

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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HEARING DATE: September 24, 2018
FILE NO.: 18-D-289

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority of Parkland County (the "County") approved a development permit application made by Alberta Rock Products (the "Applicant") for a gravel storage and sales yard at Lot 629 and 631, Block 1, Plan 1224428 Acheson Zone 5, NE 32-52-26-W4 (the "Site"). The proposed use of the Site is for a commercial and residential gravel and landscaping material storage and sales yard with a 24' x 36' portable office.

[2] Jeremy McConnell of United Construction, Bill Burnett of Trailblazer RV Centre, and Robert Young of Techmation Electric & Controls Ltd. appealed the issuance of development permit 18-D-289 (the "Development Permit").

PRELIMINARY MATTERS

A. Board Members

[3] At the start of the hearing, the Board asked if anyone had an objection to the panel hearing the appeal. There were no objections raised regarding the panel members.

B. Exhibits

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

[5] At the beginning of the hearing, the Applicant's representative, Mr. Keltie, indicated he wished to submit a copy of his speaking notes to the Board, which were not previously submitted. During the hearing, the Board, through its questions of the Development Authority, requested documents that had not been previously submitted. All the documents were circulated to the Appellants and the Applicant, and there were no objections to the documents being submitted and no one requested an adjournment as a result of the submission of the documents. The Board marked the new documents as exhibits, as indicated at the end of this decision.

C. Miscellaneous

[6] The appeal was filed in time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the "MGA").

[7] The Board is satisfied that it has jurisdiction to deal with this matter. There were no objections to the proposed hearing process. There were no preliminary matters raised at the beginning of the hearing.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[8] The Board denied the appeal and varied the conditions of the Development Permit. The Development Permit is issued subject to the following conditions:

- a) Prior to the issuance of building permits, the Applicant shall provide the following:
 - i. Revised engineering drawings to the satisfaction of the Development Authority in consultation with the County's Land Development Engineering unit.
 - ii. A revised landscaping cost estimate and a security deposit in the amount of 100% of the cost estimate of the landscaping, as outlined in the approved landscaping plan. The security shall be in the form of cash or an irrevocable letter of credit.
 - iii. A security deposit in the amount of \$5,000.00 for the construction of two (2) new approaches. The approaches must be built to comply with Parkland County's Engineering Design Standard, to the satisfaction of the Development Authority in consultation with the County's Land Development Engineering unit.
- b) The Applicant shall ensure that a drainage easement is registered at Alberta Land Titles for the proposed swale between Lot 629 and 631, to the satisfaction of the Development Authority.
- c) The proposed development shall conform to the stamped approved plans and shall not be moved, altered or enlarged except where authorized or directed through this permit approval.
- d) The display or placement of signage on the premises shall be in accordance with Subsection 15.3 as per Parkland County's Land Use Bylaw 2017-18.
- e) As per Parkland County Policy all commercial and industrial outdoor lighting installations and outdoor luminary replacements requiring an electrical permit shall be Dark Sky compliant.

- f) The Applicant shall remove all garbage and waste at its own expense and keep the site in a neat and orderly manner.
- g) All drainage and grading improvements shall be in accordance with the approved site drainage/grading plan.
- h) All development shall be landscaped in a manner to prevent any surface run-off onto adjacent properties.
- i) The Applicant shall upgrade the office building and shed in appearance, with facades that apply compatible and harmonious exterior finishing, specifically by
- i. Skirting all around the office building so that the skids are hidden from view.
 - ii. Installing professional siding that is compatible and harmonious with the adjacent buildings, such as a blue or red siding material.
 - iii. Installing siding on the shed that matches the office building.
 - iv. Installing a railing around the front deck of the office building.
 - v. Painting the deck and the stairs of the office building.
 - vi. Installing newer awnings over the windows of the office building that match with the new façade of the office building.
- j) The Applicant shall treat the gravel piles and other gravel surfaces on the Site with an effective, environmentally friendly dust suppressant as required to prevent nuisance from dust to neighbouring properties.
- k) The Applicant shall plant 4" caliper trees along the east side of the Applicant's property that are mutually agreed upon by the Applicant and Trailblazer RV Centre. The east side is along the property line that abuts Trailblazer RV Centre. The trees shall be planted in two staggered rows and shall be planted in the 6 metre setback area.
- l) The Applicant shall add privacy slats to the existing fence on the east side of the property, if the fence does not already have privacy slats.
- m) The gravel piles on the Site shall be piled no more than ten feet in height.
- n) The Development Permit shall be in effect for five years starting on the date the Board's decision is issued to the Applicant.
- o) Any proposed changes shall first be submitted for review by the Development Authority. Any changes considered substantial or inconsistent with this approval, as determined by the Development Authority, may require separate development permit approval.

p) Failure to comply with the conditions of this permit may result in the permit being cancelled and or revoked.

SUMMARY OF HEARING

[9] The following is a brief summary of the oral and written evidence submitted to the Board. At the beginning of the hearing, the Board indicated that it had reviewed all the written submissions filed in advance of the hearing.

