

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
PARKLAND COUNTY**

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DATE: November 21, 2016  
FILE NO.: 16-D-593

**CORRECTED**

**Notice of Decision of Subdivision and Development Appeal Board**

**INTRODUCTION**

[1] The Development Authority of Parkland County (the "County") approved, with conditions, a development permit No. 16-D-593 (the "Development Permit") for a Home Based Business Level 2 (Firearms related sales) on Plan 8020350, Block 2 Lot 20, Municipal Address: 20-51317 Highway 60 (the "Site"). One property owner in the vicinity of the Site, Mr. Ken Atamaniuk, appealed the Development Permit.

**PRELIMINARY MATTERS**

**A. Board Members**

[2] At the outset of the appeal hearing, the Chair requested confirmation from all parties in attendance that there was no opposition to the composition of the Board hearing the appeals. None of the persons in attendance had any objection to the members of the Board hearing the appeal.

**B. Additional Materials**

[3] There were no adjournments requested at the start of the hearing on November 21, 2016.

**C. Miscellaneous**

[4] The Board marked the exhibits as set out at the end of this decision.

[5] The appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A. 2000, c.M-26 (the "Act").

[6] The Board is satisfied that it has jurisdiction to deal with this matter. There were no objections to the proposed hearing process.

## **SUMMARY OF HEARING**

[7] The following is a brief summary of the oral evidence heard by the Board. The Board has also reviewed all written submissions filed with the Board.

[8] The Board first heard from the Development Authority. The Development Authority advised that the Site is located within the CR-Country Residential District in the Spanish Oaks subdivision. Home Based Business Level 2 is a discretionary use in accordance with Section 5.1 of the Land Use Bylaw 20-2009. The Site is subject to the Municipal Development Plan, Bylaw 37-2007 and the proposed development is consistent with the provisions of Section 3 concerning residential development. The property is subject to the Woodbend-Graminia Area Structure Plan. The application complies with part 4.3.1 of that ASP.

[9] The Development Authority approved the Development Permit. Originally, the Applicant had advised he would be selling firearms and related supplies through the website with final sales and pick up occurring within the existing garage on the property. The Applicant advised at the beginning of the hearing that there will be only deliveries. There will be limited hours of operations from 7 a.m. to 6 p.m. Monday to Friday. There will be a resident employee working on the property with no merchandise assembly or processing. There will be no outdoor storage or parking of commercial vehicles. The Land Use Bylaw does not limit the type of goods to be sold and any goods federally or provincially regulated must comply with those approvals. If there are valid planning reasons, the Board can refuse the permit. The question is whether the use is reasonably compatible. Planning reasons include traffic. It is unlikely that there will be noise or smell from this development. Conditions 5 and 6 address the traffic impact.

[10] The Board next heard from the Appellant, Mr. Atamaniuk, who lives at Lot 12, Spanish Oaks. He indicated that he appealed the decision due to concerns regarding safety, not only of the neighbours, but for the Applicant. Mr. Atamaniuk indicated that he and the neighbours are concerned about the potential of the wrong type of people coming in. There have been break-ins in the community. Some crimes turn violent, and they do not want anything bad to happen to someone they know. He indicated he is a hunter and has guns. He is not opposed to guns, or small business since he has both, but indicated he is opposing this type of business in his backyard. On questioning from the Board, he stated that he believed that someone with a criminal conviction could not obtain a fire arms licence.

[11] The Board then heard from the Applicant, Mr. Grant. He indicated that he anticipates predominantly delivering guns which have been purchased, but acknowledged some buyers may pick them up. He requires municipal permission before he can obtain his firearms dealer license. He has a license to own and use both restricted and non-restricted weapons. He is currently setting up a web page through which he will be getting orders. He anticipates between 5 to 30 visitors per day. He has 2 safes: one for fire arms and another for ammunition. He will be installing another cage around the safes and inside the detached garage, which will be locked. There are 2 dogs in the back, plus his personal dog. The garage is wired with Lorex cameras, which are high quality cameras. He is not planning on conducting any training courses or fire arms repairs. He said that the storage or consignment of other people's guns will be determined by the Chief Fire Arms Officer, but is not in place now. There

are no signs advertising the business in the subdivision. He received his unrestricted license 18 months ago, and his restricted license a week ago. He will buy from registered wholesalers, and then sell them. He will not be keeping large amounts of stock on site. Weapons delivered to his location come by armoured vehicle or RCMP delivery or he can pick them up from the RCMP. Buyers will be able to pick up firearms from his house after paying a deposit and establishing that they have the appropriate certificate. He stated that he will be delivering firearms to purchasers. There will be no on-site advertising. All sales will be done via the web site and by phone. The only people coming to the Site will be committed buyers. No browsers will be permitted. To comply with the requirements to transport weapons, the firearms must be in a fully locked, opaque, unlabeled case. The firearms certificate of a prospective purchaser has the person's details on it (name, birthday, address and picture).

