



REGIONAL MUNICIPALITY  
OF **WOOD BUFFALO**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

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

FILE NO. **SDAB-2015/019**

APPLICATION No.: **2015-DP-00977**

DEVELOPMENT: **Home Business License**

LAND USE DESIGNATION: **SE – Suburban Estate**

LEGAL DESCRIPTION: **Lot 13, Block 4, Plan 062 6388**

CIVIC ADDRESS: **145 Sommer Way, Fort McMurray, Alberta**

**IN THE MATTER OF AN APPEAL** filed with the Regional Municipality of Wood Buffalo Subdivision and Development Appeal Board (“the Board”) pursuant to Sections 685 and 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (“the Municipal Government Act”), the Appeal Hearing was held on Thursday, March 17, 2016 in the Jubilee Centre, Council Chamber, 9909 Franklin Avenue, Fort McMurray, Alberta.

**BETWEEN:**

P. Brake (“Applicant”)

-and-

The Regional Municipality of Wood Buffalo (“Development Authority”)

**BEFORE:**

D. Secord, Chair  
A. Austin  
S. Houston  
D. Moses  
S. Schaffer

**Administration:**

S. Soutter, Clerk for the Subdivision and Development Appeal Board

- [1] Following the introduction of the Board, the Chair confirmed with the parties in attendance that there were no objections to the constitution of the Board.

### **PRELIMINARY MATTERS**

- [2] No preliminary matters were raised.

### **SUMMARY OF HEARING**

- [3] This Appeal is related to the refusal of a Development Permit, an application for a Home Business License for the rental of Recreational Equipment. The area is zoned SE – Suburban Estate and the proposed use is a discretionary use.
- [4] Legal Counsel for the Development Authority introduced the report prepared by the Development Officer. The application for the development was received on November 12, 2015 and subsequently the permit was refused on December 16, 2015.
- [5] The Refusal letter indicated that the development was refused for the following reasons:

1. *Sec. 70.1 (b) of the Land Use Bylaw states: no noise, vibration, dust, smoke, odors, heat, glare, electrical or radio disturbance detectable beyond the property boundary shall be produced by the Home Business. The privacy and enjoyment of adjacent residences shall be preserved and the amenities of the neighborhood maintained at all times;*

*This Home Business for **rental of All Terrain Vehicles and Trailers** shall generate noise and dust and subsequently, the privacy and enjoyment of adjacent residences and the neighbourhood shall not be preserved.*

2. *Sec. 70.2 (e) states: a Home Business shall demonstrate to the satisfaction of the Development Authority that traffic generated by the Home Business will not significantly impact traffic flow in the neighborhood;*

*The Development Authority is not satisfied that the traffic generated by the Home Business will not significantly impact traffic flow in the neighbourhood. The Development Authority believes the volume of vehicles will adversely affect the roadway.*

3. ***Sec. 70.2 (g) states: a Home Business shall not be approved if, in the opinion of the Development Authority the business is more appropriately located in a commercial or industrial district. (Bylaw No. 00/011)***

*In the Development Authority's opinion, this business is more appropriately located in a commercial or industrial district.*

- [6] Legal Counsel provided the Board with a brief history of the development. In early 2012 a warning letter was issued to the Applicant for a development without an approved development permit, following that the Applicant made an application for a home business license for off road recovery.
- [7] Later in 2012, the Applicant applied for a development permit at the subject property and received an approved development permit for a Home Occupation, which is still current. As well, in 2012 a different person applied for a business license at 300 Maclellan Crescent for a recreational vehicle sales and rental facility. That business license was cancelled in January 2015 for failure to pay the required business license fees.
- [8] In the opinion of the Development Officer the use of the business is not compatible with the area, however, as pointed out in their submissions the Saprae Creek and Clearwater Highway 63 Area Structures Plans both contemplate that Home Occupation businesses although allowed, are not supposed to be an activity that would negatively affect the amenities of the hamlet. Home Occupations would be allowed if they do not generate noise, traffic or negatively affect the use and enjoyment of the surrounding properties.
- [9] Page 30 of the submissions (Exhibit 3) shows there was an attempt in 2009 to pass a bylaw that would have relaxed the standards of section 70.2 of the Land Use Bylaw but the proposed bylaw was defeated by Municipal Council, as the intent of the Area Structure Plan is to preserve the country residential atmosphere of these lands.

