SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY

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HEARING DATE: February 26, 2024
FILE NO.: PLDPE20230205

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority for Parkland County (the "Development Authority") issued a deemed refusal under section 683.1 for an application made by Tri F Consulting Inc. – The Norcan Group (the "Applicant"). The Applicant applied for "Seba Beach Cabins – Seasonal Rental cabins" on land municipally described as 5528 Highway 16 and legally described as W5-5-53-19-SW (the "Lands").

[2] On July 21, 2023, the Development Authority deemed complete under s. 683.1(2) the application for Tourists Campground, Destination. The Development Authority requested further documents from the Applicant and imposed a deadline of January 19, 2024 for their receipt. The Development Authority did not receive the documents by the deadline, and issued a denial on the basis of an incomplete application.

[3] The Board received the appeal on February 2, 2024 from Tri F Consulting Inc. (the "Appellant").

[4] The Subdivision Development Appeal Board (the "Board") held the appeal hearing on February 26, 2024 in person.

PRELIMINARY MATTERS

A. Board Members

[5] 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

[6] At the beginning of the hearing, the Chair confirmed that everyone in attendance had the hearing package prepared for the hearing.

[7] At the beginning of the hearing, the Development Authority noted that it wished to submit a package in support of its submissions. The Appellant stated that it had no objection to the materials of the Development Authority being accepted by the Board. The Appellant indicated that it did not need any time to review the materials.

[8] Following a brief adjournment to review the materials, the Board noted that there were significant materials and that it would require further time to review them in depth. However, in the interests of moving the matter expeditiously, the Board stated that the Development Authority and the Appellant should present their submissions. If the Board required further information or time to review the package, following their submissions, the Board would advise the parties at the conclusion of the hearing.

[9] At the end of the hearing, the Appellant asked for the opportunity to make further written submissions.

[10] In light of the Appellant's request, the Board determined that it would adjourn the hearing to allow sufficient time to both review the materials and for the parties to provide further submissions, if they wished to do so.

[11] The Board confirmed its oral direction to the parties in writing to the parties and advised them that:

1. Any party wishing to provide further written submissions with supporting documents, if any, for the Board's consideration may do so by sending an electronic copy by email to:

   SDAB@parklandcounty.com

   With a copy provided electronically at the same time to the other party.

   Any submissions and documents in support must be received by the Board no later than 4:00 p.m. on February 29, 2024.

2. If one party has provided written submissions in accordance with the directions in paragraph 1 of this letter, the party receiving those submissions may provide a written response with supporting documents, if any, for the Board's consideration.

   The response submissions must be sent electronically to:

   SDAB@parklandcounty.com

   With a copy provided electronically at the same time to the other party.

   Any response submissions and documents in support must be received by the Board no later than 4:00 p.m. on March 4, 2024.

3. The Board will advise the parties no later than March 15, 2024 if it has sufficient information to make its decision.

4. If the Board does not require further information, it will advise the parties in writing that it will close the hearing and specify the date the hearing is closing. The Board will issue its written decision in accordance with the *Municipal Government Act* within 15 days of closing the hearing.

5. If the Board requires further information, it will advise the parties in writing no later than March 15, 2024 that it will be reconvening the hearing and specify the time and date of the hearing. The hearing will be conducted virtually only.

[12] The reason for the Board's direction was that the Board required time to review the submissions received from the Development Authority on the morning of the hearing. Further, the Appellant requested the ability to make further submissions. The Board was mindful that the Development Authority's submissions were received at the hearing. In order to provide procedural fairness to both the Appellant and the Development Authority, the Board allowed both parties to make further submissions by February 29, 2024 at 4.00 pm. Then, in order that each party may respond to any submissions provided by the other, the Board has provided the parties until March 4, 2024 at 4.00 pm to provide a response. The Board was of the view that the timelines, although relatively short, were sufficient because the Appellant advised that it had the documents requested by the Development Authority at the hearing. The Appellant should be able to submit them to the Development Authority, which would have an opportunity to respond to those documents. In the same way if the Development Authority had further submissions, the Appellant would have the same opportunity to respond to them. The Board was mindful that it also needed time to review the new submissions

and wished to provide time for it to review them and to move the appeal expeditiously.

