

**ROCKY VIEW COUNTY
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

Board Order No.: 2019-SDAB-063

File No.: 04715001; PRDP20193124

Appeal by: Grandview Park Home Owners' Association

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 December 20

Decision Date: 2020 January 2

Board Members: D. Henn, Chair
T. Fehr
H. George
M. Goetjen
W. Metzger

DEVELOPMENT APPEAL DECISION

INTRODUCTION

[1] This is an appeal to the Rocky View County Subdivision and Development Appeal Board (the Board) from a decision of the Rocky View County Development Authority issued November 12, 2019. In this decision, the Development Authority conditionally approved a development permit for an accessory building (greenhouse) at 242091 Range Road 32 (the Lands).

[2] Upon notice being given, this appeal was heard on December 20, 2019 in Council Chambers of Rocky View County's County Hall, located at 262075 Rocky View Point, Rocky View County, Alberta.

DECISION

[3] The appeal is allowed in part and the decision of the Development Authority is varied. A development permit shall be issued subject to the following conditions:

Description:

- 1) That horticulture development, construction of a greenhouse approximately 2,562.00 sq. m (27,577.14 sq. ft.) in area, may be constructed on the Lands in general

accordance with the site plan, drawings submitted with the development permit application, and conditions of this permit.

Prior to Issuance:

- 2) The Applicant/Owner shall submit payment of the Transportation Off-Site Levy for the 'Development Area' in accordance with Rocky View County's *Transportation Off-Site Levy Bylaw C-7356-2014*.
 - i. A revised site plan shall be submitted, identifying the 'Development Area' of the proposal. *Note, the 'Development Area' shall include the driveway access, all structures (buildings), the storage and display areas directly associated with the use, the required landscaping and parking areas as defined in the Land Use Bylaw, and any other area used for development purposes.*
- 3) The Applicant/Owner shall contact County Road Operations to determine if a Road Use Agreement and/or any Road Data Permits are required for the importing of fill and topsoil, removal of any excess fill, and for the mobilization and demobilization of any construction equipment to and from the subject site utilizing any County Roads.
 - i. Written confirmation shall be received from County Road Operations confirming the status of this condition. Any requirement agreement or permits shall be obtained unless otherwise noted by County Road Operations.
- 4) The Applicant/Owner shall submit a water and wastewater servicing plan.
 - i. That should the Applicant/Owner tie into Westridge Water Co-Op, confirmation from the Co-Op ensuring that sufficient capacity is available and has been allocated, shall be provided.
- 5) The Applicant/Owner shall submit a Site-Specific Stormwater Implementation Plan (SSIP), conducted by a qualified professional that is consistent with the conditions set in the Springbank Master Site Development Plan (MSDP) and the Springbank Creek Catchment Drainage Plan.
 - i. The Applicant/Owner is responsible for following the recommendations outlined in the Site-Specific Stormwater Implementation Plan.
- 6) The Applicant/Owner shall submit an erosion and sediment control plan, in accordance with County Servicing Standards.
- 7) The Applicant/Owner shall submit a construction management plan, in accordance with County Servicing Standards. The plan shall address noise mitigation measures, traffic accommodation, sedimentation and dust control, management of stormwater during construction, erosion and weed control, construction practices, waste management, firefighting procedures, evacuation plan, hazardous material containment and all other relevant construction management details.
- 8) The Applicant/Owner shall submit a screening plan indicating measures to mitigate the visual impact of the development from adjacent lands, specially noting adjacent lands to

the north and east of the Lands, in accordance with sections 25 and 26 of the County's *Land Use Bylaw C-4841-97*.

