

CITY OF GRANDE PRAIRIE

P.O. Bag 4000

10205 – 98th Street

Grande Prairie, AB T8V 6V3

SDAB HEARING: 2020-004D

CITY OF GRANDE PRAIRIE

SUBDIVISION & DEVELOPMENT APPEAL BOARD

HEARING FILE NO.: 2020-004D

DEVELOPMENT PERMIT NO. PL200505

December 23, 2020

Minutes of the Subdivision and Development Appeal Board (the “**Board**”) hearing of the City of Grande Prairie held remotely via zoom in the City of Grande Prairie, Alberta on Wednesday, December 23, 2020.

PRESENT:

L. Coulter	Board Member
I. Penner	Board Member
J. Croken	Board Member
K. Brock	Planning & Development
(Development Officer II)	City of Grande Prairie
J. Johnson	Planning & Development Manager
V. Norris-Kirk	City Clerks
(SDAB Recording Secretary)	City of Grande Prairie
S. Watson	Legal Services
(Senior Paralegal – present for observation only)	City of Grande Prairie
Y. Ramirez	City Clerks
(Administrative Assistant – present for observation only)	City of Grande Prairie
C. Scott	Legal Services
(Temp Legal Admin Assistant – present for observation only)	City of Grande Prairie

CITY OF GRANDE PRAIRIE

P.O. Bag 4000

10205 – 98th Street

Grande Prairie, AB T8V 6V3

P. Wolff

Appellant

In-favour of the Appeal

N. Mcgahey

Appellant (Observing)

T. Van Tassell

Opposition to Appeal

(sent in email in opposition)

J. & E. Begalke

Opposition to Appeal

(sent in email in opposition)

L. Lejeune

Opposition to Appeal

(sent in email in opposition and participated via zoom)

CALL TO ORDER:

The SDAB Secretary, V. Norris-Kirk, called the meeting to order @ 10:06 a.m. and introduced herself to the Board and members of the public present.

ELECTION OF CHAIRMAN:

The SDAB Secretary called for nominations for the Chairman. L. Coulter was unanimously elected Chairman of this appeal hearing. **Motion moved by Board Member J. Croken Motion Carried**

Chairman L. Coulter explained the process of the Subdivision and Development Appeal Board and introductions were made.

Chairman L. Coulter asked if there were any objections to the Board members hearing the above noted appeal. No objections noted.

CITY OF GRANDE PRAIRIE

P.O. Bag 4000
10205 – 98th Street
Grande Prairie, AB T8V 6V3

APPEAL HEARING:

P. Wolff & N. Mcgahey

Grande Prairie, AB

(Hereinafter referred to as the “Appellant”)

Vs.

City of Grande Prairie

SDAB 2020-004D

Development Permit Application No.: PL200505

Legal Description: Lot 133; Block 05; Plan 072-2484

(Unit #106, 6829 Kateri Drive)

Chairman L. Coulter introduced the process for conducting the meeting and how the decision will be rendered and notification coming forthwith on the decision from the Subdivision and Development Appeal Board.

Description of Application:

- 1 The appeal before the Subdivision and Development Appeal Board (the “**Board**”) was brought by P. Wolff and N. Mcgahey, applicants for the Retail Store Cannabis.
- 2 On November 24, 2020, the Development Authority refused the development permit application for a Retail Store Cannabis located at Lot 133; Block 05; Plan 072-2484 (Unit #106, 6829 Kateri Drive – the “**Lands**”) in the Mission Heights neighbourhood. The subject property has a land use designation of General Commercial (CG) District. The proposed use is a discretionary use within the district.

Procedural History:

- 3 The hearing commenced on December 23, 2020 with consideration of procedural issues. The Board determined there were no concerns with procedural issues and had the authority to proceed with the hearing, via zoom. The hearing concluded on that date.

