SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY

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HEARING DATE: February 5, 2024
FILE NO.: PLSP20230732

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Subdivision Authority of Parkland County (the "Subdivision Authority") approved a subdivision with conditions for land located at 51222 Range Road 20, Parkland County, legally described as NE 13-51-2-W5M ("the Lands"). The applicant for the subdivision was Robert Allen, by his agent Don Wilson Surveys Ltd.

[2] On December 22, 2023, Don Wilson Surveys Ltd. on behalf of Robert Allen filed an appeal of one of the conditions of subdivision (the "Appellant"). The Appellant signed a waiver agreeing to having the hearing commence outside of the 30 day period provided for in the *Municipal Government Act*, RSA 2000, c.M-26 (the "MGA").

[3] The Subdivision and Development Appeal Board (the "Board") held the appeal hearing on February 5, 2024, in person.

PRELIMINARY MATTERS

A. Board Members

[4] At the outset of the appeal, the Chair requested confirmation from all parties in attendance that there was no opposition to the composition of the Board hearing the appeal. None of the persons in attendance had any objection to the members of the Board hearing the appeal.

B. Exhibits

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

[6] No one at the hearing had any further information they wished to submit.

C. Miscellaneous

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

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

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[9] The Board grants the appeal and varies the conditions of approval by revoking the previous condition 3. The subdivision is now subject to the following conditions:

1.	Pursuant to Section 654(1)(d) of the Municipal Government Act, any outstanding taxes on the subject property shall be paid or arrangements be made for the payment of the taxes, to the satisfaction of Parkland County.
2.	Pursuant to Section 655 of the Municipal Government Act, the landowner shall complete the following with respect to approaches and ditching: a. ensure the existing field approach off Range Road 20 to the proposed Lot 1 meets Engineering Standard Drawing No. 7.12. The approach shall be graveled to the property line, and be a minimum of 6.0 meters to a maximum of 8.0 meters in width. b. All approaches shall be constructed at the locations detailed on the accepted tentative plan. and c. The applicant shall contact the County's Public Works Program Coordinator, Mr. Shawn Satz, at 780-968-8454 for approval of a haul road agreement prior to hauling any material onto or off site on County roadways. All approaches shall maintain the spacing requirements from adjacent approaches. No disturbance or grading is to adversely affect existing drainage on adjacent lots. All surface grading is to be done in a manner that will prevent cross lot drainage conflicts. All approaches shall contain an apron equivalent to the surface of Range Road 20. Please contact a Development Engineering Officer prior to construction and to schedule inspection appointments at 780-968-8888 ext. 8372. Note: the existing residential approach off Range Road 20 the Remnant Lot meets Engineering Standard Drawing 7.12; no upgrades are required.
3.	Revoked

4.	Pursuant to Section 654(1)(c) of the Municipal Government Act, the proposed subdivision must meet Section 7(g) of the Subdivision & Development Regulation with respect to septic disposal and an inspection of the existing septic system on the Remnant Lot is required pursuant to the Private Sewage Disposal Systems Regulation. To schedule an inspection of the existing septic system, please sign-in to your PLANit Parkland Portal account to pay the required fee. A Safety Codes Permit Issuer will contact you to book an inspection. Please read attached Private Sewage Distance Requirements.
5.	Pursuant to Parkland County Bylaw No. 2015-30, the parcels shall be numbered using Parkland County's civic addressing system. Following final inspection of the approach(es), please contact the Current Planner I at 780- 968-8888, to request address assignments. Following assignment of civic addresses, please contact Customer Service at 780-968-8888 to order all required address signs. A copy of the receipt confirming purchase of the address sign(s) shall be provided to Planning & Development Services.
6.	The subdivision shall be registered in a manner acceptable to the Registrar of Land Titles. An endorsement fee of $529.00 (subject to change) is payable when the final plan is submitted for endorsement by Parkland County. No endorsement fee is charged for reserve lots or public utility lots. If applicable, the Alberta Land Surveyor shall ensure all required setbacks from existing principal and accessory buildings and new property lines are maintained in accordance with Parkland County Land Use Bylaw No. 2017-18.

