Authority on July 6, 2022. Mr. Capp confirmed that once the Appellant received the report from River Engineering Consulting, it built the geodomes in accordance with that report (see page 168 of the Agenda package). He stated that for Phase 1, six of eight geodomes are built and for Phase 2, four of eight geodomes are built.

[59] In response to Board questions, Mr. Capp confirmed that page 58 of the Agenda package sets out the approved development plan showing the setbacks at 30 meters. In response to the question of why the geodomes were changed from the approved location to where they are currently located, Mr. Capp advised that the Development Authority had advised the Appellant that the geodomes had to be located at 30 meters setback unless there was a report supporting their placement closer to the top of bank. Mr. Capp stated that it did not make business sense to place them at 30 meters and then rebuild them. Therefore, as soon as he received the report from River Engineering Consulting with a recommendation of the location of the geodomes at five meters, he built them at the five meter mark.

Bob Quazi – River Engineering Consulting

[60] Mr. Quazi stated that he is the principal of River Engineering Consulting and has a BSc from Pakistan and a Masters in Civil Engineering from the University of Alberta in 1971. He has been certified in Alberta since 1973. He worked for 31 years with Alberta Environment and stated his own professional business in 2005 after his retirement. His degrees are in civil engineering but most of his work is done in river engineering which includes hydrology, hydraulics, slope stability, sediment, flooding and erosion. He stated that this covers a wide field including slope stability. He prepared the revised flood risk and slope stability assessment found starting at page 95 of the Agenda package.

[61] Mr. Quazi stated that there were two issues:

- a. An assessment of flooding on the flood plain; and
- b. Slope stability.

[62] In relation to flooding, one method is to do a model and calculate flood levels in relation to the hydrology. However, this methodology takes a lot of time. As compared to the computational method, it was also possible to do a review based upon historical data and to talk with people in the area who know when the floods happen and find out where and when the highest floods on record were and where those water levels were. It is possible to take studies done elsewhere in close proximity and to take the data and extrapolate it. He stated that there had been a study done for Devon twenty-five kilometers up stream.

[63] Based upon his work, when the lower portion had flooded, the water was one meter in depth. He applied a 0.75 meter factor of safety and then determined the contours. He stated that the hydrology for the 1:100 year flood plain was the same as for Devon in 2007. That volume was used and based on that he determined the 1:100 year level. He stated that the lands below the line might be flooded, but that the lands higher than that line are dry and this is within his factor of safety. Mr. Quazi also stated that floods on the North Saskatchewan River do not happen suddenly and that there is a three to four day period during which the water travels from up stream to down stream. Based upon the good forecasting for the river, there is sufficient time to take emergency measures if there is a flood event.

[64] In regard to slope stability, Mr. Quazi advised that there are also two ways to conduct a slope stability assessment. The first is to conduct drilling to determine whether materials are present and to obtain exposure of the bank materials. The air photos going back to the 1950s show the same materials and because this is a riverbank, the cut of the river shows the exposure of the materials beneath the surface. Part of the slope is well vegetated and there is no sign of bending. He stated the air photos do not reveal slippages and that the only slips which are shown are local due to water from rain or snow melt.

[65] Based on his survey, the slopes were 1:2 or 1.8:1 and some were flatter. The clay is very dense and the literature indicates that it can withstand vertical movement if it is dry and compressed. Based upon the data, he concluded that the present slope is stable and that the slumps are local and limited to two to three meters so the setback of five meters is pretty safe.

[66] In relation to the road through the site, Mr. Quazi commented that the road had been there since the 1900s or earlier. Although the County wanted a cross section of the road, it was not available because the road had been constructed so long ago. The road on the bottom portion (Phase 2) was put in one to two years ago and is pretty flat. His conclusion on the safety and stability of the road is that there is not too much slope because it is on flat land and it should be stable and there is not much traffic.

[67] In response to Board questions as to whether there was a geotechnical investigation of slope stability, Mr. Quazi stated that geotechnical work is done when loading a site, for instance putting in a subdivision or a big building. For the work done on the Lands, the underlying materials are exposed to the river bottom so there is no need to drill to find out the materials.

Mr. Daniel Clark

[68] Mr. Clark is a professional engineer certified since 2006. He has 18 years land development experience and obtained his Bachelor of Science and Engineering from the University of Alberta. Mr. Clark has been hired by the Appellant to help the Appellant understand what the County requires in regard to outstanding reports.