CITY OF GRANDE PRAIRIE

P.O. Bag 4000
10205 – 98th Street
Grande Prairie, AB T8V 6V3

Proper Application for Appeal:

- 4 Pursuant to Section 686(1)(a)(i)(A) of the Municipal Government Act, the appeal was filed within 21 days of the date of Notice of Decision issued by the Development Authority.
- 5 Pursuant to Section 686(2) of the Municipal Government Act, the appeal hearing convened within 30 days of the receipt of Notice of Appeal.

Required Notification:

- 6 Pursuant to Section 686(3) of the Municipal Government Act, the Subdivision and Development Appeal Board has given at least five (5) days notice to:
 - The Appellant(s);
 - The Development Authority whose order, decision or development permit is the subject of the appeal;
 - Adjacent / affected landowners required to be notified under the Land Use Bylaw and any other person that the Subdivision and Development Appeal Board considers to be affected by the appeal and should be notified (33 circulated); and
 - Members of the Subdivision and Development Appeal Board.

Decision Timeframe:

- 7 Pursuant to Section 687(2) of the Municipal Government Act, the Subdivision and Development Appeal Board must give its decision in writing together with reasons for the decision within fifteen (15) days after concluding the hearing.

Decision:

- 8 The appeal is denied and the decision of the Development Authority is confirmed. The original *Notice of Refusal PL200505* issued by the Development Authority, acting as the Development Authority for Discretionary Uses under Section 92.3 of Land Use Bylaw C-1260, shall remain in effect (see **Schedule "A"** attached hereto – original Notice of Refusal PL200505).

Appearances:

- 9 The Board received submissions from:
 - a) Ms. K. Brock, for the Development Authority;
 - b) Mr. P. Wolff and Mr. N. Mcgahey, business owners for Retail Store Cannabis (applicant to the appeal);
 - c) Ms. T. Van Tassell, in opposition to the appeal, sent in email;

CITY OF GRANDE PRAIRIE

P.O. Bag 4000

10205 – 98th Street

Grande Prairie, AB T8V 6V3

- d) J. & E. Begalke, in opposition to the appeal, sent in email; and
- e) Ms. L. Lejeune, in opposition to the appeal, sent in email and participated in the zoom Subdivision and Development Appeal hearing.

DEVELOPMENT OFFICER'S REPORT:

The Chairman asked the Development Authority, Ms. K. Brock to read administrations appeal report for the record.

It is recommended that the Subdivision and Development Appeal Board (“SDAB”) deny the appeal and, therefore, confirm the *Notice of Refusal* as issued on Notice of Refusal Permit PL200505 for the following reasons:

- The Land Use Bylaw C-1260, Section 92 – General Commercial District (CG), identifies the Retail Store Cannabis as a Discretionary Use within the City of Grande Prairie; and
- Discretionary Use means the use of land or of a building that is listed in the column captioned ‘*Discretionary Uses*’ in a table of uses for a land use district in Land Use Bylaw C-1260 and for which a development permit **may** be issued, after due consideration is given to the impact of that use upon neighbouring parcels of land.

10 The subject property is located within the Mission Heights neighbourhood and is zoned General Commercial (CG) District in Land Use Bylaw C-1260. A Retail Store Cannabis is a Discretionary Use in the General Commercial (CG) District.

11 The proposed Retail Store Cannabis does not comply with Section 37A.5 of the Land Use Bylaw C-1260, which states:

*“Retail Store Cannabis use **shall** not be located within 300m of:*

- a. *The boundary of a parcel of land containing a high school; and*
- b. *The boundary of a parcel of land designated as future high school site.”*

12 Section 37A.7 of the Land Use Bylaw C-1260, states:

*“The Development Authority **shall not grant a variance to setbacks** from schools or Provincial Health Care Facilities.”*

13 Adjacent to the subject property on the west side is a high school site which consists of five (5) parcels of land. These five (5) parcels contain two (2) high schools (Charles Spencer High School and St. Joseph’s High School), two (2) sports fields and parking areas. These are all under title to the City of Grande Prairie.

