

**MINUTES OF THE MEETING OF THE PARKLAND COUNTY SUBDIVISION
AND DEVELOPMENT APPEAL BOARD HELD IN THE COUNCIL
CHAMBERS IN THE COUNTY OFFICE AT PARKLAND COUNTY, ALBERTA
ON DECEMBER 12, 2016**

CALL TO ORDER

The Chairperson, J. Smith, called the meeting to order at 4:04 p.m.

PRESENT

Members: J. Smith, G. MacDougall, D. Mattson, P. Kobasiuk, R. Underwood
Clerk: D. Tymchyshyn, Supervisor, Legal and Legislative Services
Recording Secretary: L. Tyerman, Administrative Assistant, Legal and
Legislative Services
Legal Counsel: G. Stewart-Palmer

ADOPTION OF AGENDA

Moved by D. Mattson that the December 12, 2016 Agenda be adopted as presented.

CARRIED

ADOPTION OF MINUTES

No unadopted minutes available

NEW BUSINESS:

4:10 p.m. Appointment

An appeal of a decision of the Development Authority to refuse Permit Application No. 16-D-433 for a Home Based Business Level 3 (Storage of vehicles for asphalt repair) at Pt. SE-19-53-26-W4, Municipal Address 53314 HWY 44.

The Chairperson opened the Hearing at 4:14 p.m.

The Chairperson asked if anyone affected by the Appeal had any objections to the Board members hearing the appeal, there were none.

The Chairperson introduced D. Tymchyshyn, Clerk to the Subdivision and Development Appeal Board. The Chairperson advised that it is the Board's practice to have the Clerk participate in private and in-camera discussion with the Board and asked those present if there were any objections, there were none.

The Subdivision and Development Appeal Board Clerk introduced the Appeal into the record.

Present Administration Staff

C. Thomas, Supervisor, Development Planning
K. Kozak, Assistant Development Officer

The Chairperson asked if any affected party present planned to provide any written materials not provided to the Clerk in advance of the hearing. No one came forward.

Submission of the Development Authority

Ms. Kozak read the Administrative Report into the record and provided the background of the subject file regarding Development Permit No. 16-D-433. Ms. Kozak stated that:

- The site is zoned Country Residential District.
- The site is 36 acres, located along Highway 44 and is approximately 186 m north of the Harris Acres Subdivision.

- The use of the site came to the attention of the Development Authority when complaints about noise and odor were received.
- Smart Fix Asphalt Ltd. was made aware that they would need to apply for a permit to operate a business on the site.
- The Appellant applied for a Development Permit for a Home Based Business Level 3.
- The development is asphalt repair and includes the storage and maintenance of up to 16 commercial vehicles. The vehicles are in operation during the day which generates traffic to and from the site.
- The development exceeds a Home Based Business Level 3 and meets the definition of Industrial Storage and Warehousing.
- The development is subject to but not in keeping with the provisions of the Municipal Development Plan, or Atim Creek North Area Structure plan.

Submission of the Appellant, Greg Lindgren for Smart Fix Asphalt Ltd.

Mr. Lindgren is in charge of business development for Smart Fix Asphalt Ltd. Mr. Lindgren stated that:

- Prior to Smart Fix the site was occupied by the Hardy family who operated a house moving company there until approximately 2.5 years ago. The Hardy family continues to reside in the dwelling on the site.
- The parcel is 36 acres, the development takes up less than 10 acres.
- The Development Authority failed to note that the business is seasonal.
- There is a 1 acre lot next to the site that abuts Highway 44. There is little impact on this neighbor, and the Appellant has put sea cans on the property line to provide sound attenuation. The site is buffered by trees.
- The Harris Estates county residential subdivision to the south is buffered by an intervening lot which is also approximately 36 acres in size. The Appellant has submitted letters of support from the neighbor to the south (the 36 acre lot), and the neighbor to the north, who has no issues with the Appellant's use of the site.
- The Development Authority has overstated the traffic impact. The vehicles leave in the morning, and return at night. There are 4 infrared trucks and 4 pickup trucks with trailers. However, there are other trucks on the site, like trailer and gravel trucks.
- Google images of properties in the area show similar uses and large outbuildings related to businesses.
- The best definition at the time of the application was Home Based Business Level 3.
- Statements of objection are based on the opinion of the Development Officer.
- The Atim Creek Area Structure plan does not exclude the use of a Home Based Business Level 3.
- Based on land use constraints on the property, not being able to proceed with the development would cause significant issues for the business.
- Mr. Lindgren said that he does not feel the development impacts people's enjoyment of their land.

