



## NOTICE OF DECISION

FILE NO. **SDAB 2023-003**

APPLICATION No.: **2021-DP-00531**

DEVELOPMENT: **Child Care Facility**

LAND USE DESIGNATION: **RMH-1 Modified Manufactured Home District**

LEGAL DESCRIPTION: **Block 297, Plan 022 0695**

CIVIC ADDRESS: **Fort McMurray, Alberta**

**IN THE MATTER OF AN APPEAL** filed with the Regional Municipality of Wood Buffalo Subdivision and Development Appeal Board (“the Board”) pursuant to Sections 685 and 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (“the *Municipal Government Act*”), the Appeal Hearing was held on Tuesday, August 29, 2023 in the Jubilee Centre, Council Chamber, 9909 Franklin Avenue, Fort McMurray, Alberta.

**BETWEEN:**

Alan and Nicole Harding (“Appellant 1”)

Travis and Christa Blanchard (“Appellant 2”)

Morgan and Lacey Pardy (“Appellant 3”)

-and-

The Regional Municipality of Wood Buffalo (the “Development Authority”)

**BEFORE:**

T. Tupper (Chair)

D. Cleaver

N. Mahgoub

A. McKenzie

T. Morris

**Administration:**

H. Fredeen, Clerk for the Subdivision and Development Appeal Board

J. Brown, Clerk, Chief Legislative Officer

**JURISDICTIONAL HEARING**

- [1] At a Jurisdictional hearing held on July 18, 2023, with consent of the parties present, the Board opened and set the hearing date as August 29, 2023.
- [2] Following the introduction of the Board, the Chair confirmed with the parties in attendance that there were no objections to the constitution of the Board. No objections were raised.
- [3] There were no conflicts identified by the Board Members.

**Preliminary Matters**

- [4] No preliminary matters were raised.

**MERIT HEARING****Summary of Hearing****Submission of the Respondent**

- [5] On behalf of the Development Authority, the Development Officer began his presentation indicating that the appeal stemmed from the approval of Development Permit No. 2021-DP-00531, an application for a Child Care Facility at the address 120 McTavish Crescent, Fort McMurray (“the Subject Property”).
- [6] The proposed Child Care Facility is a discretionary use in the RMH-1 Modified Manufactured Home District.
- [7] The Development Officer provided a chronology of the Development Permit Application as follows:
- i. December 15, 2021 – Received the development permit application for a Childcare Facility.
  - ii. January 24, 2022 - The application was circulated to internal and external stakeholders for comments.
  - iii. February 22, 2022 – Notice of the proposed development was circulated to adjacent property owners for comments.
  - iv. Between March 10, 2022, and June 13, 2023 - Revisions were made to address concerns from residents, internal and external stakeholders to address on-site parking, and configuration, relocation of garbage enclosure, increase to soft landscaping, and reduction of the Child Care Facility floor area.

- v. June 14, 2023 – All outstanding stakeholder concerns were addressed, and the Development Permit was approved and issued.
- vi. June 22, 2023 – Notification of the approval was mailed to adjacent property owners, within a 60-metre radius of the Subject Property, advertised in the local newspaper and the municipal website.
- vii. The Notice of Appeal was submitted on June 30, 2023.
- viii. It was noted that there are two restrictive covenants registered on the Subject Property .

[8] The Development Officer addressed the following concerns submitted by the Appellants:

*Loss of Park Space*

[9] The Subject Property is designated RMH-1 Modified Manufactured Home District and a Child Care Facility is a discretionary use under the Land Use Bylaw 99/059 (“the Bylaw), the surrounding park space is districted PR-Parks and Recreation and the Subject Property which is privately owned has a legal and civic address which differentiates it from the park space.

