

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
PARKLAND COUNTY**

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

HEARING DATE: January 28, 2019  
FILE NO.: 18-D-490

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

**INTRODUCTION**

[1] The Development Authority of Parkland County (the "County") approved with conditions a development permit application made by Gerard St. Denis ( the "Applicant") for a Home-Based Business Level 3 (Vehicle and ATV repairs) subject to conditions at Lot 1, Block A1, Plan 3016RS, SE-24-53-27-W4, with a Municipal Address of 53308 Range Road 270, Parkland County (the "Site").

[2] Ron Harris (the "Appellant") appealed the issuance of the Development Permit 18-D-490 (the "Development Permit").

**PRELIMINARY MATTERS**

**A. Board Members**

[3] At the start of the hearing, the Board asked if anyone had any 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.

**C. Miscellaneous**

[5] The appeal was filed in time, in accordance with section 686 of the *Municipal Government Act*, RSA 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. There were no preliminary matters raised at the beginning of the hearing.

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

[7] The Board denies the appeal and upholds the development permit on the conditions set

out in the development permit issued by the Development Authority as set out below:

**CONDITIONS:**

1. 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.
2. In addition to the residents who permanently reside in the residential building on the subject parcel, up to four additional other employees may be permitted as part of the approval and operation of a Home Based Business Level 3.
3. 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.
4. As per Parkland County Policy all commercial and industrial outdoor lighting installations and outdoor luminary replacements requiring an electrical permit shall be Dark Sky complaint.
5. There shall be no more than five (5) customers vehicles parked outside of the shop at any time.
6. There shall be no more than fifteen (15) customers vehicles allowed on the property at one time.
7. Outside Storage of up to 20 tires shall be allowed as shown on the submitted site plan and documentation.
8. The home based business shall not generate noise, smoke, steam, odour, dust, fumes, exhaust, vibration, heat, glare or refuse matter considered offensive or excessive by the Development Authority.
9. 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.
10. The applicant shall remove all garbage and waste at their own expense and keep the site in a neat and orderly manner.
11. Failure to comply with the conditions of this permit may result in the permit being cancelled and or revoked.
12. 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.

The Board also imposes the following additional condition:

13. There shall be no more than two (2) unregistered vehicles on the property at one time.

**PERMIT NOTES:**

1. Wetlands are identified on the property as fen. It is the applicant's responsibility to contact Alberta Environment and Parks to ensure no approvals are required.
2. This property is identified in an Environmentally Significant Area. Parkland County recommends that barriers to wildlife movement should be minimized.
3. The applicant is responsible to ensure compliance with the Alberta Fire Code.
4. Noise that exceeds the level as specified in the Community Standards Bylaw is an indication that noise may be an annoyance.

**SUMMARY OF HEARING**

[8] 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**

[9] The Site is located within the Country Residential (CR) District and the Atim Creek/Big Lake Overlay.

[10] The use of Home-Based Business Level 3 is a discretionary use on the Site as outlined in section 5.3 of the County's Land Use Bylaw 2017-18 (the "LUB").

[11] Section 12.8.3 of the LUB set out the regulations for a Home-Based Business Level 3. The Development Authority outlined those regulations for the Board.

[12] In addition, the Development Authority reviewed the definition of Home-based Business Level 3 with the Board:

Home-based Business Level 3 means trade or craft for gain or support and is secondary to the principal residential use. A Home-based Business Level 3 includes all home-based businesses not considered Home-based Businesses, Level 1 or Level 2. It must include the resident who permanently resides in the dwelling and may include up to four (4) employees who do not reside on the property. Typically secondary uses may 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.

Major Development means a new commercial, industrial, resource extraction, institutional, recreational, or multi-unit residential project that may create off-site impacts in terms of traffic generation, environmental, municipal infrastructure, or similar effects.

[13] The Development Authority reviewed the County's Municipal Development Plan, Bylaw No. 2017-14 (the "MDP") and advised that the proposed development is identified within Section 5.0 – Economic Competitiveness and Employment of the MDP. The proposed development meets the MDP objective of promoting a strong and diversified economy through the County. The County recognized and supports home-based businesses.

[14] The Site is subject to Atim Creek ASP. There are no conflicts between the proposed Home-Based Business Level 3 because the proposed development is outside of the Atim Creek flood plain.

