

**FOOTHILLS COUNTY
SUBDIVISION AND DEVELOPMENT APPEAL BOARD
Development Appeal Board Decision**

HEARING DATE: AUGUST 27, 2020

BOARD ORDER: D09/20

LANDOWNER: TANIA WILLUMSEN

APPLICANTS: KELLY OTTO/EARTH SMART SOLUTIONS

APPELLANT: JOHN & SHARON HART

APPEAL AGAINST: THE APPROVAL OF DEVELOPMENT PERMIT 20D 080

SUBJECT PROPERTY: PLAN 0411477, BLOCK 1, LOT 2; PTN. W½ 25-20-01 W5M

BEFORE: CHAIRMAN, G. BEACOM; BOARD MEMBERS: B. ROBSON, D. MACDONALD, L. SPILAK, K. POPOVA, AND CLERK S. BARRETT

DECISION

Having been satisfied that notice of this hearing was provided in accordance with the Municipal Government Act, R.S.A. 2000, Chapter M-26;

And upon having read the materials provided, and upon having heard the representations from the Appellant and the Development Authority for Foothills County with respect to the appeal filed by the Appellants in accordance with Section 685 of the Municipal Government Act against the approval of Development Permit 20D 080 for an Agricultural Support Services Business on PLAN 0411477, BLOCK 1, LOT 2; PTN. W½ 25-20-01 W5M (The "Property");

The Subdivision and Development Appeal Board for Foothills County (the "Board") has decided to:

Deny the appeal and uphold the Development Authority's decision to approve Development Permit 20D 080 for an Agricultural Support Services Business on PLAN 0411477, BLOCK 1, LOT 2; PTN. W½ 25-20-01 W5M.

The application is thereby **APPROVED** subject to the following **revised** conditions:

PRE-RELEASE CONDITION:

(Pre-release Conditions must be complied with before the Development Permit will be signed and released. Unless a time extension is issued under agreement

between the Development Authority and the Applicants, failure to complete this pre-release condition on or before December 31, 2020, will see this approval be deemed null and void.)

1. The applicant shall submit a Professional Engineer signed and stamped Storm water Management Plan, for review and acceptance by the Foothills County Public Works Department;
2. The applicant is required to submit a refundable compliance deposit in the amount of \$5,000 in order to ensure compliance with conditions of this approval herein;

ADDITIONAL CONDITIONS

1. Upon satisfaction of the Pre-Release Conditions, this approval will allow for the operation of an Agriculture Support Services Business on the subject property, as per the submitted Development Permit application for Earth Smart Solutions;
2. The applicant shall construct and maintain the development in accordance with all conditions of approval and plans that have been acknowledged by the County. Any revisions and/or additions to use of this land shall not proceed except under benefit of appropriate approvals;
3. The applicant shall obtain any necessary building and safety code permits from the County, to the discretion of the Safety Codes Officer. The development is required to illustrate compliance with the requirements of the Alberta Building, Plumbing, Electrical, and Fire Codes at all times. Requirements may include but not be limited to: an engineer's confirmation of completion, illustration of: water for firefighting and fire department connections meeting NFPA 1142 requirements and testing, travel distances, fire extinguishers, emergency and exit lighting, and water closet requirements based upon occupancy load (including barrier free). Occupancy for the proposed use shall not be granted until authorized by the Safety Codes Officer and the Fire Inspector. It is the applicant's responsibility to provide proof of such to the Development Authority;
4. This approval allows for a 13,312+/- sq.ft. Building for the purpose of an Office and Shop space in support of on site operations. Being a primary structure on the subject property, this building shall not exceed a maximum height of 12 meters (39.37 ft.);
5. This approval allows for a 3,200+/- sq.ft. Accessory Building for the purpose of Storage Space in support of on-site operations. Being an accessory building on the subject property, this building shall not exceed a maximum height of 10.67 meters (35 ft.);
6. No portion of the proposed buildings, shall be used as a residence or living dwelling unit; this includes any overnight accommodations;
Note: approval of this permit will be circulated to landowners within the subject quarter section, as well as advertised in two issues of the Western Wheel, and on the Municipal website: www.mdfoothills.com. Page 3 of 4
7. It is the applicant's responsibility to adhere to any applicable requirements and/or limitations of Alberta Transportation including but not limited to construction of legal and physical access to the subject property from Highway 549 West;
8. All structures shall be located as to adhere to Municipal and Provincial setback requirements from the boundaries of the legally titled property. No variance for yard setbacks has been considered under this approval;