[69] Mr. Clark stated that for the Notice of Non-Compliance items 1, 2 and 3, Mr. Quazi has provided a report indicating the Appellant has met the setback requirements. For Phase 2, the items are still under review by the Development Authority, but he is satisfied that the site plan complies with five meter setbacks.

[70] Mr. Clark advised that in relation to the second bullet on the Notice of Non-Compliance, the building elevation drawings provided would satisfy this requirement and shows the intention of the structures.

[71] In response to questions about traffic to the site, Mr. Clark advised that there has been no significant increase in traffic and that the parking lot is of a good size. He stated that the report dealt with Phase 1 and 2 and that there is no need to improve road conditions.

[72] In regard to a question about page 10 of the Agenda package, Mr. Clark advised that he did not have direct knowledge of the operational requirements but stated that there is no heavy loading. He said that maintenance is done by hand and there are no heavy operations.

[73] The Appellant advised that it has bookings for Phase 2 through to the end of September and for Phase 1 has bookings to the end of January 2023. If the Board does not suspend the Stop Order, all of those people in Phase 2 and those for the 4.5 months on Phase 1 would need to be cancelled. In concluding remarks, the Appellant advised the Board that under section 687(3)(c), the Board has the ability to confirm, revoke or vary the decision or order or condition or make or substitute a decision of its own. The Appellant candidly admitted that its objective before the Board was to buy time to honour the contractual commitments that it had made for visitors who had put down their money and made plans and so that whatever outstanding issues that are known or identified as the Development Authority works through the materials can be done. The Appellant was simply asking the Board for more time to comply.

[74] The Appellant stated that the development is favourable to the County and that although the Appellant did not follow the playbook all the way through, it was through inexperience rather than bad faith. Some of what is set out in both the Non-Compliance letter as well as in the Stop Order have been addressed, such as the warning signage and the use of the building. Items 1 through 3 in the Notice of Non-Compliance are addressed by the revised report sent to the County on July 6, 2022 (six weeks before the date of the hearing).

[75] The Appellant acknowledged that more information may be required for Phase 2 and candidly acknowledged that there was no development permit for Phase 2, which puts them on a worse footing than for Phase 1. However, the sign up of visitors for Phase 2 ends as of September 30th. The Appellant argued that the evidence before the Board suggests that there is not a safety problem in terms of slumpage or flooding. There are few sites with geodomes on them. There is a small impact with no big foundations and they do not weigh much.

Those Speaking In Favour or Against The Appeal

[76] Mr. Jim Hole Jr. advised that he was not speaking for or against the appeal. He was a landowner east and northeast of the property. He wanted to learn more about what was happening.

FINDINGS OF FACT

[77] In addition to the specific facts set out under the Board's reasons, the Board finds the following as facts.

[78] The Lands are located at SW-1-50-34-W5 and municipally described as 50505 Range Road 13, Parkland County

[79] The Stop Order is dated June 21, 2022 and was served on the Appellant on June 21, 2022.

[80] The appeal was filed July 11, 2022.

[81] The Appellant are affected persons.

REASONS

Affected Persons

[82] 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 wishes to review this issue for completeness. The Appellant is the recipient of the Stop Order and is therefore affected.

[83] Mr. Hole made no submissions of substance, and thus, the Board need not determine whether he is affected.

Jurisdiction and Issues to be decided

[84] The Board is aware that in determining the merits of an appeal of a Stop Order, its jurisdiction is found in section 687(3) of the MGA.

[85] The Board must determine:

- a. Were the Stop Order and Notice of Non-Compliance properly issued?
- b. If so, should the Board exercise its authority under section 687(3)(c) to vary the time for compliance?

[86] In making this decision, the Board has examined the provisions of the MGA and has considered the oral and written submissions made by and on behalf of those who provided evidence: the Development Authority and the Appellant and the witnesses who spoke on behalf of the Appellant, Mr. Capp, Mr. Quazi and Mr. Clarke.

[87] The Board notes that the Development Officer referred to a Stop Order and a Notice of Non-Compliance. While the Board continues to use this nomenclature in its decision, the Board notes that both are, in fact, stop orders as referenced at section 645 of the MGA.

a. Were the Stop Order and Notice of Non-Compliance properly issued?

