

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

Legislative & Administrative Services Parkland
County Centre
53109A HWY 779
Parkland County, AB T7Z 1R1
Telephone: (780) 968-3234
Fax: (780) 968-8413

DATE: December 12, 2016
FILE NO.: 16-D-433

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority of Parkland County (the "County") refused a development permit application No. 16-D-433 (the "Development Permit") Smart Fix Asphalt Ltd. for the use described by the Applicant as "Storage of Vehicles for Asphalt Repair" on Pt. SE-19-53-26-W4M, Municipal Address: 53314 Hwy 44 (the "Site"). The Applicant appealed the refusal to grant the Development Permit (hereinafter referred to as the "Appellant").

PRELIMINARY MATTERS

A. Board Members

[2] At the outset of the appeal hearing on December 12, 2016, the Chair requested confirmation from all parties in attendance that there was no opposition to the composition of the Board hearing the appeal. None of the persons in attendance had any objection to the members of the Board hearing the appeal.

B. Additional Materials

[3] No additional materials were submitted at the outset of the hearing on December 12, 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.

Development Authority

[8] The Board first heard from the Development Authority. The Development Authority indicated that the Site is zoned as Country Residential (CR) District. The Appellant characterized the use as Home Based Business Level 3, but the Development Authority characterized it as being Industrial Storage and Warehousing, which is neither permitted nor discretionary in the district. The Site is approximately 36 acres, located next to Highway 44 and is approximately 186 m (+/- 613 feet) north of the Harris Acres Subdivision.

[9] The use of the Site came to the attention of the County as a result of a complaint regarding the Appellant's use of the Site. The Appellant applied for a development permit for a Home Based Business Level 3. The nature of the use is for asphalt repair and includes the storage and maintenance of up to 16 commercial vehicles and equipment resulting in 32 vehicle movements. The vehicles are stored overnight and are in operation during the day, generating traffic to and from the Site. The Appellant proposed having three shipping containers on the Site intended to provide screening.

[10] Section 3 of the County's Municipal Development Plan Bylaw No. 37-2007 ("MDP") sets out policies for residential development. The objectives for residential development are to promote a range of housing types, and to retain the character of country residential subdivisions. The Development Authority is of the view that since the primary use is Industrial Storage and Warehousing, it will not promote a range of housing types. Further, it will not encourage the development of attractive housing, nor does it retain or add to the character or quality of life aspects.

[11] The Site is covered by the provisions of the Atim Creek North Area Structure Plan, Bylaw No. 26-2002, as amended (the "ASP"). One of the goals of the ASP is to provide for the expansion of country residential development. An industrial use may impede such expansion. The proposed development is not mindful of the attractive attributes of the ASP area. Further the ASP provides that the only industrial use permitted in the plan area is Natural Resource Extraction, and the proposed use is Industrial Storage and Warehousing.

[12] The development is not consistent with the MDP or ASP.

[13] The Development Authority provided the Board with the relevant use definitions. The Land Use Bylaw defines Home Based Business Level 3 as:

HOME BASED BUSINESS LEVEL 3 means trade or craft for gain or support conducted within the residential dwelling and/or accessory building and includes all home based businesses not considered Home Based Businesses Level 1 or Level 2. It may include up to four (4) on-site employees in addition to the resident and the resident's family who permanently reside in the dwelling. Typical uses include contractor services, parking of

commercial vehicles in excess of Home Based Business Level 2, automotive and autobody repair and on-site fabrication. This use class does not include more intensive Industrial type of uses that present exterior impacts such as noise, smoke, steam, odour, dust, fumes, exhaust, vibration, heat, glare, refuse matter, and storage of hazard or combustible materials which should be located in an industrial district.

[14] The Land Use Bylaw defines Industrial Storage and Warehousing as:

INDUSTRIAL STORAGE AND WAREHOUSING means development (including a security suite as defined by this Bylaw used solely for security purposes) used for either indoor or outdoor storage, warehousing, distribution or trans-shipment of raw materials, partially processed or finished goods, manufactured products, or equipment. Typical facilities would include pipe yards, heavy equipment service and storage, lumber yards, storage/warehousing compounds or distribution centres. Generally no additional processing would occur on site.