9. It is the applicant's responsibility to adhere to any applicable requirements and/or limitations of Alberta Culture, Multiculturalism and Status of Women;
10. All loading areas and laneways must be kept free of all debris, materials and/or equipment, and access for fire department apparatus is provided for at all times;
11. Parking for the physically handicapped shall be provided as per the provincial regulations and shall be clearly identified for use by the physically disabled;
12. Absolutely no production, use, transportation or storage of ammonium nitrate is to take place on the property at any time;
13. It is the applicant's responsibility to contact the Foothills County Mapping Department for the purpose of obtaining additional and/or updated emergency addresses for the proposed and existing buildings, as deemed appropriate for the proposed use and occupancy of each;
14. Emergency address signage shall be installed and maintained as recommended by the Foothills Fire Department;
15. Hours of operation are approved as follows:
 - a. January 1st though June 30th: - 7 days/week - 6:00am to 6:00pm
 - b. July 1st through December 31st: - Mondays - 8:30am to 5:00pm
- Tues. through Fri. - 9:00am to 5:00pm
- Sun. & Sat. - Closed
16. It is the landowner's responsibility to obtain and maintain an annual Business License from Foothills County;
17. No offensive noise, vibration, smoke, dust, odour, heat, glare, electrical, and/or radio disturbance is to be detectable beyond the boundary of the lot;
18. In addition to permitted signage as identified within Section 4.2 of the Land Use Bylaw, this approval allows for one fascia mounted identification sign to be located on the primary building and one gate/entrance pillar mounted sign, to be located wholly within the boundary of the subject property, as illustrated within the accepted application. Prior to installation of any signage, it is the applicant's responsibility to provide design and location specifics to be reviewed and accepted by the Development Authority. The applicant is responsible for obtaining all necessary approvals from Alberta Transportation with respect to signage, proof of such shall be provided to the Development Authority. No additional signage is permitted without first obtaining appropriate approvals through the Foothills County and Alberta Transportation. All signage must be kept in a safe and clean state of repair. This approval does not allow for any illumination of the proposed signs;
19. The applicant shall provide a Construction Safety Plan prior to any construction, as well as a Comprehensive Emergency Response Plan/Fire Safety Plan, to the satisfaction of the Foothills Emergency Services and Fire Department;
20. The development shall comply with the requirements of Alberta Environment, including with respect to water use. All required licenses and approvals from the Provincial authority shall be obtained if well water is to be used in support of the facility;
21. Water provided to the public, including employees, must comply with Section 11 of the Alberta Public Health Act, Nuisance and General Sanitation Regulation 243/2003; Note: approval of this permit will be circulated to landowners within the subject

- quarter section, as well as advertised in two issues of the Western Wheel, and on the Municipal website: www.mdfoothills.com. Page 4 of 4
22. A maximum of seven (7) non-resident employees are permitted to attend the subject property at any given time;
 23. A maximum of five (5) business related vehicles trips are permitted on any given day for the purpose of deliveries to or from the subject property;
 24. For the purpose of customers/clients attending the property for viewing/observing test crops, a maximum of ten (10) business related vehicle trips are permitted to access the property from 20th Street West, on any given week;
 25. Individuals and agricultural equipment attending the property for the purpose of General Agricultural uses, as defined within the Land Use Bylaw, and vehicle trips by residents or private guests of the residence on the subject property are exempt from limitations for vehicle trips;
 26. No outdoor storage of business related materials has been considered within this application. Any outdoor storage of materials shall be for the purpose of general agricultural uses only, or for personal use accessory to the residence on the subject property;
 27. It is the applicant's responsibility to ensure all outdoor parking and loading areas, are generally screened from adjacent lands and roadways, as illustrated within the accepted site plan;
 28. All parking and loading spaces shall be designed and located so that all vehicles using that space can be parked and maneuvered entirely within the bounds of the subject property without backing to or from adjacent public roadways;
 29. Natural drainage of the property must be maintained. Alteration to natural drainage may proceed as recommended within the accepted Storm water Management Plan;
 30. No topsoil is permitted to be removed from the subject property;
 31. The development must meet the requirements of all pertinent Federal and/or Provincial Acts, regulations and/or guidelines including, but not limited to compliance with the Alberta Public Health Act which identifies that no person shall create, commit or maintain any condition that is or may become injurious or dangerous to the public health;
 32. The areas designated for parking under the approved plan are to be observed at all times. Nonpassenger vehicles and/or equipment shall be located to the rear/south of the primary building or within the approved buildings on site. Use of designated parking stalls for the long term storage of any vehicle or equipment is not permitted;
 33. The development must meet all requirements of Alberta Health Services and Alberta Environment, including that all waste materials must be disposed of at an approved waste disposal site or recycling facility. There shall be no long term storage of waste materials nor burning of waste materials on the property. All garbage and recycling materials shall be stored in weather-proof and animal-proof containers that are visibly screened from adjacent lands and roadways, as illustrated within the accepted application;
 34. All installations of exterior lighting applications must adhere to the guidelines and technical specifications as outlined within the Dark Sky Bylaw;
 35. Prior to the Municipality acknowledging completion of the development, it is the responsibility of the applicant to submit as-built drawings by the respective

