

Introduction
Dunvegan Gardens' Applications to obtain a Direct Control district in Draper

Dear Counsellors,

Hello!

This is the introduction to a joint Submission of the Draper Residents Society members in relation to Dunvegan Gardens Applications to amend the Land Use Bylaw and our Area Structure Plan and the effort to change the Character of our Community. Many people contributed to its creation. Individual Draper Residents who are also members of the Society may also be submitting their own individual submissions.

While researching this matter, it came to our attention that several members of Council may have a pecuniary interest in this matter and we therefore invite them to recuse themselves from the forthcoming Council meeting. We have prepared information identifying each such Counsellors' pecuniary interests but choose at this time not to release such information so as to give each individual an opportunity to deal with this in their own manner, prior to the second reading.

We started working on this document in February of 2017, when the media issued stories reporting that the Administration at that time was trying to make a deal to revoke a Stop Order it issued to Dunvegan Gardens on the basis that it applied to convert its existing zoning to Direct Control. We knew that this matter would therefore occur, regardless of the SDAB decision as we knew Dunvegan Gardens existing activities were not legal. We were glad to see that the Stop Order proceeded to the SDAB as it moved the matter along. It took us almost 6 years to get the matter returned there, since the SDAB first ordered Dunvegan Garden's activities to be removed in September of 2011 and which order was ignored by both Dunvegan Gardens and a previous RMWB Administration.

Now that the 1st Reading of these Applications have been completed, we want you to have this information as soon as possible to give you more time to review a large amount of data that the Community has been collecting for almost nine years, while this matter has continued. Nine years, while Dunvegan Gardens has been allowed to operate its illegal business in a residential district that was only supposed to allow vegetable gardening and home businesses, without Development Permits or the legal right to be there, to our detriment. Nine years of bullying and misrepresentations to the rest of the RMWB public.

We are pleasantly surprised and pleased to see the RMWB's representations concerning this matter as it includes and applies the basic and fundamental principles of planning law in Canada, as we know it (as we had no choice but to research it ourselves all these years) along with the existing statutory plans. Our surprise is based on past experiences that are well documented in

our Submission. While we do not agree with every word of the RMWB's representations, it addresses the majority of our representations. For the record, we had our written submission completed months ago and have not plagiarized the RMWB document that was released to the public on April 6, 2018.

We do however believe that the RMWB's representations in this matter did not use strong enough language when it correctly addressed the significance of the Municipal Development Plan or the restrictions that the *Municipal Government Act* contains that limit the power of Council. One of the most troubling things about finding out that the Administration last year suggested that Dunvegan Gardens apply for Direct Control was that we do not believe that in such circumstances, Council has the jurisdiction to do so, as Council's authority in considering Direct Control is not unlimited.

The *Municipal Government Act* has restrictions that limit the ability of a Municipality from amending a Land Use Bylaw or an Area Structure Plan to create a Direct Control district. Due to the high importance of these restrictions, we will briefly include them in this introduction, although they are better explained in our Submission. The relevant provision of the *Municipal Government Act* are as follows:

616(dd) "**statutory plan**" means an intermunicipal development plan, **a municipal development plan**, an **area structure plan** and an area redevelopment plan adopted by a municipality under Division 4;

633(3) **An area structure plan must be consistent with**
[...]

(b) **any municipal development plan.**

638(2) **In the event of a conflict or inconsistency between**

(a) **a municipal development plan, and**

(b) **an area structure plan or an area redevelopment plan,**

the municipal development plan prevails to the extent of the conflict or inconsistency.

Accordingly, the RMWB report did not identify that the existing Area Structure Plan can not be amended to include inconsistencies with the Municipal Development Plan. While the RMWB representations are correct, it is not enough to say that the proposed changes are inconsistent with the Municipal Development Plan, considering the above noted sections of the *Municipal Government Act*.

Another provision that is both important and relevant is Section 641, which states:

641(1) The council of a municipality that has adopted a municipal development plan, if it wishes to exercise particular control over the use and development of land or buildings within an area of the municipality, may in its land use bylaw designate that area as a direct control district.

(2) If a direct control district is designated in a land use bylaw, the council may, subject to any applicable statutory plan, regulate and control the use or development of land or buildings in the district in any manner it considers necessary.

In other words, Council's jurisdiction is limited as it must ensure that any Direct Control amendment does not contravene the wording of the Municipal Development Plan. It seems that the drafters of these provisions intended to protect the rights of property owners who are faced with similar circumstances. As our Submission will demonstrate, it is hard to imagine a development that could be any more inconsistent with the existing Character of Draper or a bigger breach of the Municipal Development Plan's intentions concerning Draper. The proposed amendments are essentially or specifically all found in the C4 (Commercial Highway) and Business Industrial districts of the RMWB's Land Use Bylaw.

