

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
PARKLAND COUNTY**

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HEARING DATE: January 10, 2022  
FILE NO.: 21-D-441

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

**INTRODUCTION**

[1] The Development Authority of Parkland County (the "Development Authority") approved a development permit for a Home-Based Business Level 3 (Processing, and Selling Firewood, construction of shop) located at Plan 538TR Block 1 within SE-4-53-1-W5, municipally described as 53002 RGE RD 13, Parkland County (the "Lands") and adjacent to highway 16A and Allan Beach Road (Range Road 13).

[2] The Applicant was Steve Preston (the "Applicant").

[3] On December 10, 2021, Dwayne Nernberg (the "Appellant") filed an appeal of the development permit.

[4] The Subdivision and Development Appeal Board (the "Board") heard the appeal on January 10, 2022 via video conference in accordance with the *Meeting Procedures (COVID-19 Suppression) Regulation, AR 50/2020*.

**PRELIMINARY MATTERS**

**A. Board Members**

[5] 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. Exhibits**

[6] At the beginning of the hearing the Chair confirmed that everyone in attendance had the hearing package prepared for the hearing. There was no objection to any of the exhibits which had been submitted in accordance with the Board's hearing submission dates. The Board marked those exhibits received prior to the hearing as set out at the end of this decision.

### **C. Miscellaneous**

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

[8] 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**

[9] The Board denied the appeal and has varied the development permit. The Board has granted the development permit on the conditions set out below.

In accordance with s. 16.14.1 of Land Use Bylaw 2017-18, this development permit is not valid unless and until:

- a. Any conditions, except those of a continuing nature, have been fulfilled; and
- b. No notice of appeal has been served on the Subdivision and Development Appeal Board in accordance with s. 688 of the Municipal Government Act.
  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. 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.
  3. The days and hours for processing of logs shall be:  
  
Monday through Friday – 8:00 AM to 6:00 PM  
Saturday 9:00 AM to 4:00 PM  
Sunday – no wood processing allowed.
  4. The days and hours for the sales of firewood shall be:  
  
Monday through Friday – 6:00 AM to 8:00 PM  
Saturday and Sunday 8:00 AM to 6:00 PM.
  5. Tractor trailer delivery of logs for processing shall not exceed more than two loads within a thirty (30) day period.
  6. The site shall be kept in a neat and orderly manner.
  7. Outside storage of goods, materials, commodities or finished products shall be allowed as shown on the submitted site plan and documentation.

8. The 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 Applicant must comply with the noise limits found in the County's Community Standards Bylaw 03-2012, as amended or replaced from time to time, in particular the standards for noise limits in a Non-Residential District.
10. In addition to condition 9 above, the Applicant must provide to the Development Authority the results of a noise impact assessment conducted by a qualified acoustical practitioner. "Acoustical practitioner" is an individual with acoustical expertise and knowledge capable of preparing noise assessments, surveys and reports.

- a. The acoustical practitioner shall conduct testing two times per year with no less than eight (8) weeks between the two tests;
- b. The first test must be conducted no later than May 1, 2022;
- c. The Applicant must conduct testing for two years: 2022 and 2023.
- d. Each test must be conducted with all of the Applicant's processing equipment operating;
- e. Each report must indicate which pieces of equipment are operating;
- f. The Applicant must test the noise level:
  - i. at the point of the north property line of the Lands which bisects a line from the noise source to the residence on the property municipally described at 530004, Range Road 13 (the Appellant's Lands); and
  - ii. at a receptor point near the residence on the property municipally described at 530004, Range Road 13.

Should the owner or resident of that property not permit access, then provided that the Applicant provides evidence to the Development Authority that the owner or occupant of that property has refused entry to the acoustical practitioner, the Applicant need not include the results of any test from that residence for the specific test for which entry is denied. The acoustical practitioner shall attempt to gain entry for all testing.

