

Appeal File Number: 023-STU-001
Application Number: 305305-22-D0323
Appeal Against: Development Authority of Sturgeon County
Applicant/Appellant: Joginder Singh
Date and Location of Hearing: January 3, 2023
Council Chambers and Through Electronic Communications
Date of Decision: January 16, 2023
SDAB Members: Lee Danchuk (Presiding Officer), Mark Garrett, Amanda Papadopoulos, Lili Terry

NOTICE OF DECISION

IN THE MATTER OF an appeal by Joginder Singh against the Development Authority’s refusal of a development permit to operate a Home-based business level 3 - transportation trucking company - Awake Transport Ltd. at Plan 4595NY; ; Lot A (55013 Highway 825) 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 sections 685 and 686 of the *Municipal Government Act*, RSA 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 and Sturgeon County’s Municipal Development Plan (MDP), and any amendments thereto.
- [3] The following documents were received prior to the hearing and for part of the record:
- The Notice of Appeal;
 - A copy of the development permit application with attachments;
 - The Development Authority’s written decision; and
 - Planning & Development Services Report.

PRELIMINARY MATTERS

- [4] There were no preliminary matters addressed at this 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 Presiding Officer.
- [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.

ISSUE

- [9] The Appellant raised the following grounds of appeal:
 - a. Alberta Transportation Development Permit 2022-0006330 was approved.
 - b. The Home-based business complies with all requirements except for the number of commercial vehicles; all are parked but only 3-4 vehicles are in operation.
 - c. There are no neighbouring residences in close proximity to the site.
 - d. The proposed Home-based business is less than 30 metres access to Highway 825.

RECOMMENDATION OF THE DEVELOPMENT AUTHORITY

- [10] Carla Williams, representative for the Development Authority, provided a presentation which outlined the Development Authority's refusal of development permit application 305305-22-D0323. In summary:
 - 1. The property is located on Highway 825 and is adjacent to the Sturgeon Industrial Park and the land is zoned AG – Agriculture Residential.
 - 2. The property is 1.78ha (4.4ac) in area and is currently developed with a manufactured home (D-77-2002) and accessory building (305305-14-D0348 – to leave detached shop as built 836m²).
 - 3. The property is accessed by a service road off Highway 825.
 - 4. To the north, there are two Agricultural parcels. The Sturgeon Industrial Park, which is located to the east, has not been developed.
 - 5. An application to operate a Home-based business was received in May 2022. The business is a trucking company named Awake Transport Limited. The application was deemed to be incomplete until a roadside development permit was received from Alberta Transportation.

6. A site inspection of the property was conducted by Bylaw Services on October 20, 2022. At the time of inspection, there were eight (8) semi-tractors parked on site. Three of the trucks had trailers attached and there were eight (8) passenger vehicles parked in front of the dwelling.
7. Alberta Transportation Roadside Development Permit #2022-0006330 was issued on November 9, 2022 and therefore the application to the County was deemed complete. Condition #13 of the permit states that the Permittee must operate this Home-based business with a maximum of ten (10) commercial trucks operating from the site and a maximum of nine (9) employees working from the site who do not reside on the property.
8. The property is proposed to be used for general office work, for dispatch and for keeping of records. The proposed hours of operation are 8:00 a.m. to 5:00 p.m. There would be approximately two to three visits to the location in a day. There would be two non-resident employees who would work or visit the property. The vehicles associated with the business would be one car or van, five highway tractor trucks, one loader, and six trailers. The truck and trailer parking would be provided in the open yard and six parking stalls provided on site for employees. The existing 9,000 square foot warehouse building was empty at the time of the application and would be used for storing a small amount of truck parts, tires, and personal vehicles.
9. There is no local planning document or area structure plan for this area. Therefore, the community's Municipal Development Plan (MDP) provides the overarching land use policies for this application. The MDP policy requires that a proposed development that exceeds Non-residential Type 4 or if the scale conflicts with residential uses, to relocate to an appropriate location such as an industrial park.
10. Under the Land Use Bylaw, a Home-based business means the accessory use of a dwelling, accessory buildings and parcel for an occupation, trade, profession, or craft to be operated by the permanent residents of the dwelling.
11. The Land Use Bylaw allows a Fleet Service use within the Industrial and Direct Control Districts. A Fleet Service use is neither a permitted nor discretionary use within the AG-Agricultural district. Fleet Service means the use of a parcel and/or buildings for the parking and servicing of vehicles for the delivery of people, goods or services where such vehicles are not available for sale or long-term lease. This includes like bus lines, commercial transport, cartage, and Courier services.
12. The *Highways Development and Protection Regulation* requires a roadside development permit for any new development permits within a development control district zone that is 300 metres from a provincial right-of-way or 800 metres of the centreline of a highway

and public road intersection. Alberta Transportation approved a roadside development permit allowing 10 commercial trucks to operate from the site, which would suggest that the access off Highway 825 can safely accommodate additional traffic to and from this property.