CITY OF GRANDE PRAIRIE

P.O. Bag 4000

10205 – 98th Street

Grande Prairie, AB T8V 6V3

- 14 Ms. K. Brock submitted that the matter before the Board is the separation distance which is to be 300m according to Land Use Bylaw C-1260 (the “Bylaw”) and the relaxation that would be required between the proposed Retail Store Cannabis and the parcels of land containing the school sites. The proposed development would be approximately 165m from the proposed location; equating to a relaxation distance of approximately 135m.
- 15 Cannabis regulations that were drafted and subsequently approved by Council, identified this entire area as being affected by the separation requirements to parcels containing a high school, noting that Retail Store Cannabis would not be permitted in any of the commercial areas adjacent to high school sites. These setback restrictions included separation distances from schools in the interest of youth attending these schools not being in close proximity to Cannabis stores.
- 16 In addition, Alberta Gaming, Liquor and Cannabis (AGLC) has implemented restrictions to setbacks from Cannabis stores, including school sites. Municipalities, however, were given the discretion to increase these setback requirements, if desired. Council determined that 300m to a site containing a high school was an appropriate setback.

In summary, it is the opinion of the Development Authority that the proposed Retail Store Cannabis does not meet the separation requirements under Section 37A.5 of Land Use Bylaw C-1260. In addition, Section 37A.7 of Land Use Bylaw C-1260, does not permit the Development Authority to consider a variance to the separation distance requirements.

Administration recommends that the Subdivision and Development Appeal Board confirms the decision of the Development Authority and deny the appeal.

At this time, the Chairman asked Appellant to come forward to present.

PRESENTATION IN “FAVOUR” OF THE APPEAL:

The Chairman asked Mr. P. Wolff to come forward and introduce himself to the board for the record.

- 17 Mr. P. Wolff introduced himself and Mr. N. Mcgahey to the board as the business owner(s) for proposed Retail Store Cannabis in favour of the appeal.
- 18 Mr. P. Wolff highlighted the following:
- Cannabis was legalized in Canada under the Cannabis Act on October 17th, 2018;
 - First Cannabis retail store opened in Grande Prairie on December 23rd, 2018 (Lucky Leaf Cannabis);
 - Currently fifteen (15) Cannabis stores operating in Grande Prairie with over 500 Alberta wide;

CITY OF GRANDE PRAIRIE

P.O. Bag 4000

10205 – 98th Street

Grande Prairie, AB T8V 6V3

- Bud Runners is proposing one (1) location to start with and plans to open one (1) – two (2) more over the next 12-24 months pending approvals;
- Four (4) other locations owned by Bud Runners up and running in Alberta (Peace River, Grimshaw and Fairview) with two (2) years of safe operations;
- All staff trained in “Sell Safe” to ensure compliance with Alberta’s Cannabis Laws and AGLC; and
- Cody Gerk (President) and Nicholas MCGahey (Vice President) who have successfully been running all four (4) Bud Runners Cannabis locations would be partners in the proposed Grande Prairie location to ensure a successful launch.

19 Mr. P. Wolff indicated that:

- Budd Runner’s first proposed location in Grande Prairie is the old Menchie’s location on 68th Avenue in the Mission Heights neighbourhood;
- The Development Permit was refused due to proximity to Charles Spencer High School and St. Joseph’s High School; and
- City of Grande Prairie’s Land Use Bylaw C-1260 states that a Cannabis store shall not be located within 300m of the boundary of a parcel of land containing a high school.

20 The boundaries of proposed location were identified as follows:

- Distance from parcel containing proposed Cannabis store to parcel containing Charles Spencer High School and St. Joseph’s High School is approximately 370m. The track that was included in the City’s separation distance calculation is located on a different parcel than the schools; and
- Distance from parcel containing proposed Cannabis store to parcel containing the schools and the track is approximately 158m, as identified by the City of Grande Prairie.