- g. Each report must indicate the decibel readings at the specified location on the north property line of the Lands and at the receptor point on the property municipally described at 530004, Range Road 13.
11. At all times, the privacy of the adjacent residential dwellings shall be preserved, and the home-based business shall not unduly offend neighbouring or adjacent residents by way of excessing lighting, late calling of clients of an unreasonable number, or traffic congestion. In no event shall the Applicant permit clients to call after the hours of operation set out above.
12. In addition to the residents who permanently reside in the residential dwelling on the subject property, up to four (4) additional employees may be permitted as part of the approval and operation of a Home-Based Business Level 3.

13. The parking of commercial vehicles, including the number considered and location, shall be allowed as shown on the submitted site plan and documentation.
14. The display and placement of signage on the Lands shall be in accordance with subsection 15.3 of Parkland County's Land Use Bylaw 2017-18.
15. In accordance with Parkland County Policy, all commercial and industrial outdoor lighting installations and outdoor luminary replacements requiring an electrical permit shall be Dark Sky compliant.
16. The accessory building shall be attractive in appearance, with façades that apply compatible and harmonious exterior finishing. Where applicable, buildings shall comply with any architectural or design guidelines in an area structure plan.
17. The accessory building shall not exceed 8.0m in height from the inside wall grade to the peak of the roof.
18. All developments shall be landscaped in a manner to prevent any surface run-off to adjacent properties.
19. Failure to comply with the conditions of this permit may result in the permit being canceled or revoked, or both.

Permit Notes:

- a. Noise that exceeds the level as specified in the Community Standards Bylaw in an indication that noise may be an annoyance. Failure to comply with the Community Standards Bylaw may result in ticketing under that bylaw. Enforcement under the Community Standards Bylaw does not preclude enforcement of this Development Permit.
- b. The Applicant is responsible to obtain a Roadside Development Permit from Alberta Transportation.
- c. The Applicant is responsible to ensure compliance with the Alberta Fire Code.
- d. The Applicant is responsible to ensure compliance with the Environmental Protection & Enhancement Act regarding dust and air quality.
- e. The Applicant is responsible to obtain building, plumbing, electrical, gas and private sewage permits which may be required. Permits must be obtained from Parkland County.
- f. The Applicant is responsible to ensure compliance with the Restrictive Covenant(s) registered on title to the Lands.
- g. It is the Applicant's responsibility to contact Alberta One-Call at 1-800-242-3447 before any ground disturbance.

## **SUMMARY OF HEARING**

[10] The following is a 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**

[11] The Lands are located at Plan 538TR Block 1 within SE-4-53-1-W5, municipally described as 53002 RGE RD 13, Parkland County (the "Lands") and are adjacent to Highway 16A and Allan Beach Road (Range Road 13).

[12] The Lands are located within the Agriculture General District. Upon review of the application the Development Authority determined the Use Class to be Home-Based Business Level 3. Home-Based Business Level 3 is a discretionary use on the Lands as outlined in Section 4.1 of Land Use Bylaw 2017-18.

[13] The proposed development was determined by the Development Authority to be Home Based Business Level 3 as defined in Section 20.3 of the Land Use Bylaw 2017-18. Home-Based Business Level 3 is a discretionary use as listed in Section 4.1, the Agricultural General District.

[14] In relation to the Municipal Development Plan Bylaw No. 2017-14 (the "MDP"), the Lands are within the Agricultural General District, which is a Rural Agricultural Area –General as identified in section 4.1 of the MDP. The Rural Agricultural Area hosts a wide range of agricultural operations, rural subdivisions, farmsteads, rural businesses, parks, environmental areas and other uses and amenities. The Lands are governed by the Glory Hills Area Structure Plan, which accommodates for country residential and public recreation use. The Lands are not subject to an environmentally significant area as defined in the Environment Conservation Master Plan (ECMP).

[15] The Appellant is appealing the decision of the Development Authority in approving a Development Permit for a Home-Based Business Level 3 on the subject lands. The application was received on September 20, 2021, by Parkland County's Planning and Development Services Department for a Home-Based Business Level 3 and proposed accessory building.

[16] On August 3, 2017, the Home-Based Business Level 3 (Process and sell firewood) for firewood processing and sale was approved under permit number 17-D-413 as a discretionary use. This permit was time-limited for two years with the option to reapply. The applicant reapplied for the same business and the proposed accessory building on September 20, 2021.

