SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY

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HEARING DATE: August 12, 2024
FILE NO.: PLDPC20240299

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] On April 9, 2024, Kalan Savill, (the "Appellant") applied to the Development Authority of Parkland County (the "Development Authority") for a development permit (the "Application") on land legally described as W4-26-53-19-SW and municipally described as 53305A RR 270, Parkland County (the "Lands"). On July 8, 2024, the Development Authority deemed the Application refused because it was incomplete.

[2] The Appellant appeals the deemed refusal of the Application.

[3] The Subdivision and Development Appeal Board (the "Board") heard the appeal on August 12, 2024 in person at Parkland County Council Chambers - 53109A Hwy 779, Parkland County, AB.

PRELIMINARY MATTERS

A. Board Members

[4] The Chair confirmed from all parties in attendance that there was no opposition to the composition of the Board hearing the appeal. No one in attendance objected to the members of the Board hearing the appeal.

B. Exhibits

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

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

C. Miscellaneous

[7] The appeal was filed in time, in accordance with section 686 of the *Municipal*

Government Act, RSA 2000, c M-26 (the "MGA").

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

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[9] The Board refuses the appeal and confirms the deemed refusal of the Development Authority of the Application.

SUMMARY OF HEARING

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

Development Authority

[11] The proposed development is to convert lands previously used for grazing to a commercial tree nursery for landscaping stock, fruit for packaging and sale, and Christmas trees. Professional landscapers and members of the public would have access to the site via the pre-existing driveway, where they would park to purchase and collect plant materials.

[12] The Lands are zoned CR - Country Residential District. The majority of the Lands are considered a High Priority Landscape in the Parkland County Municipal Development Plan ("MDP"). Approximately one third of the Lands are subject to the Atim Creek Big Lake Floodplain Overlay. The proposed development area is adjacent to an identified Environmentally Significant Area (ESA) under the Parkland County Environmental Conservation Master Plan, specifically the Atim Creek ESA.

[13] The Development Authority determined that the proposed use most closely aligned with "Horticultural Use". Horticultural Use is a discretionary use in the Country Residential District. A discretionary use allows for greater oversight by the Development Authority.

[14] Horticultural Use is defined in the Parkland County Land Use Bylaw 2017-18 ("LUB") as:

> HORTICULTURAL USE means a Commercial horticultural operation other than a Confined Feeding Operation that, due to the nature of the operation, requires smaller tracts of land. Without restricting the generality of the foregoing, this shall include horticultural uses like nurseries, greenhouses, market gardens, tree farms, and specialty crops (not including Cannabis).

[15] The Development Authority considered whether the proposed development met the definition of Extensive Agricultural Development. However, the Development Authority rejected this definition because an Extensive Agricultural Development:

a. does not allow for commercial visits and sales on-site;

b. allows for tree removal and export for land preparation and tillage, but not for commercial nursery sales; and
c. the amount of land preparation and commercial tree removal proposed surpass the usual topsoil preparation and tillage intended by the definition.

[16] The Application was submitted on April 9, 2024. On April 23, 2024, the Application was identified as incomplete, pending site plans, floor and elevation plans, and a letter of intent. On May 1, 2024, the development permit fee was paid, and the Application was assigned to a Planner.

[17] On May 7, 2024, the planner assigned to the file informed the Appellant that the permit was being circulated to internal groups within the County to consider whether any additional studies or plans would be required to grant the development permit. The Planner wrote:

> A Biophysical assessment may be required due to the proximity of the operation to a wetland area. Our Community Sustainability team will flag this requirement to identify the setbacks that need to be maintained from these environmental features.

[18] On May 16, 2024, the Agriculture and Environment Department provided comments, and confirmed that a desktop biophysical assessment was required due to the proximity of the development to the Atim Creek Floodplain. On May 23, the Development Authority determined that the Application would require updated site plans, a desktop biophysical assessment, and pre-development engagement before it could be approved. These requirements were communicated to the Appellant by email on May 23, 2024, with a follow-up the next day.

[19] On June 6, 2024, the Appellant provided an updated site plan with a reduced footprint so the development was no longer in the Atim Creek Floodplain. On June 7, 2024, the Development Authority confirmed that a desktop biophysical assessment was still necessary in order to confirm appropriate setbacks from the Atim Creek ESA and to identify mitigation for potential impacts of the development.

[20] On June 23, 2024, the Development Authority extended the submission deadline to June 28, 2024. On June 26, 2024, the Appellant escalated his request to proceed without a desktop biophysical assessment to his local MLA and Parkland County Council.

[21] On June 28, 2024, County administration identified to the Development Authority that they were supportive of the requirement for a biophysical assessment.