Development Authority

[10] The Site is located within the Business Industrial (BI) District. The use of Industrial Storage and Warehousing is a discretionary use in accordance with section 7.1.2(c) of Land Use Bylaw 2017-18, ("LUB").

[11] The Development Authority deemed the application complete on July 9, 2018 and issued the Development Permit subject to conditions on August 14, 2018. The application proposed to use Lots 629 and 631 for commercial and residential gravel and landscaping material storage and sales yard, with a 24' x 36' portable office. There would be up to three employees working on the Site, with approximately 20 visits per day. The hours of operation are 8 am to 5 pm, up to 6 days a week.

[12] The Development Authority submitted that the proposed use was generally consistent with the relevant statutory documents as defined in the MGA.

[13] The Development Authority considered section 20.3 ("Use Class Definitions") of the LUB, which 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.

[14] The Development Authority determined that the gravel storage and sales yard was considered an Industrial Storage and Warehousing use, since the properties were intended for outdoor storage and distribution (sales) of finished products for commercial and residential landscaping purposes. As a discretionary use in the Business Industrial (BI) District, the Applicant has a right to this use if it is deemed reasonably appropriate and in compliance with the provisions set out in the LUB.

[15] The Development Authority determined that the proposed use (as conditionally approved) was appropriate for the subject properties and the surrounding area, based on the following considerations:

- a) The subject properties are located in the BI district, which encourages a mix of industrial and commercial uses along high visibility highways and the County roads provided that they have a high landscaping standard to improve the appearance of new development according to Section 7.1 of the LUB. Within already developed BI properties in the Acheson Industrial Park, there are numerous examples of outdoor storage yards facing highways and County roads, i.e. equipment and product display and sales yards.
- b) The Industrial Storage and Warehousing use is listed as a discretionary use in the BI district in the LUB; however, the LUB does not provide any specific use regulations or criteria to base any grounds for refusal for this type of use.
- c) Given the overall range of existing uses found in the BI district throughout the Acheson Industrial Park, a gravel storage and sales yard would not be considered an atypical use in a BI district.
- d) A gravel storage and sales yard use can also be considered inherently temporary in nature because the lack of permanent on-site buildings means that it would not impede future development of the lands into other permanent uses (i.e. professional offices).
- e) The Applicant is proposing to plant trees and shrubs along the property lines facing Highway 16A, which would improve the visual impact of the properties. The Applicant's proposed landscaping complies with the requirements of the LUB for BI districts (section 13).
- f) The application was reviewed by the County's Land Development Engineering unit and the proposed site improvements, such as grading, approach constructions and servicing details were accepted.

[16] Based on the above considerations, the Development Authority deemed the proposed Industrial Storage and Warehousing use to be reasonably appropriate for the subject properties, and determined that there was inadequate rationale or specific regulations in the LUB to deny the Applicant the use.

[17] Therefore, the Development Authority approved the proposed use subject to conditions (Exhibit 5, Attachment A). To ensure reasonable compatibility, the approved development must comply with all the conditions set out in the Development Permit. Non-compliance with any of the conditions may be enforced at the discretion of the Development Authority, and may result in the permit being cancelled, revoked or both at the discretion of the Development Authority in accordance with section 16.4.7 of the LUB.

[18] In addition to the requirements in the Development Permit, the Applicant is also responsible for ensuring compliance with all applicable federal, provincial and other requirements, including but not limited to obtaining required Safety Codes permits.

Options for the Board on appeal

[19] The Development Authority submitted that the Board's options and the Development Authority's recommendations were as follows:

- a) The Board can uphold the decision of the Development Authority, and if it does, the Development Authority recommended that the conditions of the Development Permit stand.
- b) The Board may refuse the Development Permit based on evidence presented during the appeal.
- c) The Board may approve the Development Permit and amend the conditions of approval based on the evidence presented at the appeal. Should the Board approve the Development Permit, the Development Authority recommended that additional conditions that further restrict the conditions of approval be imposed such as:
 - i. A condition imposing an expiry date for the Development Permit, i.e. a 2 or 5 year expiry date, upon when the Applicant must re-apply to continue the use.
 - ii. Conditions restricting the outdoor storage use, i.e. a limit on height and size of the gravel stockpiles, greater setback distances from neighbouring properties, etc.
 - iii. A condition requiring higher landscaping and screening standards from the highway and adjacent properties.

