

**THE MUNICIPAL DISTRICT OF WILLOW CREEK NO. 26**  
**P.O. BOX 550, CLARESHOLM, ALBERTA T0L 0T0**

**NOTICE OF DECISION**  
**OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD**  
**HEARING NO. 068-16**

**APPELLANT:** DJ and Terryl Woodward / Frame Aviation

**APPLICANT:** Jason Toone

In the matter of an Appeal of the Decision of the Development Authority of the Municipal District of Willow Creek No. 26 (MD), whereby an application to operate a Sports Club consisting of sport drifting, tuning and working on cars, practice sessions and competition events in the Municipal District of Willow Creek No. 26 was APPROVED by the Development Authority with conditions. The lands are legally known as Lot 1, Block 2, Plan 0812962 [*the subject parcel*] on a portion of the SW¼ 32-13-28-W4M. in the M.D. of Willow Creek No. 26.

And in the matter of an Appeal held under the Authority of Sections 627 and 629 of the Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26, as amended (MGA).

The Decision and reasons for the Decision of the Subdivision and Development Appeal Board (the Board) after a Hearing duly convened in accordance with Sections 685 and 686 of the MGA on August 24, 2016, at 10:00 a.m. are as follows:

**DECISION:**

The Board has decided that the Appeal be **DENIED** and the decision of the Development Authority be **UPHELD, subject to revised conditions.**

The Board approves development permit 068-16 to operate a Sports Club consisting of sport drifting, tuning and working on cars, practice sessions and competition events. The development is **APPROVED** **subject** to the following **revised conditions:**

1. A municipal Business License shall be obtained and maintained pursuant to Municipal District Business License Bylaw No. 1603.
2. All recommendations from Alberta Health Services shall be adhered to and any forthcoming.
3. The property shall be maintained in a neat and orderly manner.
4. Maximum operating hours shall be 4:00 p.m. to 8:00 p.m. on one (1) weekday; and also 10:00 a.m. to 6:00 p.m. on Saturday and Sunday.
5. There shall be no development within the required setbacks of 20 feet (6.1 m) from the front and rear yard and 10 feet (3.0 m) from the side yard property boundaries, except for fences which have a setback of 20 feet (6.1 m) from front yard property boundary and 0 feet on property for all other boundaries, unless a development permit is obtained that specifically varies the required setback to allow the development.
6. Insurance must be obtained and proof of insurance shall be provided yearly to the Municipal District office and a copy to be filed.

7. Fire suppression supplies shall be on site at all times, including at a minimum, commercial/airport calibre fire extinguishers are required.
8. Flax-straw bales must be put in place and maintained as a noise barrier. The bales are to be stacked no less than 12 feet high, and be continuous and seamless down the entire length of the SW and NW sides of the property.
9. Adequate portable privies/toilets are required on-site and the applicant is responsible for arranging proper disposal and adhering to all Alberta Health Services requirements and/or appropriate provincial regulations.
10. Other uses not listed or associated with the approved permit are not permitted unless a separate development permit approval is obtained from the MD.

#### **FACTS:**

**Upon having heard** what was alleged by the Appellants and Applicants, and **upon having heard** what was alleged by the Development Authority and **upon hearing** others listed in Appendix B of this Decision and **upon having read** Exhibits noted in Appendix A of this Decision, the Board finds the facts to be as follows:

1. On June 24, 2016 Jason Toone, the applicant, submitted a development application to operate a Sports Club consisting of sport drifting, tuning and working on cars, practice sessions and competition events; also, propose other events that fall under Sports Club on lands legally known as Lot 1, Block 2, Plan 0812962 *[the subject parcel]* on a portion of the SW¼ 32-13-28-W4M in the MD.
2. The subject parcel is designated as Claresholm Industrial Area – CIA in LUB No. 1616, Schedule 2, Land Use District Regulations. Sports Clubs are listed as discretionary uses in this land use district.
3. The municipality processed the permit application and as the Development Officer deemed the development proposal was for a discretionary use, the application was forwarded to the MD Municipal Planning Commission (MPC) for a decision.
4. At the July 20, 2016 M.D. of Willow Creek No. 26 MPC meeting, the MPC reviewed the application for a Sports Club as a discretionary use and upon consideration of comments received, the MPC approved development application 068-16, subject to the following conditions.
  1. *A municipal Business License shall be obtained and maintained pursuant to Municipal District Business License Bylaw No. 1603.*
  2. *All recommendations from Alberta Health Services shall be adhered to and any forthcoming.*
  3. *The property shall be maintained in a neat and orderly manner.*
  4. *Maximum operating hours shall be 4:00 p.m. to 8:00 p.m. on one (1) weekday; and also 11:00 a.m. to 7:00 p.m. on Saturday and Sunday.*
  5. *There shall be no development within the required setbacks of 20 feet (6.1 m) from the front and rear yard and 10 feet (3.0 m) from the side yard property boundaries, except for fences which have a setback of 20 feet (6.1 m) from front yard property boundary and 0 on property for all other boundaries, unless a development permit is obtained that specifically varies the required setback to allow the development.*
  6. *Proof of insurance shall be provided yearly to the Municipal District office and a copy to be filed.*
  7. *Fire suppression supplies shall be on site at all times.*

