STAFF REPORT

RE: Agricultural Land Commission Non-Farm Use Referral: O'Donnell

Date: January 31, 2019   File #: D-184-01871.000

To: Chair Russell and members of the Board of Directors

From: Ken Gobeil, Senior Planner

ISSUE INTRODUCTION
We have received an application for a non-farm use in the Agricultural Land Reserve (ALR) in Electoral Area 'D'/Rural Grand Forks (see Attachments).

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<thead>
<tr>
<th>Property Information</th>
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<tr>
<td><strong>Owner(s):</strong> Zafia Rozek</td>
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<td><strong>Applicant/Leasee:</strong> Danna O'Donnel</td>
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<td><strong>Location:</strong> 6830 Nursery Road</td>
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<td><strong>Electoral Area:</strong> Electoral Area 'D' / Rural Grand Forks</td>
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<td><strong>Legal Description(s):</strong> Lot 3, Block 3, Plan KAP567, DL 184, SDYD</td>
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<td><strong>Area:</strong> 2.93 hectares (7.24 acres)</td>
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<td><strong>Current Use(s):</strong> Agriculture</td>
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**Land Use Bylaws**

| OCP Bylaw No. 1555 | Agricultural Resource 1 |
| Development Permit Area | NA |
| Service Area | Grand Forks Irrigation District |
| Zoning Bylaw No. 1299 | Agricultural Resource 1 (AGR1) |

**Other**

| ALR: | Completely within |
| Soil Capability | 5A(7:1 3:2A) |
| Waterfront / Floodplain | NA |
| Planning Agreement Area | Grand Forks |
HISTORY / BACKGROUND INFORMATION

The subject property is east of Grand Forks, on the south side of Highway 3. With irrigation, the soil capability of the property is mainly Class 1 with some Class 2.

PROPOSAL

The applicant would like to operate a licensed micro-cultivation of cannabis facility on the property. All activity would be within a proposed a 15.24m x 30.48m (50'x100') building. Since the applicant wishes to have a cement-floor, a Non-Farm Use application was triggered.

The applicant has applied to Health Canada for a cannabis micro-cultivation license. The proposal did not include specific information regarding the layout or operation.

IMPLICATIONS

Official Community Plan

The applicant states that this use is beneficial to their overall farm by providing an additional source of revenue.

The Official Community Plan does not support non-farm use applications unless the land use supports and is beneficial to agriculture, and no other suitable land is available (section 19.4.7).

Zoning Bylaw

The application is compliant with the Zoning Bylaw. Growing, or producing cannabis is a permitted use in the AGR1 Zone as a form of agriculture. The proposed building will meet setbacks. The property would be compliant with site coverage requirements.

Changes to the Agricultural Land Reserve Use, Subdivision and Procedure Regulation

The Agricultural Land Commission (ALC) established uses that are regulated solely by the ALC (Section 2 of Part 2), and uses that local governments have discretion over (Section 3 of Part 2) in the Agricultural Land Reserve Use, Subdivision and Procedure Regulation (ALR Regulation). Section 2 of the Regulation established that lawful production of cannabis is a farm use.

In the summer of 2018, the ALC amended the ALR Regulation to add the following conditions to cannabis production:

“if produced outdoors in a field or inside a structure
(a)that has a base consisting entirely of soil, or
(b)that was, before the date on which this section came into force,
(i) constructed for the purpose of growing crops inside it, including but not limited to the lawful production of cannabis, or

(ii) under construction for the purpose referred to in subparagraph (i), if that construction

(A) was being carried out in accordance with all applicable authorizations and enactments, and

(B) continues without interruption from the date it began to the date the structure is completed, other than work stoppages considered reasonable in the building industry, and

that has not been altered since that date to increase the size of its base or to change the material used as its base.”

**Federal Government: Cannabis Act and Cannabis Regulations**

The proposal for a 464.5m$^2$ (5000ft$^2$) production facility is over twice the maximum legal size for a micro-cultivation license.