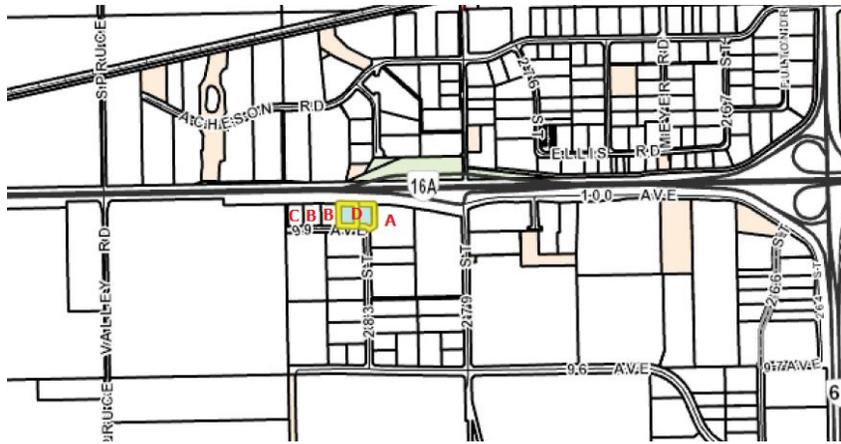
Response to questions from the Board

[20] In response to questions from the Board, the Development Authority explained that the additional conditions above have not been imposed because there is a lack of specific direction in the LUB and they looked at other BI uses and there are lots of outdoor storage yards throughout the Acheson Industrial Park. As such, it would be unfair to put restrictions on this particular business and not others. However, if the Board was inclined to impose a condition of a time limit on the Development Permit, the Development Authority submitted that the time limit should not be so short that it is onerous, for example, one year. A two to five year time limit is reasonable as this would give sufficient time to determine if the business fits within the neighborhood.

[21] The Development Authority submitted that there are other examples of stockpiling yards in the Acheson Industrial Park. The Development Authority provided two other development permits issued by the County: Top Spray Landscaping (04-D-028 Exhibit 10) and Scorpion Construction Ltd. (16-D-022 – Exhibit 11). Neither development permit had a time limit.

Appellants

[22] There were three Appellants. The Board heard from each one in turn. After hearing from the Appellant's, the Board understood the location of the businesses to be as follows from the map located at Exhibit 5, page 38:



- A** - Trailblazer RV Centre
- B** - Techmation Electric & Controls Inc.
- C** - United Construction
- D** - Applicant – Alberta Rock Products

Appellant – Carl Jaritsma on behalf of Jeremy McConnell (United Construction)

[23] Mr. Jaritsma is with United Construction, the first business that was built along 99 Avenue in this area. Before they purchased the land, the developer was adamant about the look of their building; the developer would not sell to them without knowing their intended business. Their property and the Site are located on highway frontage and this area is a more business area than an industrial and commercial area. For instance, other businesses neighbouring the Site are of high quality and finished in a way that promote commercial commerce.

[24] The Appellants have chosen this particular location because they each understand “curb appeal” and the appeal of a business being located on highway frontage. The Appellants have all chosen to build higher end buildings in this area. The development as proposed, on the other hand, would negatively affect the use, and enjoyment and commerce of the adjacent properties.

[25] Mr. Jaritsma submitted photos to the Board with his submissions. He asserted that the photos showed how clean and professional the Appellants’ office buildings were (Exhibit 2, pages 11-13). He submitted that the “curb appeal” of the current businesses would be greatly reduced by the Applicant’s proposed business. This Site is not the appropriate location for the Applicant’s business. This area has an office environment, and they have a lot of traffic currently with clients and staff. Mixing heavy hauling gravel and rocks would lead to a mess, windshield damage and early road failure.

[26] He submitted that, in his opinion, highway frontage was towards the highway. The rear of the property would not be considered the front in this area. Mr. Jaritsma requested that the Development Permit be denied.

[27] In response, to questions from the Board, Mr. Jaritsma submitted that the architectural controls on the buildings when he purchased were likely put on by the developer and not the County.

Appellant - Robert Young (Techmation Electric & Controls Inc.)

[28] Mr. Young submitted that he is a Director and business owner of Techmation Electric & Controls Inc., which is adjacent to the proposed development. Highway frontage is an important factor of the Acheson Industrial Park, and his business also went through a stringent approval process in order to purchase the land and develop it. They have invested a substantial amount of time and money into the architectural controls and designs. The existing businesses built on 99 Avenue are built to high standards with great curb appeal. The proposed development will compromise the high standard buildings along Highway 16A and does not fit within the parameters in section 3 of the Development Permit. The lack of restrictions on the piles of gravel will impede the highway frontage views and the overall aesthetics of the Acheson Industrial Park.

[29] Further, Mr. Young submitted that the wear and tear on the road will directly affect their customers and staff. Techmation Electric & Controls Inc. received a Bricks & Mortar Award presented to them in recognition of a business located in the Acheson Industrial Area that has a high curb appeal, including unique building feature, overall appeal of building and landscaping appearance. He submitted that the Development Permit should be denied by the Board. He also submitted photos to the Board showing the Appellants' businesses (Exhibit 6, pages 81 to 83).

[30] Mr. Young submitted that there was a rigorous acceptance process for them to build in this subdivision. Mr. Young explained that the second lot to the east of Techmation Electric & Controls Inc. is a storage lot, and it is owned by them. From time to time, they use that lot to build temporary buildings that they later transport out. On that lot, they have also stored material and used it for employee parking.