*Parking, Traffic Concerns and Street Congestion*

[10] In accordance with Part 7 Parking and Loading Requirements of the Bylaw, fifteen parking stalls are required for the proposed Child Care Facility,seveteen parking stalls can be provided on the Subject Property two of which are barrier free parking stalls. As this exceeds the minimum requirement the Bylaw and it is in the opinion of the Development Authority that outside of drop off and pick up hours, there will not be a significant increase in traffic flow.

[11] Furthermore, when the Morgan Heights subdivision was designed it was done with the intent of a Child Care Facility being developed on the Subject Property and at that time traffic flow was taken into consideration during design phase of the subdivision. The capacity of surrounding roads was also taken into consideration, and the Development Authority is satisfied, that any concerns are rectified with the parking availability and reduction in building capacity.

[12] It was submitted that the Development Permit application was circulated to the Engineering department and Roads Branch of the Public Works department (“Public Works”) no concerns were raised in relation to street capacity or increased traffic flow .

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*Maintenance Costs and Condominium fees*

- [13] Consideration of maintenance costs and condominium fees are not a part of the development application review process and are not regulated by the Bylaw or other statutory planning documents.
- [14] A letter of support was submitted by the Condominium Board (Exhibit 5 page 110) confirming their commitment for the development of a Child Care Facility.

Questions for the Development Authority

- [15] The Development Officer confirmed during questioning that the Child Care Facility would contribute to repairs and maintenance costs via condominium fees.
- [16] Hours of operation Child Care Facilities, under not restricted under the Bylaw.
- [17] The Development Officer confirmed that a Traffic Impact Assessment was not carried out as the Child Care development did not meet the minimum threshold to trigger.
- [18] The Developer Officer confirmed that there are two planned entrances with two-way traffic, in to the parking lot on the Subject Property.

Submission of the Appellant

- [19] It was noted for the record that there was no one present representing Appellants 2 and 3 and no written submissions were received from either Appellant aside from comments provided on their Notice of Appeal forms, Exhibits 2 and 3.
- [20] Appellant 1 appeared before the Board noting that there are approximately two dozen residents that are opposed to the proposed Child Care Facility mainly due to the potential traffic strain it will cause to the neighbourhood.
- [21] The Appellant submitted that she was not aware of the restrictive covenant on the Subject Property for a Child Care Facility when their home was purchased, and they were not privy to condominium documents prior to the sale.
- [22] The Appellant submitted the main concern is with the additional traffic which is already congested because of a nearby school and bus routes. It was submitted that there are concerns with an increase to condominium fees due to road maintenance and noise levels for homes directly adjacent to the Subject Property.
- [23] The Appellant agreed that a Child Care Facility is needed in the community and suggested it be in a less enclosed neighborhood such as the Syncrude Athletic Park or the Parson's Creek neighborhood.

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Questions for the Appellant

- [24] Through questioning, the Appellant indicated that she resides at 229 McTavish Crescent. The main impacts of the Child Care Facility to her property include the view, parking, and the construction of the Child Care Facility.
- [25] The Appellant indicated that there is no parking on one side of McTavish Crescent and submitted that the side of the road that does allow parking is busy.
- [26] The Appellant submitted that Morgan Avenue is the road access from the condominium complex to access Millenium Drive.

Development Permit Applicant (the "Applicant") Submission

- [27] The Applicant submitted that they own and operate three other Child Care Facilities in Fort McMurray, one located in the Abasand neighborhood, and one located Downtown.
- [28] The Applicant submitted that a Child Care Facility would increase the value of the properties in the neighbourhood as it brings people into the community. Their Child Care Facility in River Park Glen Tower 1 has brought more family orientated tenants to the apartment building.
- [29] Unlike the school system where children are picked up and dropped off at the same time, the Applicant argued that a Child Care Facility works differently in that drop off and pick up times are staggered throughout the day.
- [30] The Applicant submitted that the Downtown Child Care Facility, has the most children and the maximum number of vehicles in the parking lot at one time is four or five and there have never been issues with traffic.
- [31] The Applicant indicated that registration for care, for those residing within the Morgan Height's community would be given first priority for the proposed Child Care Facility.
- [32] The Applicant submitted that most of the clients in the Downtown Child Care Facility, come from uptown due to the lack of child care facilities in the uptown area. Indicating there are currently no Child Care Facilities in Timberlea except those that exist in schools; however, these child care facilities are limited to children 19-months and older.
- [33] The Applicant referred to the survey data contained in her submission (Exhibit 6, pages. 166-176) demonstrates the need for more child care facilities in Fort McMurray and the Timberlea neighborhood. The proposed Child Care Facility is to be built on private property and is not considered part of the park or green space.