The Cannabis Act enables the Cannabis Regulations. Section 13(1) of the Cannabis Regulations standardizes the size limitations for each type of cannabis production license. The maximum cultivation area for micro cultivation is listed below:

13 (1) A holder of a license for micro-cultivation

(a) must clearly delineate a surface area that does not exceed 200 m$^2$ in which all the cannabis plants, including all the parts of the plants, must be contained; and

(b) must cultivate, propagate or harvest cannabis plants only from that surface area.

The applicants have stated the sole purpose of the building would be for production. The RDKB cannot confirm compliance with the Cannabis Regulations from the information submitted in the application.

In order to cultivate an area larger than 200m$^2$ a different license would be required. The type of license does not matter for the ALC or RDKB. However, the type of license applied for noted in the application to the ALC may not be accurate.

**Future Implications**

The applicants have stated that a processing facility inside a shipping container (Sea-Can) would be placed on the property in the future.

A separate license is required to process harvested product. The amount of product harvested will determine the type of processing license (micro or
standard). Processing cannabis grown on site would be considered part of agriculture. The type of license would not matter in RDKB bylaws or the ALR Regulation as long as at least 50% of the product was grown on the farm.

ADVISORY PLANNING COMMISSION (APC)

The non-farm use application was supported on the condition that the proposed development will meet Health Canada’s size requirements for a micro-cultivation license.

PLANNING AND DEVELOPMENT COMMENTS

The proposed use is compliant with local government bylaws. However, we do not have jurisdiction to confirm compliance with regulations outside of our jurisdiction.

The Planning and Development Department has contacted the applicant regarding the Cannabis Act and Cannabis Regulation. At the time this report was written, we have not received a response from the applicant to indicate how the proposed development would comply with federal regulations regarding surface area for cultivation. This report would be forwarded to the ALC for consideration.

RECOMMENDATION

That the Regional District of Kootenay Boundary Board of Directors directs staff to forward, with a recommendation of support, the Agricultural Land Commission application for a non-farm use submitted by Danna O’Donnel on behalf of Zafia Rozek for the property legally described as Lot 3, Block 3, Plan KAP567, DL 184, SDYD, Electoral Area ‘D’/ Rural Grand Forks.

ATTACHMENTS

Site Location Map
Subject Property Map
Applicants’ Submission
Provincial Agricultural Land Commission - Applicant Submission

Application ID: 58213
Application Status: Under LG Review
Applicant: Danna O'Donnell
Local Government: Kootenay Boundary Regional District
Local Government Date of Receipt: 11/28/2018
ALC Date of Receipt: This application has not been submitted to ALC yet.
Proposal Type: Non-Farm Use
Proposal: The purpose of the proposal is to be able to construct a small cannabis production facility under a micro licence of 5000 sq ft,

Mailing Address:
6380 Nursery Rd
Grand Forks, BC
v0h 1h9
Canada
Primary Phone: (250) 443-3276
Mobile Phone: (250) 444-3276
Email: o donnellsfarm@hotmail.com

Parcel Information

Parcel(s) Under Application

1. Ownership Type: Fee Simple
   Parcel Identifier: 011-063-165
   Legal Description: PT L 3 BK 3 LYN E OF A LINE DRAWN 598 FT DISTANT FROM & PARA TO THE ELY BDY OF THE SAID L DL 184 SIMILKAMEEN DIVISION YALE DISTRICT PL 567
   Parcel Area: 7.2 ha
   Civic Address: 6380 Nursery Rd. Grand Forks BC
   Date of Purchase: 09/16/2002
   Farm Classification: Yes
   Owners
   1. Name: Danna O'Donnell
      Address:
      6380 Nursery Rd
      Grand Forks, BC
      v0h 1h9
      Canada
      Phone: [Redacted]

Applicant: Danna O'Donnell
Current Use of Parcels Under Application

1. Quantify and describe in detail all agriculture that currently takes place on the parcel(s).
   Currently the farm is growing chickens for eating and also for egg production. We are market gardening, and the bottom field is currently growing hay.

2. Quantify and describe in detail all agricultural improvements made to the parcel(s).
   8 foot perimeter deer fence has been added to the parcel. The farm has been using organic growing practices since 2001. Certified docking station for livestock is on site.