Professional Engineer(s) verifying all improvements are consistent with the plans and recommendations within the Storm water Management Plan, as accepted by the County;

36. Issuance of a development permit by the County does not relieve the applicant of the responsibility of complying with all other relevant municipal bylaws or requirements, nor excuse violation of any provincial or federal regulation or act which may affect use of the land;
37. The applicant shall be responsible for payment of any professional costs including legal fees that may be incurred by the Municipal District with respect to the development approved on this permit.

INTRODUCTION

- [1] The subject property is a 159.38 acre Agricultural District parcel located on the south side of Highway 549W and approximately one half mile west of the Town of Okotoks. This is directly north of the Sheep River and on the east side of 20th Street West.
- [2] The application requests approval to operate an Agricultural Support Services business called "Earth Smart Solutions", on this Agricultural District parcel. The business will specialize in earth friendly and naturally occurring agricultural support products including fertilizer, gypsum, herbicide additive, plant and soil condition, and soil balancers.
- [3] Approval of an Agricultural Support Business on an Agricultural District parcel is at the discretion of the Development Officer.
- [4] A 13,312 sq.ft. Office Space and Shop Building, as well as 3,200 sq.ft. Storage Building are proposed to be constructed near the northeast corner of the property in support of fulfilling online orders and test plots for crops and products which are proposed within the western/upland portion of the subject property.
- [5] No customers are proposed to attend the property and no on-site retail sales are proposed; however 5 to 10 clients are proposed to visit the property per week for viewing of test plots. Seven full time employees are proposed to work on site from January through June, and up to four employees for July through December.
- [6] On July 8, 2020, the Development Officer approved Development Permit application 20D 080 for an Agricultural Support Services Business on PLAN 0411477, BLOCK 1, LOT 2; PTN. W $\frac{1}{2}$ 25-20-01 W5M, subject to conditions.
- [7] The Land Use Bylaw 60/2014 defines Agricultural Support Services as the use of land, buildings and structures for the purpose of supplying goods, materials or services directly and primarily to the agricultural industry. This use would include the sale and storage of seed, feed, fertilizer, chemical products, fuel, and

agricultural machinery.

- [8] On July 30, 2020, an appeal was received from the appellant Sharon Hart against the approval of the Agricultural Support Business.

ISSUES

Approval of an Agricultural Support Business

- [1] The Development Officer confirmed that the application proposes to operate a business specializing in earth friendly and naturally occurring agricultural support products including fertilizer, gypsum, herbicide additive, plant and soil condition, and soil balancers. This will not include ammonium nitrate.
- [2] The development officer submitted that the decision to approve the development included two pre-release conditions to ensure a professional Engineered Storm water Management Plan is provided, that addresses the additional impermeable surfaces due to the proposed development; as well as a \$5,000 refundable compliance deposit is to be paid to ensure compliance with conditions of approval by December 31, 2020.
- [3] The development officer submitted that Alberta Transportation has reviewed and approved the proposed new approach location off of the south side of Highway 549 to provide both business access, as well as access to the existing dwelling.
- [4] The appellant S. Hart provided testimony that she has concerns with a commercial operation affecting the aesthetic of the river valley and the current residential feel of the community. She has particular concerns with the size of the proposed buildings, which she considers intrusive, and how they might impact views from her property.
- [5] The appellant provided testimony that she has concerns with the additional vehicle traffic that the business could potentially generate and whether such traffic will be comprised of large commercial vehicles.
- [6] The appellant provided testimony that she is concerned about the business operating on weekends and the disruption that this may cause.
- [7] The applicant's agent K. Beunder submitted that the proposed business, with the exception of the demonstration fields, will operate indoors and will therefore not produce any offensive noise, dust, odors, fumes, or other disturbances.
- [8] The applicant's agent submitted that the proposed business is eco friendly, bio-based (derived from plants) and that no toxic substances will be produced, used

or stored on the premises. Additionally, the upland crop area will be comprised of real plants/crops and will be managed with routine farming equipment and practices.

