

**THE TOWN OF BASSANO
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

**NOTICE OF DECISION
OF THE
SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING NO. DA TOB-D-21-19**

BOARD PANEL MEMBERS:

Tina Preston (Chair) Don Gibb Lois Schmidt Nigel Seymour Collin Wildschut

The matter and nature of the Appeal pertains to Development Application No. TOB-D-21-19 and is filed by the Appellant, Moreah Scarletts from a decision of the Town of Bassano Municipal Planning Commission; whereby an application for a change of use from a weld shop to cannabis production facility – discretionary use development, on lands designated Industrial Commercial (IC), legally known as Lot 1-2, Block 50, Plan 0411235 (201 – 1 Avenue) in the Town of Bassano, was approved by the Town of Bassano Municipal Planning Commission (Development Authority) subject to conditions.

And in the matter of the appeal being given in accordance with Section 686 of the Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26, as amended by:

APPELLANT: Moreah Scarletts

And in the matter of an Appeal held under the authority of Sections 627 and 629 of the Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26, as amended (MGA).

**THE PUBLIC PORTION OF THE HEARING WAS DOCUMENTED
AS A RECORD OF PROCEEDINGS**

And upon hearing the evidence from and submissions made by the person(s) shown on Appendix B attached hereto, and upon considering the documents shown on a list attached to Appendix A, as being the documents produced and marked as exhibits at the Hearing, and having regard to the South Saskatchewan Regional Plan, the MGA, the Land Use Bylaw No. 845/13 and amendments thereto, the Subdivision and Development Appeal Board has rendered a Decision.

The Decision and reasons for the Decision of the Subdivision and Development Appeal Board (the Board) after a Hearing duly convened in accordance with Sections 685 and 686 of the MGA on February 12, 2020, at 4:00 P.M. are as follows:

DECISION:

The Board has decided the **appeal be DENIED and that the decision of the Development Authority be VARIED**. The Board approves Development Permit Application TOB-D-21-19 subject to revised conditions.

Date:

Feb. 21, 2020

Signed:

Tina Preston

Chair of the Subdivision and Development Appeal Board

FACTS:

Upon having heard what was alleged by the Appellant, Applicant, Development Authority, and others listed in Appendix B of this Decision and **upon having read** Exhibits noted in Appendix A of this Decision, the Board finds the facts to be as follows:

1. On October 30, 2019, 2108760 Alberta Inc (Applicant) submitted Development Permit Application TOB-D-21-19 for a change of use from weld shop to a cannabis production facility on lands legally known as Lot 1-2, Block 50, Plan 0411235 (201 – 1 Avenue) [subject parcel] in the Town of Bassano. The application was deemed complete on November 15, 2019.
2. The subject parcel is designated Industrial Commercial - IC in Land Use Bylaw No. 845/13 (LUB 845/13) Schedule 2, Land Use District Regulations. The subject parcel is located on the south side of 1st Avenue and incorporates an industrial building within which an approved welding shop currently operates.
3. The lands to the north of the subject parcel are designated Residential – R and include the Four Seasons Park Estates, a manufactured home community with eight units.
4. The Canadian Pacific Railway, an active rail line, is located south of the subject parcel.
5. A cannabis production facility is classified as a discretionary use within the IC district and is subject to use specific standards as specified in Section 13, Schedule 7 of LUB 845/13.
6. Development Permit Application TOB-D-21-19 (DA TOB-D-21-19) requested variances to the 75 metre setback requirement from the residential and parks and recreation districts in Section 13.7, Schedule 7, LUB 845/13, the landscaping requirements of Section 5, Schedule 7, LUB 845/13, and the maximum fence height requirement of Section 6.1, Schedule 7, LUB 845/13.
7. On November 15, 2019, the Public Notice of Development Application (Exhibit L) was issued to adjacent landowners regarding DA TOB-D-21-19, summarizing the proposed development and notifying of the Municipal Planning Commission's (MPC) intent to consider DA TOB-D-21-19 on November 28, 2019.
8. In response to the Public Notice of Development, two letters of opposition from adjacent landowners were submitted to the MPC for consideration at the November 28, 2019, one being from Ms. Moreah Scarletts (Appellant), expressing concern about potential health, safety, and quality of life impacts to the residents of the Four Seasons Park Estates at 206 1st Avenue and the public using the golf course.
9. At the November 28, 2019 meeting, Development Officer, Ms. Davis, presented DA TOB-D-21-19 to the MPC for consideration. The MPC requested additional information regarding discontinuation of the existing use on the subject parcel and a decision on the application was postponed to a subsequent meeting.
10. On December 19, 2019, DA TOB-D-21-19 was presented to the MPC for consideration, including the information regarding discontinuation of the existing use and an additional letter of opposition received on December 18, 2019, expressing concern about potential odour impacts.
11. At the December 19, 2019 meeting, the MPC granted the requested variances and approved DA TOB-D-21-19 subject to conditions as specified in the Notice of Decision (Exhibit D).
12. On December 23, 2019, the Notice of Decision was issued to the applicant and the adjacent landowners, informing them that DA TOB-D-21-19 had been approved with conditions.
13. On January 6, 2020, the Appellant filed an appeal regarding DA TOB-D-21-19, citing reasons as described in Exhibit C.
14. Mr. Tom Rose, Chairperson of the MPC, stated that the MPC's decision to approve DA TOB-D-21-19 included consideration of the concerns from adjacent landowners, mitigating measures proposed as part of the development application, site suitability, and potential public health impacts. He stated that the MPC found the mitigating measures acceptable and determined it appropriate to grant the