3. Quantify and describe all non-agricultural uses that currently take place on the parcel(s).
   not applicable.

Adjacent Land Uses

North

Land Use Type: Transportation/Utilities  
Specify Activity: Frontage road off highway.

East

Land Use Type: Agricultural/Farm  
Specify Activity: Grain and potato farming

South

Land Use Type: Agricultural/Farm  
Specify Activity: Hay

West

Land Use Type: Agricultural/Farm  
Specify Activity: Hay

Proposal

1. How many hectares are proposed for non-farm use?
   0.1 ha

2. What is the purpose of the proposal?
   The purpose of the proposal is to be able to construct a small cannabis production facility under a micro licence of 5000 sq ft,

3. Could this proposal be accommodated on lands outside of the ALR? Please justify why the proposal cannot be carried out on lands outside the ALR.
   The Farmers currently live on the farm and are looking at ways of diversifying farming activities. Since the legalization of Cannabis is recent as of Oct 17th 2018, Cannabis production has not been introduced as a farming activity. Cultivation of plant is a farming activity. Propagation, cultivation, soil and pest management are all used to create a product for consumption. This sort of activity is specifically what is done in the ARL.

Applicant: Danna O'Donnell
4. Does the proposal support agriculture in the short or long term? Please explain.
This proposal supports agriculture in the long term. If the focus was to move from Cannabis cultivation, the building could still be used for agricultural activities such as poultry or mushroom production.

5. Describe any economic values you believe are applicable to the application as it applies to s.4.3 of the ALC Act.
The economic benefits are great. You would be supporting a farm family allowing farmers not have to worry about having 'off farms' jobs to be able to support their farm. By allowing cannabis cultivation you are offering crop diversity, reducing risk in farming. Local jobs would be created. Grand Forks is very supportive of their local farms and buying local. This would offer the community a locally produced product, while reducing a carbon footprint and food miles. Revenues generated increase taxable income. Land value will go up with the added building.

6. Describe any cultural values you believe are applicable to the application as it applies to s.4.3 of the ALC Act.
Cannabis has been used for thousands of years both medically and recreationally. In the 1900's when cannabis became illegal, this was no longer the norm. Since the legalization of Cannabis in Canada on October 17 2018, citizens no longer need to worry about the stigma of using Cannabis. The Grand Forks area has a history of Doukhobors moving here because of the potential for self-sufficient farming. Allowing Micro Licence cultivation would allow for this cultural value. The Grand Forks area also has historically been very supportive of Hemp Cultivation.

7. Describe any social values you believe are applicable to the application as it applies to s.4.3 of the ALC Act.
The Social values that are applicable are, allowing Farmers the right to farm, without discrimination because of the crop being produced. You are allowing the farmers to have dignity, knowing that they are producing a crop of medicinal, recreational and spiritual value. You are allowing local citizens the choice between supporting local farmers or large corporations. It is the right thing to do.

8. Describe any regional and community planning objectives you believe are applicable to the application as it applies to s.4.3 of the ALC Act.
As per conversation with Regional Planning "there are no restriction for this" As per conversation with our RDKB area D Director Roly Russell we "treat Cannabis as any other product or typical agricultural product" From our Official Community Plan - 19.4.4 In addition to uses otherwise permitted in all land use designations, permitted uses in the Agricultural Resource I designation may include but not necessarily be limited to: one single family dwelling; agriculture; agricultural production of a controlled substance; bed and breakfasts; home-based businesses; secondary suites on parcels 1.0 hectare or greater in size; and accessory buildings and structures. Grand Forks and Area D are supportive of Cannabis cultivation.

Applicant Attachments

- Proposal Sketch - 58213
- Certificate of Title - 011-063-165

ALC Attachments

None.

Decisions

None.

Applicant: Danna O'Donnell
**Applicant Submission**

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**Diagram:**

- Single Man Door
- Double Man Door
- Door Location: TBD
- Wall: 14' internal wall
- Dimensions: 16'-1" and 18'-1"

**Note:** Please quote building complete with industrial steel doors, all girts, perlins, claddings, roofing, insulation package, fasteners and foundation layout.

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