[31] Mr. Young further submitted that the proposed development does not meet the purposes of the Business Industrial District for the following reasons:

- a) A gravel storage and sales yard does not meet the "purpose" in section 7.1(1) of the LUB, as the proposed development will be "along high-visibility Highways".
- b) Section 7.1.4.c.ii of the LUB for parking and loading states that "loading bays shall be located in such a manner as to not impede the efficient flow of traffic and pedestrian movement and to minimize impacts on adjacent land uses". The constant flow of traffic into and out of the gravel storage area would cause congestion on a road that already sees a significant amount of traffic from large trucks and is located on a corner which poses a safety concern.
- c) Section 7.2.1.a states that "a high landscaping standard is required to improve the appearance of new development along high-visibility Highways and County main roads". The proposed development does not fit this standard and will affect the aesthetics of the surrounding businesses along Highway 16A.
- d) Section 11.2.1 states that "The quality of exterior treatment and design of all buildings, where development permit approval is required, shall be to the satisfaction of the Development Authority", further to this, section 11.2.2.a states that "all buildings

shall be attractive in appearance, with facades that apply compatible and harmonious exterior finishing and, where applicable, buildings shall comply with any architectural/design guidelines in an area structure plan". The Appellants' buildings currently on highway frontage all complement each other visually, and the addition of an Atco trailer and gravel piles will negatively affect this balance.

e) Section 7.3.5.a states that "industrial uses shall not create any nuisance effect beyond their property boundaries". The piles of gravel will create dust and debris causing potential damage to staff and customer vehicles, as well as affect the health of those with compromised breathing. The constant noise from heavy equipment will be a nuisance to administrative staff, affecting their ability to carry on business.

f) Section 7.1.5.c states that "Safety and risk assessment is an integral component of the industrial development permitting process". The addition of a high traffic business with heavy machinery at the proposed location will increase the chances of vehicle collisions, especially during the winter months.

[32] In response to questions from the Board, Mr. Young stated that their second lot to the east is gravel and their fence area is covered with slats so that side of the property is closed in.

Appellant - Bill Burnett (Trailblazer RV Centre)

[33] Mr. Burnett submitted that he is the General Manager and co-owner of Trailblazer RV Centre. Trailblazer RV Centre has been in business for over 25 years. They have customers who visit from all over Western Canada. The impact of a gravel yard next to an RV dealership will have significant impacts on their business and their ability to do business will be hampered.

[34] They have spent over \$1 million dollars to strip the top soil and pave the facility. Trailblazer RV Centre takes pride in the cleanliness of their business, and they have to keep their site neat and clean. The RV business is competitive and their clients have expectations. Part of that is ensuring that their product and business facility is clean and presentable. Further, Mr. Burnett explained that they carry anywhere between \$15 to 20 million dollars of inventory on their property, and the dust that would come from the gravel stockpile is a significant concern to them because they are downwind from the proposed development which means that there will be dust and debris on their property and facility.

[35] Mr. Burnett submitted that Trailblazer RV Centre has invested a lot of money to be at their current location and are proud of their facility. They wish to keep it that way. They chose to build their facility at this location because of the high standards of the neighbouring businesses. A gravel storage yard is a major downgrade from the current use in the area. A gravel storage yard adjacent to their business will create road and dust conditions that are not acceptable for an upscale RV dealership. The traffic that the gravel storage will create is not safe for the customers for a RV dealership. They do not want to have a muddy roadway for when their customers leave their Site with a new RV or when they bring it back in for service. They also do not want dust and dirt on millions of dollars of RVs and on their paved facility.

[36] The other reason they chose this location for their business was for the excellent highway frontage. The other Appellants have beautiful buildings that are very visible from the

highway, and Trailblazer RV Centre is proud to be part of that attractive frontage. Trailblazer RV Centre has worked hard to create a family friendly facility.

[37] Mr. Burnett also expressed concern about the corner and that there was a very significant collision about two years ago at this corner. He stated there may be traffic congestion with people coming in and out of the Applicant's Site. He also expressed concerns with drainage from the Site, as Trailblazer RV Centre has and continues to experience flooding from other businesses in the area. They have complained to the County about the drainage issues from two properties to the south, but nothing has been done and they continue to experience water runoff. This is an ongoing issue for them and was missed by the County in the drainage plan for those other properties. Mr. Burnett wants to avoid this situation with the proposed development. His biggest concern is whether the property is up to a proper grade with a proper surface.

[38] He explained that they had to submit drawings of their proposed building to the developer and had to submit plans before the developer would sell to them. He believes that this direction came from the developer and not the County.

Applicant – Brian Keltie (Alberta Rock Products)

[39] Mr. Keltie read Exhibit 8 to the Board. In summary, he submitted that Alberta Rock Products has been operating in Parkland County for 26 years and is a member of good standing in the County. He explained that they produce high quality products for the landscaping construction market and serve both commercial and residential needs.