21 The appellant indicated that the Subdivision and Development Appeal Board should reconsider the decision of the Development Authority based on the following:

- Cannabis regulations have changed since it was first legalized and will likely continue to change as time goes on;
- There are two (2) liquor stores in same proximity (or closer) to the schools;
- Alcohol and Cannabis should not be treated differently as they are both regulated under AGLC. Cannabis stores are also inspected much more frequently by AGLC than liquor stores;
- The parcel containing the track is not the parcel that the offset should be measured to. It is located on a separate parcel from the site that contains the schools and Section 37A.5 of the bylaw clearly states, “*the boundary of a parcel of land containing a high school.*”;

CITY OF GRANDE PRAIRIE

P.O. Bag 4000

10205 – 98th Street

Grande Prairie, AB T8V 6V3

- The parcel containing the track is not technically the school; therefore, the appellant believes they have met the intent of the separation as identified in Land Use Bylaw C-1260. The separation distance would be approximately 400m from the actual school and school parking lot area;
- Bud Runners would ensure minors cannot purchase Cannabis by ensuring staff are trained, installing frosted tint on all exterior windows, everyone entering the store that appears to look under the age of 25 would be ID'd and Bud Runners will not allow Cannabis to be viewed in the stores in clear "smell jars";
- The business would be owned and operated locally with revenue generated staying in the Peace Country;
- By approving this development it would employ 4 – 5 staff full-time as well as support several local third-party services (trucking companies, office supplies stores and utilization of local renovation companies);
- Cannabis retail outlets have been deemed an essential service through COVID restrictions; and
- If this location is approved and successful, there would be opportunity for expansion within the City thereby creating additional employment opportunities.

In summary, the appellant believes there has been a misinterpretation on the separation distance requirements. The approval of the development permit to allow the Retail Store Cannabis would create employment opportunities, keep revenue within the Peace Country while adhering to the requirements of the Land Use Bylaw C-1260 and the requirements of AGLC.

At this time, the Chair, Mr. Coulter asked if there was anyone present in favour of the appeal. There were no other participants in favour of the appeal.

PRESENTATION IN "OPPOSITION" OF THE APPEAL:

The Chairman asked those in opposition of the appeal to come forward and introduce themselves to the board.

- 22 Ms. L. Lejeune introduced herself to the board as a resident of the Mission Heights neighbourhood in opposition of the appeal.
- 23 Ms. L. Lejeune indicated that she lives within a block of the proposed site and sees young kids walking to Kateri and St. Joseph's High School on a regular basis who walk past this location.
- 24 In addition, Ms. L. Lejeune highlighted additional concerns:
 - There are low socio income families that live in the neighbourhood with young children;

CITY OF GRANDE PRAIRIE

P.O. Bag 4000

10205 – 98th Street

Grande Prairie, AB T8V 6V3

- ATB had a bank robbery a few years ago causing lockdowns at the schools, concerned about what would a Cannabis store bring into the neighbourhood;
- Students east of the school use the tracks, concerned about what could occur while the kids are utilizing the tracks (what would they be exposed to);
- The track is used by more than just the schools, it is also used during the summer months by families;
- Concerned about the potential smells and people loitering the parking lot;
- Currently pays high taxes and wants to be able to enjoy a safe neighbourhood;
- Concerned about the potential affects of the resale value of her home;
- Already too much traffic in the neighbourhood; and
- The overall potential risks and dangers of having a Cannabis store so close to a residential neighbourhood.

25 There were also two (2) written submissions sent in from:

- Mr. J. Begalke and Ms. E. Begalke; and
- Ms. T. Van Tassell

26 The primary concerns for the opposition to this development by the written submissions were:

- Too many Cannabis dispensaries already in Grande Prairie;
- Concerned with the presence of a Cannabis store in the neighbourhood that it will draw curiosity and wonder, becoming visually intrigued to see what this store is all about;
- The close proximity to two (2) high schools and recreation centre which is frequented by families;
- The Land Use Bylaw C-1260 is very clear that no Retail Store Cannabis is to be located within 300m of a school;
- Research shows that the location of a Retail Store Cannabis plays a role in teenager's decision to use the substance;
- The age range for student's attending both Charles Spencer High School and St. Joseph's High School is between 13 years of age to 17 years of age; and
- Research has found that *"adolescent cannabis users reporting initiation prior to age 15 demonstrated poorer performance on tasks of sustained attention, impulse control, and executive functioning. Over the majority of data support poorer cognitive performance on measures of attention and learning, and memory in adolescent users of cannabis."*

In conclusion, those in "opposition" of the appeal have asked the Subdivision and Development Appeal Board to confirm the decision of the Development Authority and deny the appeal.