- [9] The applicant's agent submitted that the proposed business in general is an entirely appropriate land use for an Agricultural District parcel, and more specifically aligns with the definition of an Agricultural Support Services operation.
- [10] The applicant's agent submitted that careful planning of the development was undertaken to ensure minimal impact on surrounding residential properties. This includes buildings in earth tone colors designed to blend into the surroundings, and with architectural features such as timber beams that compliment the agricultural feel of the area. The size of the buildings is consistent with other similar businesses operating in the county. The business will display small, unobtrusive signage at the access location and on the building façade only. Additionally, berming and screening plans are in place.
- [11] The applicant's agent submitted that there is a separate access point for the upland crop area, and that Alberta Transportation noted no concerns with access to the parcel, or traffic volumes.
- [12] The applicant's agent submitted that the application complies with all applicable legislation and the Foothills County Municipal Development Plan and South Saskatchewan Regional Plan. She confirms that the applicant has complied with all 37 pre-release conditions.
- [13] The applicant's agent submitted that an open house was hosted to inform neighboring landowners of the proposed development and request feedback. The response from affected landowners was very supportive and no concerns were raised. The agent noted that the appellant Mrs. Hart's property was slightly outside of the area that they considered to be directly impacted by the development and therefore she did not receive an invitation and did not attend.
- [14] The applicant, K. Otto submitted that they are seeking to create a long term business that will contribute positively to Foothills County and will not be a detriment to neighboring landowners. They are committed to respecting the community. Mr. Otto's own son will reside on the property and the long range plan is for his son to some day take over the business. They will comply with all conditions and local bylaws.
- [15] The landowner T. Willumsen submitted that the subject lands have been in the family since 1939 with various farming operations, and she has deep agricultural roots in the area. She is no longer able to manage the upkeep of such a large parcel, but she is confident that Earth Smart Solutions will be good stewards of the land and ensure proper maintenance and upkeep of the property.

- [16] One letter of support was received from area landowner P. Hudson and forwarded to the Board to review.

REASONS FOR DECISION

The Board has decided to **deny** the appeal and **uphold** the Development Authority's decision to approve Development Permit 20D 080 for an Agricultural Support Services Business on PLAN 0411477, BLOCK 1, LOT 2; PTN. W½ 25-20-01 W5M.

The Board considered the information presented by the Development Authority, the applicant's agent, the applicant, the landowner, and the appellant. The board determined that the proposed development of an Agricultural Support Services operation on the subject parcel conforms to the requirements of the Foothills County Land Use Bylaw, 60/2014. In upholding the Development Officer's decision however, the Board determined that condition #12 shall be amended to ensure that no ammonium nitrate may be produced, used, transported or stored on the site at any time in support of the approved business.

Section 687 of the Municipal Government Act provides the Board with the ability to confirm, revoke or vary the Development Officer's decision or any condition attached to it, or make or substitute an order of its own.

CLOSING

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in Section 688 of the Municipal Government Act, R.S.A. 2000 Chapter M-26 which requires an application for leave to appeal to be filed and served within 30 days of this decision.

Dated at the Town of High River, in the Province of Alberta this 27th day of August, 2020 and signed by the Chairman of the Subdivision and Development Appeal Board who agrees that the content of this document adequately reflects the appeal hearing, deliberations and decision of the Subdivision and Development Appeal Board.



Mr. Gar Beacom, Chairman

RELEVANT LEGISLATION

FOOTHILLS COUNTY LAND USE BYLAW 60/2014

DEFINITIONS

Section 2.5.1. - AGRICULTURAL SUPPORT SERVICES means the use of land, buildings and structures for the purpose of supplying goods, materials or services directly and primarily to the agricultural industry. This use would include the sale and storage of seed, feed, fertilizer, chemical products, fuel, and agricultural machinery.

MUNICIPAL GOVERNMENT ACT, R.S.A. 2000, CHAPTER M-26

Hearing and Decision

687(3) In determining an appeal, the subdivision and development appeal board

- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
 - (i) the proposed development would not
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

APPENDIX “A”

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

	<u>NAME</u>	<u>CAPACITY</u>
1.	Drew Granson	Foothills County - Development Officer
2.	Tania Willumsen	Landowner
3.	Kristi Beunder	Applicant/Landowner’s Agent
4.	Kelly Otto/Earth Smart Solutions	Applicant
5.	Sharon Hart	Appellant

APPENDIX “B”

- I. DOCUMENTS RECEIVED PRIOR TO THE HEARING AND MADE AVAILABLE AT THE HEARING:

NO. ITEM

- 1. Development Permit 20D 080
- 2. Notice of Appeal submitted by John & Sharon Hart
- 3. Letter of Support – P. Hudson

APPENDIX “C”

EXHIBITS MADE AVAILABLE AT THE HEARING

NO. ITEM

- 1. Presentation by the Development Authority, Drew Granson
- 2. Presentation by the Applicant/Landowner’s Agent, Kristi Beunder