[12] In response, Mr. Atamaniuk stated that his concern was for safety. There is a risk someone may come to the property, see what there is, and later come back and break in.

### **DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

[13] The Board denies the appeal. The Board upholds the development permit and amends it by adding the following additional condition:

- a) The Applicant shall obtain and maintain throughout the currency of the development all required federal, provincial and municipal licences required for the operation of the business.

### **FINDINGS OF FACT**

[14] Mr. Atamaniuk is an affected person.

[15] The Site is located at Plan 8020350, Block 2 Lot 20, Municipal Address: 20-51317 Highway 60 (the "Site").

[16] The Parkland County Municipal Development Plan Bylaw 37-2007, Policy 5.10 recognizes home based business as a viable lifestyle and economic choice.

[17] The Woodbend Graminia Areas Structure Plan Bylaw 3-84 identifies county residential uses.

[18] The Site is zoned County Residential (CR) in Parkland County Land Use Bylaw 20-2009, as amended.

[19] The Home Based Business Level 2 (Firearms related sales) is a discretionary use in the County Residential district.

[20] The Home Based Business Level 2 (Firearms related sales) is compatible with the neighbouring uses.

[21] The conditions on the development permit address the concerns identified by the Appellant.

## **REASONS**

[22] The Board notes that its jurisdiction is found in section 687(3) of the Municipal Government Act. In making this decision, the Board has examined the provisions of the County's Land Use Bylaw ("LUB"), and has noted the County's Municipal Development Plan and the Woodbend-Graminia Area Structure Plan, as referenced in the Development Authority's Report. The Board has also considered the oral and written submissions made by the Appellants, the Applicant, and the Development Authority.

**687(3)** 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 the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;
- (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.

[23] Mr. Atamaniuk lives in the same subdivision as the Applicant and the Board finds that he is an affected person.

## **Land Use**

[24] The definition of Home Based Business Level 2 is:

**HOME BASED BUSINESS LEVEL 2** means an occupation, trade or craft for gain or support, conducted within the residential dwelling or its accessory buildings. It may include some client visits and the parking of one commercial vehicle and may not include on-site employees except the resident and the resident's family who permanently reside in the dwelling. Typical uses include massage therapy, spa/aesthetic services, dog grooming, landscaping/snow removal, dress making, hairdressing, home crafts and

handicrafts, picture framing, delivery services, mobile food vendors or caterers, individual instruction to students, off-site mobile repairs and installation, janitorial services, mobile entertainment services and the carrying out of minor household appliance repair and automotive repair (does not include autobody repair).

[25] The above definition does not restrict or limit the type of goods. Nothing in the definition prevents the sale of firearms as a home based business.

### **Nature of Use**

[26] The use of Home Based Business Level 2 is a discretionary use in the Country Residential (CR) zone. Therefore, as referenced in *Rosssdale Community League (1974) v. Edmonton (Subdivision and Development Appeal Board)*, 2009 ABCA 261, the Board must assess the compatibility of the use applied for with the neighbouring uses.

[14] The object and purpose of a discretionary use is to allow the development authority to assess the particular type and character of the use involved, including its intensity and its compatibility with adjacent uses.

[27] The Appellant stated that his appeal was based upon safety concerns arising from the proposed development. However, the Board also noted that the written submissions before the Board raised concerns in regard to the traffic generated by the proposed development.

[28] The Board has considered the two concerns: traffic and safety.

[29] In regard to the traffic concerns, the Board notes that the Site is located near Highway 60. There is only one property located between the highway and the Site. The Appellant's property is further away from the highway, located further east along Spanish Oak Drive. The Appellant did not raise any specific concerns in relation to traffic. Further, the Applicant advised the Board that the method of delivery of the purchased firearms would be his delivering purchased firearms, in addition to having some customers pick them up from the Site. The Board concludes that the nature of the business is not likely to create concerns in regard to traffic. The Site is near the highway. Although there was no direct evidence presented, the Board takes note that potential purchasers are likely to come from the direction of the highway to the Site. If so, there should be little traffic east of the site. While there may be an increase in traffic in front of the property between the Site and Highway 60, that property owner did not appeal and did not present any submissions to the Board. In the absence of any evidence of concern, the Board concludes that any increase in traffic arising from the proposed development would not cause the proposed development to be incompatible with the surrounding country residential uses.