[88] The Development Authority listed the elements which it submitted to the Board justified a conclusion that the Stop Order had been properly issued (see page 50 of the Agenda package). The Board has gone through those elements and notes that the Stop Order does

correctly describe the Lands. It correctly identifies the land use infractions and gives a date by which to comply. The Stop Order was issued by the Development Authority and delivered on the same day it was issued and was sent by email to the landowner on title and the operator on June 21, 2022 and was delivered in person to the operator of the development on June 21, 2022.

[89] The Development Authority listed the elements which it submitted to the Board justified a conclusion that the Notice of Non-Compliance had been properly issued (see page 47 of the Agenda package). The Board has gone through those elements and notes that the Notice of Non-Compliance does correctly describe the Lands. It correctly identifies the land use infractions and gives a date by which to comply. The Notice of Non-Compliance was issued by the Development Authority and delivered on the same day it was issued and was sent by email to the landowner on title and the operator on June 21, 2022 and was delivered in person to the operator of the development on June 21, 2022.

[90] None of the above facts were contested by the Appellant and the Board finds as a fact that the elements set out at pages 47 and 50 of the Agenda package are established.

[91] Item 4 in the Notice of Non-Compliance deals with a requirement that the existing dwelling is not approved for accommodation use. The uncontroverted evidence before the Board is that the Appellant has provided to the County confirmation that the existing dwelling will not be used for accommodation use, but is only used for administrative purposes and to house staff who will be attending to guest needs, although this was completed after the issuance of the Notice of Non-Compliance. Therefore, the Board finds as a fact that the Stop Order properly included it, but that this element has been satisfied by the Appellant.

[92] Item 5 in the Notice of Non-Compliance states that the approved signage had not been posted. The evidence before the Board, which was also not contested by the Development Authority, was that the Appellant has posted the signage as required by the development permit (see page 170 of the Agenda package), although this was completed after the issuance of the Notice of Non-Compliance. Therefore, the Board finds as a fact that the Stop Order properly included it, but that this element has been satisfied by the Appellant.

[93] However, the Appellant candidly acknowledged that it had constructed without a development permit on the area covered by what will be Phase 2 of the development area (in regard to the Stop Order). In addition, the Appellant acknowledged that it changed the location of the buildings from what was approved without a development permit (thus items 1, 2 and 3 of the Notice of Non-Compliance were still outstanding).

[94] In the face of the facts as found by the Board as well as the acknowledgement by the Appellant that the Appellant had constructed development without a development permit in the Phase 2 lands and changed the location of the geodesic domes covered by the Phase 1 development permit as well as having the sauna and hot tub and outhouses not being located as identified on the approved plan, the Board finds as a fact that the Stop Order dated June 21, 2022 for development on Phase 2 portion of the Lands was properly issued and that the Notice of Non-Compliance for the Phase 1 portion of the Lands was properly issued.

b. Should The Board Exercise Its Power Under 687(3)(c) To Change The Time For Compliance?

[95] Having concluded that the Notice of Non-Compliance and the Stop Order were properly issued, the next question for the Board is to determine whether it will exercise its power to vary the time for compliance.

[96] The Development Authority asserted that the only question before the Board is whether the Stop Order has been issued. In contrast, the Appellant argued that the Board has discretion under section 687(3)(c) to vary the time for compliance or suspend the operation of the Stop Order and Notice of Non-Compliance for a period of time.

[97] In reviewing 687(3)(c), the Board understands that this section does provide the Board with the discretion to vary the time for compliance found within the Stop Order and the Notice of Non-Compliance. The question before the Board is whether it should exercise its discretion to do so, based upon the facts that have been presented before it.

[98] In the paragraphs below, the Board will examine whether to exercise its discretion in relation to the Notice of Non-Compliance and the Stop Order.

Notice of Non-Compliance

[99] The Notice of Non-Compliance lists five items (see page 7 of the Agenda package). Items 1, 2 and 3 of the Notice of Non-Compliance all deal with the question of the required setback and the placement of the upper campsites, the sauna and hot tub and the outhouses being located within the 30 meter setback.