SUMMARY OF HEARING

[10] 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.

Subdivision Authority

[11] The Lands are located at 51222 Range Road 20, Parkland County and legally described as NE 13-51-2-W5M. The Lands are located within the AGG – Agricultural General District (s. 4.1 of the Parkland County Land Bylaw 2017-18 ("LUB")). The Lands are located within Division 4, immediately west of Range Road 20 and approximately 800 m north of Township Road 512.

[12] Parcels adjacent to the Lands are used for extensive agricultural and rural residential land purposes. Administration's detailed review of the application can be found in the Subdivision Decision Report at Exhibit 21.

[13] The initial application for the proposed subdivision was accepted for evaluation and processing by the County on October 18, 2023. The Subdivision Authority approved the subdivision subject to conditions on December 18, 2023. The Subdivision Authority emailed the

conditional subdivision approval to the Appellant and mailed the Notice of Decision to adjacent landowners on December 20, 2023. The Subdivision Authority advised that the size of the proposed lot did not align with the regulations and the Appellant asked for a size variance. The Subdivision Authority determined that the justification did not align with the rationale for subdivision for residential purposes in the AGG District.

[14] Prior to approval, the Subdivision Authority circulated the recommended conditions, including condition 3 setting out a 10-acre maximum size for the proposed lot. The Appellant advised that he would proceed with the approval and appeal condition 3.

[15] The Appellant submitted his notice of appeal on December 22, 2023. The appeal identified that Condition #3 of the conditional subdivision approval is being appealed:

> 3. Pursuant to Section 4.3.3(a)(ii)[1] (sic) of Land Use Bylaw 2017-18 and Policy 4.1.8(b) of Municipal Development Plan Bylaw 2017-14, parcel sizes for Rural Agriculture Subdivision-Residential in the AGG – Agricultural General District are limited to a maximum parcel size of 4.05 ha (10.0 ac). The Alberta Land Surveyor shall revise the tentative plan to reduce the size of proposed Lot 1 to a maximum parcel area of 4.05 ha (10.0 ac). The final parcel size and configuration of the adjusted parcel shall be submitted to the Director of Planning & Development Services for review and approval.

[16] The application for one parcel of 8.10 ha (20.0 acres) in size is not in conformance with the County's policies and plans regarding parcel size. The Subdivision Authority included additional information regarding the relevant legislation in Appendix A of its submissions. The proposed subdivision would be the first parcel to be created from the quarter section.

[17] The Subdivision Authority's position is that the application is not consistent with Policy 4.1.8(b) of the County's Municipal Development Plan Bylaw 2017-14 (the "MDP") which states that Farmstead subdivisions in the Rural Agricultural Area should not encompass productive agricultural land and are typically no more than 10 acres (4.05 ha) in size.

[18] The application is also not consistent with Policy 4.1.7(a) of the MDP which states that subdivisions for agricultural purposes other than small holdings should typically be 80 acres (32.37 ha) or greater in size.

[19] Furthermore, the subject lands are located within the Prime Agricultural Area South East. The application is not consistent with Policy 4.2.2(a) of the MDP which states that the Prime Agriculture Area South East should retain large land parcels to support grazing and specialty operations such as grain and crop farming, while promoting diversification and expansion into new agricultural sectors.

[1] The Subdivision Authority has referenced s. 4.3.3. (a)(ii) in Condition 3. The AGG District is found in s. 54.1 of the LUB, so the corrected reference is 4.1.3.(a)(ii).

[20] The MDP identifies the Prime Agricultural Area Small Holdings area as shown on Figure 9 – Prime Agricultural Areas (Exhibit 25). A range of parcel sizes, including those between 10 acres and 40 acres, are contemplated within this area and supported by Policy 4.2.4(b). The Lands are not located within this identified area.