At this time, the Chair, Mr. Coulter asked if there was anyone present in opposition of the appeal. There were no other participants in opposition of the appeal.



CITY OF GRANDE PRAIRIE

P.O. Bag 4000

10205 – 98th Street

Grande Prairie, AB T8V 6V3

Chairman L. Coulter advised all present and participating in the appeal that they can expect an “unofficial” verbal decision within 24 hours of the hearing and an “official” written decision within 15 days.

Chairman L. Coulter declared the Subdivision and Development Appeal hearing closed at 11:17 a.m.

CITY OF GRANDE PRAIRIE

P.O. Bag 4000

10205 – 98th Street

Grande Prairie, AB T8V 6V3

DECISION OF THE BOARD:

The Subdivision and Development Appeal Board determined that the appeal is denied and the decision of the Development Authority is confirmed and the Notice of Refusal shall remain in effect. Notice of Refusal PL200505 is hereby confirmed as issued by the Development Authority, acting as the Development Authority for Discretionary Uses under Section 92.3 of Land Use Bylaw C-1260, on November 24, 2020.

REASONS FOR THE SDAB DECISION:

The Board considered the written and oral evidence submitted by all parties.

The grounds for the appeal are pursuant to section 685(1)(a), which states:

Grounds for Appeal

685(1)(a) If a Development Authority

*(a) fails or **refuses** to issue a development permit to a person*

The Subdivision and Development Appeal Board confirmed the decision of the Development Authority and refused Development Permit PL200505 for the following reasons:

1 Compliance with the MGA and Land Use Bylaw C-1260

The Board reviewed all evidence and arguments, written and oral, submitted by the parties and will focus on key evidence and arguments in outlining its reasons. The Board has considered the context of the proposed development, applicable legislation:

- Municipal Government Act (“MGA”);
- Municipal Development Plan Bylaw C-1237; and
- Land Use Bylaw C-1260, specifically Section 92 – General Commercial District (CG)

In addition to plans and sound planning considerations and the merits of the application. The Board also acknowledges that the proposed development is a *Discretionary Use* in the district.

- 2** The Board finds that the appellant’s arguments of how the business is to be operated, such as trained staff meeting requirements of AGLC, have no weight on the issuance or non-issuance of a development permit, as these regulations are mandated by AGLC and not the Land Use Bylaw.
- 3** The Board finds that the Land Use Bylaw does not address the location of liquor stores in proximity of schools and therefore did not consider the existing location of liquor stores and has no bearing on this development permit application.

CITY OF GRANDE PRAIRIE

P.O. Bag 4000

10205 – 98th Street

Grande Prairie, AB T8V 6V3

- 4 The Board considered the overall Municipal Development Plan Bylaw C-1237 and noted that on Map 2 – Future Land Use, it clearly shows the schools sites and track fields as being unilaterally considered as a Public Service / Institutional site that would function together to support the recreational activities of both the schools and neighbourhood uses and therefore did not support the arguments of the appellant that the Development Authority misinterpreted the separation distance requirements of Land Use Bylaw C-1260.
- 5 The Board notes that the Development Authority identified a relaxation of the Bylaw in its reasons for refusal in respect of the required separation distance between Retail Store Cannabis and School sites, Section 37A.5 of Land Use Bylaw C-1260. The Land Use Bylaw C-1260, states that a Retail Store Cannabis, shall not be located within 300m of:
 - (a) the boundary of a parcel of land containing a high school