[15] The definition of Home Based Business Level 3 provides that uses do not include more intensive industrial uses with exterior impacts, such as noise, fumes, dust, etc. and may have up to 4 on-site employees in addition to the resident and family of the resident. Here, based on the number of commercial vehicles, plus 12 employees coming and going, the Development Authority determined that it does not meet the definition of Home Based Business Level 3.

[16] The Development Authority determined that the development is Industrial Storage and Warehousing, which is neither permitted nor discretionary in the district. Therefore, the application was denied.

[17] If the Board determines the use is a Home Based Business Level 3, the Board should consider the use as discretionary, and address the impacts of the use on the neighbouring properties, including generation of noise, etc.; the privacy of adjacent neighbours, the parking of vehicles; and the fact that only 4 additional employees may be permitted as part of the development. The Development Authority has provided recommended conditions for the Board's consideration, in the event the Board approves the development permit.

[18] In response to Board questions, the Development Authority confirmed that a home based business does not need to be the landowner, but the intention of the use is that the resident lives in the home and has his or her business in the home. The home based business must be accessory to the residential use. The Land Use Bylaw does not contain any express limits on the number of commercial vehicles for a Home Based Business Level 3.

Appellant

[19] The Board next heard from the Appellant, Smart Fix Asphalt Ltd., by its principal, Mr. Greg Lindgren. Mr. Lindgren is in charge of business development for the Appellant. He indicated that until approximately 2.5 years ago, the Site was occupied by the Hardy's who had a house-moving company on the Site. The Appellant acquired the property in December 2015, after having leased it for the storage of their equipment for 2.5 years before then.

[20] The Site is approximately 36 acres, but the development area is 10 acres which includes the house, barn and septic field. The area used for storage is approximately 2 to 2.5 acres. All vehicles and equipment will be stored inside in the off-season in the Quonset which is a canvas covered structure. Smart Fix Asphalt Ltd. is a seasonal business operating from April 15 to October 15, which he stated had less impact than a year round operation.

[21] Mr. Lindgren stated there is a 1 acre lot next to the Site, which 1 acre lot abuts Highway 44. He stated that 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.

[22] Mr. Lindgren stated that 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.

[23] He stated that the best definition at the time of the application was Home Based Business Level 3. The intent of the county residential zoning is to subdivide and create smaller county residential lots. Based upon the ASP, portions of the Site are within the flood plain area, and therefore, it is not possible to subdivide the lands further. If there were to be further subdivision, the resulting lots would be costly. There are no references in any policy document indicating that the use of Home Based Business Level 3 is prohibited, the Administration report contains only the Development Authority's opinion. Section 7.3 of the ASP speaks to industrial and commercial uses, but does not prohibit home based businesses, nor does it have policies for home based businesses. In his submission, the development meets the definition of Home Based Business Level 3.

[24] He submitted that the circumstances regarding the Site are different from other lands within the ASP. He submitted that there was no impact on any neighbouring parcel in terms of use, value or enjoyment. He asked the Board for approval of the development permit. The Appellant wanted to work with the County to ensure it can store its equipment on the Site.

[25] In response to Board questions, Mr. Lindgren stated the sea cans are currently on the property line, but the Appellant will move them if a setback is required. They will work with the neighbour to put them into a favourable position. The Appellant would put in additional trees, but did not know what kind would be favourable to the neighbour. The Appellant will satisfy conditions, if they are imposed on the permit.

[26] Mr. Lindgren stated that the sea cans are used for storage of tools, but also to provide a screen for noise and visibility. The nature of the business is asphalt repair. The self-contained "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). There is also a small paver and larger paver used to do paving. There is no production or plant on the Site –

they go to an asphalt plant to pick up the asphalt. There are 12 employees for the appellant's operations.