[17] On October 10, 2021, the Development Authority deemed the application complete. The following items were submitted in support of the application:

1. Application Form
2. Site Plan
3. Elevation Drawings
4. Floor plan confirmation

## 5. Business Details

[18] The Development Authority is of the view that the proposed development on the Lands meets the applicable Land Use Bylaw Requirements. The Development Authority took into consideration the following:

### Proposed Land Use

- a. The Development Authority completed a thorough review of the application against Land Use Bylaw 2017-18 and determined that the proposed activities on the Lands meet the definition for Home-Based Business Level 3 as per Section 20.3.
- b. Home-Based Business Level 3 is a Discretionary use as per Section 4.1.2(c) c. The Home-Based Business Level 3 met the provisions of the Land Use Bylaw as per Sections 4.1.2(c) - Agricultural General Discretionary Uses, 4.1.4(b) - Agricultural General Development, 11.1.3(d) - Accessory Development, and 12.8.3 - Home Based Business.

### Scope of Business

- c. Proposed activities for the site are limited to processing and selling firewood within regular business hours to not generate excess noise and traffic and interfere with the surrounding properties use and enjoyment.
- d. The scope of the business provided by the applicant met the provisions for Home Based Business Level 3 under Section 12.8.3 of the Land Use Bylaw.

### Frequency of Visitors

- e. The proposed client visits are up to six clients a day. The nature of the client visits is to pick up processed firewood and are short in duration as a result.

### Business' secondary nature to principal dwelling

- f. There is an existing dwelling on the site, occupied by the applicant's son who also operates the business.

### Accessory Building Purpose

- g. The proposed accessory building is to be used for the Home-Based business to store firewood and equipment. The proposed structure met setback requirements once revised for proximity to Highway 16A. The proposed development will be finished in a manner that is visually compatible with the surrounding character and design of the neighborhood. Alberta Transportation was notified of the permit approval, and it was noted on the permit that the applicant was responsible for applying for a roadside development permit from Alberta Transportation.

[19] In response to questions from the Board, the Development Authority advised as follows:

- a. Seven letters were sent to neighbouring properties within a 100 m radius of the Lands. Three other letters were sent: one to Alberta Transportation; one to ATCO Gas; and one to FORTIS.

### **Appellant Dwayne Nernberg**

[20] The Appellant, Dwayne Nernberg, stated that the current owners, the Applicants, purchased the Lands from his father. His initial concerns were that there should be no noise from the operations and that the Lands should be clean (neat and tidy). The Applicants indicated initially that they wished to do an RV park on the Lands, which he had no objection to. However, it is now operating as a wood business.

[21] When his windows are open in the summertime, he hears sawing. There is the noise, traffic, and voices. The Appellant spoke with the Applicants about a berm. Although the Appellant was in agreement with the Applicants putting up a berm, the berm was not installed. The Appellant indicated he did not appeal the original permit due to the verbal agreement regarding the berm. Now that there is a new permit being considered, he has appealed because of his concerns. He moved to the county to be secluded. He believes that the operation has devalued his property. He stated that his wife has to stay home due to migraines and there is noise coming from the Lands. When his daughter is at home working doing schoolwork, she hears the noise. He stated that when they sit on the front deck, he can see sea-cans and hears noise. He stated that he is not disputing the business, but has concerns about the noise impacts to him.

[22] He stated that in the summertime the Applicants had a tent that they used to bundle wood. It sounded like they were on his front deck. The sound rolls down the hill to his property. In his view, there is a large amount of land where the Applicants could set up in other areas which would not have such an impact on him.

[23] The Appellant indicated that there are big trucks hauling logs to the Lands. It takes all day to unload the trucks. There is some traffic arising from the business operations, but the sawing happens all day. He hears chainsaws. His biggest complaint is the buzzing and sawing. He wants a solution to the noise, but he not unhappy with the business. He believes that a berm would remediate the visual impact and the noise. He spoke with Mr. Preston, Senior about a berm. The Appellant was fine with a berm that was on his property as well, but the deal that Mr. Preston, Senior had arranged fell through.