5. On July 13, 2016, the MD Council approved Land Use Bylaw No. 1753, text amendment to Schedule 2 Claresholm Industrial Area – CIA land use district to include Sports Clubs as a discretionary use and add to Schedule 16 Definitions –

*Sports Clubs use means a use of land and/or buildings for a private organization, association or society or private individual for public or private use including but not limited to Drift track (all the aspects of the sport of drifting tuning cars, practice sessions), BMX track, Go-Kart track, Skate park and such other uses as the Municipal Planning Commission considers similar in nature.*

6. On August 18, 2016 the appellants, Mr. Murray Frame of Frame Aviation and DJ & Terryl Woodward jointly submitted the following reasons for their appeal:
- 1) *The issue of noise was inadequately addressed in the "Conditions" of the approval with respect to Alberta Health Services requirements and respecting the noise containment wall.*
  - 2) *The "days and hours" of operation are too open ended and not "specific" enough considering the size and number of participants, spectators, and events planned.*
  - 3) *The security issues associated with this level of activity have not been properly addressed.*
  - 4) *There are no provisions in the issue of the original decision to cover a "probationary period" or specific "length of time" when the application could be reviewed for problems that may arise.*
7. The appellants, on August 23, 2016, submitted additional support information to explain the reasons for the appeal, *summarized* as follows:

The submission is a "joint" submission by the Woodward family and Frame Aviation div. of High River Aviation Services Ltd. The submission is a follow up to the letter forwarded on August 18, 2016 that list our concerns with respect to the "deficiencies" in the list of "Conditions" laid out by the MPC.

**1) Issue #1: Noise**

- There are many things (considering this is an extreme sport) that could be "injurious or dangerous" but for now we are discussing principally the "noise". As the "no" side, we only had our personal experiences (and ears) to know the noise is louder and/or more sustained than anything else in the area. We have fielded multiple complaints regarding strong "burnt rubber and exhaust fumes" during and after these events. We feel that not only could there be health risks to the residences from exposure to this noise, and odour, but what about employees that work at businesses and industries adjacent to, and closer to, this location.
- Noise Wall – In Mr. Toone's application, he references construction of a "noise wall" made up of large square bales stacked 3 high and of sea cans. At the MPC hearing he "re-stated" this to which Mr. Alm (Chair of the MPC) said, "so it's 12 feet high", and to which Mr. Toone replied "yes". In fact, the bales are not 12 feet high but, because they are stacked "strings up" are only 8 feet high and the sea cans are only 8½ feet high. By comparison, the combined height of the sound walls and berms on Deerfoot Trail are in excess of 16 feet \* (Note that we consider the noise generated by this activity to be louder than freeway noise). Our original request was to make the barrier of straw bales higher, be continuous and seamless down the entire lengths of the southwest and northwest sides, that the gate be sealed with bales (using Niblock street as an alternate access point), that ¾ of the northeast side be sealed and that all sea cans be re-located to the south property line or around the inside of the bales. However, given the information on attachment #3, we're no longer convinced this is a solution.

**2) Issue #2: Dates and Hours of Operation**

- Days – Our request is that the number of "full weekends" of competition (Friday, Saturday and Sunday) over the summer should be restricted to one weekend per month. We further request

“no racing” on holiday long weekends (I.E. May 24<sup>th</sup>, July 1<sup>st</sup> (nearest), August Civic, Labour Day, Thanksgiving). On all other weekends, we request Saturday only racing and no racing the Friday night before. Lastly, we are willing to concede all other weeknights, but subject to the hourly restrictions below.

- Hours – Our request is 10:00 AM to 5:00 PM on weekends which only shortens the time from 8 to 7 hours. With respect to weekdays/nights, we request the stop time to be backed up to 7:00 PM but do not object to a start time that would allow 5-6 hours of operation (1:00 PM).