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Questions for the Applicant

- [34] Through questioning, the Applicant submitted that their other Child Care Facilities have never received any complaints regarding noise or traffic.
- [35] The Applicant indicated that at a Condominium Corporation Annual General Meeting (AGM) last year where plans for the Child Care Facility on the Subject Property were shared and questions from the condominium residents were answered. At the AGM, the Condominium Board explained to the homeowners what the restrictive covenant was and that it restricted development on the Subject Property to a Child Care Facility.
- [36] During the AGM, homeowners expressed concerns regarding traffic, the Condominium Board suggested a speed bump could be installed but would be attributed to the Child Care Facility.
- [37] The Board referenced Exhibit 9 (Written Submission in Opposition to Appeal – Carmelo Daprocida) where a Coffee Shop was proposed for the Subject Property by the previous owner. The Applicant indicated that the coffee shop is not a part of the current Child Care Facility application.
- [38] The Applicant indicated overnight child care is not considered for the proposed facility, but it is something they will explore.
- [39] The Applicant submitted that the maximum capacity for the proposed Child Care Facility was reduced by the Development Authority from 150 to 126; however, it was later clarified by the Development Authority the maximum capacity of the Child Care Facility was increased to 150 persons inclusive of children and staff.
- [40] The Applicant indicated that it is intended to offer the facility for community use outside of the hours of operation.
- [41] The Applicant submitted that the survey data contained in her submission (Exhibit 6) was collected via an online survey posted on social media and approximately 50 responses were collected.
- [42] The Appellant submitted that it is intended to have the required twelve staff members for care of 110 children.

Submission(s) of Affected Persons in Opposition to the Appeal

- [43] The Board heard from Carmelo Daprocida, previous owner of the Subject Property who submitted, he purchased the property in 2006 from the developers of the property at the time. It was noted in the purchase contract, that there is a restrictive covenant that only a Child Care Facility could be built on the Subject Property.

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- [44] Mr. Daprocida added that he had applied to have the subject lands subdivided into four parcels to allow for additional mobile homes. However, the application was rejected due to the restrictive covenants on the land. In 2013 – 2014, Mr. Daprocida indicated he hired an architect to design a Child Care Facility which would incorporate a coffee shop; however, that application was rejected as the restrictive covenant Subject Property only allowed a Child Care Facility.
- [45] Mr. Daprocida spoke to Exhibit 18, an email dated September 5, 2014, between himself and the Municipality's Engineering department which indicated that a Traffic Impact Study was not required in 2014 when he considered the Child Care Facility with the Coffee Shop as the proposed development was below the minimum threshold to require a traffic study.
- [46] Mr. Daprocida submitted the Subject Property is a perfect location for a Child Care Facility and will benefit many of the residents in Morgan Heights.

#### Questions for Affected Person in Opposition of the Appeal

- [47] Through questioning, Mr. Daprocida indicated he has no vested interest in the proposed Child Care Facility.
- [48] Mr. Daprocida indicated that any persons who purchased a property in Morgan Heights, after the restrictive covenants were in place should have been aware of the restrictive covenants on the Subject Property as this would have been disclosed during the sale of the property.
- [49] Mr. Daprocida indicated that he does not reside in Morgan Heights; but does reside in the Timberlea neighbourhood.