When measured from each boundary of a parcel of land. The separation distance between the proposed Retail Store Cannabis and the School parcel is approximately 165 metres, requiring a relaxation of approximately 135m. The Subdivision and Development Appeal Board agreed with the Development Authority on the interpretation of the separation distance requirements and further believe this is supported under the Municipal Development Plan Bylaw C-1237 – Map 2 which shows the school parcel, parking area and track fields as being part of the future development of the overall *Public Service / Institutional* site.
- 6 The Board agrees with the Development Authority that the Land Use Bylaw C-1260 is very clear and that the term “shall”, by definition, equates to mandatory compliance; therefore, the Development Authority has a duty to ensure that the separation distance between Retail Store Cannabis and high schools is maintained.
- 7 The Board finds that this relaxation of 135m would be excessive in this context and that the resulting development could have a negative effect on surrounding properties.
- 8 The Board notes that Council stipulated a separation distance of 300m between Retail Store Cannabis and high school sites, and it is reasonable to conclude that this rule was purposively imposed as a means to achieve orderly, beneficial development in order to limit convenient access and lower the profile and visibility of cannabis to young persons.
- 9 To conclude, the Board believes this confirms Council’s desire to maintain the quality of the physical environment as stated in Section 617(b) of the Municipal Government Act, which states:

CITY OF GRANDE PRAIRIE

P.O. Bag 4000

10205 – 98th Street

Grande Prairie, AB T8V 6V3

- 9 To conclude, the Board believes this confirms Council's desire to maintain the quality of the physical environment as stated in Section 617(b) of the Municipal Government Act, which states:

"Section 617(b)

The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted

- (b) *to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta, without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest."*

As a result and in consideration of the above and having regard to planning principles, the Board is of the opinion that Development Permit PL200505 for a Retail Store Cannabis as a Discretionary Use is refused under the Notice of Refusal.

Based on the evidence before the Board, the Board hereby confirms the decision of the Development Authority for the refusal of Development Permit PL200505 in accordance with Section 687(3)(a.1)(a.2)(a.3)(c)(d)(i)(ii) of the MGA.

Subdivision and Development Appeal Board

City of Grande Prairie

Signed this 5th day of January, 2021.



Chairman L. Coulter



SDAB Secretary – V. Norris-Kirk

CITY OF GRANDE PRAIRIE

P.O. Bag 4000
10205 – 98th Street
Grande Prairie, AB T8V 6V3

SCHEDULE "A"



CITY OF GRANDE PRAIRIE
PLANNING AND DEVELOPMENT

File Number
PL200505

NOTICE OF REFUSAL

The development application for a:

Project: **Change of Use to a Retail Store, Cannabis**

Located at:

Legal: **Lot: 133; Block: 5; Plan: 0722484**

Address: **6829 KATERI DRIVE, Unit:106, GRANDE PRAIRIE, AB T8W 0H1**

in the General Commercial (CG) district has been refused by the Development Authority as per the following sections of Land Use Bylaw C-1260:

Section 37A.5

Retail Store, Cannabis use shall not be located within 300m of:

- a. The boundary of a parcel of land containing a high school; and
- b. The boundary of a parcel of land designated as a future high school site.

The subject property is located approximately 165m from the boundary of a property containing a high school therefore the application does not meet the 300m setback requirement as noted above.

Section 37A.7

The Development Authority shall not grant a variance to setbacks from schools or Provincial Health Care Facilities.

Date of Decision: November 24, 2020

Appeal Expiry Date: December 15, 2020

Kimberly Brock
Development Officer II

Notice of Appeal Procedures:

Applicant(s) may file an appeal to the Subdivision & Development Appeal Board (SDAB) by contacting the Secretary of the SDAB at 780-357-8716 or in person at Legislative Services, Third Floor City Hall, 10205 – 98 Street, Grande Prairie, AB. Appeals shall be filed on or before the "Appeal Expiry Date" noted above Monday to Friday between 8:30 a.m. and 4:30 p.m. Contact Legislative Services regarding fees for filing such an appeal.