13. A Home-based business Level 3 is a discretionary use in the AG district. The intent of a Home-based business is to be an accessory use to the dwelling, accessory building(s) and the parcel. An accessory use is to be incidental and subordinate to the principal use of the parcel. The principal use of the subject parcel is intended to be for AG residential purposes.
14. A Home-based business level 3 shall comply with the requirements provided in Table 6.1 of the Land Use Bylaw. The maximum number of commercial vehicles shall not exceed three. The application noted five 8,200-kilogram highway tractors. The maximum number of commercial trailers shall not exceed three. The application noted six Super-Bs (each consisting of a 32-foot trailer and a 28-foot trailer), one 53-foot step deck, and one 43-foot flatbed.
15. A variance cannot be applied to a “use” and is not intended to be used as a way to undermine the intent of the regulations. Therefore, the Development Authority did not consider a variance to allow for additional commercial vehicles and trailers over the permitted number of units as the scale of the proposed number of trucks and trailers would, in the opinion of the Development Authority, better fit as a Fleet Service use.
16. Pursuant to section 2.8.1(c) of the Land Use Bylaw 1385/17, the Development Authority may refuse an application for a discretionary use where the proposed development does not conform to this Bylaw. The number of commercial vehicles and commercial trailers exceed the maximum number allowed and therefore the application was refused.
17. The application is incompatible with MDP Policy I.4(a), “Ensuring proposed developments for the Neighbourhood demonstrate limited adverse impact on the activities, growth or viability of the SIP” and C4(d), “Requiring proposed or expanding development that exceeds Non-Residential Type 4, to relocate to identified Non-Residential centres in the County. HBBs, where the Non-Residential type and scale conflicts with residential uses, are to relocate to an existing Non-Residential Development Park or an appropriate location identified in an approved Planning Document.”
18. The application must conform with the prescribed uses of the land. The proposed use better falls under a Fleet Service use and would therefore be neither permitted nor discretionary within the AG - Agricultural district.

SUMMARY OF APPELLANT'S POSITION

[11] The Appellant, Joginder Singh, was in attendance and provided a verbal presentation, background information, and reasons for the appeal. To summarize:

1. When he purchased the property in 2022, he assumed that the property was zoned for commercial use. He was not aware that the property was zoned Agricultural.
2. He owns ten trailers and six trucks but sometimes there are only two trailers in the yard if others are rented out.
3. The 9,000 square foot building is empty now but has been used for spare truck or spare truck part storage.
4. There is a trailer on the site that he sometimes stays in overnight; otherwise, no one lives on the property. His driver's licence address identifies this property as his home address.
5. He knew if he was going to park more trucks there that he would need a level 3 home-based business permit.
6. There is no disturbance to neighbours because there are no neighbouring houses close to the property, and it is very close to Highway 825. The access road just goes to the nitro plant and no County roads would be damaged.
7. Alberta Transportation approved a roadside development permit as the County required.
8. After he received the roadside development permit, he called the County and was advised to apply for a home-based business permit, which was refused, and then he appealed to the SDAB.
9. The County told him the maximum number of trucks and trailers he can have on the property is three, and he has more than three. He wants the County to let him park the trailers at the property or give him an extension until the rezoning is complete.
10. He hired Stantec to apply for rezoning of the property and has paid them fees, but he does not know how long that process will take.
11. He pays commercial taxes on a portion of the property. He pays approximately \$12,000 a year in taxes; and on the tax notice, it is identified that there are portions of the property assessed as commercial and other parts assessed as residential.