[21] The Lands are districted AGG – Agricultural General District. The application is not consistent with Section 4.1(3)(a)ii of the Land Use Bylaw which allows for the subdivision of residential parcels between 0.8 ha (2.0 acres) and 4.05 ha (10.0 acres) in size. The LUB provides that a lot greater than 10 acres could be granted if it was required for farm use, shelterbelts, onsite sewage, etc. None of those issues existed with this subdivision.

[22] The application is also not consistent with Section 4.1(3)(a)i of the LUB which states that Extensive Agricultural and Extensive Livestock Parcels shall have a minimum parcel area of 16.0 ha (40.0 acres) more or less.

[23] In summary, the LUB allows for the following two parcel types within AGG-Agricultural General District:

a. Residential Parcels – which shall be between 2.0 acres to 10.0 acres in size; and
b. Agricultural Parcels – which shall be greater than 40.0 acres.

[24] Parcel sizes between 10.0 acres and 40.0 acres are not permitted. Therefore, the size of the proposed lot is inconsistent with the LUB.

[25] The Subdivision Authority did not receive any comments from adjacent landowners.

[26] In response to Board questions, the Subdivision Authority advised that:

a. There is no area structure plan governing the Lands.
b. Most of the area of the Lands are identified as class 2 soils. There are slight limitations due to the slope. The soils data available to the Subdivision Authority is County-wide. The Subdivision Authority does not have more specific data. The notation about the limiting slope being 9% is for the area, and not specifically for the Lands. It does not mean that the slopes are 9% on the Lands. The County would need a geotechnical report to make that determination and did not require the Appellant to provide one.
c. The application for subdivision is consistent with those parts of the MDP and LUB which identify the maximum number of parcels which may be subdivided out of a quarter section.
d. A 40-acre parcel is not an option because the Lands are not within a Small Holdings area under the LUB. The Subdivision Authority provided the Appellant with information about a 40-acre agricultural parcel.
e. Consolidation of parcels is done through the Land Titles Office without County approval. The Subdivision Authority did not know the cost.
f. The Subdivision Authority was not certain if the approach would need to be removed after consolidation. Residential parcels get one access. Since the parcel would not fit the size for either a agricultural or residential parcel, the requirements

regarding the access are unclear. The determination would be up to the County's engineering group.

g. The AGG District provides that the Lands could be subdivided two more times. If two 10-acre parcels were consolidated, these would be treated as one parcel for the purposes of future subdivisions. The Lands can have a maximum of four parcels.
h. The Subdivision Authority does not have the authority to grant a 100% variance to the size of the parcel.
i. The Subdivision Authority did not conduct a site visit.

Appellant – Robert Allen by his Agent, Don Wilson Surveys Ltd.

[27] Both Robert Allen and his agent, Nate Wilson of Don Wilson Surveys Ltd, spoke in favour of the appeal. Collectively, they will be referred to as the "Appellant".

[28] The Appellant's rationale for the 20-acre parcel is that he wishes to subdivide the Lands to provide a lot to be used by his son and daughter in law to live and have hay growing for their equine business. He noted that, under the LUB, he is entitled to subdivide out 30 acres of residential lands in 10-acre parcels. He understands that the size of the proposed lot is an issue because the proposed lot is bigger than permitted under the residential subdivisions and smaller than subdivisions for agricultural purposes. However, if he were to subdivide two 10-acre parcels, he could turn it into a 20-acre parcel through consolidation. His main objection was the additional and unnecessary costs.