requested variances given the industrial designation of the subject parcel, the intent of the 75 metre setback, which was primarily to provide separation from cannabis production facilities and schools, parks, hospitals, and high density residential areas, the limited impact to surrounding uses, and minimal likelihood of public health impacts.

15. The cannabis production facility is proposed to be fully contained within the existing industrial building on the subject parcel. The growing area is contained within individual growing rooms, each with its own HVAC with carbon filters and contained micro-climate. The processing of plants is designed to occur within the building. No outdoor storage, incineration or extraction is proposed. Employee parking is provided on-site and delivery vehicles will access the site a couple times a week, with the largest vehicle expected to be about the size of a garbage truck.
16. Ms. Amanda Davis, Development Officer, stated that the relaxation of the landscaping requirement was based upon consideration of the existing boulevard trees and grass along 1st Avenue in front of the subject parcel, which provides a buffer between the proposed use and the residential development to the north, and that the perimeter fence was required to be placed on the property line for consistency with existing fencing on adjacent industrial parcels.
17. The Development Officer confirmed that any issues related to compliance with conditions of development approval or bylaw standards could be addressed through the provisions of the municipal land use bylaw.
18. The 150 metre setback distance referred to in the Appellant's notice of appeal (Exhibit C), is not a prescribed setback within the current federal Cannabis Act and the suitability of varying the municipally established 75 metre setback is entirely within the jurisdiction and at the discretion of the MPC and Subdivision and Development Appeal Board in accordance with LUB 845/13 and the MGA.
19. The Appellant, stated concern regarding the potential impact the development may have on surrounding property values and residents, including potential issues related to odour, traffic, aesthetics, particularly relating to the perimeter fence and buffering of the use, safety, and uncertainty regarding potential health effects of living in proximity to a cannabis production facility, as well as a lack of public consultation with respect to the proposed development.
20. The Appellant stated that the existing landscaping along 1st Avenue provided an inadequate buffer between the uses and proposed that the Applicant be required to provide a landscaping buffer along 1st Avenue to mitigate potential aesthetic impacts.
21. Mr. Devon Davidson, Applicant, stated that the proposed development would include a cultivation space of 2,000 ft², which is considerably smaller than facilities cited as examples relating to odour impacts, and is classified as micro cultivation under the federal legislation.
22. The Applicant stated no objection to providing landscaping along 1st Avenue to serve as a buffer.
23. Mr. Wayne Seaward, owner of the subject parcel and operator of the existing business, described the operation as an active industrial manufacturing business with 20 employees, which includes sandblasting, painting, and welding, and associated noise, exhaust, and traffic impacts.
24. LUB 845/13, Schedule 2, Section 2 Use Regulation, Table 2.2.1 lists light fabrication shops, light industrial, manufacturing and fabrication, mini storage, general warehousing/storage, outdoor storage, transportation/delivery service, and truck dispatch/depot as permitted uses within the IC district. In accordance with LUB 845/13, Section 29, the Development Officer is required to issue a development permit for permitted uses if the development conforms to the land use bylaw.
25. LUB 845/13, Schedule 2, Use Regulation, Table 2.2.1 lists cannabis production facility, processing, bulk fuel station, bulk fertilizer storage and sales, truck stop, truck wash, animal care service, large, auctioneering facility, grain elevator, seed cleaning plant, and railway and railway related uses as discretionary uses within the IC district. In accordance with LUB 845/13, Section 30.1, the MPC may issue a development permit for a discretionary use after consideration of any response to the