[13] At the conclusion of those further submissions, the Board was able to review the information to make a determination as to whether it could then close the hearing, or whether it required further submissions. The Board closed the hearing as of March 14, 2024 and in accordance with its direction, provides its written decision in relation to the appeal.

C. Miscellaneous

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

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

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[16] The Board allows the appeal and varies the time for submission of materials until March 14, 2024. Since the Appellant submitted all of the documents requested to the Board, the Board determines that the application is complete and remits the application and the documents to the Development Authority for examination and determination on the merit of the application.

SUMMARY OF HEARING

[17] 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

[18] The Lands are municipally described as 5528 Highway 16, Parkland County and legally described as W5-5-53-19-SW. The Lands are located within the Agriculture General District (AGG) (s. 4.1 of the Parkland County Land Bylaw 2017-18 ("LUB")).

[19] On April 5, 2023, the Development Authority received an application for a "2 phase development including sixteen cabins, seasonal rentals, and supporting services to the [L]ands". The Development Authority determined the Use class to be Tourist Campground, Destination (section 12.21 of the LUB). Tourist Campground, Destination is a discretionary use in the Agricultural General District (AGG).

[20] The Lands are not located within the provisions of an area structure plan or an area redevelopment plan. The Lands are located in a High Priority Landscape as identified

in the Municipal Development Plan ("MDP"). The Prime Recreation and Tourism area supports campground uses. The Lands are adjacent to a local environmentally sensitive area across range road 60 to the west.

[21] The development site is located southwest of the property line and access is provided along the service road to range road 60. The development site is 1.19 acres out of a 60 acre parcel.

[22] On April 5, 2023, the Development Authority received an application for a multi phased recreation development including sixteen cabins.

[23] The application items included

a. the application fee;
b. the certificate of title;
c. land owner authorization form;
d. Building elevations;
e. public consultation summary;
f. traffic impact assessment; and
g. desktop biophysical assessment.

[24] The following items were not received and therefore the application was deemed incomplete:

a. building elevations;
b. building floor plans;
c. project details dash business details, client visits, project phasing;
d. sediment and erosion control plan;
e. grading plan;
f. site plan; and
g. cabin site detail - typical site layout.

[25] Under section 683.1 of the Municipal Government Act, RSA 2000, c.M-26 ("MGA"), the Development Authority has 20 days to determine if an application is complete. The question asked is whether other documents are required to process the application. On April 25, 2023, the Development Authority determined to the application was incomplete and sent a letter to the Applicant outlining the missing information (see exhibit E to the Development Authority's submissions). The Development Authority provided the Applicant until June 24, 2023 to submit the requested information.

[26] On July 21, 2023, the Development Authority deemed the application to be complete. Once the application is deemed to be complete, the Development Authority has 40 days to decide on the merits of the application. The Development Authority examined the application under the provisions of section 12.21 of the LUB. These

provisions contain specific use regulations for a Tourist Campground. After its review, the Development Authority determined that it required additional information to assess the application. On August 25, 2023, the Development Authority issued a planning review corrections letter and a time extension agreement with a deadline of October 10, 2023. (See section 683.1 (10)).

[27] On October 11, 2023, the Applicant submitted new information to the Application which was circulated for review. On November 10, 2023, the Development Authority sent a Planning Review Corrections letter with an itemized deficiency list outlining the information required to make a decision on the application, in accordance with s. 683.1(10). The Development Authority imposed a deadline of January 19, 2024 to submit all new information, failing which, the application would be deemed refused. The requested information was not sent by the deadline date. On January 29, 2024, the Development Authority then issued its decision of deemed refusal for incompleteness, setting out its reasons – that the information was not provided by the deadline.