- [10] The Applicant indicated he would like 12 All-Terrain Vehicles (“ATV’s”) with the prospect of his business growing to over 20 vehicles. The Applicant also indicated that repairs to the vehicles would not be done on the subject property. However, in the Development Authority’s opinion repair is incidental to this type of business, proven by a previous warning letter issued in 2012 which stated “please ensure the repair business is not operating at this location...”.
- [11] Over the years site inspections have shown there appears to be a number of vehicles repaired and stored on the lands, pages 34 – 39 (Exhibit 3) date stamped 2006 showed materials stored on the lands.
- [12] Notice of the permit application was also circulated to the public and some concerns were raised with regard to noise and general detriment of the neighbourhood.
- [13] It appears from the Applicant’s photographs (Exhibit 4) he may be suggesting the development was denied due to unsightliness. Whilst that is a factor, in this case it is not the main factor, the main factor for the Development Officer was compatibility.
- [14] The Land Use Bylaw states recreational equipment includes ATV’s, The Development Authority’s submission is that when the Land Use Bylaw was passed in 1999, at that time ATV’s referred to a different type of vehicle. In reality the vehicles being advertised on the Applicant’s website are more industrial and for commercial use. The website specifies industrialized specialties for companies working in the oil and gas industry.
- [15] Six of the vehicles that are advertised as being available for rent are all large and have between six to eight wheels, weigh between 800 and 5,000 pounds, seat between two six adults and tow between 1,000 and 8,000 pounds. The handout (Exhibit 5) shows the vehicles sizes, towing capacity and weight. The models on the website are compared to a sportier ATV and sizes are quite different.
- [16] The argument of the Development Authority is that the vehicles size, towing capacity, weight etc., is very different from what was considered an ATV in the Land Use Bylaw in 1999.
- [17] During questioning the Development Officer confirmed there are six other active business permits approved in the area. The businesses are Electrical Contracting, Landscaping and Snow Clearing, Buying, Repairing and Selling of House Hold Goods and Décor, Custom Granite Counter Tops and a Massage Parlor. One other business, Hauling and Hoisting, is listed as closed.

- [18] Therefore, the Development Authority recommends that the Board uphold the decision of the Development Officer and refuse Development Permit 2015-DP-00977 as the proposed home business for rental of recreational equipment, specifically ATV's and trailers will interfere with the use, enjoyment and value of adjacent properties, and the amenities of the neighbourhood and will also adversely impact the traffic flow and road conditions.

Submission In Favor Of The Appeal

- [19] The Board heard from D. Gallagher who spoke on behalf of the Applicant. The Applicant was present and made clarifications during the submissions.
- [20] The presenter stated that there has been assertions that the business would be better suited in an industrial area and the reason given was the nature of the vehicles. The vehicle although marketed as being for industrial use, is due to the market that the Applicant is looking to rent these vehicles to.
- [21] The statements alleging there would be impact on the neighbourhood in the form of vibration, dust, smoke, odors, heat and glare are unfounded. In actual fact there have been noise studies carried out with regard to these vehicles and decibel readings taken at 5 feet away was recorded at 70. He added that the neighborhood is at the end of the airport runway, therefore there is quite a bit of noise in the area already and in comparison these vehicles are much quieter. The Applicant also noted that his yard is covered in crushed gravel so there is hardly any dust emitted from his yard.
- [22] D. Gallagher addressed the reason identified in the permit refusal, where it was stated that there would be increased traffic to the neighbourhood. He pointed out that when these vehicles are rented out the intention is to have them delivered to the client as this would eliminate constant travel and as well this will create additional revenue for the business.
- [23] The Applicant clarified that he does not own everything that is advertised on his website. He explained that due to the recession he cannot afford to update the website but has every intention to do so once business increases.
- [24] The Applicant also mentioned that in the Development Authority's submission they show a sport ATV but omitted including an Argo which is very comparable to what his vehicles are. His vehicles are an Amphibious ATV.

- [25] The Applicant confirmed he does own six vehicles and that the vehicles weigh approximately 3,000 pounds. The Applicant indicated that he did apply for 12 vehicles with the optimism of his business being successful, so that should there be increase in his stock he would avoid having to revise the permit. He added that the intention is if he did increase his stock, he would move his business back to an industrial location. He indicated that the reason why he has to switch from a home occupation to a home business is because he would like to hire one employee.
- [26] With respect to his property and any unsightliness, the vehicles are kept behind the house and cannot be seen from the road. He has every intention to have all the vehicles stored inside his garage. On page 38 (Exhibit 3) you can see the backyard. The big yellow machine is for his personal use as he has a local trap line. The Hydrovac track was sold and the trailers belong to his neighbours. He stated that there will be some maintenance work done on the rental vehicles and this work will be done in the lower half of the garage, therefore there is no noise anticipated.
- [27] The Applicant stated that a traffic study has been requested, and noted that when the business was located in town, a similar study was done and that study disclosed only 2 vehicles coming to the business. It was noted that this study was completed in 2014 when the business was very busy and his stock was approximately 20 vehicles.
- [28] The Applicant submitted a Petition (Exhibit 4) signed by his adjacent property owners (within the 60 meter radius) showing their support for the proposed business.
- [29] The Board heard from Bob Fleming, an adjacent property owner who spoke in support of the Appeal and stated he is the one who canvassed the neighbours to sign the petition and no one voiced any issues with the proposed business. He stated that there is other businesses in the area such as a ski hill and a rail yard and that there is increased traffic which includes sulphur trucks and the loading and unloading of ATV's.
- [30] The Board also heard from P. Drever who spoke in support of the appeal and indicated the Applicant is a valued reputable business owner that supports the community.

