

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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

DATE: November 21, 2016 and December 5, 2016
FILE NO.: 16-D-597

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority of Parkland County (the "County") approved, with conditions, a development permit No. 16-D-597 (the "Development Permit") for a Group Home, Limited (for up to 6 residents excluding staff, with 10' high chain link fence around dwelling) on Plan 8220233, Block 3, Lot 12, Municipal Address: 25-51515 Range Road 32A (the "Site"). One property owner in the vicinity of the Site, Stacey Lauder, appealed the Development Permit.

PRELIMINARY MATTERS

A. Board Members

[2] At the outset of the appeal hearing on both November 21, 2016 and December 5, 2016, the Chair requested confirmation from all parties in attendance that there was no opposition to the composition of the Board hearing the appeals. None of the persons in attendance had any objection to the members of the Board hearing the appeal.

B. Additional Materials

[3] At the beginning of the hearing on November 21, 2016, the Applicant submitted documents now marked as Exhibit 29. The Board gave the Appellant time to review the documents. At the conclusion of that review, the Appellant advised that she would need more time to review the documents in order to be prepared for the hearing.

[4] The Board granted an adjournment of the hearing until December 5, 2016 and directed that if the Appellant had any information to submit in response to the new information provided by the Applicant, she was to submit that to the Board no later than November 28, 2016. The Applicant would have until November 30, 2016 to submit any further materials upon which it wished to rely. The hearing would resume December 5, 2016 at 4:10 pm. The Appellant provided further written materials marked as Exhibit 30 in the list of exhibits at the end of this decision. The Applicant did not file further materials in response to those filed on November 28 by the Appellant.

C. Miscellaneous

[5] The Board marked the exhibits as set out at the end of this decision.

[6] The appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A. 2000, c.M-26 (the "Act").

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

SUMMARY OF HEARING

[8] The following is a brief summary of the oral evidence heard by the Board. The Board has also reviewed all written submissions filed with the Board.

Development Authority

[9] The Board first heard from the Development Authority. The Development Authority indicated that the Site is located within the hamlet of Keephills, in the Rural Centre District. The use of Group Home, Limited is a discretionary use in the Rural Centre District. There is to be no change to the external aspects of the house or garage. The plan identified where the fence is to be located. There will be a gate between the dwelling and the garage.

[10] The Site is subject to, and consistent with the provisions of the County's Municipal Development Plan, and there is no area structure plan applicable for the Site. Section 20.1.3 of the Parkland County Land Use Bylaw defines Group Home, Limited as:

GROUP HOME, LIMITED means development consisting of the use of a building as a facility which is recognized, authorized, licensed or certified by a public authority as a social care facility intended to provide room and board for six (6) residents or less, excluding staff, for foster children or disabled persons, or for persons with physical, mental, social or behavioural problems, and which may be for the personal rehabilitation of its residents either through self-help or professional care, guidance and supervision. The residential character of the development shall be primary with the occupants living together as a single housekeeping group and using cooking facilities shared in common. The use class does not include treatment facilities such as detoxification centres.

[11] In granting its approval, the Development Authority found no valid planning reason to deny the use of Group Home, Limited.

[12] In relation to the proposed chain link fence, the fencing is for a small area, not the entire Site. The Development Authority felt the fence was likely not visible from the road.

[13] In response to questions from the Board as to whether there was a concern about the road standard and the higher volumes of traffic generated from the Group Home, , the Development Authority indicated that in approving the use, the Development Authority examined the compatibility of the use and if there were characteristics of that use at the Site that made it incompatible with the neighbouring uses. The traffic generated from the use was

examined, but the Development Authority's position was that the quality of road was developed to a standard to serve the subdivision, and the uses allowed in the subdivision contemplate the proposed use.

[14] In making its decision, the Development Authority focused on the use, and not the users of the Site. In determining compatibility, it considered the amount of traffic generated, whether it would produce noise, etc. If the use were approved, another operator could step in, and provided the intensity was the same, the nature of the Group Home could change, but that is not a land use consideration. In terms of the fence, the Parkland County Land Use Bylaw provides that if a fence is 6 feet or less, no development permit is required. If it is greater than 6 feet, a development permit is required. The Site is a pie shaped lot which is heavily wooded. It would be hard to see the fence from other properties.