[15] The Development Authority advised that the proposed development was an appropriate use because:

- the proposed business falls in line with the MDP by supporting employment in the area;
- the proposed development is not within 150 metres of a multi-parcel residential subdivision;
- there is limited outside storage;
- the noise, odour, dust, fumes, exhaust, and vibration are consider non-offensive or excessive by the Development Authority for all work will be conducted within the shop;
- there will be no late calling of clients traffic congestion, or excessive on-street or off-street parking that could offend the neighbouring or adjacent residents for the reason that the property is 21.37 acres;
- there will be no more than 4 employees plus the resident and the resident's family who permanently reside in the residential building; and
- Home-Based Business Level 3 means a trade or craft for gain or support and is secondary to the principal residential use and a typical secondary use may include automotive repair.

[16] In response to Board questions, the Development Authority advised that the notification distance in the Land Use Bylaw is a 100 m radius of the lands. The Development Authority indicated that it is common for individuals to obtain a development permit to construct a building first, and then decide to apply to change the use of that building and home based businesses can be considered within an existing accessory building. Further, the proposed development is a residential development and not a major development. There is no need for a traffic impact assessment for a home based business.

## **Appellants – Ron Harris via his agent Rob Harris**

[17] Mr. Ron Harris lives across the road from the proposed development. He was not able to be in attendance, so Mr. Rob Harris spoke on his behalf. Mr. Harris advised that there were four key areas.

[18] First, he questioned the validity of the application on the basis that a home based business level 3 must include a resident who permanent resides in the dwelling. The Applicant is not the deeded owner of the parcel and there is no documentation to support the permanency of his residency on the parcel. It is up to the Board to dispense with the application on this basis, before assessing the merits of the arguments presented.

[19] Second, this area is designated as country residential, whose primary purpose is set out in section 5.3 of the Land Use Bylaw to provide for traditional multi-residential communities and residential development and agricultural pursuits. Other uses should be the exception and not the norm. The Administration did not exercise its discretion when assessing the cumulative impacts with other such in this area. The Administration failed to acknowledge that business operations will mirror operations of the business on the adjacent property and the combined impacts of both operations. The scope of operations goes beyond the intent of a home based business level three and is more suitably classed as automotive equipment repair use.

[20] Third, the location is on a dead end road, and the increased traffic will affect the privacy of all residents north of Township Road 532A. There are no restrictions on the hours of operations and the increased traffic will be untenable for the residents on the dead end road which is used for residential purposes. There are a number of small children who live on the road, and the traffic with the existing home based business is frequent and exceeds the speed limit. The road is under designed for the use, and the increase in the frequency of repairs should not be borne by the residents. There is no farming equipment on the road, because there has been no farming in the area for a number of years.

[21] Finally, the Board should take into account the Applicant's pattern of deceptive behavior. The Administration failed to acknowledge that the Applicant previously applied to build a shop. Development Permit 18-D-105 stipulated that the building was for personal use only and could not be used for business or accommodation purposes. Three months later, the Applicant proposes to use the building as the foundation for his business purposes. The intention from the outset was to use the building for business purposes.

[22] The Appellant stated that there are unaddressed compliance issues, including infill activities (bringing in 30 gravel loads) and the land is next to a wetland. He also questioned the notification process as he feels he should have been personally notified of the application. His property is on the east side of the road, three properties down.

[23] The Appellant stated that in his view this is not a home-based business, but a shop-based business. He disagreed with the Administration's assertion that the decision is based on an individual application, because he felt the effect is cumulative. He was concerned that there was no clear assertion about the scale of the business.

### **Person Speaking in Favour of the Appeal – Mr. Bob Sage**

[24] Mr. Sage lives south of the Site, south of the intersection with RR 270. In his view, the road is small and narrow, and will not handle much more traffic than currently exists. There are small children on the road and he is worried about that situation.

[25] There is also another business similar to the proposed development which both exist on a dead end road. He believed that there would be significant increases in the amount of traffic on the road.

### **Applicant – Mr. George St. Denis**

[26] Mr. St. Denis is the applicant. His closest neighbour is his father who operates a similar business. He is trying to start his own business because he has suffered an injury and cannot find a job.

[27] The road is a public road and is only slightly narrower than other roads in the area. He stated there should be no greater impact as a result of his development than currently exists on the road. He is willing to work with anyone who has concerns about his hours, and vehicles on the road.

[28] He is not sure of his operating hours because he is just starting the business. The number of vehicles will fluctuate. He expects that it will be busiest during the week. However, he needs family time too.

[29] He talked to Alberta Environment and was told that his development was outside of the floodplain.

[30] In response to Board questions, he stated that the location is his permanent residence. He currently does not have any employees. Because the business has not started, he cannot say how many vehicles he will be working on. He anticipates starting small, and getting bigger.

[31] He stated that for the previous development permit, he needed to make the site level and therefore he had to bring in road crush to level the site.