Permanent:

- 9) That the proposed horticulture development (greenhouse) shall not be used for residential occupancy purposes at any time.
- 10) That the exterior siding and roofing materials of the horticulture development (greenhouse) shall be neutral in tone.
- 11) That during construction and operation of the business, dust control shall be maintained onsite and the Owner/Applicant shall take whatever means necessary to keep visible dust from blowing onto adjacent lands.
- 12) That the northern most turnoff to the Lands from Range Road 32 shall be paved according to County Servicing Standards.
- 13) That there shall be no more than 1.00 m (3.28 ft.) of fill placed adjacent to or within 15.00 m (49.21 ft.) of the proposed building under construction, which is used to establish approved final grades unless a development permit has been issued for additional fill and topsoil.
- 14) That all screening elements identified in the approved screening plan, shall be installed onsite no later than six months from date of permit issuance or by June 30th of the permit issuance year, whichever is the later.
- 15) That all on-site lighting shall be dark sky, and all private lighting, including site security lighting and parking area lighting, shall be designed to conserve energy, reduce glare, and reduce uplight. All development shall demonstrate lighting design that reduces the extent of spill-over glare, and eliminates glare as viewed from nearby residential properties.
- 16) That any garbage containers shall be weather and animal proof and shall be completely screened from view from all adjacent properties and public thoroughfares.
- 17) That all employee parking is restricted to onsite only. There shall be no parking permitted within the County road allowance.
- 18) That should water servicing be provided via groundwater wells, the Applicant/Owner shall be required to provide confirmation of a commercial water licence from Alberta Environment and Parks.
- 19) That any proposed signage shall require a separate development permit.
- 20) That any plan, technical submission, agreement, or other matter submitted and approved as part of the development permit application or submitted in response to a prior to issuance or occupancy condition, shall be implemented and adhered to in perpetuity including any recommendations of the above SSIP.

Advisory:

- 21) That any other federal, provincial, or County permits, approvals, and/or compliances, are the sole responsibility of the Applicant/Owner.
- 22) That during construction of the horticultural development, all construction and building materials shall be maintained on site, in a neat and orderly manner. Any debris or garbage shall be stored/placed in garbage bins and disposed of at an approved disposal facility.
- 23) That the County's *Noise Control Bylaw C-5772-2003* shall be adhered to at all times.
- 24) That a building permit or farm building location permit and sub-trade permits shall be obtained through County Building Services, prior to any construction taking place.
- 25) That if the development authorized by this development permit is not commenced with reasonable diligence within 12 months from the date of issue, and completed within 24 months of the issue, the permit is deemed to be null and void, unless an extension to this permit shall first have been granted by the Development Authority.
- 26) That if this development permit is not issued by **JULY 31, 2020**, or the approved extension date, then this approval is null and void and the development permit shall not be issued.

BACKGROUND

[4] On September 3, 2019, 1885807 Alberta Ltd. (the Applicant) submitted a development permit application for an accessory building (greenhouse).

[5] The Lands are located at 262075 Range Road 32 (Lot 1 Block 1 Plan 0310130; SE-15-24-3-W5M), are 20.00 acres in size, and owned by 1885807 Alberta Ltd.

[6] The Lands' land use designation is Agricultural Holdings and is regulated in section 46 of the Rocky View County *Land Use Bylaw C-4841-97* (the *Land Use Bylaw*).

[7] On November 12, 2019, the Development Authority conditionally approved an accessory building (greenhouse) on the Lands.

[8] On December 3, 2019, the Grandview Park Home Owners' Association appealed the Development Authority's decision to conditionally approve an accessory building (greenhouse). The notice of hearing was circulated to 30 adjacent landowners in accordance with the *Municipal Government Act*, RSA 2000, c M-26 and Rocky View County Council policy C-327, *Circulation and Notification Standards*.

SUMMARY OF EVIDENCE

[9] The Board heard verbal submissions from:

- (1) Stefan Kunz, Planner, for the Development Authority;

- (2) Sean MacLean, Supervisor Planning and Development, for the Development Authority;
- (3) Noor Mirza, Municipal Engineer, for the Development Authority;
- (4) Martin Teitz, representing the Grandview Park Home Owners' Association (the Appellant);
- (5) John Schouten, in support of the appeal;
- (6) Mike Gilchrist, in support of the appeal;
- (7) Brian Roch, in support of the appeal; and
- (8) Marc Schulz, the Applicant who spoke in opposition of the appeal.

[10] The Board received two letters in support of the appeal from:

- (1) Mike Gilchrist; and
- (2) Selma Music.

