

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
PARKLAND COUNTY**

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DATE: January 29, 2018  
FILE NO.: 82-D-019

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

**INTRODUCTION**

[1] The Development Authority of Parkland County (the "County") granted development permit No. 82-D-019 to Border Paving Ltd. (the "Applicant") for the continuation of Natural Resource Extraction/Processing (the "Development Permit") on NW-22-50-4-W5M, Municipal Address: 4229 Township Road 504, Parkland County (the "Site"). The Applicant appealed the imposition of three conditions to the Development Permit.

**PRELIMINARY MATTERS**

**A. Board Members**

[2] At the outset of the appeal, 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 hearing.

**C. Miscellaneous**

[4] The Board marked the exhibits as set out on the list 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 "MGA").

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

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

[7] The Board allows the appeal. The Development Permit conditions are varied as set out below, and the balance of the conditions are confirmed.

4. Hours for Hauling

The removal of sand and/or gravel from the pit location (hauling) shall take place only within the hours specified below:

6:00 a.m. to 6:00 p.m. Monday to Friday

8:00 a.m. to 4:00 p.m. Saturday  
No hauling on Sundays.

Condition 10 is deleted.

Condition 12 is deleted.

## **SUMMARY OF HEARING**

[8] 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.

### **A. Development Authority**

[9] The Board heard from the Development Authority.

[10] The Development Authority indicated that the Site is zoned as Agriculture/Nature Conservation (ANC) District.

[11] The Site is also subject to the Municipal Development Plan, Bylaw 2017-14. The Development Authority advised that the Development is generally consistent with section 5 of the Municipal Development Plan, Economic Competitiveness and Employment.

[12] The Site is not subject to an area structure plan.

[13] The Development Permit was originally approved in 1982 for gravel extraction with a one year expiry date. The existing gravel extraction operation on the Site is part of a larger gravel pit operation on N-22-50-4-W5M and S-27-50-4-W5M on a total of 116 hectares (287 acres).

[14] Since 1982, the Development Permit has been approved on a time-limited basis and continually approved upon re-application. The most recent re-approval was in November, 2012, at which time the Subdivision and Development Appeal Board issued the Development Permit and imposed conditions, which included a 5-year expiry date.

[15] On November 27, 2017, the Applicant applied to continue the use of Natural Resource Extraction/Processing on the Site and did not request any changes to the conditions in the 2012 Development Permit. On December 4, 2017, the Development Authority approved the application with the same set of conditions issued by the Subdivision and Development Appeal Board in 2012.

[16] The Applicant has obtained all necessary registrations and approvals for the gravel pit under the Code of Practice for Pits and the Water Act.

[17] On December 21, 2017, The Applicant appealed the following conditions to the Development Permit:

#### **4. Hours for Hauling**

The removal of sand and/or gravel from the pit location (hauling) shall take place only within the hours specified below:

7:00 a.m. to 7:00 p.m. Monday to Friday

8:00 a.m. to 4:00 p.m. Saturday

No hauling on Sundays

10. Trucks while hauling on Range Road 43 shall not use Jake brakes (engine

brakes).

12. This development permit does not allow for the production of asphalt.

[18] The Applicant has requested that Condition 4 be varied to permit hauling from 6:00 a.m. to 6:00 pm. Monday to Friday and that Condition 10 and Condition 12 be removed.

[19] The Development Authority supports the Applicant's request to revise the conditions.

[20] With respect to the hours for hauling, Section 12.12.6 ("Hours of Hauling") under Land Use Bylaw 2017-18 requires the hours of hauling for a gravel pit operation to be:

6:00 a.m. to 6:00 p.m. Monday to Friday

8:00 a.m. to 4:00 p.m. Saturday

No hauling on Sundays

[21] Changing the hours of hauling as requested would make the Development Permit compliant with the requirements under the Land Use Bylaw, as well as with nearby gravel operations, which have hours of hauling from 6:00 a.m. to 6:00 p.m. Monday to Friday. Consistency in requirements would enable to County to undertake effective enforcement when needed.

[22] With respect to the condition that engine brakes not be used, the Applicant has advised that engine brakes are required to ensure the safe operation of its trucks. The area surrounding the Site is hilly and a prohibition on engine brakes is a safety issue.

[23] In response to questions from the Board, the Development Authority advised that there have not been any complaints about noise related to the use of engine brakes in the area. There had previously been complaints of this type, but the individual making most of those complaints no longer resides in the area. There have not been any noise complaints with respect to the gravel pit on the Site.

[24] The Development Authority also advised the Board that the County does not have the authority to prohibit the use of engine brakes. The Development Authority also advised that they are not aware of any similar restrictions on other gravel pits in the area.