[22] The Application was deemed refused by the Development Authority on July 8, 2024, as the Appellant was unwilling to provide the desktop biophysical assessment.

[23] In response to Board questions, the Development Authority stated:

a. When determining whether a biophysical assessment is required, the Development Authority will first review the site plan and the letter of intent provided by an applicant. The Development Authority will then consider the relevant overlays and mapping contained in the MDP, and any relevant Area Structure Plans.

b. In this case, the proposed development is directly adjacent to Atim Creek, which is an environmentally sensitive area with a significant watershed into Big Lake and the Edmonton Area. The proposed development would involve overturning of soil and the use of supplements to aid in the growth of trees. There is a potential for overland water flows in the development area, and for wetlands on the parcel.

c. The "Desktop Biophysical Assessment" is a less intensive review than a "Comprehensive Biophysical Assessment". The desktop assessment is appropriate in this case and was selected in part because it was kinder to the Appellant as it would have a lower cost.

d. At page 100 of the hearing package, an email from the Development Authority to the Appellant lists of the relevant sections of the MDP, Atim Creek ASP, LUB and Biophysical Assessment Policy C-CS01 that taken together authorize the Development Authority to require a desktop biophysical assessment. Specifically, section 16.3.2 and 16.3.3(f) of the LUB grant discretion to the Development Authority to require "such other matters as the Development Authority deems appropriate" and "a Biophysical Site Assessment", respectively, depending on the nature of the application and other circumstances. The Biophysical Assessment Policy C-CS01 provides:

> The Biophysical assessment process shall be applied to all County capital projects as well as planning, development and subdivision projects requiring municipal approvals if the proposed activities are considered major development activities OR take place within or adjacent to any Environmentally Sensitive Areas, High Priority Landscapes, watercourses, wetlands, or water bodies.

e. A desktop biophysical assessment can be completed by a County Biologist or a qualified external environmental professional. The County currently does not have a biologist on staff, so this service is not offered. If the County had a biologist on staff, there would still have been a cost to the Appellant associated with getting the desktop biophysical assessment.

Appellant

[24] The Appellant is the owner of the Lands and is seeking to operate a tree farm.

[25] The desktop biophysical assessment is not necessary in this case as the use of the Lands is not fundamentally changing. The Lands have been used as farmland for at least fifty years, and they will continue to be farmland.

[26] The cost to complete the biophysical assessment is prohibitive. After contacting several companies, the cost would be approximately $2000.

[27] The Development Authority's characterization of the Application as being Horticultural Use is incorrect. The development is more akin to an Extensive Agricultural Development. The Appellant cited section 16.2 of the LUB which lists Extensive Agricultural Development as a development that does not require a development permit.

[28] Alternatively, the Appellant cited section 5.5 of the LUB "Other Development Regulations", which provides:

> Pursuant to the MDP, a biophysical assessment shall be required for a site proposed for a multi-parcel subdivision or a major development if all or part of the site is located within areas defined as environmentally significant…

The Appellant argued that the proposed development is neither a subdivision, nor a major development. Therefore, a biophysical assessment is not required.

[29] There are no trees being cleared from the Lands in light of the reduced scope of the project reflected in the second detailed site plan. The proposed use will include trees being planted and then removed.

[30] No one from the County has been out to observe the Lands. If someone had been out to visit the Lands, they would see that it is farmland and that a biophysical assessment is not required. As a result, the Appellant has had to incur the costs of appealing and the SDAB has had to convene a hearing on this issue.

[31] The Appellant has incurred significant costs already with respect to the Lands. His initial plan was to subdivide; however, the costs of upgrades and servicing the Lands was prohibitive. There have been significant delays in developing the Lands and obtaining the necessary approvals. The Appellant also incurred significant costs to complete the driveway that currently exists on the Lands.

[32] The Appellant views the requirement for a biophysical assessment as a roadblock and suggested that other municipalities did not have similar requirements. The Appellant further argued that the Development Authority was acting contrary to the general principles contained in the MDP. This development is a value-add initiative, which would preserve valuable agricultural land.

[33] The Appellant requested the Board approve his development permit application without the need for a biophysical assessment, and without further conditions.

[34] In response to questions from the Board, the Appellant indicated that the proposed development footprint was now outside the 100 year floodplain for Atim Creek.

FINDINGS OF FACT

[35] The Lands are located at W4-26-53-19-SW and municipally described as 53305A RR 270, Parkland County.

[36] The Lands are located within the CR - Country Residential District of the LUB and are subject to the Atim Creek ASP. The proposed development is within a High Priority Landscape, and is adjacent to an Environmentally Significant Area.

[37] The use of the proposed development is Horticultural.