When questioned by the Board, Mr. Lindgren answered that the sea cans are located on the property line, but if a setback was required they could be moved. He added that the Appellant would add trees that the neighbor found favorable.

When questioned by the Board, Mr. Lindgren stated that the barn located on the property is not part of the business, the barn holds 3 horses that are owned by the Hardy family.

When questioned by the Board, Mr. Lindgren said that the sea cans are used for storage of tools, but for the most part their purpose is to provide screening.

When questioned by the Board, Mr. Lindgren answered that the nature of the business is asphalt repair. Infrared asphalt trucks leave in the morning to pick up asphalt from plants and come back in the evening after work is completed. No asphalt is produced on site.

When questioned by the Board, Mr. Lindgren said that the trucks are cleaned at car washes or asphalt plants.

When questioned by the Board, Mr. Lindgren stated that there are surface propane, diesel and gas tanks on the Site. There are no underground storage tanks. The propane tanks on the infrared trucks are approximately 400 L per truck.

When questioned by the Board, Mr. Lindgren said that each of the "hot boxes" carry 3 tons of hot mix which they pick up from the asphalt plant and carry to the job site. The workers go to the job site, then come back to the site and park the vehicles. Each "hot box" (infrared truck) is driven by one employee. It is accompanied by a pickup and trailer which have 2 employees. There are 4 "hot boxes" (infrared trucks).

When questioned by the Board, Mr. Lindgren answered that regular maintenance on trucks is done on site by a Heavy Duty Mechanic employed by Smart Fix Asphalt Ltd.

When questioned by the Board, Mr. Lindgren said that no member of the Hardy family living in the house on the property worked for Smart Fix Asphalt Ltd.

When questioned by the Board, Mr. Thomas, Supervisor, Development Planning answered that there is no legislation that sets out how many commercial vehicles a Home Based Business Level 3 could have.

When questioned by the Board, Mr. Lindgren stated that to his knowledge the hot boxes do not give off a strong odor of asphalt.

When questioned by the Board, Mr. Lindgren stated that the temporary shelter (Quonset) is movable, and made of steel and canvas. The Appellant did not realize that a permit was required for a temporary structure, and if allowed to stay they would obtain any necessary permits.

When questioned by the Board, Mr. Lindgren explained that the equipment showed in photos in the agenda package were the following:

- Page 98 – Bed truck for hauling pieces of equipment, used infrequently.
- Page 99 – Dump trailer.
- Page 102 – Pavers and a hot box, meant for larger repairs, holds 4 tons of asphalt.
- Page 103 – Trailer infrared unit, used infrequently. The white piece of equipment in the photo is a 50 litre propane tank, which is used as fuel to heat the asphalt.

When questioned by the Board, Mr. Lindgren answered that there is 1 Heavy Duty Mechanic working on site.

When questioned by the Board, Mr. Lindgren answered that 90% of the site is covered in asphalt to reduce dust. He was not aware of any storm water management plan in place.