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

a. The swept path analysis was required on November 10, 2023 and the deadline to submit was January 19, 2024;
b. The Development Authority was not aware of any issues with the portal upload. When the portal first started, there were some glitches. However, they are not aware of this being an ongoing issue, nor of any other cases where files are lost in the system;
c. The application number changed because the first application was refused in April, 2023 for lack of information. Once the application was refused, the number is taken down, and there is no ability for the information to cross between the two files;
d. Once the information is submitted, it would be recirculated to the Fire Department, Engineering, Community Sustainability, etc, to see if anything else is missing. If the Swept Path analysis is missing, it would determine whether the application was extended or the permit denied. Even though documents are submitted, they need to be reviewed to ensure the information meets the County's standards; and
e. Documents can be submitted by mail, email or via the portal. However, the County's preference is to have documents submitted through the portal.

Appellant

[29] The Appellant was represented at the hearing by three individuals: Mr. Reg Tancowny, the landowner and president of 2138436 Alberta Ltd., Mr. Frank Florkewich, a principal of Tri F Consulting Inc. – The Norcan Group, who applied for the development permit and Mr. Darcy Paulichuk, the traffic engineer who prepared the traffic impact brief.

[30] Mr. Tancowny noted that they have worked with the County for 2 years on the application. He understands that there were some technical problems along the way, and staffing changes at the County. He believes they have submitted all but one report. They sent the documents into the County's "portal" system, but there were problems with receipt of the information provided. He apologized for not meeting the deadline, but noted that Mr. Florkewich could provide evidence that they submitted documents to the portal, but it was not received. He asked the Board to take into account their attempts to meet the deadline.

[31] Mr. Florkewich noted the reason for denial indicates that there was a lack of information to assess against the regulations of the LUB. He stated that he had submitted all the information before January 19, 2024, except one document – the Swept Path analysis which notes turning radii in the 2 cul-de-sac bulbs. Despite the Appellant having submitted the documents, the County did not receive them before January 19, 2024. They have had previous issues with uploading on the County's portal before. He has submitted numerous emails showing discussions with the Development Authority regarding the problems with the uploading. He indicated that the data was uploaded on January 9, 2024, and he has a copy of the entry and an excerpt of his daily dairy regarding his efforts. He previously had problems with uploading in September 2023. He noted that there had been a change in the application number (from the last digits being 04136 to 0205) which might explain some of the difficulties.

[32] He asked the Board to consider the date of the deemed refusal (January 29, 2024) and the date of the appeal (February 1, 2024). He also noted that there had been a number of County staff working on the matter from when the application was originally made in 2022. The application was originally considered under a Cottage Industry and then was changed to a recreation tourism RV park.

[33] He asked the Board to grant an extension of 30-90 days to provide the one outstanding document. He indicated that the Swept Path analysis was submitted, but after the January 19, 2024 deadline. The owner wishes to proceed with its application.

[34] Mr. Paulichuk is the consulting transportation engineer on the file. He stated that the Swept Path Analysis usually provides a turning assessment or turning movement analysis. He is a subconsultant to Tri F on this file. He noted that he had preformed the traffic impact analysis and the County then asked for a Swept Path Analysis, which, although completed, did not get submitted through the portal.

[35] In response to Board questions:

a. Mr. Paulichuk advised that he worked on the project in December 2023 and provided it to Mr. Florkewich in December 2023. Mr. Florkewich was to upload the document to the portal;
b. Mr. Florkewich advised that the Swept Path Analysis was not in the package that had to be submitted to the County by January 19, 2024. He included 4 of the 5 requested documents. However, he had the full package with him at the hearing;
c. Mr. Florkewich stated that the portal was not dependable to submit information. There is no mechanism for applicants to know if their documents have been uploaded;
d. Mr. Florkewich confirmed that they are asking for an extension of time to complete the submission; and
e. In response to a question of why 30 to 90 days is required if the Appellant has all the documents, the Appellant advised that a week would be sufficient given the fact that they have all the documents.

FINDINGS OF FACT

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

[37] The Lands are located at 5528 Highway 16, Parkland County and legally described as W5-5-53-19-SW.

[38] The Lands are zoned Agricultural General District (AGG).

[39] The appeal was filed on February 2, 2024.

[40] The Appellant is an affected person.

REASONS

Affected Persons

[41] The Board must determine 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.

[42] The Appellant is the applicant for the development permit and is affected by the Development Authority's decision.