[29] In response to Board questions, the Appellant stated:

a. The consolidation of the two 10-acre parcels was an option put forward by the Subdivision Authority. The Applicant did not wish to have a 40-acre parcel because it would cut into the crop land. He did not wish to disrupt the farmer who is farming the Lands by cutting 20 acres out of the lands which he is farming. The 20 acres of the proposed lot is already fenced and has been in pasture since the 1980s.
b. The current use of the quarter section is split between crop land and pasture. The 20 acres which would be subdivided are currently pasture. Following subdivision, the Appellant would continue to have animals pasturing on those lands. They would be used for grass for horses and steers.
c. Consolidation is done through a survey plan or descriptive plan which then cancels the title to the two 10-acre parcels and registers one 20-acre parcel. The cost of registration is about $200-$300.
d. The Appellant would be required to construct a second approach to access the second 10-acre parcel. Once consolidated, the Appellant would be required to remove the second approach.
e. The Lands, particularly where the proposed lot is located, have short, sharp hills with a couple of low areas that hold water after rain and snowfall. The area of the proposed lot is unsuitable for large agricultural equipment because the hills are

sharp and steep. The area is great pasture and has been in pasture for 40 years. The Appellant has sprayed for weeds and fertilized the area.

f. The Appellant owns this quarter section and the one to the west of it. As noted on the image at page 104 of the Agenda Package, the area which is on the east of the Lands has more hills (it is hummocky). There are crops on the northern portion of the Lands, which extend to the parcel to the west (both are owned by the Appellant). Over the two quarter sections, he has 120 acres of crop land. The balance is pasture for cattle and horses. There is no viable way to farm the 20 acres of the proposed lot due to the short, sharp hills.

FINDINGS OF FACT

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

[31] The Lands are located at 51222 Range Road 20, Parkland County, legally described as NE 13-51-2-W5M.

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

[33] The appeal was filed on December 22, 2023.

[34] The Appellant is an affected person and entitled to be heard by the Board.

REASONS

Affected Persons

[35] 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.

[36] The Appellant is the applicant for subdivision. Under s. 678(1)(a), the Appellant, as the Applicant for subdivision, is entitled to file an appeal.

Jurisdiction and Issues to be Decided

[37] The Board's jurisdiction is found in section 680(2) of the MGA.

> **680(2)** In determining an appeal, the board hearing the appeal
> (a) repealed 2020 c39 s10(48);
> (a.1) must have regard to any statutory plan;
> (b) must conform with the uses of land referred to in a land use bylaw;
> (c) must be consistent with the land use policies;
> (d) must have regard to but is not bound by the subdivision and development regulations;

(e) may confirm, revoke or vary the approval or decision or any condition imposed by the subdivision authority or make or substitute an approval, decision or condition of its own;
(f) may, in addition to the other powers it has, exercise the same power as a subdivision authority is permitted to exercise pursuant to this Part or the regulations or bylaws under this Part.

[38] The issue in this appeal concerns the Appellant's appeal of condition 3, which limits the size of the parcel to be subdivided. The Appellant seeks to have condition 3 removed so that he can have a 20-acre parcel. The Subdivision Authority has recommended the retention of condition 3.

[39] In deciding this appeal, the Board must:

a. have regard for the applicable statutory plans;

b. ensure the subdivision conforms with the uses of lands within the LUB; and

c. have regard for the Matters Related to Subdivision and Development Regulation (the "Regulation") (but is not bound by that Regulation).

[40] 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 Subdivision Authority and the Appellant.

Statutory Plan

[41] Under s. 680(2) of the MGA, the Subdivision Authority must have regard to any statutory plan in making its decision. The Board notes that the only applicable statutory plan is the MDP, since there is no area structure plan which applies to the Lands.

[42] There are three Policies of the MDP which the Board must consider in making its decision:

a. Policy 4.1.7;
b. Policy 4.1.8; and
c. Policy 4.2.2.

[43] These three Policies are set out below.

4.1.7 Rural Agricultural Subdivision - Agriculture
a. Rural Agriculture Subdivision - Agriculture for agricultural purposes other than small holdings should typically be eighty (80) acres (32.37 ha) or greater in size.

