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Appeal File Number:	020-STU-015, 020-STU-016, 020-STU-017
Application Number:	305305-20-D0177
Appeal Against:	Development Authority of Sturgeon County
Appellants:	Kevin and Rita Anderson; Gurpreet Takhar; and Duane and Corlaine Legge
Date and Location of Hearing:	October 20, 2020 Held via Videoconference
Date of Decision:	November 2, 2020
SDAB Members:	Chair Julius Buski, Wayne Bokenfohr, Mark Garrett, Dave Kluthe, Allan Montpellier

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### NOTICE OF DECISION

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**IN THE MATTER OF** appeals by Kevin and Rita Anderson, Gurpreet Takhar, and Duane and Corlaine Legge against the Development Authority's approval of a development permit to operate a Micro Cannabis Production and Distribution Facility located at SE 19-54-25-W4 within Sturgeon County.

- [1] This is the decision of the Sturgeon County Subdivision and Development Appeal Board (the "SDAB" or "Board") on an appeal filed with the SDAB pursuant to section 685 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the "MGA" or "Act").
- [2] In making this decision, the Board reviewed all the evidence presented and considered provisions of the *Municipal Government Act*, Sturgeon County's Land Use Bylaw 1385/17 (the Land Use Bylaw or LUB) and Sturgeon County's Municipal Development Plan (MDP), and any amendments thereto.
- [3] The following documents were received prior to the hearing and form part of the record:
- The Notices of Appeal;
  - A copy of the development permit application with attachments;
  - The Development Officer's written decision;
  - Development Support Services Report;
  - The Applicant's written submission; and
  - Rita & Kevin Anderson's written submission

### PRELIMINARY MATTERS

- [4] There were no preliminary matters addressed at the hearing.

## PROCEDURAL MATTERS

- [5] The appeal was filed on time and in accordance with section 686 of the MGA.
- [6] There were no objections to the proposed hearing process as outlined by the Chair. The Appellants agreed to proceed with the hearing via videoconference as permitted by the Meeting Procedures (COVID-19) Suppression Regulation.
- [7] There were no objections to the composition of the Board hearing the appeal.
- [8] The Board is satisfied that it has jurisdiction to deal with this matter.

## ISSUES

- [9] The Appellants raised the following grounds of appeal:
- Emission of odours
  - Disruption of adjacent neighbours' properties
  - Increased traffic and possible criminal activity
  - Potential decrease in neighbouring property values
  - Increased security at the site may result in addition floodlights/spotlights in neighbouring homes

## RECOMMENDATION OF THE DEVELOPMENT AUTHORITY

Carla Williams, representative for the Development Authority, provided a presentation which outlined the Development Authority's approval of development permit application 305305-20-D0177 for the following reasons:

- [10] The proposal aligns with the MDP related to Economic Health by promoting small business. The land is located within Neighbourhood G, the urban-rural fringe, which experiences development pressures and is included as part of the St. Albert annexation area. The proposed use encourages business creation and is providing for job opportunities. Small businesses are a vital economic contributor and provide residents with a variety of lifestyle opportunities. Cannabis production is an activity that has similarities to agricultural uses carried out in greenhouses, typically located within the AG - Agriculture district.
- [11] County Council amended the Land Use Bylaw in 2019 to allow for Micro Cannabis Production and Distribution, as a discretionary use on AG lands. To determine suitability of the proposed development, the Development Authority must examine the subject site, the adjacent land uses, and review the proposed development for additional requirements and planning considerations.
- [12] The City of St. Albert was notified of the proposed development within their annexation area and they did not appeal the decision of the Development Authority. The City's Land Use Bylaw includes a Cannabis Production and Distribution Facility (larger scale), as a discretionary use within Commercial and Industrial Service Land Use District. The City's Bylaw does not allow for

agriculture type uses and does not include a Micro Cannabis Facility. As part of the annexation process, the City may amend their Bylaw to allow for an agricultural land use district to accommodate existing land uses.