[25] With respect to the condition that asphalt production is not permitted on the Site, the Development Authority advised that this condition was likely added to the 2012 Development Permit in error. Asphalt production has been occurring on the Site since 2011, and the Applicant holds a permanent development permit for an asphalt plant on the Site.

[26] In response to Board questions, the Development Authority confirmed that Condition 12 was a clerical error that had not been caught following the issuance of the Development Permit in 2012. They are now simply seeking to correct this oversight.

**B. Applicant Border Paving Ltd.**

[27] No one appeared at the hearing on behalf of the Applicant, nor did the Applicant make any written submissions in support of the appeal.

**FINDINGS OF FACT**

[28] The Site is located at NW-22-50-4-W5M, Municipal Address: 4229 Township Road 504, Parkland County.

[29] The Site is zoned Agriculture/Nature Conservation (ANC) District in Parkland County Land Use Bylaw 2017-18, as amended.

[30] Natural Resource Extraction/Processing is a discretionary use in the Agriculture/Nature Conservation (ANC) District.

[31] The Development is consistent with the Municipal Development Plan, Bylaw 2017-14.

[32] The Applicant is an affected person.

## **REASONS**

[33] The Board notes that its jurisdiction is found in section 687(3) of the MGA. In making this decision, the Board has examined the provisions of the Land Use Bylaw, and has noted the provisions of the Land Use Bylaw as referenced in the Development Authority's Report. The Board has also considered the oral and written submissions made by the Development Authority.

### **A. Affected Persons**

[34] No one spoke in favour of or against the appeal.

[35] Although it may not be required to expressly address the status of the Applicant, in order to be clear, the Board finds the Applicant affected because it has appealed the conditions of the Development Permit.

### **B. Statutory Plans**

[36] The Site is within the Municipal Development Plan, Bylaw 2017-14. However, as this appeal is only of certain conditions to the Development Permit, the Board does not find it necessary to examine the Municipal Development Plan, other than to note that the Development is generally consistent with section 5 of the Municipal Development Plan.

### **C. Land Use**

[37] The Site is zoned Agriculture/Nature Conservation (ANC) District (see section 4.3 of the Land Use Bylaw). Within section 4.3, Natural Resource Extraction/Processing is a discretionary use.

### **D. Conditions**

[38] The Board heard evidence from the Development Authority that it supported the Applicant's request to revise the conditions to the Development Permit. Otherwise, no one spoke for or against the Applicant's request.

#### **1. Hours of Hauling**

[39] The Board heard evidence that the hours of hauling set out in Condition 4 of the Development Permit were continued from the 2012 Development Permit. However, the Land Use Bylaw and other development permits for gravel pits in the area permit different hours of hauling. The Board also heard evidence that ensuring consistency of hauling hours among all gravel pits in the area would make enforcement more effective for the County when necessary.

[40] The Board finds that Condition 4 of the Development Permit does not comply with the hours of hauling set out in the Land Use Bylaw. It also makes sense for all gravel pits in the County to have the same hours of hauling to assist in effective enforcement.

[41] Condition 4 of the Development Permit should be varied to permit the hours of hauling from 6:00 a.m. to 6:00 p.m. to ensure compliance with the Land Use Bylaw and consistency with other gravel pits in the area, and the Board makes this change to the condition.

## **2. Engine Brake Prohibition**

[42] The Board heard evidence that the prohibition on the use of engine brakes set out in Condition 10 had been continued from the 2012 Development Permit. The Board accepts the evidence that the County does not have the authority to prohibit the use of engine brakes. The Board also accepts the evidence of the Development Authority that there have been no recent complaints in regard to noise. Therefore, the removal of this condition should not affect neighbouring uses.

[43] The Board finds that Condition 10 of the Development Permit must be deleted as a prohibition on the use of engine brakes is not within the jurisdiction of the County, and therefore makes this change to the conditions.

## **3. Asphalt Production Prohibition**

[44] The Board heard evidence that the prohibition on asphalt production set out in Condition 12 was a clerical error that had been carried over from the 2012 Development Permit. The Board also heard evidence that the Applicant has a permanent development permit for an asphalt plant on the Site.

[45] The Board accepts that there is no reason to include this prohibition in the Development Permit, and finds that Condition 12 of the Development Permit should be deleted, and therefore makes this change to the conditions.

[46] For the above reasons, the appeal is allowed.

Issued this 9<sup>th</sup> day of February, 2018 for the Parkland County Subdivision and Development Appeal Board



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Barb Williams, SDAB Clerk for  
Phyllis Kobasiuk, 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

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### **PERSON APPEARING**

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1. Feinan Long, Development Planner
2. Karen Kormos, Development Officer

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

Exhibit	Description	Date	Pages
January 29, 2018			
1.	Table of Contents and Agenda	January 23, 2018	1
2.	Letter of Appeal	January 1, 2018	2-3
3.	Submission of the Development Authority	January 22, 2018	4-33