Jurisdiction and Issues to be Decided

[43] The Board's jurisdiction is found in section 687(3) and 687(4) of the MGA.

> **687(3)** In determining an appeal, the board hearing the appeal referred to in subsection (1)
>
> (a) repealed 2020 c39 s10(52);
>
> (a.1) must comply with any applicable land use policies;
>
> (a.2) subject to section 638, must comply with any applicable statutory plans;
>
> (a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;
>
> (a.4) . . .
>
> (b) . . .
>
> (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.
>
> **(4)** In the case of an appeal of the deemed refusal of an application under section 683.1(8), the Board must determine whether the documents and information that the applicant provided met the requirements of section 683.1(2).

[44] The questions for the Board in this appeal are:

a. Did the documents and the information provided meet the requirements of s. 683.1(2) as of January 19, 2024?

b. If the documents and information provided did not meet the requirements, should the Board exercise its variance power under s. 687(3)(c) to vary the time for submission of the documents and information?

c. If the Board does exercise its variance power to extend the date for submission of the documents and information, has the Appellant submitted all of the requested information?

[45] 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.

a. **Did the documents and the information provided meet the requirements of s. 683.1(2) as of January 19, 2024?**

[46] The Board notes that the Development Authority is entitled to ask for further information under s. 683.1(10) of the MGA. The facts before the Board are that on November 10, 2023 the Development Authority sent a Planning Review Corrections letter with an itemized deficiency list outlining the information required to make a decision on the application, in accordance with s. 683.1(10) and imposed a date for submission of those documents and information of January 19, 2024. One of the requested documents was a Swept Path Analysis.

[47] The first question the Board must address is whether the documents and information provided meet the requirements of s. 683.1(2) as of the date imposed by the Development Authority – January 19, 2024.

[48] The evidence of the Development Authority is that it had not received all 5 of the requested documents by the January 19, 2024 date. The Appellant stated that it had uploaded 4 of the 5 documents using the County's portal for the submission of reports before that date. It was not aware that the documents were not received. The Appellant candidly admitted that the 5th document (the Swept Path Analysis) had not been uploaded by the January 19, 2024 date nor otherwise submitted to the Development Authority.

[49] There is a dispute between the parties whether all 5 of the documents or only 1 of the 5 documents was not submitted by the deadline. Despite that question, the Board notes that the Appellant acknowledged that it had not uploaded or attempted to upload the Swept Path Analysis, which was the 5th of the requested documents. Since the 5th of the required 5 documents was not submitted, the Board makes the factual finding that the application was incomplete as of January 19, 2024. From the Board's perspective, it is not relevant whether 5 of 5 documents were not submitted or only 1 of 5 documents were not submitted. The Development Authority requested all 5 documents by the specified date. Based upon the Appellant's admission that the Swept Path Analysis was not submitted, the Board can conclude that the application did not meet the requirements of s. 683.1(2) as of January 19, 2024.

b. If the documents and information provided did not did not meet the requirements, should the Board exercise its variance power under s. 687(3)(c) to vary the time for submission of the documents and information?

[50] The Board notes that nothing in s. 683.1 or s. 687(4) precludes the Board from exercising its variance power under s. 687(3)(c). The Board interprets s. 687(4) as requiring the Board to make a determination on the completeness of the application. Having concluded that analysis, the Board may then consider the circumstances of the case before it to determine whether to exercise its variance power and change the date for the submission of the documents and information requested by the Development Authority.

[51] Having concluded that the documents and information provided did not meet the requirements of s. 683.1(2) as of January 19, 2024, the Board now turns to whether it should exercise its variance power to extend the deadline for the submission of the 5 reports.

[52] The Board notes that the Appellant stated that it had submitted 4 of the 5 requested documents, but acknowledged that the 5th document (the Swept Path Analysis) was not submitted. The evidence before the Board was that the Swept Path Analysis had been sent from the transportation engineer to the main consultant before the due date. The Board also took into consideration the Appellant's statement that it had attempted to submit 4 of the 5 documents before January 19, 2024 and that it had the Swept Path Analysis at the February 26, 2024 hearing.

