

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

Legislative Services, Parkland County Centre
53109A HWY 779
Parkland County, AB T7Z 1R1
Telephone: (780) 968-3234
Fax: (780) 968-8413

HEARING DATE: February 11, 2019
FILE NO.: 18-D-491

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority of Parkland County (the "County") refused development permit application 18-D-491 made by Theresa Crawley for a Home Based Business (wedding venue) located at Lot 13A, Block 3, Plan 9820226, municipally described as 9-53407 Range Road 30, Parkland County (the "Property").

[2] Ms. Crawley ("the Appellant") appealed the refusal of the Development Permit 18-D-491 (the "Development Permit Application").

PRELIMINARY MATTERS

A. Board Members

[3] At the start of the hearing, the Board asked if anyone had an objection to the panel hearing the appeal. There were no objections raised regarding the panel members.

B. Exhibits

[4] 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 *Municipal Government Act*, RSA 2000, c M-26 (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.

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 Property is located within the Country Residential (CR) District and located within a Multi-Parcel Residential Subdivision.

[10] The Appellant applied for a development permit for a Home Based Business as a wedding venue on December 13, 2018.

[11] Based on the details provided by the Appellant, the Development Authority determined that the use applied for was a Home Based Business Level 3. The Development Authority relied on the following information from the Appellant with respect to the proposed wedding venue business:

- a. the wedding venue would have outdoor wedding ceremonies;
- b. the wedding venue would operate five months out of the year on two Saturdays a month from 1:00 pm to 5:00 pm;
- c. there would be a 60 foot by 40 foot wedding site and a 20 foot by 20 foot bridal tent;
- d. the maximum number of guests would be 50 people; and
- e. up to 20 cars would be permitted on the Property.

[12] A Home Based Business Level 3 is a discretionary use in the CR District, as outlined in section 5.3 of the County's Land Use Bylaw No. 2017-18 (the "LUB").

[13] However, section 5.3.2a) of the LUB states that a Home Based Business Level 3 shall not be located within a Multi-Parcel Residential Subdivision:

Section 5.3.2a) - of the Country Residential District: Uses:

The Fundamental Use Provisions as requisite qualifiers for Permitted and Discretionary Uses listed within Subsection 2 b) and c) shall ensure:

- i) That the following uses shall not be located within a Multi-Parcel Residential Subdivision:

[...]

(4) Home Based Business Level 3.

[14] Section 12.8.3 of the LUB sets out the regulations for a Home Based Business Level 3. The Development Authority outlined those regulations for the Board.

The following provision shall apply to all Home Based Business Level 3:

a) with the exception of the CRWL - Country Residential Work/Live District, a Home Based Business Level 3 shall not be located within a Multi-Parcel Residential Subdivision (excluding rural centres) or row housing development and/or if the location of the development is within 150.0 m of a Multi-Parcel Residential Subdivision (excluding Rural Centres) or row housing development.

[15] The Development Authority also outlined its variance authority provided for in the LUB, but noted that the Development Authority was limited by section 16.11.3(b) of the LUB:

Section 16.11 - Variance Authority:

16.11.3(b) - A variance, relaxation, or waiver of a regulation shall be applied to any regulation, at the discretion of the Development Authority, unless the regulation is part of a Fundamental Use Provision.

[16] The Development Authority refused the Development Permit Application on January 8, 2019 because the proposed development (wedding venue) does not meet the regulations for a Home Based Business Level 3 and because the Property is located in a Multi-Parcel Residential Subdivision.

[17] The Development Authority considered whether the proposed development fell within the definition of a Home Based Business Level 2. The Development Authority found it did not because the proposed development exceeded the definition. The ceremonies would be held outdoors and there would be an increase of traffic within the neighbourhood. The Development Authority also considered whether the proposed development met the regulations of a Cottage Industry. It did not because the proposed development did not meet the definition of a Cottage Industry, as it is located in a Multi-Parcel Residential Subdivision.

[18] In response to questions from the Board, the Development Authority clarified that the Development Permit Application had not specified the level (1, 2 or 3) of the Home Based Business. The Development Authority stated that the proposed development does not meet the definition of a Home Based Business Level 2, as that category is mostly for work in the house or an office and where there are no clientele attending at the Property or the need for excessive parking.