Submission Opposed To The Appeal:

- [31] No one came forward to speak in opposition of the Appeal.

[32] Upon conclusion, the Chair asked the parties present, if they felt that the hearing was conducted in a fair manner. No issues were brought to the Board's attention.

### **FINDINGS OF FACT**

[33] The Board makes the following findings of fact:

1. The Property is zoned SE – Suburban Real Estate;
2. The use is a discretionary use; therefore it is within the authority of the Board to exercise its power under section 687 of the Municipal Government Act.
3. The Applicants recreational vehicles are Amphibious All-Terrain Vehicles (ATV's) which defined in the Off Highway Vehicle (Saprae Creek) Bylaw 97/049 "*means a wheeled or tracked motor vehicle designed for travel primarily on unprepared surfaces such as open country or marshland...*".
4. There will be no on-site operation of the vehicles on the subject property, the intention is to where possible, deliver the vehicles to prospective clients.
5. Given that the lots in this district are generally bigger than urban area lots there will be little to no noise impact on the neighbours.
6. Saprae Creek is a designated area for operating off highway vehicles.
7. This business is not industrial in nature.
8. The Development Permit has to be renewed annually.
9. The Applicant has adequate facilities for the storage and maintenance of his ATV's.
10. The Applicant provided a signed petition from the majority of the effected neighbors supporting the Development Permit.
11. No one came forward to speak in opposition of the Appeal

### **DECISION**

[34] **It is the decision of the Subdivision and Development Appeal Board to overturn the decision of the Development Officer and uphold the Appeal by approving Development Permit 2015-DP-00977 with the following conditions:**

- i. That the Applicant/owner shall facilitate random site inspections of the property on a consistent basis, to be determined at the discretion of the Development Authority. Upon arrival to the subject property, the Development Authority must announce their presence to the Applicant/owner. This is to ensure that the use of the property is consistent with the information provided in this application.
- ii. That any storage of vehicles, equipment, materials or goods related to the Home Business must be located within the principal building and accessory building(s)/garage. No exterior storage is permitted.
- iii. That no more than 12 (twelve) vehicles and 2 (two) trailers be used for the purpose of rental equipment for the Home Business.
- iv. That no repair or servicing of the equipment be carried out outside the attached garage of the principal dwelling.
- v. That no noise, vibration, dust, smoke, odors, heat, glare, electrical or radio disturbance related to the Home Business is detectable beyond the property boundary; or interfere with the privacy and enjoyment of adjacent residences within a 60 meter radius and the amenities of the neighbourhood.
- vi. That all business vehicle trips and delivery trips by the Applicant and employee shall be restricted to:
  - a. Monday to Saturday between the hours of 7:00 a.m. and 10:00 p.m.; and
  - b. Sundays and Statutory Holidays between the hours of 10:00 a.m. and 6:00 p.m.
- vii. That the traffic generated by the Home Business will not significantly impact traffic flow in the neighbourhood.
- viii. That the Home Business provide at least one (1) on-site parking space in addition to the residential parking spaces provided pursuant to Part 8 of Bylaw 99/059. Parking in the front or side yards is prohibited, except on a driveway. Where a commercial vehicle is associated with the business, a separate off-street parking space shall be provided unless the vehicle is also used for non-business personal travel. That no more than 1 (one) vehicle is permitted in the driveway at any given time in regard to this Home Business and that there shall be no on-street parking associated with this Home Business.
- ix. All required Safety Code permits under the *Safety Code Act* in the: building, mechanical, electrical, gas, plumbing and private sewage disciplines must be obtained for this development. Please contact the Regional Municipality of Wood Buffalo - Planning and Development Branch to obtain the required Safety Code permits or for information regarding these permits 780-799-8695 or follow up on our permitting website: <https://aca.woodbuffalo.ab.ca/citizenaccess/>



- x. That one (1) non-illuminated sign or plaque shall be permitted on the dwelling. The maximum sign or plaque dimensions are 20 cm by 30.5 cm. No other form of on-site advertising is permitted.
- xi. That the Home Business be operated by the permanent resident(s) of the principal dwelling, and may employ no more than one (1) non-resident employee on-site.
- xii. That the necessary business license from the Municipality be obtained.
- xiii. That all interior or exterior alterations, additions or renovations to accommodate the Home Business comply with the *Safety Codes Act* and/or any applicable Bylaws.
- xiv. That not more than 30 percent of the gross floor area of the principal dwelling plus the area of one accessory building shall be occupied by the Home Business.
- xv. That all Federal, Provincial and Municipal statutes, regulations, codes and standards shall be met.
- xvi. That the approved Home Business is governed by Land Use Bylaw 99/059 Part 5 - General Regulations Section 70 - Home Business.