### **Those speaking in opposition to the Appeal – Mr. Ronnie St. Denis**

[32] Mr. Ronnie St. Denis spoke against the appeal. He is the owner of the Site. He has lived on the same road for 25 years. His brother is the Applicant and rents the Site from him. Mr. St. Denis stated that this development is no different than the one operating next-door, owned by his father. He stated there will not be a lot of traffic out. The road is a public road and with speed limits posted. There is also a weight restriction on the road. He stated that there will not be a significant number of vehicles up because a single operator cannot work for so long.

[33] In response to questions from the board, Mr. R. St. Denis stated that his father picks and chooses his hours some days he works very short hours and some days he works from 8 to 8. His Brother is very family oriented and he does not expect that the Applicant will work late into the evening.

## FINDINGS OF FACT

[34] The Site is located at Lot 1, Block A1, Plan 3016RS, SE-24-53-27-W4, with a Municipal Address of 53308 Range Road 270, Parkland County, Alberta.

[35] The Site is zoned County Residential (CR) District.

[36] The proposed development is a Home Based Business Level 3.

[37] The Appellant is an affected person.

[38] The Applicant is an affected person.

[39] Those speaking before the Board (Mr. Sage and Mr. R. St. Denis) were affected persons.

## REASONS

### Jurisdiction

[40] 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;*

*(a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;*

*(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**

[41] 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.

[42] The Applicant, Mr. George St. Denis, is the applicant for the permit and as such is affected by the appeal.

[43] The Appellant, Mr. Ron Harris, lives across the road, and due to the proximity to the Site is affected by the appeal.

[44] Mr. Sage lives in proximity to the proposed development and the Board finds that his proximity makes him affected. Mr. R. St. Denis is the owner of the Site, and therefore the Board finds he is affected due to his ownership of the Site.

### **Statutory Plans**

[45] The Board heard submissions from the Development Authority that the proposed use meets the MDP objective of promoting a strong and diversified economy through the County. The Board heard submissions from the Development Authority that the Site is subject to Atim Creek ASP and there are no conflicts between the proposed Home-Based Business Level 3 because the proposed development is outside of the Atim Creek flood plain.

[46] The only evidence before the Board was that the development complied with the statutory plans. Therefore, the Board finds the proposed development complies with the statutory plans as defined in the MGA.

### **Land Use District**

[47] The Site is zoned as Country Residential (CR) District.

### **Nature of Use**

[48] The use applied for is a Home Based Business Level 3. The Appellant has challenged the characterization of the use as a Home Based Business Level 3, arguing that it is an

automotive equipment repair use and that a home based business level 3 must include a resident who permanent resides in the dwelling". The Appellant also argued that the Applicant is not the deeded owner of the parcel and there is no documentation to support the permanency of his residency on the parcel.

[49] The first question for the Board is whether the use applied for is a Home Based Business Level 3 or an "automotive equipment repair use" because if the Board determines that the use is an "automotive equipment repair use", that use is neither permitted nor discretionary in the CR District, and the Board cannot approve the use. However, if the Board determines that the use is a Home Based Business Level 3, then the Board needs to go on to assess whether the use, which is a discretionary use in the CR District, is compatible and should be approved.

[50] The definition of Home Based Business Level 3 is set out below.

Home-based Business Level 3 means trade or craft for gain or support and is secondary to the principal residential use. A Home-based Business Level 3 includes all home-based businesses not considered Home-based Businesses, Level 1 or Level 2. It must include the resident who permanently resides in the dwelling and may include up to four (4) employees who do not reside on the property. Typically secondary uses may 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.

Major Development means a new commercial, industrial, resource extraction, institutional, recreational, or multi-unit residential project that may create off-site impacts in terms of traffic generation, environmental, municipal infrastructure, or similar effects.

[51] "Automotive, Equipment and Vehicle Sales" is defined as follows:

Automotive, Equipment and Vehicle Sales means development used for the rental, lease, sale, storage, service, restoration, inspection and/or mechanical repair of automobiles, trucks, trailers, motorcycles, snowmobiles, motor homes, tent trailers, boats, travel trailers or similar light Recreational Vehicles. Uses and facilities would also include transmission shops, muffler shops, autobody paint and repair facilities, Highway Service Stations and fleet services involving vehicles for the delivery of people, goods or services and may include key lock retail sales. This use class does not include Bulk Fuel Depots.

[52] The evidence before the Board was that the Applicant, Mr. George St. Denis, lives on the Site as his primary residence. As there is a resident who permanently resides in the dwelling, the Board finds that that portion of the definition for Home Based Business Level 3 is met. Further, the evidence was that at the present time, the use of the land is residential, and Mr. St. Denis was going to start a vehicle repair business. Since the main use is residential, and the business is a start up business, the Board finds that the proposed development meets the portion of the definition which says that the use is secondary to the principal use of a dwelling.