- [13] The land surrounding the facility is districted as AG – Agricultural and the closest dwelling is approximately 345 metres from the exterior walls of the proposed facility. The property directly to the north operates an approved Landscaping Contractor Services. There are no provincial healthcare facilities or schools within 150 metres from the proposed facility.
- [14] The existing buildings meet the minimum required setbacks. The outdoor lighting is to remain the same; no additional lights are to be installed.
- [15] Aerial photos show trees aligning the majority of the frontage of the property. No exterior storage is permitted; therefore, additional screening or landscaping was not considered necessary.
- [16] A noise impact assessment was not required by the Development Authority as the property is a 122-acre parcel and the buildings to be used for the operation are located in a central location on the parcel, at least 200 metres from any property line. Therefore, noise from the buildings is not anticipated to have a negative impact on surrounding properties.
- [17] Traffic generated by four employees and the transporting of the product by pick-up truck is anticipated to be less than traffic permitted for the operation of a home-based business (HBB) level 3. An HBB Level 3 allows for three commercial vehicles, three trailers, four non-resident employees and up to ten vehicle visits per 24 hours.
- [18] A Road Use Agreement is a condition of the development permit to ensure Range Road 255 is maintained to its current standard and for any necessary dust control.
- [19] The proposed security measures are considered adequate for County requirements. A security plan must be submitted as part of the licensing application subject to the *Cannabis Act*. In accordance with the Act, security requirements are less stringent for a micro facility as compared to a larger production facility. Part 4 of the *Cannabis Regulations* establishes requirements pertaining to physical security measures, in order to ensure that a license holder's site is adequately secured and safeguarded at all times to protect public safety and to minimize the risks of diversion. As per subsection 74(b) of the *Cannabis Regulations*, the site must be surrounded by a physical barrier that prevents unauthorized access. The physical barrier should be continuous, and it should surround the entire site. A site perimeter can consist of a fence line or exterior building wall. The 122-acre parcel has barbed wire fencing on the east, north, and south borders of the property. Should the federal government require additional fencing, the applicant has indicated that it will be installed as per their requirements.
- [20] The appeal noted a valid concern regarding odour from the facility. The applicant has indicated that he would be installing carbon filters to minimize odour. Activated carbon works by the contaminated air stream passing through the activated carbon. Carbon is porous and has a large surface area, which allows the carbon to absorb the odorous chemicals in the air stream. The

applicant also plans to freeze-dry at the time of harvesting rather than to hang-dry, helping to alleviate odours. Also, Part 5, section 85(1) of Good Production Practices/General Requirements, SOR/2019-206, states, *any building or part of a building where cannabis or anything that will be used as an ingredient is produced, packaged, labelled, stored or tested must be equipped with a system that*

*a) filters air to prevent the escape of odors associated with cannabis plant material to the outdoors;*

*b) provides natural or mechanical ventilation with sufficient air exchange to provide clean air and to remove unclean air in order to prevent the contamination of the cannabis.*

- [21] The applicant is also installing air purifiers, which are not mandated by federal legislation, in the cultivation area to scrub the area of bacteria, spores, mites, and other potential pests. These units also scrub the air of pollutants, including odour. Since odours are difficult to quantify objectively in terms of strength or character, setting regulatory standards is challenging.
- [22] An appeal noted a concern that the cannabis facility may have an impact on property values. The County's Assessment Services Department indicated that they do not have an example of any sale of property where there was an adjacent cannabis operation and there is no data to conclusively determine how such a facility would affect the value of nearby properties.
- [23] The development, as proposed, meets the definition of a Micro Cannabis Production and Distribution Facility, and meets the regulations of section 6.3B of the Land Use Bylaw, and therefore the application was approved.

#### **SUMMARY OF APPELLANT GURPREET TAKHAR'S POSITION**

- [24] The Appellant has reviewed the submissions and is not convinced that the measures being taken to control the potential smell emitting from the facility will eliminate it completely.
- [25] There is concern that if this development is approved, when the land is annexed by the City of St. Albert, the Land Use may change which may allow for the facility to grow with no avenues of recourse for neighbouring land owners with regard to nuisance issues.
- [26] There are other available lands and locations within the County that would be more suited for this type of business.

#### **SUMMARY OF APPELLANTS DUANE AND CORLAINE LEGGE AND KEVIN AND RITA ANDERSON'S POSITION**

- [27] Cannabis was approved in 2018, and as such, these cannabis facilities are relatively new and there is little evidence one way or the other on the emissions and odours of micro cannabis facilities.
- [28] There is no tree line to mitigate noise or potential odours that may impact the home to the southeast of the facility.