[30] In regard to the concerns about safety, the Appellant's concerns appeared to the Board to be general in nature. The Appellant did not appear to have specific concerns about the security measures to be implemented by the Applicant. The Board has considered the security measures which the Applicant has indicated he will install: the two locked cases with one for firearms, the other for ammunition; the locked cage around them, a locked garage, security cameras and dogs. In relation to the transportation of fire arms, the Applicant has advised that the firearms must be transported in fully locked, opaque, unlabeled cases, which he will do. He

has also indicated that in order to sell a firearm, the purchaser must provide details of his or her firearms acquisition certificate and a deposit so that anyone coming to the location is committed to the purchase of a fire arm. The Applicant has also indicated that there will not be a sign advertising the business, which is an added measure of security. The Board also notes that the Appellant confirmed that a person with a criminal conviction is not able to obtain a firearms acquisition certificate.

[31] Having heard all of the evidence, the Board is satisfied with the security measures which the Applicant states that he will undertake. It is unclear what further or better security measures could be taken. The Board notes that the Appellant was concerned about having a business selling fire arms in the neighbourhood, has not raised specific concerns. The Board is of the view that the generalized concerns of safety have been addressed by the Applicant through the security measures which he has stated that he has or will have in place. The Appellant's concern about a potential break-in by a purchaser of fire arms is a possibility, but is remote enough that the Board does not find it a compelling reason to deny the development permit.

[32] The Board has examined all of the conditions imposed by the Development Authority. The Board is of the view that the conditions address the concerns raised by the Appellant, particularly condition 5 related to the prevention of excessive or unacceptable increases in traffic, and condition 6, regarding the protection of privacy. The Board noted that there was no condition which required the Applicant to obtain, and to maintain, required approvals from other levels of government. While the Applicant indicated that he was in the process of obtaining those approvals, the Board is of the view that imposing a condition that the Applicant obtain and maintain approvals will assist in ensuring that the business is conducted in accordance with all legislated requirements.

Issued this 1st day of December, 2016 for the Parkland County Subdivision and Development Appeal Board



Jane Smith, Chair  
SUBDIVISION AND DEVELOPMENT APPEAL BOARD

### **Correction**

[33] On December 2, 2016, Board Administration was contacted by the owner of the property immediately adjacent to the Applicant's to request a correction to paragraph 29, where the Board stated:

[29] While there may be an increase in traffic in front of the property between the Site and Highway 60, that property owner did not appeal and did not present any submission to the Board. In the absence of any concern, the Board concludes that any increase in traffic arising from the proposed development would not cause the proposed development to be incompatible with the surrounding country residential uses.

[34] The adjacent landowner requested a correction because she had written to the Board and her submissions were included in the package. The Board did review the adjacent landowner's letter as part of its review of the evidence. However, the address was blacked out and in the body of the letter, the adjacent landowner states they reside "within proximity to the location proposed in application 16-D-593". The Board notes that the adjacent landowner is not an appellant and this aspect of the decision does not need to be corrected. The Board corrects paragraph 29 by noting that the adjacent landowner did provide submissions to the Board. The concerns raised were in relation to security and traffic, both of which were addressed by the Board in its decision. The adjacent landowner also provided a comment stating the assumption that there would be no discharge of firearms on the property and as a statement does not need to be responded to specifically. The final comment was an objection to business signage on the Applicant's lands. Since the Applicant has indicated there will be no business signage on the Site, this concern has been addressed.

[35] The Board notes that the adjacent landowner's email contains further submissions. Since the hearing was closed November 21, 2016 and the time for evidence passed, the Board has not considered those submissions and is not marking that email as evidence.

This corrected decision issued this 6<sup>th</sup> day of December, 2016 for the Parkland County Subdivision and Development Appeal Board.

Jane Smith, Chair  
SUBDIVISION AND DEVELOPMENT APPEAL BOARD

*This decision may be appealed to the Court of Appeal of Alberta on a question of law or jurisdiction, pursuant to Section 688 of the Municipal Government Act, R.S.A. 2000, c.M-26. This section requires an application for leave to be filed with the Court of Appeal of Alberta within 30 days of receipt of this decision.*

**APPENDIX "A"**  
REPRESENTATIONS

**PERSON APPEARING**

- |    |               |                                  |
|----|---------------|----------------------------------|
| 1. | Ken Atamaniuk | Appellant                        |
| 2. | Joseph Grant  | Applicant                        |
| 3. | Feinan Long   | Development Planner              |
| 4. | Craig Thomas  | Supervisor, Development Planning |

**APPENDIX "B"**  
DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:

Tab	Description	Date
1.	Table of Contents and Agenda	November 17, 2016
2.	Letter of Appeal	October 23, 2016

Tab	Description	Date
3.	SDAB Report	November 17, 2016
4.	Administration Report (Development Planner)	November 14, 2016
5.	Submission of Appellant – Ken Atamaniuk (none received)	
6.	Letter in support of Appellant – Elizabeth Shen	November 8, 2016
7.	Letter in support of Appellant – Peter and Rosemarie Serafinchon	November 5, 2016
8.	Submission of Applicant – Joseph Grant	November 8, 2016