[11] The Board received no letters in opposition of the appeal.

Development Authority's Submissions

[12] The Development Authority proposed a revised set of conditions to clarify that the proposed greenhouse is more of an agricultural building than an accessory building. The revised conditions also require a screening plan which was not included in the Development Authority's original decision.

[13] There is no maximum structure size in an Agricultural Holdings District.

[14] A separate development permit application would be needed if the Applicant or any future owner want to use the greenhouse for cannabis cultivation. Cannabis cultivation is a listed discretionary use in the Agricultural Holdings District.

Martin Teitz Submissions – The Appellant

[15] Martin Teitz is president of the Grandview Home Owners' Association (HOA) and they oppose the approval of the greenhouse.

[16] The HOA is concerned that only some Grandview residents received the notice of decision as most residents will drive by the proposed development when entering the subdivision.

[17] The HOA supports the 22 conditions of approval submitted by the Development Authority. The HOA did not see these conditions when the notice of decision was circulated.

[18] The HOA's biggest concern is that the greenhouse could be used for cannabis in the future, especially if the Lands are sold.

[19] The proposed structure suits a commercial-sized operation, not agriculture.

[20] This proposal impacts the whole of Grandview which represents approximately \$100,000,000 in residential development. They are concerned the proposed development will reduce property values due to added traffic, obstructed views, noise from an onsite power generator, odour from the greenhouse, and the general commercialization of the area.

[21] The HOA would like to see:

- (1) extensive berms;
- (2) spruce tree planting and landscaping;
- (3) removal of legacy junk on the Lands;
- (4) the overall visual improvement of the Lands around the greenhouse;
- (5) the greenhouse moved to the western part of the Lands where it will have the least visual impact;
- (6) conditions to make sure noise is muffled; and
- (7) conditions to ensure odour from the development is mitigated.

[22] The Lands currently have three rental residential dwellings and there has been a history of unsightliness on the Lands.

John Schouten Submissions

[23] John Schouten represents the residents at Mountain River Estates which is to the west of the Lands and supports the appeal.

[24] Mountain River Estates represents over 300 acres of land, part of which is beautiful environmental land along Springbank Creek.

[25] The proposed development is too commercial for the residential and conservation character of the community.

[26] Schouten is concerned about where the development will get water from and where the wastewater will go.

[27] The proposed development will have a negative impact on the area in terms of smell, traffic, and noise.

Mike Gilchrist Submissions

- [28] Mike Gilchrist lives at 43 Grandview Place and supports the appeal.
- [29] The proposed development is more industrial than agricultural and does not fit the character of the area. The Lands should be used for a residential subdivision.
- [30] The proposed development will increase traffic in the area.
- [31] The Lands are unsightly and need to be cleaned up.

Brian Roch Submissions

- [32] Brian Roch lives in Grandview Park and supports the appeal.
- [33] The proposed development does not fit the area and will make the community too industrial. It has always been assumed that the Lands would be used for a residential subdivision.
- [34] The proposed development could reduce property values in the area.

Marc Schulz Submissions – The Applicant

- [35] Marc Schulz owns the Lands and opposes the appeal.
- [36] Schulz and his wife own 1885807 Alberta Ltd. (Hydragreens Produce Ltd.) and have lived in an adjacent neighbourhood, Windhorse, for a year. They purchased the Lands in October and intend to clean up the rental dwellings. They intend on being good neighbours.
- [37] The proposed development is not a greenhouse, it is an indoor vertical growing operation that grows lettuces, leafy greens, micro-greens, and herbs to be sold to grocery stores, specialty stores, and restaurants. The business will employ 7-10 people, run 365 days a year, and has no retail component where customers come to the Lands.
- [38] The proposed development will be on the far north west section of the Lands and will be set back about 50 metres from the road. It will be bordered by a large tree line to the south. They hope to subdivide the southern part of the Lands for residential purposes in the future.
- [39] There are currently no plans to have a generator on the Lands and Schulz will ensure the noise is muffled if a generator is ever brought in for emergency situations.
- [40] The business will use Cubic Farms technology which is very energy efficient and results in very little waste.
- [41] Cannabis is not a part of the business's strategy and they have not made any applications for cannabis cultivation.
- [42] The business will use no pesticides or chemicals and their model results in no additional odour.