- [29] The facility may decrease neighbouring property values.
- [30] The facility will not bring a positive effect to the area and should not be in close proximity to a city. There are other, more appropriate locations for a micro cannabis facility within the County.
- [31] There is a second access to the property that has not been considered and this poses a security concern.
- [32] This development will not bring a single benefit to adjacent landowners.
- [33] Cannabis production requires significant water consumption and the impacts of water usage have not been considered.

### SUMMARY OF APPLICANT'S POSITION

- [34] This industry is federally regulated, and the product is considered to be agricultural.
- [35] The Applicant empathizes with the concerns of odour but does not believe the smell will travel to surrounding properties without first dissipating in the air.
- [36] The Applicant has installed carbon and HEPA filters that will clean the air every minute along with purifiers that scrub away any other contaminants.
- [37] The smell of the product comes from the terpenes of the plant and it does not smell like a burning marijuana cigarette. The smells will change with the strains of the plants, but the Applicant is confident the odours will not leave the building.
- [38] The facility will operate on regular business hours so evening and weekend traffic will not be an issue.

### DECISION

- [39] **The Board DENIES the appeal, UPHOLDS the decision of the Development Authority made on September 10, 2020 to approve development permit application 305305-20-D0177 with conditions, and APPROVES the development permit with the following conditions as recommended by the Development Authority:**

#### Permit Conditions

1. The existing building, 60ft x 100ft in area, as located, is approved for the purpose of processing and distribution of cannabis, with an annual amount of less than 600 kilograms of dried cannabis, or as otherwise defined by the Cannabis Regulations SOR/2018-144, as amended or replaced.
2. The existing building, 80ft x 120ft in area, as located, is approved for the purpose of cultivation of cannabis. The cultivation area with a plant canopy area of less than 200m<sup>2</sup> or as otherwise defined by the Cannabis Regulations SOR/2018-144, as amended or replaced.

3. Separate building permits for change of use or to construct interior alterations shall be obtained.
4. Separate electrical, gas, plumbing and private sewage permits shall be obtained as required.
5. The applicant shall obtain and demonstrate compliance, when required, with all relevant Alberta Gaming, Liquor and Cannabis Commission and Health Canada regulations, and other relevant provincial and federal regulations before operating the facility.
6. The number of non-resident employees on site shall not exceed four (4).
7. Security of the site shall be in accordance with the security plan, as provided, to prevent unauthorized access.
8. Access to the facility shall be utilized by one approach off Range Road 255. This approach shall meet the minimum requirements of Sturgeon County's General Municipal Servicing Standards, to the satisfaction of Engineering Services. Any other existing approach to the property shall be removed or fenced in order to prevent unauthorized access.
9. Adequate on-site parking for employees and business-related vehicles shall be provided. On-site parking stalls shall be paved or be a gravel mixture in accordance with Sturgeon County's General Municipal Servicing Standards.
10. A Road Use Agreement shall be entered into with County Transportation Services for dust control and road maintenance, if required.
11. Solid and liquid wastes generated during production and processing must be stored, managed and disposed of in accordance with relevant legislation.
12. All activities related to the use must be located indoors.
13. Any exterior storage of goods and materials shall be kept in a clean and orderly manner at all times and shall be screened from roads and adjacent residential uses.
14. If the development authorized by this permit is not commenced within 12 months from the date of its issuance, or is not carried out with reasonable diligence, the permit approval ceases and the permit is deemed to be void, unless an extension to this period has previously been granted by the Development Authority.
15. Only one micro cannabis production and distribution development shall be permitted per parcel.

**Advisory Notes**

1. Micro Cannabis Production and Distribution is defined herein, and is either:
  - (a) In the case of a production facility, a cultivation area with a plant canopy area of less than 200m<sup>2</sup> or as otherwise defined by the Cannabis Regulations SOR/2018-144, as amended or replaced.
  - (b) In the case of a processing and distribution facility, has an annual processing amount of less than 600 kilograms (dried), or as otherwise defined by the Cannabis Regulations SOR/2018-144, as amended or replaced.
2. The applicant shall be responsible to ensure that the development complies with any federal or provincial laws/legislation and that all required approvals are obtained.
3. Cannabis Retail Sales is neither a permitted nor discretionary use within the AG district.

**REASONS FOR THE DECISION**

- [40] The Board finds that a Cannabis Production and Distribution, Micro is a discretionary use within the Land Use Bylaw.