#### Submission(s) of Affected Persons in Favor of the Appeal

- [50] Theresa Piercey and John Piercey, submitted in addition to their written comments (Exhibit 16) they reside at **FOI** Morgan Avenue, which is the second home as you enter the Morgan Heights neighborhood.
- [51] It was submitted that information on the restrictive covenants on the Subject Property are included in condominium documents when purchasing a home in the neighbourhood; however, the documents have been copied many times making it difficult to read.
- [52] Concerns of additional traffic congestion during drop off and pick up times at the Child Care Facility were expressed and it was indicated that the speed limit is only 30 km/h which is already difficult to enforce. Adding that there is only one entrance and one exit into the Morgan Heights neighbourhood on Morgan Avenue, which leads to a four way stop onto Millenium Drive. Peak times are 4:00 a.m. – 8:00 a.m. followed by the school crowd as a result there are a lot of U-turns at the entrance of Morgan Heights for traffic for St. Marthas School's.

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- [53] Ms. Piercey submitted that it is her belief it will be very difficult for those living on Morgan Avenue to get in and out of their driveway due to the traffic and there will be an influx of parents crossing the street on McTavish Crescent to get to the Child Care Facility. There is also a park beside the proposed Child Care Facility where children ride their bikes to. The excess traffic may be a safety concern for these children.
- [54] Mr. Piercey clarified that there is only one exit to and from the Morgan Heights neighbourhood which is already a concern as there should be a secondary exit in case of an emergency. If the Child Care Facility is approved, then a secondary exit should be considered.
- [55] Ms. Piercey suggested that a Traffic Impact Study may be beneficial to see how the proposed development will affect the Morgan Heights neighbourhood and submitted that due to the size of the proposed Child Care Facility, it might be better suited for the Parson's Creek development as its closer to industry work site's as well as many different access points.

#### Questions for Affected Person in Support of the Appeal

- [56] Through questioning, Ms. Piercey indicated that they reside at **FOI** Morgan Avenue which falls outside of the notification area.
- [57] Mr. Piercey submitted that for the on-street parking areas, approximately 80% of the properties have room in front of their homes for parking.
- [58] Ms. Piercey clarified that they are not opposed to the proposed Child Care Facility but are opposed to the size of the Child Care Facility, adding that the Subject Property would be better suited for a community centre, clubhouse or an ice-skating rink with a warm up facility.

#### Final Questions for the Development Permit Applicant

- [59] The Applicant clarified that through discussions with the Development Authority, the maximum number of children at one time was reduced from 150 to 126, but there will likely be maximum of only 110 children at one time.

#### Closing Comments from the Respondent

- [60] The Development Officer reiterated that the Subject Property is private property that is eligible for development. A Child Care Facility is a discretionary use in the RMH-1 Modified Manufactured Home District. Other possible uses that were suggested during the hearing including a clubhouse or community centre cannot be considered in the district.



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- [61] On the approved landscape plan (Exhibit 5 page 67), consideration was given for the buffering of adjacent properties. With respect to comments regarding the facility obstructing the view of the park, a number of trees were placed to mitigate impact.
- [62] With respect to construction and safety during construction, the Development Officer submitted that as per Municipal requirements, safety fencing must be erected during construction.
- [63] The Development Officer reiterated that there was consideration given to the parking on the Subject Property, and the proposed parking is in excess of the minimum requirements.
- [64] A Child Care Facility on the Subject Property was a consideration when the Subdivision was planned in 2002.
- [65] The building capacity is based on Building Codes; however, Alberta Health Services may also have additional requirements with respect to staff to child ratio.

#### Closing Comments from the Applicant

- [66] The Applicant concluded that the Child Care Facility is willing to work with the Condominium Board and is committed to giving priority for childcare to Morgan Heights residents.
- [67] The Applicant reiterated that there is a need for child care and the proposed Child Care Facility will assist with this.