notifications of adjacent landowners and other persons likely to be affected, compatibility and suitability of the proposed use, and any other matters.

26. LUB 845/13, Schedule 7, Commercial/Industrial Standards of Development Administration, Section 13 Cannabis Production Facility states:
- 13.1 *The owner or applicant must provide as a condition of development a copy of the current licence for all activities associated with medical cannabis production as issued by Health Canada.*
 - 13.2 *The owner or applicant must obtain any other approval, permit, authorization, consent or licence that may be required to ensure compliance with applicable federal, provincial or other municipal legislation.*
 - 13.3 *The development must be done in a manner where all of the processes and functions are fully enclosed within a stand-alone building.*
 - 13.4 *The development shall not operate in conjunction with another approved use.*
 - 13.5 *The development shall not include an outdoor area for storage of goods, materials or supplies.*
 - 13.6 *The development must include equipment designed and intended to remove odours from the air where it is discharged from the building as part of a ventilation system.*
 - 13.7 *The development must not be within 75.0 metres of a residential, public institutional, or parks and recreation district, measured from the building foundation containing the use to the nearest property line of a parcel designated as a residential, public institutional, or parks and recreation district.*
 - 13.8 *The Development Authority may require, as a condition of a development permit, a Public Utility and Waste Management Plan, completed by a qualified professional that includes detail on, but not limited to:*
 - (a) the incineration of waste products and airborne emissions, including smell; and*
 - (b) the quantity and characteristics of liquid and waste material discharged by the facility; and*
 - (c) the method and location of collection and disposal of liquid and waste material; and*
 - (d) the impact to municipal servicing and utilities, including, but not limited to, the effect on water and sewer system delivery.*
 - 13.9 *The minimum number of motor vehicle parking stalls shall be based on the parking requirements of the Light industry/manufacturing use found in Schedule 5.*
 - 13.10 *Any signage relating to a Cannabis Production Facility is subject to approval by the Development Authority, as well as the sign regulations outlined in Schedule 8.*
 - 13.11 *Cannabis Production Facility is a Discretionary Use within the Industrial Commercial (I-C) Land Use District.*
27. LUB 845/13, Schedule 2, Section 3 Land Use Definitions, defines Cannabis Production Facility as: *a Use where Cannabis is grown, processed packaged, tested, destroyed, stored or loaded for shipping, and that meets all Federal requirements as well as all requirements of this Bylaw, as amended from time to time.*
28. LUB 845/13, Schedule 7, Sections 5.2 and 5.8 Landscaping and Screening, state:

- 5.2 *Within the front setback and secondary front setback, a minimum landscaped strip of 3.0 m (10 ft) in width along the entire lot frontage (excepting driveways, sidewalks, and walkways) is required. The strip shall be comprehensively landscaped to the satisfaction of the Development Authority.*
- 5.8 *Landscaping or screening shall consist of any combination of the following to the satisfaction of the Development Authority:*
- (a) *vegetation (e.g. trees, shrubs, lawn, flowers);*
 - (b) *ground cover (e.g. large feature rocks, bark chip, field stone, crushed rock, or other similar features);*
 - (c) *buffering (e.g. berming, terracing, paving stones, fencing);*
 - (d) *outdoor amenity feature (e.g. benches, walkways, raised planters);*
 - (e) *innovative landscaping features, as approved by the Development Authority.*
29. LUB 845/13, Schedule 7, Sections 6.1 and 6.2 Fencing, state:
- 6.1 *No fence, wall, gate, hedge or other means of enclosure shall extend more than 2.4 m (8 ft) in height in any side or rear yard. A fence, wall, gate, hedge or other means of enclosure that exceeds 0.9 m (3 ft) in height within a front yard or secondary front yard requires approval by the Development Authority.*
- 6.2 *The use of barbed wire below a height of 1.8 m (6 ft) is not permitted.*
30. The MGA, Section 687(3) states: *In determining an appeal, the subdivision and development appeal board*
- (a) *must act in accordance with any applicable ALSA regional plan;*
 - (a.1) *must comply with any applicable land use policies;*
 - (a.2) *subject to section 638, must comply with any applicable statutory plans;*
 - (a.3) *subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;*
 - (a.4) *must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;*
 - (b) *must have regard to but is not bound by the subdivision and development regulations;*
 - (c) *may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;*
 - (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, and*
 - (ii) *the proposed development conforms with the use prescribed for that land or building in the land use bylaw.*

The Subdivision and Development Appeal Board has decided the **appeal be DENIED**, and that the **decision of the Development Authority be VARIED**. **Development Permit TOB-D-21-19 is APPROVED with the following variances granted, subject to revised conditions:**

VARIANCES:

1. A variance is granted to Section 13.7, Schedule 7 of the Town of Bassano Land Use Bylaw, allowing a reduction in the 75 metre setback from the Cannabis Production Facility and the Residential and Parks and Recreation Districts.
2. A variance is granted to Section 6.1, Schedule 7 of the Town of Bassano Land Use Bylaw, allowing a chain link perimeter fence with barbed wire not to exceed 7 feet in height.
3. A partial variance is granted to Section 5.2, Schedule 7 of the Town of Bassano Land Use Bylaw, eliminating the requirement for a 3 metre wide landscaping strip along 1st Street only. Landscaping along the 1st Avenue frontage is required as stipulated in condition number two (2).

CONDITIONS:

1. The development must be completed in accordance with the permit application dated October 29, 2019 and Change of Use Narrative with site plans dated November 15, 2019, subject to the additional requirement for landscaping as stipulated in condition number two (2).
2. A minimum 3.0 metre wide landscaped strip shall be provided along the entire frontage of 1st Avenue in accordance with Section 5.2, Schedule 7 of the Land Use Bylaw. Landscaping shall be in accordance with Section 5.8, Schedule 7 of the Land Use Bylaw, and must include shrubs and/or trees as a screen, which may be located on the inside of the chain link perimeter security fence or within the boulevard, as may be approved by the municipality. The developer shall submit the landscaping plan for municipal approval prior to commencement of landscaping.
3. The chain link perimeter security fence with barbed wire must be installed in accordance with the site plan with defined driveways and access points. The total height of the security fence, including barbed wire, shall not exceed 7 feet. In accordance with Section 6.2, Schedule 7 of the Land Use Bylaw, the use of barbed wire below a height of 6 feet is not permitted.
4. The developer is responsible to obtain all discipline permits.
5. The developer must provide the municipality with a copy of a current license for all activities associated with the medical cannabis production issued by Health Canada within 6-months from the date of issue of the permit.
6. The developer must provide the municipality with copies of all permits, authorization, consent or licenses that may be required to ensure compliance with applicable federal, provincial or other legislation within 72-hours of receiving a request from the municipality or its delegated representatives.
7. All development must be done in a manner where all processes and functions are fully enclosed in the primary stand-alone building.
8. Outdoor storage of materials or supplies is not permitted onsite.
9. The incineration of cannabis or plant material is not permitted onsite without development approval from the Municipal Planning Commission. A waste management plan may be required for incineration of cannabis or plant related materials.
10. Retail sales are not permitted onsite.
11. The developer must maintain an active business license with the Town of Bassano.