As described in the Municipal Development Plan, Draper is to be protected from any commercial development Use that would interfere with the quiet country rural residential Community Character of Draper. The Plan identifies that the Draper Community is not even allowed to have a "wide variety of housing options, land uses or services" beyond the large lot acreages. A 60 acre "No Control" commercial district that has been proposed is completely beyond that scope and is inconsistent with the Municipal Development Plan. We are very curious to know why the Administration last year suggested this as an option in the first place, when it offered to revoke Dunvegan Gardens' Stop Order.

Likewise, Section 118 of the Land Use Bylaw acts to limit Council's ability to create a Direct Control district if the development is not of a unique form or nature not contemplated or reasonably regulated by another district. As we will demonstrate, we do not believe that any of the existing illegal activities or proposed development are unique. All such activities are better regulated in other heavy commercial zones. There are plenty of properties in the RMWB for sale and lease right now that are available for this type of development.

It is further noted that the RMWB report did not specifically identify that any amendment to the Land Use Bylaw or Area Structure Plan must be solely for proper planning purpose. Without putting words in the RMWB drafter's mouth, we believe that that is essentially what the report identifies overall. If any other motivating factors exist, the proposals are not legal. That means, if there is at least one other reason for proposing an Amendment, it cannot legally occur. This is the law, according to the Court of Appeal of Alberta and other jurisdictions of Canada. We have

approximately 60 other reasons why these Amendments do not meet the “solely for proper planning purpose” test and have included them in our Submission.

The RMWB representations identify that no traffic impact studies have been provided by Dunvegan Gardens in its Applications. While the RMWB report uses “future tense” in describing the Uses being proposed, in reality, most of the Uses exist and have existed in our area for too long (in 2011, the SDAB ordered all commercial materials and equipment unrelated to the growing of fruits and vegetables to be removed). We have done our own studies based on the traffic generated by the illegal activities that have existed since 2009 and have included them in our Submission, along with an RMWB finding performed last year.

While the RMWB report mentioned the infrastructure challenges, it did not go into any great detail concerning the existing flooding, road conditions and infrastructure issues other than to say Dunvegan’s Applications lacked any detail. We have done so in our Submission and provided evidence of the existing state of the area.

Over the past 7 years, Draper Residents have complained about the illegal commercial activities of Dunvegan Gardens in our Community. The response that we got from Dunvegan Gardens was not an apology, but several smear campaigns and threats from several RMWB representatives in key positions of authority who did not declare themselves as being in a conflict of interest, due to their relationships with Dunvegan Gardens.

We have tried to limit our submission to information that is relevant to the Applications themselves. Rest assured, there is a lot more information related to the activities of several RMWB representatives that we have been aware of for years and which explains why this matter has been outstanding for so long, some of which we do not even think the existing Administration is aware of, and which will have to come out in an ongoing lawsuit started by several of our Residents.

In our Submission we have bolded several sentences and paragraphs to catch your attention throughout the document, as we believe that these passages are very important.

The information contained in our documentation is supported by Exhibits, which are attached in separate folders to provide you with proof or evidence to demonstrate that we are honest and that our arguments are sound. We have ensured that the relevant points of the Exhibits are discussed in the document itself.

We are sending you only the written Submission via email and have provided a copy of the Exhibits to Legislative Services this morning, along with a USB key that has a copy of the Submission and each Exhibit, including audio and video Exhibits, which we assume will be available to you upon your request. Unfortunately, the Exhibits are approximately 1,500 pages in length. This matter has been ongoing for almost 9 years, and while the RMWB at times has

not been paying attention to the issue, we have, and the result is as you see it. If you believe this is too much information, please put yourselves in our shoes. You put your entire life savings and more into improving your quality of life by moving to an area recently designated as quiet country large lot acreage living, only to have someone move into your district soon thereafter without legal authority and who creates a significant nuisance, but without enforcement by those who are empowered to protect you and the law.

The Exhibits are contemplated to provide you with more details and information for each point that we make. We have included photographs to demonstrate our observations and to provide you with a mere sample of what we have seen and documented. We have also provided you with several Video Exhibits and an Audio Exhibit, which are again, discussed in the written submission, but which are provided to ensure that you have all the relevant information to make an informed decision. A Table of Contents and an Exhibit List is attached to this Introduction for convenience.

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Links to videos submitted

<http://www.youtube.com/watch?v=itBYgydx-2M>

<http://www.rmwb.ca/Municipal-Government/Appeal-Boards/Subdivision-and-Development/Hearing-Agenda/2015-Agendas-and-Decisions.htm>