Appellant

[15] The Board next heard from Stacey Lauder, the appellant, who is a long-time resident of the Keephills community and who lives near the Site in Keephills. The Appellant indicated she filed the appeal because she and other residents in the area have concerns about the proposed development due to the lack of information provided by the Applicant, despite direct inquiries. She stated that the proposed development is not a fit for the community. She questioned why the site in Keephills was chosen when it is 30 minute from emergency services. She stated that Lots 9, 10 and 11 of Block 3 in Keephills are leased to the Keephills Community Association. The proposed group home is near the school, which is current closed, but is still owned by the school division and is to be used for school purposes, if the school is re-opened.

[16] The Appellant questioned the licensing requirements if the Applicant had 4 or fewer residents at the Site, and questioned why there would be a 10 foot fence. She questioned whether it would provide any security if it would not be locked, and further, access to the home was still possible through the front door. She stated no other homes in the hamlet have 10 foot fences. She questioned what will be expected of Keephills residents if someone leaves the residence. She had questions about what the Applicant defined as "forensic concerns" and "addiction". Although the Group Home is not a detox centre, the information does not indicate that it cannot be used for someone with addictions, and the Site is next to the school, playground, community hall, etc.

[17] The Appellant stated that the ratio of staff to residents was 2:1, which meant that there could be up to 12 staff at the Site. With 3 shifts per day, there could be 36 additional vehicles into the hamlet, and there is only 1 narrow road into the hamlet. She stated this was more traffic than had been generated by the school, which had 5 teachers who came and left only once per day.

[18] The Appellant had questions about what training the staff would have. She also stated there were concerns about fire due to the number of trees around the Site.

[19] The Appellant asked the Board to deny the Development Permit approval, but if it was approved, the Appellant asked the Board to impose 3 more conditions:

- a) That there be no residents with criminal convictions or addictions;

- b) The fence be a maximum of 6 feet high; and
- c) That there be a setback area for the fire pit.

[20] In response to questions from the Board, the Appellant indicated that the Keephills community was about 40 to 50 people. She stated her main concern was the safety of the community and its residents, particularly due to the potential for increased traffic on the narrow road.

Applicant

[21] The Board then heard from several representatives of the Applicant, I have a Chance Support Services Ltd. The first speaker was Greg Worms, the Executive Director. He stated that the Applicant has been in business for 30 years in Spruce Grove, Stony Plain and Parkland County. He indicated that the Applicant had attended the community meeting in Keephills, but when the appeal came, it decided to provide a response to the residents' questions at one time, during the hearing, rather than responding in a piecemeal fashion which may result in crossed messages.

[22] In response to the question of why the Applicant chose Keephills, he responded "why not?" He stated that people with disabilities are no different than anyone else, but may require some extra assistance with cooking or cleaning, etc., but if they wish to live in a rural setting, they should have the choice to do so. The Applicant will be providing a residential group home which he defined as a care home for people who require assistance from care givers to take care of their daily needs. This is not a treatment centre for those with addictions and not a detox facility, although he stated that someone who lives at the Site may be "addicted" to smoking or a specific food.

[23] Since the individuals who live in the site are vulnerable, for example, they may not see or hear, or may be non-verbal, the chain link fence is required to provide extra security for them. The extra security was necessitated because one of their other group homes was robbed.

[24] He stated that there would be a maximum of 3 staff at the Group Home, because their staffing ratio is 1:2 – one staff for 2 residents. There will be a maximum of 3 staff working at any point in time, other than at shift changes, when there could be up to 6 staff. The shifts are 7.5 hours and 17.5 hours. There will be 6 staff in a 24 hour period.

[25] In response to Board questions, he indicated that the age of residents will be between 18 – 70. The residents are generally long term residents. The Applicant has a waiting list of individuals looking for housing. The residents are a mix of people from the County and not from the County. If residents wish to go for a walk, it will be their choice. The staff will go with them, but the residents of the group home are included in the community. The residents have someone with them on their walks because they require assistance. The doors of the residence are not locked to keep the residents in, but for security, just as a homeowner would do.