[40] In response to the concerns, Mr. Keltie submitted that his operation does not require a big expensive building to operate and the County bylaws and regulations do not require him to have one. He has a different type of business. He submitted that the office building and shed are quite attractive and have matching siding. He also submitted that their gravel piles are attractive in appearance (Exhibit 1, page 113) and the piles would never be more than 10 feet high at the Site.

[41] The Applicant provided photos of his current business location to address these concerns (Exhibit 7, pages 107 to 114). He also referred to detailed landscape plans that showed his new property would be very attractive. At the Site, he does not intend to use any sea cans or Atco buildings, as two of the other business have done. Mr. Keltie provided a picture of the loader which he intends to locate to the Site.

[42] The Applicant submitted that he has delayed siding and finishing the shed until it has been moved, to reduce the risk of damage. However, the shed will be sided and otherwise finished to match his current office building. In response to being a nuisance, in the past 20 years he has operated in the City of Edmonton, he has had no complaints to the City, the Province or his company respecting his sales yard on account of weed, dust, noise, mud or debris on the roadways. In fact, there have been no complaints of any description. The Applicant also provided four reference letters from his neighbours in Edmonton.

[43] In response to his operation impeding traffic flow, Mr. Keltie submitted that this concern is without merit. The traffic flow at the present time is light and his operation would add little

traffic. He estimated his visitors to be about 20 per day, which is less than the traffic generated by the Appellants and others in the development. The corner in question is obscured by trees and the main approach to his Site will be towards the west end of the Site, which he expects to put over 400 feet from the corner.

[44] In response, to gravel piles creating dust and debris and his heavy equipment creating constant noise, Mr. Keltie submitted that Techmation Electric & Controls Ltd. and United Construction both have gravel yards. In fact, Techmation Electric & Controls Ltd. has a shop where they manufacture components. He submitted that driving around their yards would create as much dust as his Site would create. Further, as per previously stated, he has never had any dust complaints in Edmonton. As per noise, his equipment (a loader) is shut down when not in use. There is no constant noise. They are not a high traffic business and will not increase the risk of the vehicle collisions during the winter or otherwise.

[45] Mr. Keltie submitted that he agreed with the County's submissions that a gravel yard is inherently temporary in nature, which does not impede future development.

[46] Mr. Keltie also submitted that the Appellants (Trailblazer RV Centre and Techmation Electric & Controls Ltd.) are engaging in conduct which they say the Applicant will engage in, such as uncontrolled weeds and thistle on Highway 16A frontage. The Applicant submitted that it may not be their legal obligation to control those weeds, but it is certainly prudent for them to attend those weeds if they are concerned about the view from Highway 16A.

[47] It is noteworthy that the Appellants and his Site are about 1/8th of a mile from the center of Highway 16A whereas the BI development on the other side of the highway is approximately half of the distance. Also their sites are above the level of the highway, whereas the lots to the north are about the same level with the highway. In other words, the view from the highway to the Appellants' lots and the Applicant's Site is much less dramatic than the highway view of the lots on the other side of Highway 16A.

[48] Mr. Keltie submitted that the Applicant's development permit application fits within the criteria for land use in the BI district. He submitted that the landscaping and other conditions imposed by the County are sufficient to satisfy any concerns of property owners in the vicinity and that the conditions would reasonably address the concerns.

[49] Mr. Keltie submitted that he wants to showcase his Site and show off his products from the Site. He explained to the Board that before purchasing the property, the developer was aware of the business that he proposed to operate at the Site and further to that (Exhibit 1, page 95), Mr. Keltie contacted the County and he was informed that a gravel stockpiling and sales use would fall within the definition of Industrial Storage and Warehousing, which is an allowed use at the Site (Exhibit 1, page 96).

Questions from the Board

[50] In response to the questions from the Board, the Applicant clarified that the loader that he uses for the gravel piles only goes 10 feet high. The piles in the photographs are lower than 10 feet. He is proposing that the landscaping at this Site would be similar to the existing landscape at his current location in Edmonton. In terms of the length of the permit, Mr. Keltie

submitted that he is applying for a long term intended use, but he does not know what the future holds. He explained that in Edmonton his permit did not have an end date. He has plans to plant trees, three inches in diameter around the Site and the trees would be similar to the trees at his current location (Exhibit 1, pages 109-111).

[51] Mr. Keltie also highlighted that there is another gravel operation in the area beside an RV park in the County (Exhibit 1, page 140).

[52] Mr. Keltie explained that he had intended to put landscaping (the trees, shrubs and flowerbeds) on his property and not on the County's property, such that he would move the fence line to do this. He explained that when he talked to the engineering firm, they told him that they could put a fence and the landscaping on the interior of the Site or landscaping on the property line with the fence further in, so landscaping is from the highway. He intends to do the latter. He is also going to try and get hold of Alberta Transportation and find out if he can cut the grass down to the ditch, so he can accentuate the landscaping on his Site and the Site always looks nice. He clarified that he has 95% rock products but that he also sell landscape fabric and other things indoors.