[43] Three to four 5 tonne refrigerated trucks will visit the Lands once a day. Schulz intends to upgrade an existing turnoff to the Lands but that is the extent of the plans for road upgrades.

[44] Schulz is open to whatever screening, building design, and landscaping conditions are needed. No signage is needed for the business.

[45] The local water co-op can provide service to the Lands but Schulz is unsure whether or not they will use the co-op water as the water must meet a specific standard. The business may tank the water to the Lands.

[46] Schulz believes the proposed development will not have a negative impact on adjacent properties in terms of noise, odour, or traffic.

Martin Teitz Rebuttal

[47] Martin Teitz provided no rebuttal to the Board.

Development Authority's Final Comments

[48] The Development Authority recommended the revised set of conditions as they are more suited to the proposed agricultural building.

Martin Teitz Final Comments

[49] Martin Teitz provided no final comments to the Board.

FINDINGS & REASONS FOR DECISION

[50] The Board finds that given the evidence put forth by the Development Authority and Applicant that the primary purpose of the proposed development is horticulture development and not an accessory building as was originally approved by the Development Authority. And while the Applicant does not define the proposed development as a 'greenhouse', the Board finds the term 'greenhouse' the most fitting for the purposes of the *Land Use Bylaw*. The Board finds that the proposed horticulture development, construction of a greenhouse, is a discretionary use in an Agricultural Holdings District in accordance with section 46 of the *Land Use Bylaw*.

[51] The Board finds it has the authority to make a decision on this matter pursuant to section 687(3)(d) of the *Municipal Government Act*.

[52] The Board reviewed all evidence and arguments, written and oral, submitted by the parties and focused on the most relevant evidence and arguments in outlining its reasons. The Board also considered the context of the proposed development, sound planning considerations, the merits of the application, and all applicable legislation, plans, and policies.

[53] The Board finds that the proposed horticulture development (greenhouse) meets the intent, setback, and other regulations of the Agricultural Holdings District as outlined in section 46 of the *Land Use Bylaw*.

[54] The Board heard the neighbours' concerns about the odour, visual, noise, and property value impacts of the proposed horticulture development (greenhouse) on nearby residential parcels. The Board is satisfied that the proposed development will not be powered by a generator and that the indoor, low-impact operation model will result in minimal noise and odour. The Board added screening and design conditions to help mitigate potential visual impact on adjacent parcels. The Board did not hear compelling evidence that the proposed development (greenhouse) would negatively impact residential property values in the area.

[55] The Board heard the neighbours' concerns that the proposed horticulture development (greenhouse) may be used for cannabis cultivation. The Board is satisfied that the proposed use under the current development permit application is not cannabis cultivation and that if the Applicant or any future owner would like to use the Lands for cannabis cultivation, they would be required to submit a new development permit application.

[56] Given the above findings and pursuant to section 687 of the *Municipal Government Act*, the Board finds that the proposed development would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The Board also finds the proposed development conforms to the use prescribed for the Lands in the *Land Use Bylaw*.

CONCLUSION

[57] For the reasons set out above, the appeal is allowed in part and the decision of the Development Authority is varied.

Dated at Rocky View County, in the Province of Alberta on January 2, 2020.



Daniel Henn, Chair
Subdivision and Development Appeal Board

EXHIBIT LIST

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD

NO.	ITEM
1.	Development Authority's Report to the Board (34 pages)
2.	PowerPoint presentation submitted by Development Authority (10 pages)
3.	PowerPoint presentation submitted by M. Teitz (3 pages)
4.	PowerPoint presentation submitted by J. Schouten (9 pages)
5.	Images submitted by M. Gilchrist (1 page)
6.	PowerPoint presentation submitted by Applicant (11 pages)
7.	Handout submitted by Applicant (1 page)
8.	Letter of support from Selma Music (1 page)
9.	Letter of support from M. Gilchrist (1 page)