[27] The vehicles are cleaned at a carwash. The hoppers are periodically unloaded at the Site, and then the material is taken away. Each "hot box" has a propane tank to keep the asphalt warm. 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. Mr. Lindgren was not sure of the size of the propane tanks on the Site.

[28] Mr. Lindgren stated the intention is to do vehicle maintenance on the Site, and there is a heavy duty mechanic working full time doing regular maintenance. Mr. Lindgren confirmed that the people who live on the Site are not employed by the Appellant. It is not a home based business of anyone who lives on the Site.

[29] In response to Board questions about concerns raised about noise and odor, Mr. Lindgren stated that the trucks do not leave at 6 am. The Appellant tries to work with the neighbours. The neighbour to the south had a concern about the back-up alarms. In response, the Appellant has asked its mechanic to put toggle switches on the back-up alarms so that the alarms can be turned off when the trucks enter the yards.

[30] Mr. Lindgren provided an explanation of the equipment found on the Site referencing pages 98, 99, 100, 102 and 103 of the Exhibits. The equipment included a dump trailer, a paver, a "hot box", and an infrared unit.

[31] The Appellant has paved a significant amount of the surface of the Site which used to be gravel. They do not have a storm water management plan for the run off, and did not know one was required. The creek is on the edge of the Site, and the surface water runs into the creek for drainage.

[32] The Quonset does not have development approval, but the Appellant confirmed it will obtain approval for it, if the development permit for the use is granted.

[33] In his closing statement, Mr. Lindgren argued that the Merkus's property is more affected by the traffic on the highway, than by the noise created by the Appellant's use of the Site. He has spoken with the south most neighbour and their concern is the back-up alarms which they will be addressing. There is no work done on Saturday and Sunday and no business on the Site on those days.

Adjacent Neighbour

[34] The Board then heard from Mr. Glen Merkus who has lived for over 20 years on the small one acre parcel which is immediately adjacent to the Site. He provided the Board with the history of his experiences with the previous owner of the Site, noting that they had horses and moved the bales with a bobcat. In the summer, it was rare to hear a back-up beeper. In the winter, it was every 4-5 days.

[35] He stated that the previous owner did have the equipment used in his house moving company on the Site, but Mr. Merkus did not complain.

[36] He stated that things changed in 2014, when the house moving company was given notice to leave the property. There was a significant amount of noise following that change. He spoke with the neighbours on the Site, asking them if there was something they could do to reduce the noise. He stated the vehicles leave the Site as early as 5:30 am, and come back as late as 10:20 pm. There are large piles of asphalt along the fence line. There was sand blasting, and mobile heavy duty equipment on the Site creating noise and dust. There was a big air compressor running for days on end. He complained to the then landowners, who indicated they could do what they wanted with their property.

[37] He stated that he spoke with one of the principals of the Appellant, and was promised that there would be trees planted on the west property line and a berm created. However, this was not done. The Appellant removes asphalt from the trucks onto the Site.

[38] He stated his biggest concern is the noise. There are packers, earth moving equipment, the sound of trucks idling and back-up beepers in the early morning, and at 6:30 in the morning on Saturdays and Sundays. On Saturdays and Sundays, they cannot enjoy the outside of their home. He stated the seasonal nature of the Appellant's business is exactly the time that they wish to be outside on their deck or in their garden. They cannot entertain on their deck due to the noise.

[39] He felt that due to the subdivision of his property from the Site, they have a multi-parcel country residential subdivision. He felt the sea cans bounce the sound off from the highway and negatively affect him. The drainage from the Site goes into his property. While it may have always done so, due to the increased amount of paving on the Site, the amount of run off has increased. This year, there were 3 trucks parked on the Site from Shane's Landscaping, and they only shut down in the most recent cold snap, long after October 15. In his view, the traffic trips are understated, and he indicated there are tandem trucks, and vacuum trucks on the Site. He feels there is an impact and there will continue to be one. He asked for the Board to deny development approval.