### **3) Issue #3: Security and Safety**

- In Mr. Toone’s original application he stated there would be no more than 30 cars per event. Why was this not included in the MPC’s conditions? We feel this is important to maintain control of the events.
- We feel the applicants should be required to install proper and permanent signage to the property, and additionally, 1 week to 10 days prior to any major event (excluding local club practises), all local enforcement agencies should be informed of the planned event to give them a chance to plan any extra man power they may feel they need. We also feel the M.D., the Town, EMS and the Fire Department should be advised.
- Terryl Woodward would also like to point out at this time, that due to this being a private club, operating on private property, and the sport being relatively new, they do not fall under any guideline or regulations that other industries in the CIA do. This includes Worker’s Compensation or Occupational Health and Safety.

### **4) Issue #4: Probationary Period**

- We are requesting that this permit, when issued, be only temporary or probationary. The reasoning is, that, even though this submission is longer than we had hoped or envisioned, it still only scratches the surface of the problems that could result from this authorization.

8. In addition to the appellant’s who filed the appeal, there are a number of other area residents or landowners who object or have concerns with the proposal and whom submitted letters or made presentations to the MPC at the July 20, 2016 meeting.
9. The MD Development Officer’s report to the MPC on July 20, 2016, outlined the following in regards to the proposal: There is an existing fence surrounding the perimeter and bales have been stacked along the inside of the fence as a noise barrier, the proposed hours are 10:00 a.m. to 9:00 p.m., propose to operate on weekends and the occasional weeknight, portable toilets will be provided, all participants and spectators are required to sign a waiver.
10. The subject lands are located within the MD airport grounds (Claresholm Industrial Area), approximately 2.5 miles west of the Town of Claresholm off of Highway 520 West. The parcel is located on the south perimeter of the airport and there are no buildings or further development on the southeast side as it is airport runway land. Access to the subject lands is from an internal road known as Tigermoth Crescent.
11. The Town of Claresholm has in the recent past allowed the drift club to utilize the runway adjacent to the east. The Town of Claresholm indicated during the MPC circulation on the application referral, that it had no concerns.
12. Car sport drifting basically consists of cars driving a course and drivers are judged on technique and skill typically from the driver causing a loss of traction in the rear wheels while trying to maintain control; as part of the manoeuvring, the cars do stop, swerve and “burn” tires which may result in the emission of burnt rubber and exhaust fumes during the events and noise which may be created from mufflers or tires squealing on the pavement.

13. There are approximately six residents who reside in the Claresholm Industrial Area. Residential uses are no longer permitted within the Claresholm Industrial Area – CIA land use district and are a prohibited use under the land use bylaw. These uses are remnants from the operation of the airport from the war years when it was part of the NATO training base and existed prior to any of the municipality's land use bylaws coming into effect. These residential uses are considered "grandfathered-in" and if the uses were damaged or destroyed beyond 75% of the value they would not be allowed to be rebuilt or replaced.
14. Mr. Jason Toone, the applicant, explained to the Board that only car club members will be permitted to use the facility and that each participant or attendee at the events must purchase a club membership in order to be covered and meet insurance requirements.
15. Mr. Roy Johnson, the MD Superintendent of Public Works stated that he had no concerns regarding parking on the municipal roadways.
16. Mr. Murray Frame, one of the appellant's, stated that through the appeal process they were not attempting to stop the proposed development, but attempting to address the concerns surrounding the proposal
17. Land Use Bylaw No. 1616, Schedule 2 Claresholm Industrial Area - CIA, Prohibited Uses states  
*Single Family Dwellings*
18. The MGA, Section 687(3) states:
  - (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 the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;*
    - (b) *must have regard to but is not bound by the subdivision and development regulations;*
    - (c) *may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;*
    - (d) *may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw, if in its opinion,*
      - (i) *the proposed development would not*
        - (A) *unduly interfere with the amenities of the neighbourhood, or*
        - (B) *materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and*
      - (ii) *the proposed development conforms with the use prescribed for that land or building in the land use bylaw. In determining an appeal, the subdivision and development appeal board must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect.*

### **REASONS:**

THAT the Board encompasses the findings of fact within these reasons and, as a result, **DENIES the appeal** and the decision of the Development Authority be **UPHELD, subject to revised conditions**, based on the following:

1. The Board has determined that the use does meet the definition and parameters of Sports Clubs as defined in the MD land use bylaw, and therefore, the application may be considered for development permit approval as a discretionary use. As a discretionary use, the Board scrutinized the proposal, the site, the area, and the concerns raised by the neighbours, and has issued a conditional permit to allow the use to operate in consideration of these matters. The Board has the authority to impose conditions as it deems necessary to apply to the permit approval, to address land use and site considerations, as well as potential effects to neighbouring land uses.
2. In reviewing the submissions, site location, area and land use bylaw information, the Board finds that the potential for noise and smoke (odours) to be created by the proposed use are deemed to be no different than what may normally occur or be experienced from various industrial uses that may be allowed in the CIA district, such as from industrial operations, light industrial/manufacturing operations, and other similar uses that may operate at the airport. The Board is of the opinion that the applicant is willing to work to reduce impacts as much as reasonably or practically possible, and the Board has placed specific conditions on the permit to address some of the concerns in respect of this. The Board further notes that the operator (applicant) is required to obtain yearly insurance to be in compliance with the development permit approval, and if the insurance is cancelled or ceases to be obtained, the permit will then become null and void and the use can no longer operate. This should both compel the sports club to manage and educate patrons of the facility of proper conduct and also act as an incentive for them to operate in a respectful and safe manner.
3. The Board is of the opinion that with the conditions imposed, and amended from the original MPC permit approval, these will help mitigate negative effects to area land owners or residents and assist in making a better operation of the sports club car drifting use. Particularly, in considering the neighbouring residents concerns, the Board is further of the opinion that by revising and limiting the hours of operation and more specifically stipulating conditions for noise attenuation, these will help reduce and manage potential impacts from noise, smoke and associated activities of operating the sports car drifting events. The Board has also taken into consideration the fact that the car drifting activities are somewhat seasonal and based on weather conditions, and the use will not be happening every week or weekend all year long.
4. The Board, in accordance with its authority under the MGA and LUB No. 1616 to approve discretionary uses, and with the information provided, consideration for the land use bylaw, and with the conditions imposed by the Board, the development as approved is determined to be suitable for the subject parcel.

### **INFORMATIVE:**

The Board recommends that temporary, movable signage (e.g. sandwich or A-frame boards, or similar to real estate type signs) be put in place by the applicant to direct patrons to events at the site. For any more permanent signage or signs that would normally require a development permit approval from the MD, the applicant is advised to consult with the MD to ascertain what the requirements may be.

## APPENDIX A

### Documentary Material Submitted to the Board:

NO.	ITEM
A.	Notice of Hearing and Subject Parcel Location Map.
B.	List of Persons Notified.
C.	Letter/notice of Appeal.
D.	Notice of MPC Decision, (Approved subject to Conditions).
E.	Development Permit Application 068-16 including site maps, site plans and proof of insurance.
F.	Photographs of subject parcel (at Claresholm Airport) taken by M.D. of Willow Creek Development Officer.
G.	Notice of M.D. of Willow Creek Municipal Planning Commission meeting regarding Development Permit Application 068-16 to affected landowners.
H.	Development Officer's Report to the M.D. of Willow Creek Municipal Planning Commission regarding Development Permit Application 068-16.
I.	Unapproved M.D. of Willow Creek Municipal Planning Commission meeting minutes of July 20, 2016, regarding DP 068-16.
J.	Written responses for MPC from referral agencies and affected persons.
K.	List of signatures in support of proposal and DP 068-16.
L.	Excerpts from the M.D. of Willow Creek Land Use Bylaw No. 1616.
M.	Reasons for appeal, submitted via electronic mail by the appellants on August 18, 2016.
N.	Supporting information for reasons of appeal, submitted via electronic mail by the appellants on August 23, 2016.
O.	Submission in support of application from affected person, Lon Hall.

## APPENDIX B

List of persons who gave oral evidence or made submissions:

CAPACITY	NAME
Appellant(s):	Murray Frame Teryl Woodward DJ Woodward
Applicant:	Jason Toone
Municipal District of Willow Creek No. 26 Representatives:	Mike Burla – Senior Planning Advisor Cindy Chisholm – Development Officer Roy Johnson - Superintendent of Public Works
Municipal District of Willow Creek No. 26 Municipal Planning Commission Representative:	Glen Alm – MPC Chair
Public/Affected Persons:	Lon Hall Anne Papan Debra Mesi Doreen Toews

Date:

SEPT 06/16

Signed:



Chairman of the Subdivision and Development Appeal Board  
Municipal District of Willow Creek No. 26

**IMPORTANT:**

This Decision of the Subdivision and Development Appeal Board  
is final and binding on all parties and persons, subject only to Appeal to the Provincial Court of Appeal.