[26] The residents may have either physical or mental disabilities. The Provincial Government requires licensing if there are 4 or more residents. However, the Applicant is reviewed by the Alberta Council of Disability Services, which accredits the entire agency every 3 years. They also have inspections of the facilities conducted by their staff and have fire and health inspections conducted at all of their facilities. The Applicant has 16 locations, of which 3 are rural. The location furthest from an urban centre is about 11 kilometers from Keephills. He stated that the use of emergency services varies, but in his view is not excessive. The training of staff is part of the accreditation process. The staff are trained in first aid, food safety, medication administration, and abuse prevention and response. There is also continuous training of staff. The residents may receive medication based on their needs, such as pain medication, which is similar to the residents in any neighbourhood.

[27] The fence is for the safety of the residents and to ensure no harm comes to them because some of the residents may be non-verbal, may not hear you or be non-mobile. A 5 or 8 foot fence does not provide the security necessary for the residents. The Applicant currently has 1 facility in the County with a 10 foot fence. They are in the process of constructing a 10 foot fence on a second facility of theirs. If approved, this will be the third one. In placing individuals in their facilities, the Applicant obtains their background and makes a decision as to which home they are suited for.

[28] The Board heard from Hollie Reeves, the Client Relations Manager for the Applicant. She urged the Board to approve the use. The clients of the Group Home have varied needs, but they have every right to live wherever they choose. They deserve supports around the home to make them feel safe. Some of their clients may wish to live in an urban setting, and some may wish to live in a rural setting, but they should have that choice. The Site has a 6 bedroom home. Someone lived there before and this is no different.

[29] The Board then heard from Lory Morgan, the Licensing Coordinator for the Applicant. She is in charge of the licensing process. She and her staff inspect the various properties of the applicant to ensure they are in compliance with the standards.

[30] The Board then heard from Darren Nigel, the HR assistant for the Applicant. He is responsible to ensure the training and development of the staff. There are core competencies for the staff including First Aid and CPR training, including AED training; food safety, incident reporting, and additional training as required. Workers generally have a health care aide certificate, which can be achieved at Grant McEwan, NAIT or the University of Alberta, although the Applicant may hire individuals with no experience, but who interact well with their clients.

[31] In response, the Appellant thanked the Applicant for the information provided. She wanted to know if there would be a designated smoking area, so the residents of the Group Home would not put cigarette butts onto neighbouring properties. Even after the presentation, she did not understand what "forensic concerns" entails. She questioned whether employees would have on the job training. She questioned whether the employees had to remain awake during their 17 hour shifts. She felt that a 10 foot fence brings attention to the area, and that the residents generally feel safe in their community.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[32] The Board denies the appeal and upholds the Development Permit and the conditions imposed by the Development Authority, but adds the following additional conditions:

- a) The Applicant must properly dispose of any bio-hazardous wastes, including medical "sharps".
- b) The fence must be chain link and cannot have privacy slats.
- c) The fence is approved in the location set out in Appendix A to this decision.

FINDINGS OF FACT

[33] The Site is located at Plan 8220233, Block 3, Lot 12, Municipal Address: 25-51515 Range Road 32A, in the hamlet of Keephills.

[34] The Parkland County Municipal Development Plan Bylaw 37-2007 governs the Site as part of the Hamlets Provisions and the development is consistent with the Municipal Development Plan.

[35] The Site is zoned Rural Centre District in Parkland County Land Use Bylaw 20-2009, as amended.

[36] The use Group Home Limited is a discretionary use within the Rural Centre District.

[37] There will be one worker per every 2 residents for a maximum of 3 workers on site at a time.

[38] The use of Group Home Limited is compatible with the neighbouring uses.

[39] The 10 foot high fence is required for the security of the residents.

[40] The Appellant is an affected person.

REASONS

[41] The Board notes that its jurisdiction is found in section 687(3) of the Municipal Government Act. In making this decision, the Board has examined the provisions of the County's Land Use Bylaw ("LUB"), and has noted the County's Municipal Development Plan as referenced in the Development Authority's Report. The Board has also considered the oral and written submissions made by the Appellant, Stacey Laude, the Applicant, I have a Chance Support Services Ltd., and the Development Authority.

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 the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;*

- (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.*

Appellant and Affected Person

[42] The Appellant lives in the hamlet of Keephills, which has a total population of 40 to 50 residents. Given the size of the hamlet, and the fact that it is a small community, the Board finds the Appellant is affected by the proposed development.

Municipal Development Plan

[43] The Municipal Development Plan Bylaw 37-2007 states in policy 5.2 as encouraged within Hamlets:

Commercial development that serves the every day needs of surrounding communities shall be encouraged in Hamlets.

