



Subdivision and Development Appeal Board

IN THE MATTER OF AN APPEAL by Wesley Earle, on behalf of Kamiyosik Piyesiw Inc./Silver Mountain Construction

BEFORE:

Members:

G. Yeomans, Chairperson
W. Martens, Member
D. Crout, Member
A. Gillard, Member

SDAB Secretary:

M. Minchin

Recording Secretary:

A. Noonan

This is an appeal to the Subdivision and Development Appeal Board (SDAB) regarding a decision of Lacombe County's Municipal Planning Commission (MPC) to refuse Development Permit Application No. (DPA) 153/19, submitted by Wesley Earle for permission to construct and operate a cannabis production facility, known as Silver Mountain Cannabis, on property legally described as Lots 4 to 6 Block 12 Plan 7159A1, located in the Hamlet of Mirror on property owned by Allan McKenzie.

Upon notice being given to all interested parties, a hearing was held in the Council Chambers of the Lacombe County Administration Office on March 3, 2020.

OVERVIEW

[1] The SDAB must decide whether to uphold the decision of the MPC and refuse the construction and operation of a cannabis production facility.

PROPOSAL

[2] To receive approval to construct and operate a cannabis production facility, known as Silver Mountain Cannabis.

BACKGROUND

[3] The subject property is located in the Hamlet of Mirror and is legally described as Lots 4 to 6 Block 12 Plan 7159A1, which is zoned Hamlet Industrial “I-H” District under the County’s Land Use Bylaw.

[4] The applicants propose to construct a 1,500ft² office as well as three 2,100ft² buildings for cannabis cultivation. There is an existing shop on the south end of the subject site that will be utilized for storage purposes. The proposed buildings will be designed to integrate green building principles, passive heating and an upgraded building envelope. The proposed landscaping will be designed in order to meet Crime Prevention Through Environmental Design (CPTED) principles and the County’s Dark Sky Principles. As well, the applicants propose to install and utilize enhanced HVAC units to prevent odours by utilizing HEPA filters, ozone treatment and charcoal scrubbers.

[5] The applicants propose that the business will employ six to ten non-resident, on-site employees and the hours of operation will be Monday to Friday from 7:00 a.m. to 6:00 p.m.; however, there will be security personnel on-site 24 hours a day, seven days a week during product harvest. As well, during the bi-monthly harvest period, two employees will be required to work at the site for a night shift.

[6] The proposed facility is expected to generate minimal traffic daily and will consist of employee vehicles and delivery services and is expected to be a maximum of seven vehicle round trips per day. There is sufficient parking on-site for all vehicles, no customers will visit the site and there is no signage proposed as part of the application.

[7] The applicant pre-circulated the application to affected landowners in order to solicit feedback on the proposed development. Of the 350 packages sent out, 17 responses were received because of the consultation. The main areas of concern included decrease in property values, moral issues, safety and security and potential odour emitted from the development; as well, positive responses were also received supporting the venture and the potential employment opportunities that it would bring to the community.

[8] The application was pre-circulated to the County’s Operations Department, the County’s Fire Chief, the County’s Community Services Department, Alberta Transportation and CN Rail. Alberta Transportation and CN Rail advised no objection to the development. The Operations Department had no objections to the proposal and confirmed that the access is adequate and that the existing road can handle the proposed traffic generated from the site. The County’s Director of Community Services responded that this development would be required to connect to the municipal services, which are available in 52nd Avenue. The County Fire Chief responded that due to the remoteness

of the site, emergency services will be delayed as the Alix Fire Department would be the primary fire service provider. Chief Bussiere recommends that the building be constructed of fire resistant materials, a monitored fire alarm system be installed, and a Fire Safety Plan is to be developed and approved by the County. The building will be required to meet the most recent requirements of the Alberta Building Code, Alberta Electrical Code and the Alberta Fire Code. Chief Bussiere also noted that the hanging of plastic to create wall dividers is not permitted and an inspection will be required prior to occupancy and periodically going forward.

[9] On January 30, 2020, the County's MPC refused DPA 153/19 for the following reason:

The proposed development was found to be in too close proximity to an established residential area and may cause undue nuisance to neighboring landowners.