REASONS

Statutory Scheme and Jurisdiction

[38] Section 678(2) of the *Municipal Government Act*, provides that an appeal lies to the Board "within 14 days after receipt of the written decision of the subdivision authority or deemed refusal by the subdivision authority in accordance with section 681." [Emphasis Added]

[39] Section 681 provides:

> If a subdivision authority fails or refuses to make a decision on an application for subdivision approval within the time prescribed by the subdivision and development regulations, the applicant may, within 14 days after the expiration of the time prescribed,
>
> (a) treat the application as refused and appeal it in accordance with section 678, or
>
> (b) enter into a written agreement with the subdivision authority to extent the time prescribed in the subdivision and development regulations.

[40] In this case, the Appellant and the Development Authority initially agreed to extend time to provide the Appellant an opportunity to submit further documents required by the Development Authority. Once it became clear that the Appellant refused to provide a desktop biophysical assessment, the Development Authority deemed the Application incomplete.

[41] The Board is satisfied that the appeal was filed within the required time limits, and notes that no party raised any concerns regarding the Board's jurisdiction during the hearing.

Issue to be Decided

[42] On a deemed refusal, the question before the Board is whether the Application was complete. In order to assess this question, the Board must consider what information was required by the Development Authority, and whether the Appellant provided that information.

Was the Application Complete?

[43] The facts of this appeal are largely not in dispute and are set out in the correspondence between the Appellant and the Development Authority which form a part of the appeal package.

[44] On May 23, 2024, the Development Authority communicated to the Appellant that the Application was incomplete, and that the Development Authority would require a desktop biophysical assessment, among other requirements. The requirement for the biophysical assessment was confirmed by the Development Authority to the Appellant in writing on May 24, 2024, June 25, 2024, and July 5, 2024. There is no dispute that the Appellant has not provided the desktop biophysical assessment. Factually, the Application is not complete.

Does the Application Require a Desktop Biophysical Assessment?

[45] The Board next considered whether a desktop biophysical assessment is required in the circumstances. After considering the documents in the hearing package, the relevant statutory provisions, and the submissions of the parties, the Board finds that a desktop biophysical assessment is required in the circumstances.

[46] In reaching its conclusion, the Board first considered the proposed use of the Lands. When reviewing any statutory document such as the LUB, the Board is guided by the principles of statutory interpretation. The Board understands that it must take a broad and purposive approach to interpreting statutory language. Where language is ambiguous, the Board considers the text, context, and purpose of the language, in an effort to determine the legislative intent underlying the words.

[47] In the Board's view, Horticultural Use most closely aligns with the Appellant's proposed development. As noted above, the LUB defines Horticultural Use as:

> a Commercial horticultural operation other than a Confined Feeding Operation that, due to the nature of the operation, requires smaller tracts of land. Without restricting the generality of the foregoing, this shall include horticultural uses like nurseries, greenhouses, market gardens, tree farms, and specialty crops (not including Cannabis).

[48] In this case, the Board notes that the definition of Horticultural Use specifically includes the phrases "nurseries" and "tree farms". A "tree farm" is precisely how the Appellant proposes to use the land. Indeed, the Appellant referred to his proposal as a tree farm during his submissions to the Board. There is no ambiguity in this definition – Horticultural Use directly aligns with the proposed development.

[49] The Appellant argued that the proposed use was more akin to Extensive Agricultural Operations. The Board disagrees. The Board accepts the Development Authorities submissions that Extensive Agricultural Operations would not allow for the commercial visits to the site, which is a key feature of the Appellant's proposed development. Further, while Extensive Agricultural Development can include "the off-site removal and export of logs or trees", this language is intended to cover the incidental removal of trees in a situation where lands are being cleared and prepared for farming operations. The definition of Extensive Agricultural Development must be read in the context of the definition of Horticultural Use that specifically deals with nurseries and tree farms. The specific examples of Horticultural Use override the more general definition of farming operations in Extensive Agricultural Development.

[50] Horticultural Use is a discretionary use in the CR- Country Residential District. The Board accepts that the Development Authority has the authority to scrutinize a discretionary development. The Board also accepts that generally speaking, the LUB provides discretion to the Development Authority to make determinations regarding what information or reports are necessary to fully assess proposed developments.

[51] The Board next considered the purpose of a desktop biophysical assessment. Appendix 2 of the MDP describes a "Desktop Biophysical Assessment" as:

> A desktop biophysical assessment may be required for simple subdivisions, as well as any stripping, filling, excavation, grading activities, tree clearing or creation of a pond or dugout if the proposed activities take place within or adjacent to an Environmentally Significant Area, High Priority Landscape, watercourse, wetland, or water body. The desktop biophysical assessment is a simple assessment based on publicly available information that is used to identify if any environmental triggers are present that require mitigation measures, further investigation or additional permits/approvals from governmental agencies. The desktop biophysical assessment is a one page assessment form that can be completed by the County Biologist or by a qualified external environmental professional.