[40] In response to Board questions, he stated that the Appellant's propane tank is 2000 gallons and it is only 60 to 70 meters from his deck. He does not know if there is an emergency response plan in place.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[41] The Board denies the appeal and upholds the Development Authority's refusal of the Development Permit application.

FINDINGS OF FACT

[42] The Site is located at Pt. SE-19-53-26-W4M, Municipal Address: 53314 Hwy 44.

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

[44] The use is not a Home Based Business Level 3.

[45] The operations of Smart Fix Asphalt are wholly separate from the residential use on the Site.

[46] The use does not fall within any other permitted or discretionary use within the County Residential District.

[47] Since the Use is neither permitted nor discretionary within the District, the Board cannot approve the use.

[48] The proposed use is not in compliance with the Parkland County Municipal Development Plan Bylaw 37-2007 or the Atim Creek Area North Structure Plan Bylaw.

[49] The adjacent neighbor, Mr. Merkus, is an affected person.

REASONS

[50] 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 Atim Creek Area Structure Plan, and the provisions of the Parkland County Land Use Bylaw as referenced in the Development Authority's Report. The Board has also considered the oral and written submissions made by the Appellant, Smart Fix Asphalt Ltd., through its principal Mr. Lindgren, the adjacent neighbor, Mr. Merkus, 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.*

Affected Persons

[51] The Appellant applied for and was refused a development permit. It is affected by the refusal and the Board finds it is an affected person.

[52] Mr. Merkus lives immediately adjacent to the Site and is affected by the impacts of the development. The Board finds that he is an affected person.

Land Use

[53] The property is zoned County Residential (CR) District (see section 5.1 of the Land Use Bylaw).

Nature of Use

[54] Within Section 5.1, the purpose of the County Residential District is:

1. Purpose

To provide for traditional multi-parcel country residential subdivision/development identified in a statutory plan for that use and related uses, including minor agricultural pursuits. Subdivision and development may be serviced by private on-site systems.

[55] Within section 5.1, Home Based Business Level 3 is a Discretionary use, but must be compliant with section 12.9 (Home Based Business). The following note is also found in section 5.1:

Compliant with Section 12.9 Home Based Business

With the exception of an auto body business including auto body shop and steel fabrication shop on NE 12-51-27-W4M within 152.4 m (500 ft.) of a multi-parcel residential subdivision

[56] Section 12.9.3 of the County's Land Use Bylaw

3. The following provisions shall apply to Level 3 Home Based Businesses:

a) with the exception of the CRWL – Country Residential Work/Live District, a home based business level 3 is neither permitted nor discretionary within a multi-parcel residential subdivision (excluding rural centres) or row housing development and/or if the location of the development is within 152.4 m (500.0 ft.) of a multi-parcel residential subdivision (excluding rural centres) or row housing development;

b) outside storage of goods, materials, commodities or finished products shall be at the discretion of the Development Authority;

- c) *the display or placement of signage on the premises of a home based business shall be in accordance with Subsection 15.5;*
- d) *the home based business use shall not generate noise, smoke, steam, odour, dust, fumes, exhaust, vibration, heat, glare, refuse matter and storage of hazard or combustible materials considered offensive or excessive by the Development Authority;*
- e) *at all times the privacy of the adjacent residential dwellings shall be preserved and the Home Based Business use shall not unduly offend neighbouring or adjacent residents by way of excessive lighting, late calling of clients of an unreasonable number, traffic congestion, or excessive on-street or off-street parking, etc;*
- f) *the parking of any commercial vehicles, including the number considered and location, shall be at the discretion of the Development Authority, notwithstanding, the parking of school buses in excess of the number allowed shall be as per the Community Standards Bylaw;*
- g) *in addition to the resident and the resident's family who permanently reside in the residential building on the subject parcel, up to four (4) additional other employees may be permitted as part of the approval and operation of a home based business level 3, if deemed appropriate by the Development Authority; and*
- h) *the business owner shall obtain a Business License pursuant to the County's Business License Bylaw.*

Is the Use a Home Based Business Level 3?