[10] On February 14, 2020, Wesley Earle on behalf of Kamiyosik Piyesiw Inc./Silver Mountain Construction appealed the MPC's decision to refuse DPA 153/19 for the following reasons:

1. The zoning amendment was recently made for the Industrial Hamlet District (I-H) to include cannabis production as a discretionary use, so this business should be allowed in this case. The distance from the residential area to the industrial area hasn't changed. The lots in question have undoubtedly been included in this thought process prior to this application;
2. The community needs sustainable and long-term jobs and the tax base business creates. As this business undoubtedly grows, we will grow in the community. As it stands now, the population of Mirror is aging and the community is decreasing in size and value, due to lack of employment in the area. It has previously lost its Village status as it was not sustainable;
3. Had this development permit not been released to the general public, nobody would know it existed. Micro-production facilities are designed to compete with illegal, clandestine production facilities, that already operate in the community, undetected. Micro-production facilities are designed not to smell, and are environmentally friendly and sustainable business that could operate for many years in the community;
4. Lacombe County was founded on agriculture and agricultural processing. This business is no different than any other potential allowable businesses that exist in the County;
5. Although one community member came out and voiced their concerns, there were more letters of support, including a withdrawn objection; and
6. The Council voted 3/3 for the project ended in a hung vote, with one Councillor absent. We feel that had this proposal had the full vote, it could have passed.

LEGISLATIVE RESPONSIBILITY

[11] In accordance with Lacombe County Bylaw 1212/15 passed pursuant to Section 627(1) of the Municipal Government Act (the Act), the Board is authorized to hear development appeals.

[12] Section 686(2) of the Act requires the Board to hold a hearing within 30 days after receiving a notice of appeal and Section 687(2) of the Act requires the Board to give its written decision, together with the reasons of the decision, within 15 days after concluding the hearing.

[13] In deciding an appeal, Section 687(3) of the MGA describes how the Board must comply with provincial land use policies, the Municipal Development Plan and any other statutory plan affecting the land and the uses that may be considered for the land, based on its zoning in the Land Use Bylaw; and must have regard to but is not bound by the subdivision and development regulation.

[14] The Board can confirm, or it may change the decision the MPC as it deems appropriate.

SUMMARY OF LACOMBE COUNTY'S POSITION

[15] The Development Authority (DA) confirmed that the proposed cannabis production facility is a discretionary use under the Hamlet Industrial "I-H" District in the County's Land Use Bylaw, which requires approval by the MPC.

[16] The DA confirmed that the County's Land Use Bylaw (LUB) defines a Cannabis Production Facility as "a premises authorized by a license issued by Health Canada and used for the production, cultivation, harvesting, processing (including the trimming, drying, and curing of raw materials", storage or distribution of cannabis or its by-products for commercial sale".

[17] The DA explained that the subject site is located directly adjacent to the Hamlet Residential "H-R1" District in this particular area in the Hamlet of Mirror. The DA acknowledged that these different zoning types could create inherent conflict so it is important to be sensitive to development on either side.

[18] The DA confirmed that the applicants personally responded to those affected landowners who submitted comments on the proposal and agree that the applicants made an effort to mitigate any adverse impacts that may occur as a result of the proposed development.

SUMMARY OF APPELLANT'S POSITION

[19] Rob Smith, on behalf of Silver Mountain Cannabis, addressed the Board and advised that the proposed development will utilize an odour elimination system called "Odorox" which claims to kill microorganisms, decompose volatile organic compounds and eliminate/neutralize odours.

[20] Mr. Smith advised that odours from the product are only present during the eight week flowering process of the grow cycle. Mr. Smith confirmed that the odour reducing units operate constantly during this period to eliminate and neutralize all odours and mould from the facility.

[21] Russell Stojack, on behalf of Silver Mountain Cannabis, addressed the Board and confirmed that the proposed development would follow all Health Canada regulations concerning security requirements. Mr. Stojack confirmed to the Board that there would be a security person on-site 24/7 during harvest times to monitor activity at the property.

SUMMARY OF AFFECTED PERSONS OPPOSED TO THE DEVELOPMENT

[22] Affected landowner, Ed Baker, addressed the Board and outlined his concerns regarding the proposed development. Mr. Baker argued that the proposed development is too close in proximity to the residential area, will contaminate the water table and produce odours that HEPA filters and charcoal buffers cannot mitigate.

[23] Affected landowners, Lindsay and Shirley Barr submitted an email voicing their concerns regarding possible odour emission from the property through the ventilation system.