Appellant – Theresa Crawley

[19] The Appellant appealed the Development Permit refusal on the basis that her proposed development should be granted an exception from the LUB provisions. She acknowledged that the proposed development is not in compliance with the LUB, as it is in a subdivision, but requested an exception be made based on the size and nature of the proposed development. The Appellant stated that she conducted a public consultation and had the full support of her

neighbours to the east and west of the Property. She provided written support from her neighbours.

[20] The Appellant stated that the Property had a gated entrance, which exits onto Whitehall Road. The Property is a 3 acre parcel. The Appellant submitted that the ceremony site would be located on the north side of the Property, behind the existing residence, and the ceremony site would not be visible from the road. The Appellant submitted that the wedding venue business would operate two Saturdays a month from May to September from 1:00 pm to 5:00 pm and that there would be parking provided for up to 20 vehicles on the Property.

[21] In response to questions from the Board, she added that an additional 4 vehicles could be parked behind the garage on the Property.

FINDINGS OF FACT

[22] The Property is located at Lot 13A, Block 3, Plan 9820226, with a Municipal Address of 9-53407 Range Road 30, Parkland County, Alberta.

[23] The Property is zoned Country Residential (CR) District. The proposed development is located in the Canterbury Estates Subdivision, which is a Multi-Parcel Residential Subdivision.

[24] The proposed development (wedding venue) meets the definition of a Home Based Business Level 3.

[25] The Appellant is an affected person.

REASONS

Jurisdiction

[26] 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 as well as consider the oral and written submissions made by the Development Authority and the Appellant.

687(3) In determining an appeal, the subdivision and development appeal board

- (a) must act in accordance with any applicable ALSA regional plan;*
- (a.1) must comply with any applicable land use policies;*
- (a.2) subject to section 638, must comply with any applicable statutory plans;*
- (a.3) subject to 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.*

Affected Person

Ms. Crawley is the applicant and the Appellant. Since she applied for the permit she is affected by the appeal.

Land Use District

[27] The Property is zoned as Country Residential (CR) District.

Nature of the Use

[28] The first question for the Board is whether the use applied for is a Home Based Business Level 3. This question is critical because section 5.3.2 of the LUB contains a fundamental use provision. Since the Board cannot vary a use, if the proposed development falls within the fundamental use provisions and is prohibited by them, then the Board has no jurisdiction to approve the use.

5.3.2. Uses

a) Fundamental Use Provisions

The Fundamental Use Provisions are requisite qualifiers for Permitted and Discretionary Uses listed within Subsection 2 b) and c) shall ensure:

- i) That the following uses shall not be located within a Multi-Parcel Residential Subdivision:

...

(4) Home Bases Business Level 3 (emphasis added)

[29] The LUB provides guidance on the interpretation of Fundamental Use provisions at section 1.9.7:

1.9 Interpretation of this Bylaw

...

7. Fundamental Use Provisions within Land Use Districts are requisite qualifiers for specific or all Permitted and Discretionary Uses within the District. The purpose and intent of Fundamental Use Provisions are to:

- a) Limit or restrict the nature or scope of the Use;
- b) Ensure that Uses achieve a particular planning objective that is inherent of the Land Use Bylaw District; and
- c) Not be regulatory but to modify the scope of the use as it applies to that particular District.

[30] The LUB defines a Home Based Business Level 3 as follows:

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.

[31] The Board finds the proposed use is a Home Based Business Level 3 for the reasons that follow.

[32] The Board finds that the proposed development is not a Home Based Business Level 1, as the definition prevents the visiting of clients to the site. The evidence was that there would be tens of visitors per event, which rules out a Home Based Business Level 1. The definition of a Home Based Business Level 2 reveals that the use is slightly more intrusive than a Home Based Business Level 1. However, in a Home Based Business Level 2, the definition says there may be "some" client visits. The Board finds that 20 vehicles are likely to bring at least 20 visitors, if not double that number of visitors (2 occupants per vehicle) to the Property. The Board finds that this number of visitors is more than the "some" permitted by a Home Based Business Level 2.