[57] The first question for the Board to determine is what is the use being applied for. The Board heard from the Appellant which indicated that the use was a Home Based Business Level 3, stating that the reasons for refusal were the opinions of the Development Authority, and not founded in regulations.

[58] By contrast, the Development Authority determined that the use was not a Home Based Business Level 3, but that it was an Industrial Storage and Warehousing use.

[59] The Board has examined the definition of Home Based Business Level 3 and notes that in interpreting legislation, the Board must use a broad and purposive analysis to determine the meaning. The definition is comprised of the following elements:

- a) A trade or craft for gain or support.
- b) The trade or craft is conducted within the residential dwelling and/or accessory building.
- c) It includes all home based businesses not considered Home Based Businesses, Level 1 or Level 2.
- d) It may include up to four (4) on-site employees in addition to the resident and the resident's family who permanently reside in the dwelling.

- e) This use class does not include more intensive Industrial type of uses that present exterior impacts such as noise, smoke, steam, odour, dust, fumes, exhaust, vibration, heat, glare, refuse matter, and storage of hazard or combustible materials which should be located in an industrial district.

[60] The Appellant has established that the first element: it is using the Site to make money (thereby establishing it is a "trade ... for gain").

[61] The second element requires the trade to be conducted within the residential dwelling or accessory building, or both. The evidence presented in the hearing is that there would be storage of the vehicles and equipment in a Quonset. The Appellant has established that the business is conducted utilizing an accessory building on the property, but is not at all times contained to just that accessory building, with outdoor storage and regular movement of vehicles on and off the site.

[62] The third element is that the business is a home based business. The Board interprets this element to mean that a resident of a site conducts the business either in the residential dwelling, or in an accessory building on the property. However, the Appellant was clear that no-one living on the property is at all associated with the use. The Board accepts the evidence of the Development Authority that the intention of the Home Based Businesses are that they are to be accessory and secondary to the primary residential use of the property. In the present case, there was no evidence presented of any connection at all between the residential use of the property and the development for which approval was sought. The Board finds that there can be no home based business without that link. In the present case, the Board finds as a fact that the business operations of Smart Fix Asphalt are wholly separate from the residential use. The use for which development approval has been sought is not accessory to the residential use. Therefore, the second element of a home based business – the connection to the "home" has not been established by the Appellant. The third element also has not been met, because the Appellant has failed to establish the connection to the residential use.

[63] The fourth element has not been met. The evidence of the Appellant is that there would be 13 employees (4 "hot boxes" and 3 employees associated with each "hot box" = 12 employees plus the on-site mechanic), and does not include anyone living in the residence. This exceeds the maximum of 4 on-site employees by 9 employees, thus removing it from the definition of Home Based Business Level 3.

[64] The final element provides that the use does not include more intensive Industrial type of uses that present exterior impacts such as noise, smoke, steam, odour, dust, fumes, exhaust, vibration, heat, glare, refuse matter, and storage of hazard or combustible materials which should be located in an industrial district. The un-contradicted evidence at the hearing from Mr. Merkus was that trucks were idling and backing up as early as 5:30 in the morning, and as late as 10:20 pm. Mr. Merkus indicated that he was not able to enjoy his deck or have company over or enjoy his garden due to the noise from the use. The Board accepts the evidence of Mr. Merkus that there is a 2000 L propane tank 60-70 meters from his deck and the evidence from Mr. Lindgren that each of the "hot boxes has a 400L propane tank. The Board heard no evidence of any emergency management plan from the Appellant. Due to the noise and the storage of combustible materials on the Site (propane), the Board finds that the use does not meet this element of the definition of Home Based Business Level 3.

[65] For the reasons set out above, the Board finds the use is not a Home Based Business Level 3. Because the use is not a Home Based Business Level 3, the Board does not need to consider section 12.9.3 of the Land Use Bylaw which is applicable only to Home Based Business Level 3.