4.1.8 Rural Agriculture Subdivision – Farmstead
a. Rural Agriculture Subdivision - Farmstead is supported in the Rural Agricultural Area to provide opportunities for rural living, support multi-

generational farming and ensure sufficient population to service the agricultural sector.

b. Rural Agriculture Subdivision - Farmstead in the Rural Agricultural Area should not encompass productive agricultural land and are typically no more than ten (10) acres (4.05 ha) in size.

4.2.2 Prime Agriculture Area South East
a. Prime Agriculture Area South East should retain large land parcels to support grazing and specialty operations such as grain and crop farming while promoting diversification and expansion into new agricultural sectors.

b. Within the Prime Agriculture Area South East, a total four (4) parcels are supported per quarter section.
c. Subdivisions for non-agricultural developments should be limited in Prime Agriculture Area South East.

[44] The Board notes that Policy 4.1.7.a indicates that the typical size of lots for agricultural purposes is 80 acres or greater. This Policy uses the words "should typically be". The Board notes that the language of the Policy is not mandatory but provides some flexibility for the Board to consider the specific facts in the matter before it. In examining the words and the purpose of the Policy, the Board finds that the purpose of Policy 4.1.7.a is to preserve larger blocks of agricultural land, if possible.

[45] In the circumstances of this case, the Board finds that the evidence is that the 20 acres of the proposed lot could not be farmed using modern farming equipment due to the short, sharp hills. Further, the evidence is that subdividing a 40-acre parcel would disturb the existing farming occurring on the Lands and the Appellant's quarter section to the West. While the Board appreciates the desire to keep agricultural parcels in larger areas, the Board notes that the facts of this case indicate that whether the proposed lot is 10 acres or 20 acres, neither would be able to be "traditionally farmed" because of the topography of the proposed lot. Further, there are constraints on traditional farming around the area of the proposed lot in the remainder of the Lands due to its topography. The evidence before the Board was that the Lands and the Appellant's quarter section to the west have, over the two quarter sections, only 120 acres of crop. The size of this subdivision of either 10 or 20 acres would not disturb the area that can be farmed. Therefore, although the Board recognizes the rationale for this policy, the Board is not persuaded that it provides an overriding reason to deny the appeal.

[46] Policy 4.1.8.a speaks to the desire to have opportunities for rural living and to support multi-generational farming. The Appellant stated that he wishes to have his son and daughter in law live on the proposed lot. This intention supports Policy 4.1.8.a. Even though the Appellant's goal of having his son live on the newly created parcel, that evidence is neutral in relation to whether the parcel should be 10 or 20 acres, as the Appellant's son and daughter in law could live on either sized parcel.

[47] Policy 4.1.8.b has two parts: first, that the farmstead should not encompass productive agricultural land, and second, that the farmstead is typically no more than 10 acres (4.05 ha) in size. In considering this Policy, the Board has considered the Appellant's evidence that the proposed lot cannot be farmed using modern machinery due to its topography. In light of that evidence, the policy intention behind Policy 4.1.8.b is met since productive crop land would not be taken from production by the creation of the proposed lot. The Board also notes that the land has been used for pasture and the intention is that it continue to be used for pasture, which is an agricultural use. That use, however, can be accommodated if the newly created lot is 20 acres. In considering the second part of Policy 4.1.8.b, the Board notes that the language of the section is not mandatory, but, like Policy 4.1.7.a, uses the words "are typically no more than". The facts of this case support having a larger parcel (at 20 acres) because of the limitations on the productivity of the newly created parcel.

[48] Policy 4.2.2.a contains aspirational language, using the word "should". The Board notes that the intention of the Policy is to have larger parcels to support grazing. In this regard, the Board notes that having 20 acres for pasture would better meet this goal, because a larger area would be subject to more rotation of grazing areas, field maintenance and fertilization. Policy 4.2.2.b is met because the Appellant seeks to have only 1 newly created parcel, for a total of 2 parcels on the quarter section.