[24] The Appellant advised that the land on his side of the property line goes down into what his father called a 'coulee'. If the berm was located on the property line, some of the berm would slide off into the coulee. However, he is okay with that happening because of the slope. The Appellant advised that further north on his lands, he has a pond where the drainage from this portion of the lands goes into his ponds. He has no objection to the drainage occurring into the pond because they have outdoor recreation on the pond.

[25] The Appellant advised that a berm would have to be placed more in the middle of the north property line to Lands because that would reflect where his house is.

[26] In response to Board questions, he indicated that:

- a. He is three hundred (300) feet from the property line. He is immediately adjacent to the Lands.
- b. The Applicants were operating outside of the hours for operation specified by the County's Community Standards Bylaw (noise), but after he made a complaint, the operations outside of those hours stopped.

### **Applicant – Steve Preston**

[27] Mr. Steve Preston, Senior and Mr. Steve Person, Junior, both spoke on behalf of the Applicant. Mr. Preston, Senior stated that he and the Appellant spoke and had wanted to come to a mutually acceptable agreement to benefit both of them. Mr. Preston, Senior advised that there are 'holes' in the property, but the County required engineered drawings to show the proposed berm would work for both the Lands and for the Appellant's lands. He has contacted engineering firms and had been told that the cost would be eight thousand dollars (\$8,000). He is reluctant to spend the money on drawings if it would not get County approval to haul the material in to construct a berm and fill in holes.

[28] He purchased the land from the Appellant's father approximately six years ago. He has not pursued the berm due to the question of whether he would get approval. He is trying to get to a mutually beneficial agreement.

[29] Mr. Preston, Senior advised that a berm would have to be three to four meters high to block out the noise and then there would be trees on top of the berm to block the view.

[30] Mr. Preston, Junior stated that the only location for the accessory building is directly across from the Appellant. The Prestons have moved the development as far back as they can. The only location that they can place the building is at the top of the hill because it is flat enough to build at that location. Mr. Preston, Junior does not believe that they could work inside a building. A massive building would be required to conduct their operations inside the building. Mr. Preston, Junior believes that a berm is ideal.

[31] Mr. Preston, Junior operates the business from the Lands. Mr. Preston, Junior told the Board that he runs the business and has tried to keep the noise down as much as possible. They understand that they have neighbours, but they are trying to make a living. In his view, the berm and separation are key. They have tried not to cause problems. The previous complaint by the Appellant was in relation to the noise and the eyesore. Mr. Preston, Junior advised that he tries to keep the Lands neat and clean.

[32] The land is comprised of rolling hills. The land between them is completely dry and there has never been water. It is not a slough.

[33] Mr. Preston, Senior advised that they have not done an environmental assessment but that would be part of the eight-thousand-dollar (\$8,000) cost. He advised that the elevation of his property is approximately five meters higher than that of the Appellant.

[34] In response to Board questions, the Applicants advised that:



- a. the accessory building that is part of the development permit application is not to be used for the processing (to mitigate noise). Rather, the accessory building is for the storage of equipment. It might be possible to construct an addition to that building, such as a lean-to, which might reduce the noise.
- b. The cutting of wood is done on a cyclical basis. They have not operated in the last four weeks. On a regular day, a couple of trucks are brought in at once. That gives them sufficient wood for two weeks worth of processing. On a high production day, they saw for four to five hours a day. Generally, when a truck comes in, the truck is gone within one to one and a half hours. There is sawing, stacking and maintenance. They usually operate the saw for five or six hours a day.
- c. The berm would be the full length of the lot between the two properties. Initially, the Applicants would do the front end closer to the Appellant's home.
- d. In response to a Board question about whether the berm could fit entirely on the Lands, Mr. Preston, Senior advised that it could. However, he stated that the Appellant did not mind if the berm was partially on the Appellant's property. Upon further consideration, Mr. Preston, Senior advised that it would not be possible to put the berm wholly on his property because at the northwest end, there is a drop off. It would be possible to place a berm wholly on the northeast side of the Lands.
- e. In response to Board questions about whether there could be a wall to provide noise attenuation, Mr. Preston, Senior advised that on the northwest part of the Lands, the land would need to be leveled. Moreover, a wall would have to be high in order to provide noise attenuation.