[53] In response to which side of the property would be highway frontage (99 Avenue or Highway 16A), the Applicant submitted that he will have the product and the office closer to the 99 Avenue because that is where the customers will be coming from; however, the gravel will be visible from the highway. He wants to be able to showcase his product. When he purchased the Site, he would consider that Highway 16A was the front but the road to the property is 99 Avenue.

[54] In response to what was being proposed for the fencing around the proposed development, he explained that he intended to do the same type of fencing as the neighbour. He would keep it the same height so they were all the same. The east and the west sides of the Site is fenced. The Applicant submitted that he would put in privacy slats to seal the interior of the property, if needed. Mr. Keltie also explained that when he had the landscaping firm at his property, they were explicit that he needed a drainage swale, so that there is no water going from the Site to any other property. As a result, there is a 1 foot deep swale to ensure the water from the ditch would go into the swale. He also submitted that the finished grade in the plan would not be any higher than other properties and that there would no water from the Site migrating to anyone else's property. In attendance with Mr. Keltie was Vern Hardman of Hardman Law Office. Mr. Hardman's submissions were more or less the same as the Applicant's submissions as summarized above.

FINDINGS OF FACT

[55] The Site is located at Lot 629 and 631, Block 1, Plan 1224428 Acheson Zone 5, NE 32-52-26-W4. The proposed development is located in the Acheson Industrial Park.

[56] The Site is zoned Business Industrial (BI) District.

[57] The use of Industrial Storage and Warehousing is discretionary in accordance with section 7.1.2(c) of the LUB.

[58] The Appellants are affected persons.

[59] The Applicant is an affected person.

[60] Highway frontage is towards Highway 16A.

REASONS

Jurisdiction

[61] 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 LUB as well as consider the oral and written submissions made by the Development Authority, the Appellants and the Applicant.

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 any applicable land use policies;

(a.2) subject to section 638, must comply with any applicable statutory plans;

(a.3) subject to clause (d), must comply with any 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

[62] The first question the Board must determine is whether those appearing and speaking before the Board are affected persons. The Board notes that there was no objection made to

any of the speakers on the basis that they were not affected. However, the Board will address this issue in its reasons.

[63] The Appellants, Mr. Burnett of Trailblazer RV Centre and Mr. Young of Techmation Electric & Controls Ltd., are adjacent to the Site (see the map at paragraph [22]) of this decision). For this reason, they are both affected persons. The Appellant, Mr. McConnell of United Construction is located next to Techmation Electric & Controls Ltd. and at the end of the dead-end street. Due to the Appellants' close proximity to the Site, they are all affected by the proposed development.

[64] The Applicant, Alberta Rock Products, is the applicant for the permit and as such is affected by the appeal.

Statutory Plans

[65] The Board heard submissions from the Development Authority that the proposed use was generally consistent with the relevant statutory documents as defined in the MGA. None of the Appellants or the Applicant provided further evidence to contradict the submissions of the Development Authority on this point. The only evidence before the Board was that the development complied with the statutory plans. Therefore, the Board finds the proposed development is generally consistent with the statutory plans as defined in the MGA.

Land Use District

[66] The Site is zoned as Business Industrial (BI) District (Land Use Bylaw section 7.1.2(c)).

Nature of Use

[67] The use is for gravel storage and sales yard, which the Board finds falls within the "Industrial Storage and Warehousing" definition. The Board finds this definition is broad and that the activities detailed by the Applicant (e.g. outdoor storage of gravel and the distribution (sale) of finished products (gravel) for commercial and residential landscaping purposes) fall within the definition. The Board also notes the Development Authority's evidence that there are a range of existing uses in the Acheson Industrial Park, and a gravel storage and sales yard would not be considered an atypical use in a BI district.

[68] The use of "Industrial Storage and Warehousing" is a discretionary use in the LUB. Therefore, as referenced in *Rossdale 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.

[69] In its submissions, the Development Authority stated that it considered the compatibility of the development and found that it was reasonably appropriate for the subject properties. As this was a hearing *de novo*, meaning afresh, the Board will now turn its analysis of the concerns

raised in the hearing to assess whether the proposed use is compatible with the neighbouring uses.

[70] The Appellants raised the following concerns:

- a) Aesthetics,
- b) Noise and dust,
- c) Safety and traffic, and
- d) Drainage.

Aesthetics

[71] The Board heard evidence from all Appellants that the Applicant's proposed office building (Exhibit 5, page 52 and Exhibit 7, page 106) and shed (Exhibit 5, page 54) are not in harmony with the current businesses and do not comply architecturally with the Appellants' businesses that have highway frontage.

[72] The Applicant's evidence, on the other hand, is that the office building and shed are attractive and that the nature of his business does not require him to have an expensive building like the Appellants do.

[73] The Board appreciates that the Applicant's business is different than the Appellants'. However, section 11.2.2a of the LUB states that "all buildings shall be attractive in appearance, with facades that apply compatible and harmonious exterior finishing..." and the Board notes that the appropriateness of the proposed development on the Site and the compatibility of it depends on the surrounding properties.