[24] Affected landowner, Howard Copland, submitted an email documenting his concern with the location of the proposed development. Mr. Copland argued that this development should be located on other commercial property, rather than across the back alley from residential lots.

SUMMARY OF AFFECTED PERSONS IN SUPPORT OF THE DEVELOPMENT

[25] Affected landowner, Tim Butz, addressed the Board and expressed his support of the development indicating his view that this facility would be good for the community in creating job opportunities and aiding the community in growing in a positive manner.

[26] Affected landowner, Margaret Blank, submitted a letter expressing her support of the proposed development. Mrs. Blank argued that the potential for employment

opportunities, the increased security on the site and property maintenance make this development a favorable addition to the community.

CONCLUDING REMARKS

[27] The DA confirmed that the proposed greenhouse and cannabis production facility, as presented, is a discretionary use under the County's Land Use Bylaw.

[28] The DA confirmed that all cannabis production facilities approved in Lacombe County have a set term on the approval; therefore, if any problems arise during this time period, the County would be able to address the problem with the applicants before or during the reapplication phase. Furthermore, the DA advised that the County have enforcement and nuisance policies and procedures in place to ensure that approved businesses do not unduly affect neighboring property owners.

[29] Mr. Smith confirmed that the Odorox system would be installed in the facility to mitigate any odours produced. Furthermore, Mr. Smith advised that Silver Mountain Cannabis would adhere to the conditions imposed by the County and Health Canada to ensure that neighbours are not negatively affected by the facility.

[30] Mr. Stojack confirmed that it is the intention of Silver Mountain Cannabis to work closely with the community to ensure that landowners are not negatively affected by the production facility. Mr. Stojack confirmed that Silver Mountain Cannabis will contribute to the local economy by providing job opportunities and by providing people with health and medically useful products.

[31] Mr. Butz and Mr. Baker had no further comments.

FINDINGS OF FACT

[32] Upon hearing and considering the representations and the evidence of the parties shown on Appendix A, and upon having read and considered the documents shown on Appendix B and Appendix C attached hereto, the Board finds the facts in the matter to be as follows:

1. The subject property is legally described as Lots 4 to 6, Block 12, Plan 7159AI located in the Hamlet of Mirror, which falls under the Hamlet Industrial “I-H” District in the County’s Land Use Bylaw.
2. The proposed development is a discretionary use in accordance with the County’s Land Use Bylaw; therefore, requires the approval of the County’s Municipal Planning Commission.
3. On December 4, 2019, the applicants pre-circulated information on the proposed facility to landowners within the Hamlet of Mirror.
4. On January 2, 2020, Wesley Earle on behalf of Kamiyoski Piyesiw Inc./Silver Mountain Construction, submitted a Development Permit Application to construct and operate a Cannabis Production Facility.
5. On January 30, 2020, the Municipal Planning Commission refused Development Permit Application No. 153/19 for a Cannabis Production Facility.
6. On January 30, 2020, the Notice of Decision was forwarded to the applicant advising of development refusal and their right to appeal the decision.
7. On February 14, 2020, the County received an appeal from Wesley Earle regarding the Municipal Planning Commission’s refusal of Development Permit Application No. 153/19.
8. As per Section 686(2) of the Municipal Government Act requiring the Board to hold a hearing within 30 days after receiving a notice of appeal, a hearing was scheduled for March 3, 2020.

In consideration of the above and having regard to the provisions of the Municipal Government Act, the Board makes the following decision for the reasons set out below:

DECISION

[33] The Board has granted the appeal and in doing so has approved Development Permit No. 153/19 submitted by Wesley Earle, on behalf of Kamiyosik Piyesiw Inc./Silver Mountain Construction for permission to construct and operate a cannabis production facility, known as Silver Mountain Cannabis, on property legally described as Lots 4 to 6 Block 12 Plan 7159AI, located in the Hamlet of Mirror on property owned by Allan McKenzie, subject to the following conditions:

1. the term of the development permit to be for three (3) years;