[35] In his concluding remarks, Mr. Preston, Senior advised that he and the Appellant have agreed that it would be beneficial to both properties to have materials hauled in and to construct a berm. If this happens, he questioned whether they would need approval from the County. The Development Authority confirmed that anything over six inches of fill requires a permit and potentially an environmental impact report.

## **FINDINGS OF FACT**

[36] In addition to the specific facts set out under the Board's reasons, the Board finds the following as facts.

[37] The Lands are located at located at Plan 538TR Block 1 within SE-4-53-1-W5, municipally described as 53002 RGE RD 13, Parkland County and are adjacent to highway 16A and Allan Beach Road (Range Road 13).

[38] The Lands are located within the Agriculture General District of the LUB.

[39] The Use is Home-Based Business Level 3.

[40] Home-Based Business Level 3 is a discretionary use on the Lands as outlined in Section 4.1 of Land Use Bylaw 2017-18.

[41] The development as approved by the Board complies with the applicable MDP and the Glory Hills ASP.

[42] The Home-Based Business Level 3 (Processing, and Selling Firewood, construction of shop) is not compatible with neighbouring uses. However, the Board believes that with the position of the new conditions, the new conditions will address the concerns with regard to compatibility.

[43] The Appellant, Dwayne Nernberg, is an affected person.

[44] The Applicants, Steve Preston and his son Steve Preston, are affected persons.

## **REASONS**

### **Jurisdiction**

[45] 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 and has considered the oral and written submissions made by and on behalf of those who provided evidence: the Development Authority, the Appellant, the Applicant and those speaking in favour of 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 (a.4) and (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**

[46] 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 those making submissions to the Board. The Appellant has property immediately adjacent to the Lands. As a result, due to the proximity of the proposed development, the Board finds the Appellant to be affected.

[47] Because the Applicant's development permit is under appeal, the Applicant is also affected by this appeal.

## **Issues to be decided**

[48] The Board must determine:

- a. Is the proposed development in compliance with the applicable statutory plans?
- b. What is the use?
- c. Is the use discretionary?
- d. If so, is the use compatible with surrounding uses?

## **Compliance with Statutory Plans**

[49] The only information before the Board in regard to the applicable Municipal Development Plan (MDP) is the information from the Development Authority which indicates that the Lands are located within the Rural Agricultural Area – General as identified in section 4.1 of the MDP. Since this area hosts a wide range of agricultural operations including rural businesses, the Board finds that the development complies with MDP since it is a rural business located within an agricultural area.

[50] The Lands are governed by the Glory Hills Area Structure Plan, which accommodates for county residential and public recreation use. The Board notes that there is nothing expressed within the area structure plan which prevents a development of the proposed nature from occurring. Further, the Board notes that neither the Appellant nor the Applicant had any submissions contrary to those provided by the Development Authority. In light of the absence of any objection and in having read the terms of the Area Structure Plan, the Board finds that the proposed development is compliant with the Area Structure Plan.

[51] Having addressed the question of the proposed developments' compliance with the statutory plans, the Board must continue its analysis. Compliance with the statutory plans is required, but does not address the entirety of the issues before the Board. The Board now turns to the nature of the use and the questions which flow from the Board's determination of use.

## **What is the Use?**

[52] The Board notes that the Development Authority determined that the proposed development was a Home-Based Business Level 3. The Development Authority's determination was based on its conclusion that the proposed development was for firewood processing and sale which fell within a Home-Based Business Level 3 because there is an existing dwelling on the site, occupied by the Applicant's son who operates the business. The scope of the business meets the provisions for Home-Based Business Level 3 because it is a limited number of clients per day (6).

[53] The Board notes that the Development Authority concluded that this is a Home-Based Business Level 3. However, the Board must decide as to whether the proposed development is a Home-Based Business Level 3 or whether it is an industrial business. The Board has examined the definition of industrial, heavy as well as industrial storage and warehousing which are found within the County's Land Use Bylaw. The Board has determined that the definition of "industrial storage" is not applicable because the proposed use is not primarily storage, but is the processing of wood. In examining the definition of heavy industrial, the Board notes the typical uses include upgraders, or the plants for the manufacture of petroleum products, fertilizers and chemicals.