12. Any contractors working onsite must obtain a business license before commencing construction or development.
13. Any signage related to the Cannabis Production Facility is subject to approval by the Development Authority, as well as the sign regulations outlined in the Land Use Bylaw.
14. The weld shop shall cease operations within six (6) months of permit approval. The Cannabis Production Facility and weld shop are not permitted to operate at the same time and the "Change of Use" permit takes precedence over the weld shop.
15. The "Change of Use" may be withdrawn or cancelled by written notice prior to the new use coming into effect.

REASONS:

THAT the Board encompasses the findings of fact within these reasons and, as a result, has **APPROVED the development application subject to revised conditions**, based on the following:

1. Upon considering the extent of the proposed development, the intent of the Industrial/Commercial district, the list of allowable uses within the district, and the existing approved use of the subject parcel and other surrounding industrial uses, including the active rail line, the Board finds the use to be suitable and compatible with the adjacent Residential and Parks and Recreation districts given the conditions of approval.
2. The Board is of the opinion the development is unlikely to create any appreciable impact upon the adjacent residential and parks and recreational uses given the operational measures proposed to mitigate any potential odour impacts and the nature of the proposed use (particularly, the operation is contained entirely within the existing industrial building and will result in no increase in the building footprint; traffic generated by the facility will be limited and likely less than the volume generated by the existing development; incineration is currently prohibited; and noise associated with the proposed development is expected to be less than that generated by the existing development). Furthermore, the Board is of the opinion the conditions of approval mitigate any potential impacts and, therefore, the development would not materially interfere with or affect the use, enjoyment or value of neighbouring properties.
3. Given the concerns raised at the hearing regarding aesthetics, the Board is of the opinion the 3 metre wide landscaping requirement prescribed within the land use bylaw is warranted along 1st Avenue and will serve to mitigate the aesthetics of the development's perimeter fencing. As such, only a partial variance has been granted to the landscaping requirements as prescribed in condition number two (2) of the conditions of approval.
4. The Board finds the land use bylaw contains mechanisms with respect to enforcement and, therefore, is satisfied the conditions of approval can be adequately upheld should issues arise with respect to the development.

INFORMATIVE:

The Board acknowledges the notification requirements of the Town of Bassano Land Use Bylaw were properly fulfilled with respect to this development application. However, given that cannabis production is an emerging industry, it may be valuable to consider an enhanced public consultation requirement for cannabis production facilities in proximity of residential development.

APPENDIX A

Documentary Material Submitted to the Board:

NO. ITEM

- A. Notice of Hearing and Location Sketch Map
- B. List of Persons Notified
- C. Notice of Appeal
- D. Notice of Decision - Development Application TOB-D-21-19, December 23, 2019
- E. Development Permit Application, October 29, 2019
- F. Request for Decision to Municipal Planning Commission (MPC), December 19, 2019
- G. Request for Decision to (MPC), November 28, 2019
- H. Letters submitted to MPC
- I. Minutes from MPC meeting December 19, 2019 (unapproved)
- J. Minutes from MPC meeting November 28, 2019 (adopted)
- K. Town of Bassano Notice of Appeal of Development Application to Applicant, January 13, 2020
- L. Public Notice of Development Application – Adjacent Landowners and persons likely to be affected
- M. Town of Bassano Notice of Completion of Development Application
- N. Excerpts from Town of Bassano Land Use Bylaw No. 845-13
- O. Submission from Applicant, Devon Davidson of Canalief Inc., February 9, 2020
- P. Email from Candy McLachlan, February 9, 2020
- Q. Submission from Moreah Scarletts, February 11, 2020
- R. Submission from Senior Planning Advisor, February 12, 2020

APPENDIX B

List of persons who gave oral evidence or made submissions at the hearing:

CAPACITY	NAME
Appellant:	Ms. Moreah Scarletts
Applicant:	2108760 Alberta Inc. (Mr. Devon Davidson and Mr. Adam Bourbonnais)
Municipal Representatives:	Ms. Amanda Davis – Development Officer Ms. Diane Horvath – Senior Planning Advisor Mr. Tom Rose – Municipal Planning Commission Chairperson
Public Gallery:	Wayne Seaward Scott Milton

IMPORTANT:

**This Decision of the Subdivision and Development Appeal Board
is final and binding on all parties and persons, subject only to Appeal to the Provincial Court of Appeal.**