[100] The Board notes that the Appellant obtained a revised slope stability report from River Engineering Consultants. The Board also acknowledges Mr. Capp's forthrightness in acknowledging that he placed the geodomes within the 30 meter setback in reliance upon the revised report, even though he was aware that the County had not yet reviewed the report and had not yet provided development approval for the placement of those geodomes within the setback and before the Development Authority had issued a revised development permit. The Board notes the Appellant's evidence that some of the other buildings (outhouses) were placed in their current location before the Appellant started its operations.

[101] The Board also notes that the evidence from Mr. Quazi was that the setback of five meters was sufficient and that there were no problems or safety concerns in relation to slope stability. Mr. Quazi stated that based upon his review the potential for bank slumping were minor.

[102] In considering the above evidence, the Board notes that the Development Authority had not yet reviewed the revised report submitted from Mr. Quazi.

[103] The Board has significant concerns in relation to exercising its variance powers to authorize or extend the time within which the Appellant can have the structures, most particularly the geodomes located five meters from the top of the bank in Phase 1.

[104] In looking at the evidence provided, the Board notes from the picture at page 59 of 173 that the geodomes located in Phase 1 are located at the top of what appears to be a high escarpment. The Board is concerned that the placement of geodomes so close to the edge of the top of bank without the County having reviewed the report is a significant risk. While the Board accepts that these geodomes, as well as the outhouse and sauna may not be particularly large, the Board is concerned about the fact that the geodomes do have screw piles which have disturbed the soil. The Board has noted the pictures at page 64, 65 and 66 of the Agenda package and notes the proximity of these structures to the top of bank. The Board is concerned about the risk involved to the users of these sites.

[105] While the Board understands the financial impact to the Appellant of refusing the exercise its discretion of the Stop Order, the Board has significant concerns about the safety of the users from the placement of the geodomes, sauna, hot tub and outhouses in the required setbacks. The Board is not prepared to exercise its discretion because there is insufficient evidence before it to allow the Board to conclude that the factors of safety considered by the Development Authority in establishing the 30 meter setback have been addressed. Until the County's Land Development department reviews the report and provides its comments, it is premature to conclude that the appropriate factor of safety has been addressed in the report.

[106] The Board notes that based upon the comments made by the Appellant that the geodomes on the upper level are not large and would not create much disturbance, the Board notes that the Appellant could move the geodomes back 30 meters from the top of bank and therefore be in compliance with the provisions of the Phase 1 development permit. If this were so, the development would be in compliance.

Stop Order

[107] In relation to the development in Phase 2 and the location of the geodomes within the 30 meter setback from the flood plain, the Board notes again that the report has not been reviewed by the County's Development Authority.

[108] The Board has concerns about the placement of the geodomes within the setback as well as within the flood plain area. While the Board is again sympathetic to the question of the financial impact to the Appellant, the Appellant recognized that he did not have development approval for Phase 2. His decision to take a calculated risk to construct on Phase 2 without a development permit and to operate without approval should not be rewarded. The Board has significant concerns about patron safety and therefore is not prepared to exercise its discretion.

Conclusion

[109] For the above reasons, the Board denies the appeal and does not vary the time for compliance with the Stop Order and Notice of Non-Compliance.

[110] Issued this 2nd day of September, 2022 for the Parkland County Subdivision and Development Appeal Board.



B. Williams, Clerk of the SDAB, on behalf of D. Smith, Chair

SUBDIVISION AND DEVELOPMENT APPEAL BOARD

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

APPENDIX "A"
REPRESENTATIONS

PERSON APPEARING

1. Rachelle Trovato, Development Authority, Parkland County
2. Kim Wakefield, Q.C., Dentons LLP
3. Steve Capp
4. Bob Quazi, River Engineering Consulting
5. Daniel Clarke
6. Jim Hole, Jr.

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

August 22, 2022 Agenda package			
Exhibit	Description	Date	Pages
1.	Agenda Coversheet	August 18, 2022	1
2.	Table of Contents	August 18, 2022	2
3.	Notice of Appeal – Urban River Adventures, Agent: Dentons Canada LLP	July 11, 2022	3-12
4.	Submission of the Development Authority	August 16, 2022	13-51
5.	Submission of the Appellant - Urban River Adventures, Agent: Dentons Canada LLP	August 16, 2022	52-173
6.	Additional Submissions of the Appellant – Urban River Adventures	August 22, 2022	