### **REASONS FOR THE DECISION**

- [35] The Board has the responsibility to determine that the development will be compatible with adjacent properties and the use will not adversely affect the surrounding area. Based on the information provided, the Board concludes that as long as the conditions of the development permit are being upheld; there will be no negative impact on the use, enjoyment, and value of the adjacent properties.
- [36] The Board accepted the evidence of both parties but favored the evidence of the Applicant. The evidence of the Development Authority failed to show an undue impact on the neighbourhood. The submissions did not persuade the Board that the intended use is not compatible with the neighbourhood.
- [37] Although the Development Officer indicated that she had received complaints from concerned adjacent property owners, the Board did not put any weight on these statements as no one came forward to speak in opposition to the Appeal, nor did anyone submit anything in writing.
- [38] The Board finds that the Applicant did a satisfactory job in providing the Board with adequate facts with regard to the economic aspects of the development, aesthetics, and residence size. The Applicant further clarified that the intention is to deliver the vehicles to prospective clients where possible as this will generate more revenue for his business. The Board finds that this mitigates any concerns with regard to increased traffic to the area.
- [39] The critical question before the Board is to determine whether or not the objective of the proposed business is in line with the regulated use of land. The Suburban Estate district is zoned for the operation of recreational vehicles, therefore, this shows that there is compatibility within the area.

- [40] The Board determines that the Applicants ATV's are recreational vehicles as currently defined in the Land Use Bylaw. Although the Development Authority suggested that in 1999 when the Land Use Bylaw was enacted the definition of an ATV is not what it is classed as today. The Boards duty is that it must base its decision on what is in the existing Land Use Bylaw, therefore the Applicants ATV's falls into the category of recreational vehicles.
- [41] For these reasons the Board upholds the Appeal and approves Development permit 2015-DP-00977
- [42] The decision of the Subdivision and Development Appeal Board is final and binding on all parties, subject only to appeal to the Court of Appeal under Section 688 of the *Municipal Government Act*, R.S.A 2000, c. M-26

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 15<sup>th</sup> day of April 2016.

CHAIR:   
Sean Schaffer, Vice Chair

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

<b>Exhibit #</b>	<b>Filed by:</b>	<b>Description</b>	<b>Filing Date</b>
1.	Appellant	Notice of Appeal	12/30/2015
2.	Appellant	Development Permit Refusal	12/30/2015
3.	Respondent	Development Officer's Report	01/15/2016
4.	Appellant	Appellants Disclosure	03/09/2016
		<i>i - Photographs</i>	03/09/2016
		<i>ii. - Mudd-Ox Letter</i>	03/09/2016
		<i>iii. - 2016 Fully Hydraulic Specifications - Decibel</i>	03/09/2016
		<i>iv. - Nav Canada Decibel Comparison</i>	03/09/2016
		<i>v. - Photos from street view</i>	03/09/2016
		<i>vi. - Sure-Trac Trailer Specification sheet</i>	03/09/2016
		<i>vii - Coachman 2016 brookstone fifth wheel specification flyer</i>	03/09/2016
		<i>viii - Coachman RV 2017 motorhome brochure</i>	03/09/2016
		<i>ix - Email to Engineering requesting for Traffic Study</i>	03/09/2016
		<i>x - New Construction</i>	03/10/2016
		<i>xi - Current Home Business License</i>	03/10/2016
		<i>xii - Vehicle Classification Document</i>	03/10/2016
		<i>xiii - Signed Petition</i>	03/10/2016
		<i>xiv - Government classification as an amphibious all-terrain vehicle</i>	03/11/2016
5.	Respondent	Specifications	03/17/2016

**APPENDIX “B”  
REPRESENTATIONS**

<b>PERSON APPEARING</b>	<b>CAPACITY</b>
1. B. Shah	Development Officer, Planning and Development Regional Municipality of Wood Buffalo
2. A. Gulamhusein	Legal Counsel Regional Municipality of Wood Buffalo
3. P. Brake	Applicant - Subject Property Owner
4. D. Gallagher	Associate for the Applicant
5. B. Fleming	Adjacent Property Owner
6. P. Drever	Associate for the Applicant