[74] In the circumstances, the Board finds that the office building and shed proposed to be transported to the Site, in their current form, are not compatible with the surrounding businesses. However, if the appearance of the office building and shed were improved, as per the Board's condition set out in paragraph [8] of this decision, the Board is of the view that the proposed development would be compatible with the surrounding businesses.

[75] The Board accepts that the Appellants' have made significant investments in making their businesses professional and increasing the standards in this area of the Acheson Industrial Park. The Board does not expect the Applicant to make the same financial investments that the Appellants have, but the Board does expect the Applicant to improve the appearance of the office and shed and make it compatible with the surrounding businesses. Although the proposed development is located in an industrial park, the surrounding properties in the Acheson Industrial Park have high standards for buildings and as a result the office building and shed are not harmonious with the other office buildings owned by the Appellants.

[76] To address the aesthetic concerns, the Board imposes a condition on the Applicant's development permit that the Applicant shall upgrade the office building and shed in appearance, with facades that apply compatible and harmonious exterior finishing, specifically by:

- a) Skirting all around the office building so that the skids are hidden from view.

- b) Installing professional siding that is compatible and harmonious with the adjacent buildings, such as a blue or red siding material.
- c) Installing siding on the shed that matches the office building.
- d) Installing a railing around the front deck of the office building.
- e) Painting the deck and the stairs of the office building.
- f) Installing newer awnings over the windows of the office building that match with the new façade of the office building.

[77] The Board heard concerns regarding the height of the gravel piles. The Applicant submitted at the hearing that the gravel piles would be piled no more than ten feet in height. The Board has imposed this as a condition of the Development Permit.

Dust and noise concerns

[78] The Board heard concerns about dust from the proposed development from Techmation Electric & Controls Ltd. and Trailblazer RV Centre. Techmation Electric & Controls Ltd., located adjacent to the Site, raised concerns about the piles of gravel creating dust and debris. Trailblazer RV Centre, also located adjacent to the Site and downwind, raised concerns about dust from the proposed development. Trailblazer RV Centre submitted that it will negatively impact its ability to do business and keep its inventory and facility clean and presentable.

[79] The Board also heard from the Applicant who stated that, in the past 20 years, while his business has operated in the City of Edmonton, he has had no complaints about dust (or otherwise) to the to the City, the Province or his company. The Board notes that the Applicant provided with his written submissions four reference letters from his neighbours and photos of his neighbours' businesses in the City of Edmonton (Exhibit 7, pages 116 to 124). The Applicant further submitted that the dust from his yards will create as much dust as the other Appellants who are driving around their yards.

[80] Although the Applicant has submitted reference letters from his neighbours at his current business location and they have not expressed no issue with dust, the Board notes that some of the businesses in the photos provided appear to be indoor business, for example, the Alberta Regional Council of Carpenters Corporation and Petrolia Plastics. The Board finds that at least one of the Applicant's new neighbour's, Trailblazer RV Centre, is different and unique in that their product, which is valued at 15 to 20 million dollars, is kept outside and the nature of their business is such that their product and their facility has to be kept in pristine condition.

[81] The Board accepts Trailblazer RV Centre's evidence that they are downwind from the proposed gravel and sales yard and there could be dust from the Applicant's development that could negatively impact Trailblazer RV Centre and any dust from the Applicant's Site that may impact Trailblazer RV Centre's business must be mitigated.

[82] Therefore, to address the dust concern, the Board has imposed a condition on the Applicant's development permit that the Applicant shall treat the gravel piles and other gravel surfaces on the Site with an effective, environmentally friendly dust suppressant as required to prevent nuisance from dust to neighbouring properties.

[83] The Board also heard concerns from Trailblazer RV Centre about its ability to do business next to the proposed development and from Techmation Electric & Controls Ltd. about the constant noise from heavy equipment affecting its ability to carry on its business. The Board notes that the Applicant did submit that he has not had any complaints about noise in his years of business and there is no constant noise that comes from his business because the equipment is shut down when it is not in use.

[84] The Board accepts this evidence, but Board finds that given the nature of Trailblazer RV Centre's business, the investments that it (and all the other Appellants have made), additional conditions need to be imposed to address the noise and dust concerns raised by the Appellants. Accordingly, the Board has imposed two additional conditions on the Applicant's development permit to mitigate any noise and dust from the proposed development. First, that the Applicant shall plant 4" caliper trees along the east side of the Applicant's property that are mutually agreed upon by the Applicant and Trailblazer RV Centre. The east side is along the property line that abuts Trailblazer RV Centre. The trees shall be planted in two staggered rows and shall be planted in the six metre setback area.

[85] During the hearing, Mr. Keltie submitted that he would install privacy slats to the fence to seal the interior of the property, if needed. Second, the Applicant shall add privacy slats to the existing fence on the east side of the property, if the fence does not already have privacy slats.