[33] The Board has examined the definition of Home Based Business Level 3. The definition reveals the use is more intrusive than a Home Based Business Level 1 or 2. It permits employees who do not reside on the property. As the Board has found that the proposed development does not fall within either Home Based Business Level 1 or 2, the Board finds that the proposed development must fall within Home Based Business Level 3, as the definition states that it includes all home based businesses which do not fall within Level 1 or 2.

[34] The Board considered whether the proposed use falls within the definition of a Cottage Industry. The Board finds it does not, as the definition of Cottage Industry expressly provides that a Cottage Industry shall not be located in a Multi-Parcel Residential Subdivision, which the proposed use is. The Board notes that the Appellant did not challenge the characterization by the Development Authority of the proposed use as a Home Based Business Level 3.

[35] Having concluded that the proposed use is a Home Based Business Level 3, the Board cannot approve this use, since the fundamental use provision in section 5.3.2. prohibits this use.

Compliance with the Regulations of the LUB

[36] In light of the Board's finding that the use is not permitted or discretionary in the CR District due to the fundamental use provisions, the Board need not address whether the proposed development complies with the regulations in the LUB. However, for completeness the Board will examine this issue. For the reasons that follow, the Board finds that the proposed development does not comply with the regulations.

[37] Section 12.8 of the LUB sets out the regulations applicable to Home Based Businesses. Section 12.8.3 of the LUB provides that a Home Based Business Level 3 is not permitted within a Multi-Parcel Residential Subdivision:

12.8.3. The following provisions shall apply to Home Based Business Level 3:

a) with the exception of the CRWL - Country Residential Work/Live District, a Home Based Business Level 3 shall not be located within a Multi-Parcel Residential Subdivision (excluding rural centres) or row housing development and/or if the location of the development is within 150.0 m of a Multi-Parcel Residential Subdivision (excluding Rural Centres) or row housing development. (emphasis added)

[38] Although section 12.8.3a) is a regulation and can be varied, in light of the fundamental use provision in section 5.3.2, even if the Board were to exercise its variance powers, it still cannot approve the proposed development.

[39] Section 12.8.3e) provides that:

12.8.3. The following provisions shall apply to Home Based Business Level 3:

e) at all times the privacy of the adjacent residential dwellings shall be preserved and the Home Based Business use shall not unduly offend neighbouring or adjacent residents by way of excessive lighting, late calling of clients of an unreasonable number, traffic congestion, or excessive on-street or off-street parking, etc;

[40] The question for the Board is whether the 20 vehicles entering and leaving the Property every other Saturday, five months of the year, and the additional parking for up to 4 more vehicles would unduly offend neighbouring or adjacent residents by way of "traffic congestion, or

excessive on-street or off-street parking". The Board notes that the current owners of neighbouring properties have provided letters of support; however, if approved, future owners in the area would be affected, who may not have consented to the proposed development. The Board finds that 20 or more additional vehicles entering the Property in a four hour period is a significant increase in traffic within the neighbourhood.

[41] The Board further considered whether the above regulation can be varied under the LUB.

[42] The Appellant acknowledged the proposed use of the Property does not comply with the provisions of the LUB but requested an exception be made. Although the Board has jurisdiction to vary the regulations, as set out in s. 687(3)(d) of the MGA, the Board is not prepared to exercise its discretion due to the significant impact on neighbouring use and enjoyment due to the significant number of vehicles and the duration of the use during the year which means that for 5 months of the year, there will be a significant increase in the number of vehicles in the neighbourhood.

Statutory Plans

[43] Having determined that the proposed use cannot be approved, the Board makes no determination on the compliance of the proposed development with the applicable statutory documents.

[44] Issued this 25th day of February, 2019 for the Parkland County Subdivision and Development Appeal Board



Barb Williams, Board Clerk on behalf of
Lawrence Niblock, 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. Kim Kozak, Development Officer
2. Theresa Crawley, Appellant

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

Exhibit	Description	Date	Pages
1.	Agenda Package Table of Contents and Agenda		N/A
2.	Notice of Appeal	January 25, 2019	291-292
3.	Submission of the Appellant Theresa Crawley	February 1, 2019	294-300
4.	Submission of the Development Authority	February 8, 2019	N/A