[49] The Board has considered the use for the proposed parcel. The residential component is permitted under the AGG District. The grazing is an agricultural use, which is allowed in the AGG District. The Board is satisfied that the use of the proposed lot conforms with the uses in the LUB.

[50] The Board notes that the size of the proposed lot does not accord with the size set out in s. 4.1.3.a.ii of the LUB. The Subdivision Authority commented that the variance of 100% (from 10 acres to 20 acres) was too large for it to approve. The Board notes that the Board may exercise the variance power granted to the Subdivision Authority under s. 654(2) of the MGA. The Board may exercise the variance power to vary the size of the lot, provided the Board is of the opinion that the proposed lot would not unduly interfere with the amenities of the neighbourhood, or not materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land and the use conforms with the use prescribed by the LUB.

[51] As indicated above, the Board finds the use of the proposed lot conforms with the LUB. Therefore the only question is whether to grant the requested variance.

[52] In relation to the amenities of the neighbourhood, the Board has considered what the amenities of the neighbourhood are. The area is an agricultural area (see page 104 of the Agenda Package). The Board heard no specific evidence in regard to the amenities in the neighbourhood, but can infer that part of the amenities would be a quiet agricultural area. There was no evidence from neighbours in this hearing. The Board infers from the absence of neighbourhood concerns that the creation of one additional lot, whether 10 acres or 20 acres, would not unduly interfere with the quiet of the neighbourhood.

[53] In relation to the issue of whether a 20-acre parcel would materially interfere with or affect the use, enjoyment or value of the neighbouring parcels of land, the Board again notes the absence of any comments from neighbouring landowners. The Board infers from the absence of neighbourhood concerns that the creation of one additional lot, whether 10 acres or 20 acres, would not materially interfere with use, enjoyment or value of those neighbouring parcels.

[54] In coming to its decision, the Board notes the evidence before it was that the Appellant could subdivide two 10-acre parcels, and then consolidate them, coming to the same result as one 20-acre parcel. Should the Appellant consolidate two 10-acre lots, and have one 20-acre parcel, he would still be able to subdivide out 2 more parcels (each to a maximum of 10 acres) resulting in 40 acres of subdivided lands (rather than 30 acres from the quarter section). The Board was not persuaded that making the Appellant go through the time, effort and cost of subdividing two 10-acre parcels, only to have them consolidated was a valuable use of his or the County's time and money, particularly when there does not seem to be any particular benefit to him or the County by making him do so, nor does it seem to advance the County's policy goals, as described in the County's MDP.

[55] The Board has examined the provisions of the Regulation to determine if there are any concerns about this subdivision in relation to the requirements of the Regulation. The Board notes that the Subdivision Authority did not raise any concerns about the subdivision's compliance with the Regulation. The Board is not aware of any concerns about compliance with the Regulation regardless of whether the newly created lot will be 10 or 20 acres.

[56] The Board is persuaded by the evidence presented to it that it should remove condition 3.

Conclusion

[57] For the above reasons, the Board grants the appeal, revokes condition 3 and approves the subdivision subject the conditions set out at paragraph [9], above.

[58] Issued this 15th day of February, 2024 for the Parkland County Subdivision and Development Appeal Board.

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B. 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.	B. Bundt
3.	L. Foy
4.	L. Helton
5.	A. Tollenaar

APPENDIX "B"
REPRESENTATIONS

	PERSON APPEARING
1.	R. Karimi -Boushehri, Current Planner I
2.	J. Leduc, Senior Current Planner
3.	N. Wilson, Don Wilson Surveys Ltd.
4.	R. Allen, Applicant/Appellant

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

February 5, 2024 Agenda Package			
Exhibit	Description	Date	Page
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6.	Subdivision and Development Appeal Board – Waiver Form – Appellant/Applicant	December 22, 2023	13
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