Submission in Opposition to the Appeal, Glen Merkus

Mr. Merkus is an adjacent neighbor, and has lived in the location for over 20 years. Mr. Merkus gave some background on his family's life in the neighbourhood and stated the following:

- The previous business was a house moving operation. The equipment involved a couple of moving tracks and trailers, steel beams, wood blocks, a small bob cat and limited amounts of other machinery. It was not a busy business.
- The gate on the west fence line is shared. Mr. Merkus indicated that he used this access to bring in water, firewood etc.
- In 2014 the house moving company was given notice to vacate the premises.
- Following the house moving companies departure, the noise and dust coming from the property became much worse.
- Vehicles would leave the site as early as 5:30 a.m. and return as late as 10:20 p.m.
- Large piles of asphalt appeared along the fenceline.
- Disturbances included sandblasting, heavy duty equipment and a large air compressor running for days.
- After becoming concerned with the amount of noise and dust generated from the property, Mr. Merkus pulled the land title and found that the property was still owned by the Hardy family. Mr. Merkus contacted the Hardy family about his concerns and was met with what he believed to be animosity and a "this is our land and we will do what we want with it" mentality.
- Mr. Merkus arranged to meet with Vitto Chiodo, the CEO of Smart Fix Asphalt Ltd. Mr. Merkus was told that trees would be planted along the west property line and a berm would be created.
- Saw Mr. Chiodo and an employee emptying asphalt from one of the trucks into the yard, at that time he was told that they had planned to pave the whole yard.
- Has been taking photos, videos and logs regarding the disturbances arising from the property. While taking photos of the site on a busy work day Mr. Merkus was confronted by Mr. Chiodo and a verbal dispute ensued.
- Very concerned about the constant noise of back up alarms and work being performed 7 days a week. On Saturdays and Sundays he is not able to entertain guests in the backyard due to the noise. The Spring-Fall nature of the business is exactly when Mr. Merkus and his family would like to be outside enjoying their property, and they are unable to.
- Spoke to a neighbor who said she had been woken up by the back up alarms early in the morning on a weekend.
- Mr. Merkus referenced portions of the Development Authority's report.
- Mr. Merkus directed the Boards attention to Section 12 of the Land Use Bylaw. He stated that due to the subdivision of his property from the site, his property could be considered part of a multi-parcel subdivision.
- Mr. Merkus stated that having a letter of support from an owner the north side of the property, where no one lives is pointless.
- Mr. Merkus directed the Boards attention to a photo on page 90 of the agenda package. The photo depicts 12 vehicles, none of which belong to Smart Fix, he alleged that these are vehicles belonging to employees.

- Mr. Merkus disagreed with the statements made in the Development Application, which said that due to the fact that his property abuts Highway 44 the impact of the development would be nonexistent.
- The sea cans placed on the west property line bounce sound of traffic from the highway onto his property.
- Mr. Merkus stated that run-off from the Appellant's property drains onto his land, the amount of run-off is higher since the site was paved.
- In his view the traffic trips are understated, also, tandem trucks and vacuum trucks have been seen on the site.

When questioned by the Board, Mr. Merkus answered that the neighbor who had complained of being woken up by the backup alarms lives to the South of the property. Her husband had signed a letter of support for Smart Fix Asphalt Ltd.

When questioned by the Board, Mr. Thomas, Supervisor, Development Planning, answered that to be considered a multi-parcel subdivision there would need to be 4 or more residential parcels of 4 acres or less.

When questioned by the Board, Mr. Merkus said his main concern is noise. He said that the propane tank on Smart Fix Asphalt Ltd.'s property is about 2000 gallons and is 60 to 70 meters from his deck. He was not aware of any emergency response plan.

Closing Remarks of the Appellant

In closing Mr. Lindgren stated that if the Appellant had to subdivide the property for residential lots it would be very costly. He argued that the noise coming from Highway 44 is much worse than the noise coming from the development. He stated that they are willing to provide additional buffering to please Mr. Merkus. He asked that the Board approve the permit or direct them to work with administration to figure out a favorable compromise for all parties.

When questioned by the Board, Mr. Lindgren indicated that he would need to clarify with Alberta Health and Safety if it is allowable to remove back up alarms from vehicles.

The Chairperson asked the affected parties if they had concerns with the process of the hearing that were not previously raised. There were no concerns from either party.

ADJOURNMENT

The Chairperson closed the hearing at 5:53 p.m.



CHAIRPERSON