[44] The proposed development is consistent with the provisions of the Municipal Development Plan.

[45] The Board notes that there is no area structure plan governing the Site.

Land Use

[46] The property is zoned Rural Centre (RC) District.

Nature of Use

[47] The use of Group Home, Limited is a discretionary use in the Rural Centre (RC) district. Therefore, as referenced in *Rossdale Community League (1974) v. Edmonton (Subdivision and Development Appeal Board)*, 2009 ABCA 261, the Board must assess the compatibility of the use applied for with the neighbouring uses.

[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.

[48] In looking at the definition of Group Home, Limited, the Board notes that the proposed development meets the definition in the Land Use Bylaw. There will be up to 6 residents and the character of the site is residential in nature. As the Applicant stated, these will be individuals living at the Site, but who need a bit more assistance with their daily tasks.

[49] The Appellant questioned the compatibility of the proposed use and raised a number of questions. One concern raised was the issue of traffic safety. The Board accepts the evidence of the applicant that the staffing ratio is 1 worker to 2 residents which means that if there are 6 residents, there will be 3 workers at any one time. The Board also accepts the Applicant's evidence that there will be 2 shifts per day, resulting in a maximum of 6 workers travelling into and out of the hamlet on a daily basis. The Appellant indicated that when the school was open, there were 5 teachers travelling to and from the school on a daily basis. The Board finds that the impact on traffic of the 6 workers is not that much more than that from the 5 teachers. The Appellant also noted that there were community groups using the community hall in the hamlet. The Appellant did not mention how much traffic was created by those community groups. However, in a community with only 40-50 residents, the Board is of the view that it is likely there are users of the community hall coming from outside the hamlet. The traffic of the workers does not make the proposed development incompatible with the residences in the hamlet.

[50] The Appellant raised questions about the licensing of the establishment. The Board heard evidence about the requirement for provincial licensing with 4 or more residents, and the fact that the Applicant's facilities are inspected regularly. The Board is satisfied that the Applicant has in place measures for inspections. The Board is also satisfied with the evidence regarding training of the workers.

[51] The Appellant questioned why the Applicant chose Keephills as a location for a group home, given the distance to medical services. The Board has no authority to direct where an applicant seeks to locate, and must assess the facts before it. The use is a discretionary use in the hamlet, and the Board accepts the Applicant's statement: "Why not Keephills?" Individuals who require assistance with their daily living are entitled to live in either a rural or urban setting, just as individuals who do not require that assistance. The question for the Board is one of compatibility of use. Based on the evidence provided the Board finds the use to be compatible.

[52] The Board also noted the evidence that a number of the individuals residing at the group home may take medications. While this may be the same in other parts of the County, the Board recognizes that the use of medications may result in medical waste, such as sharps. In light of the fact that the residents may need additional assistance with every day tasks, the Board is imposing a condition on the Applicant to properly dispose of the bio-hazardous waste which might result, particularly from the use of medications, in order to lessen any impact of this use on the community.

[53] The Board noted that the Appellant wanted the Board to impose a condition that there be no residents with criminal convictions or addictions. The Board has no authority to do so for the group home, which is no different than individuals with criminal convictions or addictions living in single family dwellings elsewhere in the County. The Appellant also wanted a set back area for the fire pit. The Board notes that the Applicant recognized the need for fire permits. The Land Use Bylaw section 1.8.d requires compliance with all other legislation. Therefore, the Board will not impose a separate condition regarding the use of the fire pit.

1.8. Compliance with Other Legislation

1. A person applying for, or in possession of, a valid development permit is not relieved from the responsibility of ascertaining and complying with, or carrying out development in accordance with:

- a) the requirements of any statutory plan;*
- b) the requirements of the Alberta Safety Codes Act, R.S.A.2000, Chapter S-1;*
- c) the Parkland County Building Permit and/or Business License Bylaw;*
- d) the requirements of any other appropriate federal, provincial and/or other municipal legislation;*
- e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land;*
- f) the Community Standards Bylaw; and*
- g) any Animal Control Bylaw.*