#### Closing Comments from the Appellant

- [68] The Appellant reiterated that she is not opposed to a Child Care Facility in Timberlea, but the Morgan Heights Community is just too small to accommodate it.
- [69] Upon conclusion, the Chair asked the parties present, if they felt that the hearing was conducted in a fair manner. No issues were brought to the Board's attention.

#### **Findings Of Fact**

The Board makes the following findings of fact:

- a. The Subject Property is located in the RMH-1 Modified Manufactured Home District.
- b. The proposed development is a Child Care Facility.
- c. The use is a discretionary use.
- d. The parking required for the proposed development is in excess of the requirements under the Land Use Bylaw.

- e. Based on the size of the proposed development a traffic impact study was not triggered.

### Decision

[70] **It is the decision of the Subdivision and Development Appeal Board to deny the Appeal. The application for a Child Care Facility is Approved. All conditions stipulated in Development Permit 2021-DP-00531 are upheld pursuant to section 27 of Land Use Bylaw 99/059.**

### Important Note:

[71] In accordance with section 27.6 of Land Use Bylaw 99/059 construction must commence one year from date of this Decision.

### Reasons for The Decision

[72] The Board notes that its jurisdiction is found within section 687(3) of the *Municipal Government Act*, RSA 2000, c.M-26 (the "MGA"). In making this decision, the Board has examined the provisions of Land Use Bylaw 99/059 and has considered the oral and written submissions by and on behalf of the Development Authority, the Appellant, the Development Permit Applicant, as well as affected persons.

[73] The Board carefully examined the submissions of the three Appellants (Exhibits 1-3) and the verbal submission of Appellant Nicole Harding and determined that the Appellants are affected by the proposed development and therefore the Board placed significant weight on these submissions.

[74] The Board reviewed the written submissions contained in the Hearing Package and gave considerable weight to the written submissions from affected persons residing in the Morgan Heights neighborhood (Exhibits 13 – 16) as well as the verbal submission from Theresa and John Piercey.

[75] The Board also put significant weight on the Planner's Report (Exhibit 5) and verbal submission along with the Development Permit Applicant's verbal and written submission (Exhibit 6).

[76] The Board gave significant weight to the letter of support from the Morgan Height's Condominium Corporation contained in the Planner's Report (Exhibit 5, Pg 110). The Board considers a Condominium Board to be an accurate representation of the owners and therefore considers the Morgan Height's Condominium Board, an affected party to the appeal.

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- [77] Although the Board recognizes that child care is in high demand, this was not a consideration of the Board when making its decision; therefore, the Board gave no weight to Exhibits 7-12 and letters of support included in the Applicant's submission (Exhibits 6 pages 163 – 165 and pages. 178-180).
- [78] Although the Board appreciates the context and history of the Subject Property provided by Mr. Carmelo Daprocida, the previous owner of the Subject Property, the Board gave no weight to his written and verbal submissions (Exhibits 9 and 18), as the Board found that Mr. Daprocida is not an affected party to the proposed development.
- [79] The Board gave no weight to the restrictive covenants referred to and included in Exhibits 5, 6, and 9, as they are not relevant planning considerations and are therefore outside of the authority and jurisdiction Board's .
- [80] As the proposed Child Care Facility is a discretionary use in the RMH-1 Modified Manufactured Home District., the Board must determine if the use of the Child Care Centre is compatible with neighbouring uses. In examining the compatibility of the proposed development with the neighbouring uses, the Board considered the evidence and arguments presented to it by those deemed affected. The main issues regarding compatibility were:
- i. Increased Traffic
  - ii. Parking and Safety Concerns

*Concerns regarding Increased Traffic*

- [81] The Board recognizes that there will be increased traffic as a result of the proposed Child Care Facility; however, the Board is swayed by the Development Authority's circulation of the proposed development to internal and external stakeholders in which the Engineering and Public Works departments (Exhibit 5 page 95). In addition, the Board notes that in the verbal submission, the Development Officer submitted that the proposed Development does not meet the minimum threshold to trigger a Traffic Impact Assessment. The Board is therefore convinced that the Development will have a minimal impact to traffic flow.
- [82] The Board gave considerable weight to the verbal submission of the Development Permit Applicant and her experience as a child care facility operator, who indicated that she has never received any formal complaints or concerns regarding traffic flow with the three other Child Care Facilities in Fort McMurray owned by the Applicant. Furthermore, the Board is swayed by her submission that traffic flow for a Child Care Facility differs from that of a school which has a scheduled drop off and pick up time. A Child Care Facility has staggered drop off and pick up times which has less impact on traffic flows.