[54] In considering the nature of the operations, the Board notes that the noise impacts are not sufficiently similar to the nature and type of impacts from the typical heavy industrial uses as listed within the Land Use Bylaw so as to be able to conclude that the proposed development is a heavy industrial use.

[55] The Board has noted that the proposed development is located on agricultural lands; the Applicant lives in the house and there would be visitors to the premises; therefore, the Board finds that this use is, in fact, a Home-Based Business Level 3.

## **Is the Use Discretionary?**

[56] Having concluded that the use is a Home-Based Business Level 3, the Board notes that the Land Use Bylaw provides that a Home-Based Business Level 3 is a discretionary use within the Agricultural General District, and the Board finds so as a fact.

## **Is the Use Compatible with Neighbouring Uses?**

[57] Having concluded that the use is discretionary, the Board must consider whether the use is compatible with neighbouring uses.<sup>1</sup> In determining compatibility, the Board has reviewed the arguments raised by the Appellant, which include the fact that the development, which has operated under a previous time limited two-year permit, causes traffic and noise impacts. The Board notes that the concerns which the Appellant has raised in relation to traffic do not appear to be about the volume of traffic, but rather the noise that the traffic generates. Therefore, the Board concludes that the Appellant's concerns center on the question of noise.

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<sup>1</sup> *Rossdale Community League (1974) v. Edmonton (Subdivision and Development Appeal Board)*, 2009 ABCA 261 at para 14.

[58] The Board is not certain as to how widespread the noise impacts are. The Board notes that there were seven landowners notified by the Development Authority of the proposed development. The evidence is that only the Appellant filed an appeal.

[59] The Appellant gave evidence that the operations of the Applicant have caused noise impacts. He raised the fact that his wife is troubled by the noise; further, his daughter is affected by the noise when she is studying. He indicated that the noise from the operations, whether it is sawing or bundling, caused significant impacts to his enjoyment of his property.

[60] The Board asked a significant number of questions about the topography of the Lands and the Appellant's lands. The Lands have a higher elevation to that of the property of the Appellant given the 5 m differential in elevation. The Board concludes that due, in part, to this difference in elevation, the noise of the sawing, etc. can, and does, affect the Appellant.

[61] The concerns of the Appellant appear to be accepted by the Applicant because the Applicant has entered discussions with the Appellant about the placement of a berm to reduce the noise impacts.

[62] In light of the uncontroverted evidence about the noise impact on the Appellant, the Board concludes as a matter of fact, that the noise is causing an impact on the Appellant and, therefore, the development is not compatible with neighbouring uses.

[63] The Board's analysis must continue to consider whether the imposition of any conditions could address the incompatibility arising from the noise of the operations.

[64] The Board heard a significant amount of evidence about the placement of a berm which the Appellant and the Applicant suggested should be placed across the property line on both properties. The Board considered whether it could impose a condition to have the Applicant construct a berm. However, the Board received insufficient information about the height of the berm, the location of the berm and the geotechnical impacts of such a berm. The Board is concerned about imposing a condition about putting a berm because of the evidence of the Appellant that there is a steep drop on the northwest side of the Lands where the placement of any berm may slough into the Appellant's lands.

[65] In the absence of specific geotechnical information about the placement of the berm and the fact that the berm would have to be of a significant size (three to four meters high), the Board did not have sufficient information to impose the condition of a berm. The Board did not wish to impose a condition requiring the placement of a berm in the absence of specific information about both the nature and materials of the berm, particularly without any engineering reports. The Board does not wish to create additional problems whose consequences cannot be immediately foreseen in the absence of far more detailed information.

[66] The Board notes that the Appellant's concerns centered on the impact of the noise. In light of those concerns, the Board is of the view that the imposition of a condition on the permit may address the noise concerns and thus make the development compatible. The Board has determined that it will impose a condition that the Applicant must comply with the terms of the Community Standards Bylaw as a development permit condition. Since this is a condition of the development permit, if the Applicant exceeds the standards in the Community Standards Bylaw

regarding noise in a Non-Residential District, the Applicant would be in breach of the condition of its development permit approval and may face a stop order issued by the County. The Board is of the view that including this as a condition would strengthen the enforceability of the requirement for noise compliance.