[66] The Board is mindful that section 687(3)(d)(ii) prohibits the Board from approving a use which is not permitted or discretionary in a district. The Board has examined all of the uses, both permitted and discretionary, within the County Residential District. The Board concludes, based upon the evidence it heard during the hearing that the use for which development approval is sought does not fall within any of the definitions of any permitted or discretionary use within the County Residential District. Therefore the Board cannot approve the Use.

[67] The Development Authority has indicated that it determined that the use is Industrial Storage and Warehousing, which is neither permitted nor discretionary in the County Residential District. The Board has determined that it is not necessary to definitively answer the question of the nature of the use, having determined that it is not a Home Based Business Level 3, and that it does not fall within the definitions of any permitted or discretionary use in the County Residential District.

[68] However, had the Board determined that the use was a Home Based Business Level 3 (which it did not), the Board would have had to determine the compatibility of the use with the neighbouring uses. The Board would have drawn the conclusion that the use is not compatible with the neighbouring uses due to the impact of noise. The uncontroverted evidence was that vehicles on the Site are started, idle and use their back up beepers causing a negative impact to adjacent neighbours, including Mr. Merkus and the neighbor to the south, and that the noise has prevented Mr. Merkus from using his deck and having company during the summer. The Board accepts that the impact of a summer seasonal business is significant given the fact that summer is the time that people go into their yards to enjoy the outdoors, or to sit on their decks and enjoy the company of friends and relatives.

Municipal Development Plan

[69] Although it may not be necessary for the Board to examine the statutory plans due to its conclusion regarding the use (not a Home Based Business Level 3 and not otherwise permitted or discretionary within the County Residential District), the Board sets out its assessment of the compliance of the development with the County's Municipal Development Plan Bylaw 37-2007. The development is contrary to the MDP goals for Residential Development.

Goal

The County supports appropriately located and serviced country residential subdivisions as the residential option to meet the diverse housing and lifestyle needs of its residents.

Objectives

- Promote the development of a range of housing types and locations, capable of meeting the diverse needs of County residents.
- . . .
- Encourage the development of attractive residential environments;

- Retain the character, amenities, and quality of life aspects of existing country residential subdivision while encouraging more diversity.

[70] A development of the nature described by the Appellant will not promote a range of housing types. The Board finds that having a development with significant noise as described will not encourage the development of attractive residential environments. In fact, it may discourage future residential developments due to the impact of the development on neighbouring properties. The development will detract from the amenities of life, rather than enhancing them due to the impacts of noise.

[71] The Appellant stated that the Site, or a portion of it, fell within the flood plain identified in the Atim Creek North Area Structure Plan Bylaw ("ASP"). If this is so, the development does not comply with policy 6.5.1 which provides that the use of land within the flood plain area shall be extensive agricultural or habitat conservation. The Site is within the Country Residential Core area, and the development is contrary to policy 6.3.1 which provides that the primary use is country residential. Although the Board has not made a determination as to the specific nature of the use, the Board notes policy 7.3.6 prohibits all industrial uses in the plan area, except natural resource extraction operations. The use is not residential (as discussed above) and is not natural resource extraction. The Board heard no evidence that it was commercial. The only other possible use type is industrial, which makes the use contrary to this policy.

[72] The Board finds that the development is contrary to the ASP.

[73] For the above reasons, the appeal is denied.

Issued this 21st 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. Kim Kozak, Development Planner
 2. Craig Thomas, Supervisor, Development Planning
 3. Mr. Greg Lindgren, Smart Fix Asphalt Ltd.
 4. Mr. Glen Merkus

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

1.	Table of Contents and Agenda	
2.	Letter of Appeal	November 24, 2016
3.	Submission of the Applicant/Appellant	November 24, 2016
4.	Letter in support of the Appeal H. Ahlskog	December 6, 2016
5.	Letter in support of the Appeal D. Victoor	December 6, 2016
6.	Submission of the Development Authority	December 6, 2016
7.	SDAB Clerk's Report	December 8, 2016