This is further supported by the evidence that there are currently no employees. Further, this supports that portion of the definition indicating that there can be up to four employees. The Board also noted that the definition itself states that typical secondary uses may include automotive and autobody repair, which is what Mr. G. St. Denis wishes to do.

[53] The Board examined the definition of "Automotive, Equipment and Vehicle Sales". That definition indicates that Automotive, Equipment and Vehicle sales" is a primary use on the site. While the definition also includes vehicle repair, the Board finds that the proposed development falls better into the definition of Home Based Business Level 3, due to the fact that Mr. G. St. Denis is living on the Site, and this will be secondary to that principal use of residential. Therefore, based on all of the above, the Board finds that the proposed use is a Home Based Business Level 3.

[54] Having found that the proposed use is a Home Based Business Level 3, the Board must now determine if that use, which is discretionary in the CR District, is compatible with neighbouring uses. 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.

[55] In addition to the concerns about the nature of the use (which was dealt with above), the Appellant raised concerns in relation to increased traffic and the negative impact on privacy arising from the proposed development. The concerns in relation to traffic were echoed by Mr. Sage.

[56] The Board listened to the concerns raised. They were primarily that there would be a significant impact in traffic and that the road was not built for such an increase in traffic, and was, moreover, a dead end road. However, the evidence of the Development Authority was that the road is a public road, which the Board accepts means that any member of the public can travel on it. There was no evidence that the road was unsafe or was built to any lesser standard than any other public road in the County.

[57] In examining this issue, the Board notes that the Development Authority imposed conditions on the approval. The Board notes that condition 7 provides that there can only be 15 customer vehicles allowed on the Site at any one time. The Board finds that this condition should address the impact of additional traffic on the road. The evidence is that the business hasn't started yet. Therefore, at the beginning, there will be few cars travelling to the Site. Once the business gets underway, the conditions limit the number of customer cars on site, which limits the number of vehicles on the road. The Board is of the view that the limitation of 15 cars at one time balances the concerns of the neighbours against the ability of the Applicant to operate a home based business from the Site, and the Board, thus, upholds that condition.

[58] The other concern raised related to privacy. The Board notes that the condition relating to the number of cars on the site should assist in decreasing any impact. In addition,

condition 3 specifically addresses privacy concerns and imposes limitation on lighting, late calling etc.

[59] The Board examined the regulations applicable to Home Based Business Level 3 found in section 12.8(3).

- a) with the exception of the CRWL – Country Residential Work/Live District, a Home Based Business Level 3 shall not be located within a Multi-Parcel Residential Subdivision (excluding rural centres) or row housing development and/or if the location of the development is within 150.0 m 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 15:3;
- 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 a 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 number of the number allowed shall be as per the Community Standards Bylaw; and
- 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 Home Based Business Level 3, if deemed appropriate by the Development Authority.

[60] The Board notes that the items set out in section 12.8.3(b)- (g) are all addressed in the conditions imposed by the Development Authority. The Board confirms all of these conditions, as it believes that any impact by the proposed development would be addressed by these conditions. In relation to section 12.8.3(a), the evidence was that the Site is not in or within 150 m of a Multi-Parcel Residential Subdivision (excluding rural centres) or row housing development, thus meeting this requirement.

[61] The Board notes that the Appellant raised concerns about the proximity of this proposed development and the location of the Applicant's father's property (they are next to each other). The Board has to treat each of the developments separately and cannot base its decision on this development permit appeal on a separate development, particularly where, as here, the second development is operated by someone other than the Applicant.

[62] Issued this 12<sup>th</sup> day of February, 2019 for the Parkland County Subdivision and Development Appeal Board




---

Barb Williams, SDAB Clerk for  
 Sam Whitehouse, 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.*

**APPENDIX "A"**  
 REPRESENTATIONS

**PERSON APPEARING**

- 
1. Kim Kozak, Development Officer, Parkland County
  2. Rob Harris, agent for Ron Harris, Appellant
  3. Bob Sage
  4. George St. Denis, Applicant
  5. Ronnie St. Denis

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

Exhibit	Description	Date	Pages
1.	Agenda Package Table of Contents and Agenda		1 - 2
2.	Notice of Appeal	January 4, 2019	3 - 6
3.	Submission of the Development Authority	January 21, 2019	7 - 87
4.	Submission by the Appellant Ron Harris	January 4, 2019	88 - 90
5.	Submission of Tammy Ketchen – in support	January 21, 2019	91 - 92
6.	Submission of the Applicant – Mr. St. Denis	January 21, 2019	93 - 95