[67] Further, the Board is imposing a condition whereby the Applicant must provide a noise impact assessment done two times during each calendar year for two years, with each test being done at least eight (8) weeks apart and the first test being done no later than May 1, 2022. The Board is requiring that the noise impact assessment be done by a qualified acoustical practitioner and conducted at two points:

- a. the first point is at a point along the north property line which intersects a notional line drawn between the noise source and the Appellant's residence. This point should indicate how much noise is being generated at the north property line of the Lands; and
- b. the second point is at the residence located on the Appellant's lands. The measurement will determine how much noise there is at the Appellant's house, and whether that amount of noise breaches the County's Community Standards Bylaw.

[68] These results must be provided in writing to the Development Authority who can assess whether those results show any breach of the condition imposed above. If there is a breach of the noise condition (see paragraphs [9].9 and [9].10 above), the Development Authority can consider whether it wishes to issue a stop order to ensure compliance. The Appellant may ask the Development Authority for the reports and the Development Authority must provide the response, subject to any privacy legislation in place that might affect the disclosure of that information.

[69] The Board is of the opinion that requiring the Applicant to do noise reports and providing those noise reports to the County should provide some assurance to the Appellant that the Applicant will be aware of and monitor noise levels. By requiring the testing for two years, the Board is attempting to balance the interests of the Appellant in knowing whether the noise exceeds the standard of the County's Community Standards Bylaw, while permitting the Applicant to conduct his business. The Board considered whether some other noise standard could be imposed. However, in the absence of evidence, the Board had no evidence upon which to make this determination. The County's Community Standards Bylaw provides a standard that the County has set, and because it has been examined by County Council, the Board is of the view that it provides a standard that the Board may rely upon. If the Appellant is of the opinion that the Community Standards Bylaw noise limit is too high and wishes to change it, he may urge County Council to change the noise limit in that bylaw.

[70] The Board did not wish to impose the requirement for testing for the duration of the permit because the Board was of the opinion that if the testing showed that the noise levels exceeded the Community Standards Bylaw Limits, the Applicant and the Appellant could try to resolve this concern through private agreement, keeping in mind that if the limits exceed the Community Standards Bylaw limits, the County could issue a Stop Order against the Applicant.

[71] The Board notes that if the Applicant and the Appellant are able to reach an agreement or otherwise resolve the concerns about noise, for instance by placing a berm, the Applicant is entitled to apply to amend the conditions of this approval, which would be considered by the Development Authority in accordance with the County's processes. The Board notes that the evidence of the Development Authority was that any berm would require a development permit.

[72] The Board commends the parties who have attempted to work together to resolve this issue. This decision should not be read as precluding them from agreeing to construct a berm and obtaining appropriate County approvals with whatever conditions may be imposed. As indicated above, the Board does not have sufficient information to be able to assess the construction of a berm and as a result of the potential impacts, both geotechnical and otherwise, the Board does not wish to make a decision in the absence of appropriate evidence.

[73] The Board commends the neighbours for attempting to work together to resolve this issue and urges them to continue their work and agree to the construction of a berm which would have a long-range solution to these issues to allow them to both enjoy their respective properties.

## **Conclusion**

[74] For the above reasons, the Board denies the appeal, and upholds the Development Permit but on the modified conditions as set out above.

[75] Issued this 20<sup>th</sup> day of January 2022 for the Parkland County Subdivision and Development Appeal Board.



Barb Williams, Clerk of the SDAB, on behalf of N. Jamieson, 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. V. Antonakis, Development Authority
2. D. Nernberg, Appellant
3. S. Preston, Senior, Applicant
4. S. Preston, Junior, Applicant

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

<b>January 10, 2022 Agenda Package</b>			
<b>Exhibit</b>	<b>Description</b>	<b>Date</b>	<b>Pages</b>
1.	Agenda Coversheet	January 6, 2022	1
2.	Table of Contents	January 6, 2022	2
3.	Notice of Appeal – Dwayne Nernberg	December 10, 2021	3
4.	Submission of the Development Authority	January 4, 2022	4-37