DECISION

[12] **The Board DENIES the appeal and CONFIRMS the decision of the Development Authority made on November 18, 2022 to refuse development permit application 305305-22-D0323.**

REASONS FOR THE DECISION

- [13] The application is for a Home-based Business Level 3 (transportation trucking company). The vehicles associated with the business would be one car or van, five highway tractor trucks, one loader, and six trailers. The truck and trailer parking would be provided in the open yard and six parking stalls provided on site for employees. The existing 9,000 square foot warehouse building would be used for storage of truck parts, tires, and personal vehicles.
- [14] The subject property is zoned AG-Agricultural. A Home-based business level 3 is a discretionary use in the AG district. The Land Use Bylaw defines a Home-based business as “the accessory use of a dwelling, accessory buildings and parcel for an occupation, trade, profession, or craft to be operated by the permanent residents of the dwelling”. Table 6.1 of the Land Use Bylaw specifies the regulations of Home-based businesses, including the Home-based business level 3, regarding maximum business size, the storage of equipment or material, client traffic, number of non-resident employees, number of commercial vehicles, number of commercial trailers, number of passenger vehicles, hours of operation, and additional on-site parking stall requirements.
- [15] The Board received evidence from the Development Authority, including aerial photographs of the subject property. The Development Authority asserted that the number of commercial trailers on site is in excess of what is permitted under the regulations.
- [16] The Appellant submitted verbal evidence that the trucking company has not unduly impacted neighbouring property owners as there are no residences near the proposed development. The Board notes that only one adjacent property owner spoke in opposition to the proposed development.
- [17] The Board heard from the co-owner of an adjacent property who raised concerns regarding the potential environmental impact of the proposed Home-based business, contemplating that the effluent from the materials used in the trucking company business may pollute the North Saskatchewan River. The Board placed no weight on this assertion as there was no evidence that the business would cause such effluent, or the extent of such environmental degradation.
- [18] The Board heard evidence that, although the parcel is zoned Agricultural, the 9,000 square foot shop is assessed for taxation purposes as commercial. Although the Development Authority indicated that it is an anomaly for a commercial building to be located on a parcel zoned agricultural, the Board’s jurisdiction is with respect to land use planning and not the assessment or taxation of structures. Therefore, the Board must consider the suitability of land for development purposes relying on the Land Use Bylaw and statutory plans of the municipality.

- [19] The Board heard from the Development Authority that a reason for refusing the development permit is that the MDP Policy I.4(a) encourages industrial businesses to locate to industrial parks, such as the nearby Sturgeon Industrial Park. The Board placed little weight on this submission since the Board must consider the suitability of the subject site for the proposal submitted, not the appropriateness of the business being relocated elsewhere. Further, the Appellant submitted evidence, corroborated by the Development Authority, that other similar type businesses have been successfully rezoned to a Direct Control district to allow them to remain rather than relocate to an industrial park. The Board does, however, acknowledge the intent of the MDP policies in reducing conflict between residential and industrial uses in close proximity.
- [20] The Board considered the comparator businesses noted by the Appellant in close proximity to the subject parcel. The Board gave little weight to this evidence as it was admitted that these parcels are zoned Direct Control, meaning that they have different regulations than what is in the AG district. Further, the Development Authority noted that these are not home-based businesses, further reducing comparability to the application in question.
- [21] In reaching its decision, the Board referred to the definition of “Fleet service” in the Land Use Bylaw, which is “the use of the parcel and/or building(s) for the parking and servicing of vehicles for the delivery of people, goods, or services where such vehicles are not available for sale or long-term lease. This may include, but is not limited to, bus lines, commercial transport, and courier services. This used does not include warehousing”. Based on the development permit application form, aerial photographs supplied, and verbal submissions made by the Appellant regarding the purpose of this business, the Board finds that the Appellant is seeking to operate a Fleet service, which is neither a permitted nor a discretionary use in the AG – Agriculture district.
- [22] Having determined that the nature of the proposed development is a Fleet service, the Board does not deem it appropriate to approve a Home-based business use to circumvent the intent of the Land Use Bylaw, which is for the use of the land to be in alignment with that which is contemplated in the Land Use Bylaw.
- [23] Further, the Board heard conflicting evidence from the Appellant about his residency status at the property. The Board heard from the Development Authority that the intent of a Home-based business use is for it to be accessory to the residential use. Although the Appellant asserted that his driver’s licence lists this property as his home address, the Appellant submitted to the Board that he has a house in Edmonton and sleeps at the subject property only when he is working late. The Board is not satisfied that the proposed development meets the intent of a Home-based business in that the parcel is proposed to be predominantly used for the industrial use, not a residential use.

[24] For all of these reasons, the Board has decided to deny the appeal, confirm the decision of the Development Authority, and refuse the development permit.

Dated at the Town of Morinville, in the Province of Alberta, this 16th day of January, 2023.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD
Sturgeon County



Lee Danchuk, Presiding Officer

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 Notice of Appeal
- A copy of the development permit application with attachments
- The Development Officer's written decision
- Planning and Development Services Report