[52] In this case, the Development Authority argued that the biophysical assessment could identify appropriate setbacks for the proposed development from the Atim Creek ESA, as well as other mitigation measures necessary to protect the adjacent Environmentally Significant Area. The Board agrees. Based on the information currently before the Board, it is impossible to assess the potential environmental impacts of the proposed development and what conditions may be necessary to mitigate those impacts. This is the purpose of a biophysical assessment to identify additional measures necessary to mitigate the impact of development; or, to conclude that the proposed setbacks or other measures already provide the necessary protections. The point is, until the assessment is complete neither the Appellant, the Development Authority, nor the Board can know for certain what the impact of the proposed development will be. Even with the reduced development footprint, the Board accepts that the proposed development is directly adjacent to an Environmentally Significant Area.

[53] The Board further accepts that the proposed development may include the types of landscaping activities that are contemplated in the description of the desktop biophysical assessment. The planting, growing, and removal of trees could very well necessitate changes to the landscape which may have an impact on drainage patterns or other environmental impacts. A desktop biophysical assessment is a necessary step to assess these potential impacts of the proposed development.

[54] The Appellant pointed the Board to provisions within the MDP and LUB that reference biophysical assessments for subdivision or major developments. However, the sections relied on by the Appellant are not the only references to biophysical assessments within County planning documents, and cannot be read in isolation. The Development Authority has broad discretion under section 16.3 of the LUB to require biophysical site assessments for all manner of development permits depending on the circumstances. In addition, Parkland County's Biophysical Assessment Policy C-CS01 does not preclude the Appellant's proposed development from a biophysical assessment. To the contrary, it provides that the assessment process shall be applied "to planning, development, and subdivision projects requiring municipal approvals if the proposed activities … take place within or adjacent to any Environmentally Sensitive Areas…" [emphasis added]. The Application is for a development, requiring municipal approval, adjacent to an ESA. The requirement for a biophysical assessment in this case is wholly consistent with the County's Biophysical Assessment Policy.

[55] Finally, the Board considered and accepts that the Development Authority, the

Agriculture and Environment team, and administration unanimously supported the requirement for a desktop biophysical assessment in the circumstances. In the Board's view, it is telling that multiple agencies within the County reviewed the Application and came to the same conclusion regarding what information was necessary to proceed.

[56] For all these reasons, the Board is satisfied that a desktop biophysical assessment was required in the circumstances. It was within the discretion afforded to the Development Authority to request the desktop biophysical assessment, and the Appellant refused to provide it. The Application was incomplete.

Other Arguments Raised by the Appellant

[57] In the course of the hearing, the Appellant argued that Parkland County imposes requirements that other municipalities do not. He also raised arguments that the Board considered to be economic hardship arguments.

[58] The hardship and policy arguments raised by the Appellant are outside the scope of this appeal, and it is not necessary for the Board to comment upon them. The Board interprets the statutory plans, it does not write them. The Board's role in this hearing is only to consider whether the Application was complete.

Conclusion

[59] Having considered the evidence and argument before it, the Board denies the appeal.

[60] In their submissions, the Development Authority requested the Board require the Appellant to provide a desktop biophysical assessment if he resubmits an application for development. The Board declines to impose this requirement. In the Board's view, it would not be appropriate for this Board to comment on a hypothetical new application for development.

[61] Issued this 27 day of August 2024 for the Parkland County Subdivision and Development Appeal Board.

Barb Williams, Clerk of the SDAB, on behalf of T. Grenier, 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.	T. Grenier, Chair
2.	A. Tollenaar
3.	L. Helton
4.	M. Morin
5.	W. Ekert

APPENDIX "B"
REPRESENTATIONS

	PERSONS APPEARING
1.	Nick Zazula, Development Authority
2.	Amy Jones, Environmental Coordinator
3.	Kalan Savill, Appellant

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

August 12, 2024 Agenda Package			
	Description	Date	Pages
1.	Agenda Coversheet	Aug 12, 2024	1
2.	Table of Contents	Aug 12, 2024	2
3.	Notice of Appeal	Rec. Jul 8, 2024	3
4.	Appellant/Applicant Waiver Form	July 8, 2024	7
5.	Notice of Permit Deemed Refused	July 8, 2024	8
6.	Hearing Notification	July 10, 2024	10
7.	Submissions of the Development Authority	August 1, 2024	12
8.	Submissions of the Appellant/Applicant	August 6, 2024	79