- [41] The Appellants raised a concern respecting odours from the proposed facility. The Appellants provided documentary evidence of reports of odours at a cannabis facility south of Edmonton. The cannabis facility in the article provided explains that the facility produces more than 100,000 kilograms of marijuana per year. The proposed facility would produce less than 600 kilograms annually. The Board found that the difference in the magnitude of the development south of Edmonton and the proposed micro facility render the facilities and corresponding emissions incomparable. The Appellants did not provide compelling evidence that the proposed facility would result in emissions as described in the article provided to the Board.
- [42] The Appellants argued that, since cannabis production is a new industry, there is little evidence in the public realm indicating the presence or absence of odours from cannabis micro facilities. The Board finds that the onus is on the Appellants to provide evidence to support their position and that the absence of evidence is not a compelling reason to refuse the application.
- [43] Further, the Development Officer advised that the regulation of odours falls under federal jurisdiction, and that Part 5, section 85(1) of Good Production Practices/General Requirements, SOR/2019-206 regulates air filtration requirements in cannabis production facilities. The Board also heard from the Applicant, who explained that the carbon filters within the vicinity will exchange air approximately every minute, and air purifiers will scrub the air for bacteria, spores, mites, and other contaminants.
- [44] Upon weighing the evidence provided, the Board finds that, with federally-required measures and those measures explained by the Applicant implemented, odours from the facility are not reasonably expected to unduly interfere with the amenities of the neighbourhood.
- [45] The Appellants also raised concern of potential decrease in property values as a result of the proposed development, anecdotally explaining that, all other things being equal, a prospective buyer would prefer to purchase a property that is not located next to a cannabis facility than one that is. The Appellants did not provide any evidence of the impact of the proposed development on property values and the County's Assessment Department did not have information in this regard. Therefore, the Board placed no weight on this argument.
- [46] The Board heard concerns that, as the parcel is within the St. Albert annexation area, approval of this development could invite future industrial uses in the area or result in a future expansion of the existing proposal. The Board notes that the City of St. Albert was consulted on the application and voiced no objection to the proposed development.
- [47] Further, the Board can only consider the application before it, including the proposed location of the facility. Considerations of what the City of St. Albert may do in the future with respect to land redistricting is not something the Board can consider. Also, although recognizing that Sturgeon County is large geographically with a number of other potential parcels for this development farther away from residents and cities, the Board does not have the authority to dictate to an applicant where he should consider locating his business. The Board can only consider the existing application in the context of the proposed location and is not persuaded by, nor can it properly contemplate, the potential future impact of decisions made by the City of St. Albert in the future and therefore placed no weight on this argument.

- [48] In reviewing the aerial photos of the subject and neighbouring properties, as provided in the Development Officer's presentation, the Board found that the location and condition of the facility, including lighting, would not change and therefore would have no negative impacts on current sight lines of adjacent properties. Therefore, the Board placed no weight on the argument that the proposed development would result in addition floodlights/spotlights in neighbouring homes.
- [49] As the facility would be a production and distribution facility, and not a commercial facility, there would be limited traffic to and from the site, and only during regular work hours. The Board heard no persuasive evidence that the development would cause traffic issues or result in increased criminal activity in the area and therefore placed no weight on this argument.
- [50] The Board finds that the proposed development conforms with the use of Cannabis Production and Distribution, Micro as provided in the Land Use Bylaw and with the provisions of the Municipal Development Plan related to Economic Health by promoting small business.
- [51] For all of these reasons, the Board has decided to deny the appeal, uphold the decision of the Development Authority, and approve the development permit with the conditions noted above.

Dated at the Town of Morinville, in the Province of Alberta, this 2<sup>nd</sup> day of November, 2020.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
Sturgeon County



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Julius Buski, Chair

*Pursuant to Section 688(1)(a) of the Municipal Government Act (MGA), an appeal of a decision of the Subdivision and Development Appeal Board lies with the Alberta Court of Appeal on a matter of law or jurisdiction. In accordance with Section 688(2)(a), if a decision is being considered, an application for permission to appeal must be filed and served within 30 days after the issuance of the decision and, notice of the application for permission must be provided to the Subdivision and Development Appeal Board and in accordance with Section 688(2)(b), any other persons that the judge directs.*

**APPENDIX "A"**  
**List of Submissions**

- The Notices of Appeal;
- A copy of the development permit application with attachments;
- The Development Officer's written decision;
- Development Support Services Report;
- The Applicant's written submission; and
- Rita & Kevin Anderson's written submission