[53] The Board is persuaded that it should exercise its variance power to extend the time for submission of the documents. The Board accepts the evidence of the Appellant that before the deadline it tried to submit 4 of the 5 documents using the portal. The Board concludes that there is evidence of a good faith effort to submit the documents. The Board also accepts that the Appellant was not clear about whether the documents had actually been received by the Development Authority. The Board is prepared to exercise its power to vary the date so that the Appellant is not required to start the application process again. The Board is of the view that it would not be efficient to require the Appellant to start again, when the Board can extend the date by which the documents must be submitted, particularly when the documents all appear to be available.

[54] In considering how much time the Appellant requires, the Board notes the Appellant originally asked for 30 to 90 days, but then indicated that it would require a much shorter time. The Board was provided no compelling reasons to extend the submission date for any time longer than the date the Board closed the hearing. Since

the Appellant advised that it had all of the information as of the hearing date, the Board is of the view that extending the date until the closing of the hearing is fair to the Appellant as well as to the Development Authority. The Board concludes that having those documents submitted to the Board is satisfactory, since the documents and information have been submitted.

[55] Based on the above, the Board varies the date for submission of the documents and information to March 14, 2024.

c. If the Board does exercise its variance power to extend the date for submission of the documents and information, has the Appellant submitted all of the requested information?

[56] In considering this matter, the Board has considered the evidence before it that the Appellant noted at the February 26, 2024 hearing that it had with it at that time all 5 of the requested documents. Further, the Board has considered the supplementary submissions submitted by the Appellant in accordance with the Board's directions regarding supplemental submissions and notes that the swept path analysis is included at page 127/173 of the full agenda package.

[57] In light of the inclusion of the Swept Path Analysis to the Board, which package was also shared with the Development Authority, the Board finds that the Appellant has submitted all 5 of the requested documents.

[58] Having concluded that the information and documents submitted are now complete, the Board recognizes that the next step is for the Development Authority to conduct a review on the merits of the application and the information and documents submitted in support of the application. The Board's direction in relation to the completeness of the application should not be seen as being an evaluation of the merits of the application. The Development Authority is empowered under the LUB to review the application on its merits and make the decision it feels appropriate, having reviewed the application, information and documents provided.

Conclusion

[59] For the above reasons, the Board grants the appeal, exercises its variance power in s. 687(3)(c) and varies the time for submission of the requested information to March 14, 2024. The Board has determined that following this variance of time, the application is complete under s. 683.1(2) and the Board remits the development permit application to the Development Authority for consideration on the merits of the application.

[60] Issued this 22nd day of March, 2024 for the Parkland County Subdivision and Development Appeal Board.

B. Williams, Clerk of the SDAB, on behalf of B. Bundt, 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"
BOARD MEMBERS

	MEMBERS
1.	B. Bundt, Chair
2.	D. Baumgardner
3.	M. Chambers
4.	K. Kowalski
5.	C. Lamoureux

APPENDIX "B"
REPRESENTATIONS

	PERSON APPEARING
1.	K. Kormos
2.	J. Candlish
3.	R. Tancowny
4.	F. Florkewich
5.	D. Paulichuk

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

February 26, 2024 Agenda Package			
Exhibit	Description	Date	Pages
1.	Agenda Coversheet	February 26, 2024	1
2.	Table of Contents	February 26, 2024	2
3.	February 5, 2024 SDAB Meeting Minutes	February 5, 2024	3
4.	Notice of Appeal	February 2, 2024	5
5.	Development Authority – Notice of Permit Denied	January 19, 2024	7

February 26, 2024 Agenda Package			
Exhibit	Description	Date	Pages
6.	Hearing Notification	January 8, 2024	9
7.	Handout – Development Authority Submission	February 26, 2024	11
8.	Handout – Agent/Appellant	February 26, 2024	70
9.	Board Letter of Notice to Parties for Additional Information	February 28, 2024	86
10.	Submission of Development Authority – Supplementary as Directed by the Board	February 29, 2024	88
11.	Submission of Agent/Appellant – Supplementary as Directed by the Board	February 28, 2024	118
12.	Submission of Development Authority – Supplementary as Directed by the Board	March 4, 2024	166