2. prior to the issuance of a development permit, the applicant shall enter into a development agreement and provide security equal to the value of the estimated cost of the proposed landscaping, returnable upon the completion of the improvements to the satisfaction of the County;
3. prior to the issuance of a development permit, the applicant shall provide engineered drawings for the extension of municipal water and wastewater services to the subject property, to the satisfaction of Lacombe County and provide the required security for the same;
4. this approval shall be subject to an annual review by the Development Officer. Failure to comply with the conditions of the development permit may result in the permit being suspended or revoked;
5. prior to occupancy of the buildings for use as a cannabis production facility, the applicant/operator shall provide to the satisfaction of the County confirmation of application for, and compliance with the requisite federal license;
6. cannabis production facility shall at all times comply with federal and provincial legislation and regulations, failure to do so will result in the immediate termination of this development approval;
7. prior to occupancy of the building for use as a cannabis production facility, a fire safety plan to be submitted to the satisfaction of the County's Fire Chief;
8. prior to occupancy of the building, applicants to arrange for the County's Fire Chief to carry out an inspection of the premises to ensure compliance with the Alberta Fire Code (AFC) Please note, that periodic inspections may occur through your development permit approval term;
9. business activities at the site shall adhere to the description of the business provided with the development application;
10. lighting to comply with the County's Dark Sky guidelines, and the Crime Prevention Through Environmental Design Principles;
11. business to be operated at all times in manner that does not cause nuisance for surrounding residents due to noise, light, odour, excessive traffic, or anything else of dangerous or objectionable nature as determined by and at the sole discretion of Lacombe County;
12. dust control may be required at the County's sole discretion should the vehicle traffic generated by the business warrant this measure; and
13. no signage permitted without prior approval from the County.

It is the responsibility of the applicants to ensure that the proposed development meets the requirements of the provincial Safety Codes Act and the associated Regulations. For more information on what permits may be required, contact one of the safety service agencies listed on the attached sheet.

REASONS

[34] The Board is of the view that the conditions of approval will mitigate the concerns of the community regarding dust control, odour emissions, noise emissions or lighting emissions; as well, ensure that the business will not unduly interfere with the amenities of the neighborhood or interfere with or affect the use, enjoyment or value of neighboring parcels of land.

[35] The Board is of the view that no evidence was presented to support the claims of increased odour or increased traffic, beyond what would be expected in industrial use.

[36] The Board is of the view that no evidence was presented to support the claims of increased crime or loss of property values.

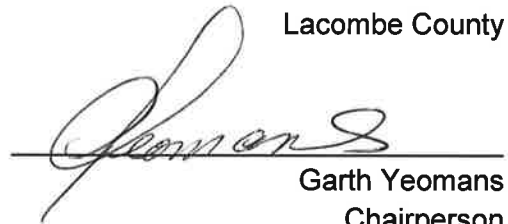
[37] The Board is of the view that there would be no impact to groundwater use as the applicants would be required to connect to existing water/wastewater services.

DATED at Lacombe County, in the Province of Alberta, this 3rd day of March, 2020.

DATE OF ISSUE of the Decision being the 17th day of March, 2020.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Lacombe County



Garth Yeomans
Chairperson

NOTE: This decision may only be appealed on a question of law or jurisdiction to the Alberta Court of Appeal. An application for leave to appeal must be made to a judge of the Appellate Division within 30 days of the date of issue of this decision.

APPENDIX A

PERSONS WHO WERE IN ATTENDANCE OR MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING

NAME	CAPACITY
Dale Freitag	Director of Planning Services, Lacombe County
Peter Duke	Planner/Development Officer, Lacombe County
Rob Smith	Appellant/Applicant
Russell Stojack	Appellant/Applicant
Tim Butz	Affected Landowner
Ed Baker	Affected Landowner

APPENDIX B

DOCUMENTS RECEIVED PRIOR TO THE HEARING AND MADE AVAILABLE AT THE HEARING

NO.	ITEM
1.	Staff report to Lacombe County's Subdivision and Development Appeal Board for Development Application No. 153/18
2.	Supplementary Business Form submitted by Wesley Earle
3.	Letter of appeal from Wesley Earle, dated February 14, 2020.
4.	Development Permit Application Consultation Report, dated January 1, 2020
5.	Email dated February 27, 2020 submitted by Lindsay and Shirley Barr opposing the proposed development
6.	Letter dated February 27, 2020 submitted by Ed and Joan Baker opposing the proposed development

7. Email from Howard Copland opposing the proposed development
8. Letter received March 3, 2020 from Margaret Blank supporting the proposed development
9. List of adjacent landowners notified of the appeal hearing.

APPENDIX C

DOCUMENTS MADE AVAILABLE AT THE HEARING

NO.	ITEM
A.	Information Package submitted by Rob Smith and Russell Stojack regarding Odorox (<i>entered into hearing as Exhibit A</i>)