[54] In regard to the development permit application for the 10 foot high chain link fence, the Board notes that a fence over 6 feet high requires development approval and that the Appellant requested that the Board direct a 6 foot high maximum fence. The Board noted that the Appellant stated that few residents have fences, unless they wish to keep their dogs inside the yard. In addition, she was concerned that having a fence of this height would draw attention to the fence. The evidence of the Applicant was that they have had a robbery at another group home, and that due to the vulnerable individuals who live at the homes, a 10 foot fence is required for the individuals' safety. The Board accepts that the individuals who will reside at the site may have specific needs which make them more vulnerable, and accepts the evidence that another group home has been robbed. The Board notes that the site is heavily wooded, and is of the view that a 10 foot high chain link fence would not be very visible near the wooded area. However, the Board recognizes that such a high fence, with privacy slats would be visible, and would change the character of the community. Further, the Board took into account that a 10 foot fence would be visible in the front yard and would be inconsistent with the other homes.

[55] In light of the above concerns, the Board has imposed a condition that the fence must be chain link and cannot have privacy slats so that the impact of the fence is reduced. In addition, the fence must be located as set out on Appendix A. The Applicant is entitled to put a fence for the safety of the residents, but it cannot be located in the front yard, because to do so would have a visual impact on the neighbouring properties. The Board is of the view that the location of the fence as indicated minimizes that impact.

[56] It is so ordered.

Issued this 16th day of December, 2016 for the Parkland County Subdivision and Development Appeal Board



for 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, R.S.A. 2000, c.M-26. This section requires an application for leave to be filed with the Court of Appeal of Alberta within 30 days of receipt of this decision.

APPENDIX "A"
REPRESENTATIONS

PERSON APPEARING

1. Feinan Long, Development Planner
2. Craig Thomas, Supervisor, Development Planning
3. Stacey Lauder, Appellant
4. Greg Worms, Executive Director for the Applicant
5. Hollie Reeves, Client Relations Manager for the Applicant
6. Lory Morgan, Licensing Coordinator for the Applicant
7. Darren Nigel, HR assistant for the Applicant

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

1.	Letter of Appeal	October 28, 2016
2.	SDAB Report	November 17, 2016
3.	Administration Report (Development Planner)	November 14, 2016
4.	Submission of Appellant – Stacey Lauder	November 15, 2016
5.	Letter in support of Appellant – Everett Ray John	October 28, 2016
6.	Letter in support of Appellant – Ignacio Astete	October 28, 2016
7.	Letter in support of Appellant – Carrie Kouse	October 28, 2016
8.	Letter in support of Appellant – Ruther Dunbar	October 28, 2016
9.	Letter in support of Appellant – Sharon Topping	October 28, 2016
10.	Letter in support of Appellant – Shirley Charlton	October 28, 2016
11.	Letter in support of Appellant – Ben Foster	October 28, 2016
12.	Letter in support of Appellant – Marion Turner	October 28, 2016
13.	Letter in support of Appellant – Darcy Turner	October 28, 2016
14.	Letter in support of Appellant - Russel Scheideman	Oct 28, 2016
15.	Letter in support of Appellant - Judy Scheideman	Oct 28, 2016
16.	Letter in support of Appellant - Ruth Wagner	Oct 28, 2016
17.	Letter in support of Appellant- Kelly Humphries	Oct 28, 2016

18.	Letter in support of Appellant- Angela Strand	Oct 28, 2016
19.	Letter in support of Appellant- Aileen Wagner	Oct 28, 2016
20.	Letter in support of Appellant- Crystal Fowler	Oct 28, 2016
21.	Letter in support of Appellant- Trudy Charlet	Oct 28, 2016
22.	Letter in support of Appellant- Roy Raymond	Oct 28, 2016
23.	Letter in support of Appellant- Ellen Raymond	Oct 28, 2016
24.	Letter in support of Appellant- Kim Berndt	Oct 28, 2016
25.	Letter in support of Appellant-Alvin Berndt	Oct 28, 2016
26.	Letter in support of Appellant-Donna J. Smith	Oct 28, 2016
27.	Letter in support of Appellant-Keith Smith	Oct 28, 2016
28.	Submission of the Applicant – I have a Chance Support Services Ltd.	November 14, 2016
29.	Policies and Procedures Distributed at the hearing - I have a Chance Support Services Ltd.	November 21, 2016
30.	Revised Submission of Appellant – Stacey lauder	November 28, 2016

Appendix "A"