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- [83] The Board did not hear any substantial evidence, from those affected, of how the Childcare Facility would disrupt the flow of traffic on the roads leading to the Subject Property; and is therefore persuaded that the impact on traffic flow will be minimal.

*Parking & Safety Concerns*

- [84] The Board heard evidence from the Development Authority that seventeen parking stalls have been provided for the Child Care Facility which is two more than the minimum parking required by the Land Use Bylaw. The Board finds that this is adequate parking for the Child Care Facility and is persuaded that the excess parking will alleviate the impact of on-street parking across from the Subject Property.
- [85] The Board is swayed by the Development Permit Applicant's evidence that her downtown Child Care Facility which has the highest capacity of children, sees at most, four to five cars in the parking lot at one time. Furthermore, the Board is persuaded that with staggered drop off and pick up times, the parking availability will be appropriate for the size of the Child Care Facility.
- [86] The Board recognizes there were additional concerns from affected persons such as increased maintenance costs, increased condominium fees and increased insurance costs; however, these are not relevant planning considerations and are therefore not within the Board's jurisdiction to consider. The Board encourages the Morgan Heights residents to communicate these concerns to the Condominium Board.
- [87] Based on the evidence provided and the mitigation efforts taken by the Development Authority and the Applicant, to alleviate the concerns of adjacent property owners, the Board finds that the proposed development is compatible with the neighboring uses within the RMH-1 Modified Manufactured Home District.
- [88] It is so ordered.

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 14th day of September 2023.

CHAIR: \_\_\_\_\_



**APPENDIX "A"**

## DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:

<b>Exhibit No.</b>	<b>Description</b>	<b>Page Number</b>
	Subject Area Map	1
P1.	Board Decision - Preliminary Hearing	2 - 5
1.	Notice of Appeal – Harding	6
2.	Notice of Appeal - Blanchard	7 – 8
3.	Notice of Appeal - Pardy	9 - 10
4.	Development Permit No. 2021-DP-00531	11 - 44
5.	Planner's Report	45 - 160
6.	Submission in Opposition to Appeal – Bimbola Ogune of Klorious Services	161 - 190
7.	Submission in Opposition to Appeal – Megan Cook	191 - 192
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9.	Submission in Opposition to Appeal - Carmelo Daprocida	194 - 230
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11.	Submission in Opposition to Appeal – Marene Gatali	232
12.	Submission in Opposition to Appeal – Chantal Gatali	233
<b>Additional Exhibits</b>		
13.	Submission in Support of Appeal – Gary Gouthro	2023-08-28
14.	Submission in Support of Appeal – Alison Bolden	2023-08-28
15.	Submission in Support of Appeal – Haley Briand	2023-08-28
16.	Submission in Support of Appeal – Theresa Piercey	2023-08-28
17.	Submission in Support of Appeal – Cheryl G	2023-08-29
18.	Email date September 5, 2014 re: Traffic Impact Assessment – Carmelo Daprocida	2023-08-29

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**APPENDIX “B”**  
REPRESENTATIONS

<b>Person Appearing</b>	<b>Capacity</b>
Lee-Anne Kumka	Development Authority Supervisor
Brett Williamson	Development Officer
Nicole Harding	Appellant
Bimbola Ogunye	Development Permit Applicant
Carmelo Daprocida	Former Owner, Subject Property
Theresa and John Piercey	Adjacent Property Owner – Affected Persons