Safety and traffic concerns

[86] The Board heard evidence from Trailblazer RV Centre about safety and traffic concerns relating to the curve in the road at 99 Ave and 283 Street, also referred to as the "corner" throughout the hearing. Mr. Burnett informed the Board that there was a significant collision at the corner approximately two years prior, and he stated there may be traffic congestion with driver's coming in and out of the Applicant's Site. Techmation Electric & Controls Ltd. also expressed concerns about the corner and that the constant flow of traffic in and out the Site will cause congestion on a road that already has a significant amount of traffic from large trucks.

[87] The Board heard evidence from the Applicant that the traffic concern is without merit. His traffic flow is light and his estimated visitors to his Site will be about 20 per day, which he submitted was less than the traffic generated currently by the Appellants and others in the area. The Applicant explained that the corner is unobscured by trees and the main approach to his Site will be towards the west end of the Site, which he expects would put it away from the corner by about 400 feet.

[88] The Board finds that the traffic and safety concerns detailed above, have been reviewed by the County's Engineering department and the approach constructions were accepted by

them. Further, the Board notes that two of the conditions imposed by the Development Authority address these concerns, specifically at condition 1:

a) Prior to the issuance of building permits, the Applicant shall provide the following:

i. Revised engineering drawings to the satisfaction of the Development Authority in consultation with Land Development Engineering unit.

ii. A security deposit in the amount of \$5,000.00 for the construction of two (2) new approaches. The approaches must be built to comply with Parkland County's Engineering Design Standard, to the satisfaction of the Development Authority in consultation with Land Development Engineering.

[89] As a result, the Board finds that the conditions as imposed are sufficient to address these concerns without there being any additional evidence other than the Appellants' submissions.

Drainage concern

[90] The Board heard evidence from Trailblazer RV Centre that they currently have draining issues from two properties to the south and are concerned that if the proposed development is approved, they will experience further draining issues. In response, the Board heard from the Applicant who stated that when he had Teckera, his landscaping firm, at the Site they were explicit that he needed a drainage swale. The proposed drainage, a one foot deep drainage swale is indicated on Exhibit 5, page 44. The swale will go through the middle of both properties and this way, no water from the Site will go onto any other property. The Applicant also submitted that the finished grade in the plan would not be any higher than other properties and that there would be no water from the Site migrating to any other property.

[91] The Board accepts Mr. Keltie's evidence on this point. The Board also accepts the swale proposed by Teckera to address the draining concern and that the Applicant's site grading and drainage plan was reviewed and accepted by the County's Land Development Engineering unit. The Board reviewed the conditions imposed by the Development Authority and finds that conditions 2, 8 and 9 of the Development Permit are sufficient to address and mitigate Mr. Burnett's drainage concerns. The Board heard Mr. Burnett's concerns about drainage and is sympathetic and notes that if he experiences such issues from the Applicant's development, he should contact the County's enforcement department.

[92] In order to test out the Applicant's development in this location, the Board imposes the condition that the Development Permit shall be effective for five years starting on the date the decision is issued to the Applicant. The Board finds that one or two years would be too short for the Applicant to establish his business, but that five years is reasonable in the circumstances.

[93] Finally, the Board finds that the conditions that were imposed by the Development Authority in combination with the Board's imposed conditions will be sufficient to ensure the

Applicant's development is compatible with the Acheson Industrial Park and the surrounding properties.

[94] Issued this 5th day of October, 2018 for the Parkland County Subdivision and Development Appeal Board



Christine Beveridge, SDAB Clerk, on behalf of
Dylan 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, RSA 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. Feinan Long, Development Planner
2. Carl Jaritsma, on behalf of Jeremy McConnell, Appellant
3. Rob Young, Appellant
4. Bill Burnett, Appellant
5. Brian Keltie, Applicant
6. Vern Hardman

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

Exhibit	Description	Date	Pages
1.	Agenda Package Table of Contents and Agenda		
2.	Notice of Appeal Jeremy McConnell (United Construction)	August 29, 2018	8-15
3.	Notice of Appeal Bill Burnett (GM, Trailblazer RV Centre)	August 30, 2018	16-21
4.	Notice of Appeal Robert Young (Techmation Electric & Controls Inc.)	August 31, 2018	22-26
5.	Submission of the Development Authority	September 17, 2018	27-77
6.	Submission of the Appellant – Techmation Electric and Controls Inc.	September 14, 2018	78-85
7.	Submission of the Applicant – Alberta Rock Products	September 19, 2018	86-155
8.	Additional Materials – Speaking Notes of the Applicant Submitted at the Hearing	September 24, 2018	N/A
9.	Additional Materials – Land Use Bylaw Excerpt 7.1 BI – Business Industrial District submitted by the Development Authority at the Hearing	September 24, 2018	N/A
10.	Additional Materials – Approved Development Permit for Top Spray Landscaping submitted by the Development Authority at the Hearing	September 24, 2018	N/A
11.	Additional Materials – Approved Discretionary Development Permit for Scorpion Construction Ltd. submitted by the Development Authority at the Hearing	September 24, 2018	N/A