

Appeal File Numbers: 023-STU-007
023-STU-008
023-STU-009
023-STU-010

Application Number: 305305-23-D0092

Appeal Against: Development Authority of Sturgeon County

Appellants: Janice Nolte
Vivianne Pambrun
June Van Brabant
Cheryl Hauptman

Date and Location of Hearing: June 6, 2023
Council Chambers and Through Electronic Communications

Date of Decision: June 20, 2023

SDAB Members: Julius Buski, Lee Danchuk, Mark Garrett, Alanna Hnatiw, Lili Terry

NOTICE OF DECISION

IN THE MATTER OF appeals by Janice Nolte, Vivianne Pambrun, June Van Brabant and Cheryl Hauptman against the Development Authority's permit approval to operate a temporary asphalt plant at SE 20-54-26-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 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:
1. The Notice of Appeal;
 2. A copy of the development permit application with attachments;
 3. The Development Authority's written decision; and
 4. 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 Chair.

[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 that they object to the Development Authority's approval of Development Permit 305305-23-D0092 to operate a temporary asphalt plant at SE 20-54-26-W4 within Sturgeon County for the following reasons:

1. Access to the yard site for the Property will be directly affected by the increased commercial traffic.
2. There will be an increase in commercial traffic at the intersection of Highway 44 and Township Road 554. Highway 44 is currently very busy at this location.
3. The proposed hours of operation, six (6) days a week from 7:00 a.m. to 8:00 p.m. Monday to Saturday, are excessive and will negatively affect the Property to October 31, 2023.
4. Dust suppression is already insufficient at the Property due to the current commercial activity of Heidelberg Materials (Heidelberg).
5. There are possible smell and health concerns.

RECOMMENDATION OF THE DEVELOPMENT AUTHORITY

[10] Yvonne Bilodeau, representative of the Development Authority, provided a presentation which outlined the Development Authority's approval of Development Permit 305305-23-D0092. In summary:

1. Allied Paving Ltd. has been awarded Alberta Transportation Highway Rehabilitation project CON 0021741, which includes new passing lanes and intersection upgrades to improve safety along Highway 44 between Highway 16 and the Town of Westlock.
2. The development permit allows for the operation of a temporary asphalt plant to support the awarded project between the hours of 7:00 a.m. and 8:00 p.m., Monday to Saturday. The permit expires on October 31, 2023 at which time the plant will be removed from the site.
3. The property is owned by Heidelberg Materials Canada Ltd. Three previous permits have been issued for temporary asphalt plants on this site. Typically, temporary asphalt plants are set up in close proximity to the project site and the aggregate supply sites for efficiency.
4. The subject parcel is districted RE – Resource Extraction District. The purpose of this district is to provide for the extraction, processing and stockpiling of on-site natural resources on lands.
5. Land Use Bylaw 1385/17 states:

- Section 11.2.2 Uses – lists *temporary asphalt plant* as a discretionary use.
 - *Temporary asphalt plant* means a structure which is used to make asphalt from aggregate materials for a limited period of time and is typically associated with a road construction project.
 - Special Regulations for *temporary asphalt plants* of Section 6.34 state:
 - 6.34.1 The period for a development permit for the operation of a *temporary asphalt plant* or *temporary concrete batch plant* shall be at the discretion of the Development Authority based on the scope of the project.
 - 6.34.2 A *temporary asphalt plant* or *temporary concrete batch plant* shall not be located within 400m (1,312.3ft) of a dwelling.
 - 6.34.3 Notwithstanding Subsection 6.34.2, a *temporary asphalt plant* or *temporary concrete batch plant* may be permitted within 400m (1,312.3ft) of a dwelling as agreed to in writing by the resident(s) of the existing dwelling.
6. The Development Authority approved the permit with the following considerations:
- The application met the regulations outlined in the Land Use Bylaw as the closest dwelling is approximately 890m to the site and the permit was issued for a temporary period to expire October 31, 2023.
 - The proposed temporary asphalt plant location is ideal due to the close proximity to the road project area and the aggregate and other materials required for the asphalt mix.
 - The proposed haul route has the least use of County roads and is along a designated haul route for the industry.
7. The Development Authority recommended that the Board deny the appeal and uphold the issued permit for the temporary asphalt plant due to the added community benefit and safety related to this highway improvement project.

SUMMARY OF APPELLANTS' POSITION

- [11] Janice Nolte, speaking on behalf of all four Appellants, who are sisters and co-own a property adjacent to the subject property, submitted that:
1. The Appellants object to the development permit for the operation of a temporary asphalt plant on the subject parcel.
 2. They have concerns with potential environmental and air quality impacts which she feels could lead to health problems for the residents of their adjacent property.
 3. They have additional concerns with increased industrial traffic and noise, insufficient dust suppression, and traffic safety concerns in relation to slippery road surfaces and visibility at intersections along the haul route.
- [12] Appellant June Van Brabant submitted concerns regarding truck traffic noise, as the residence she co-owns and rents out is 23 yards from Township Road 544 and 64 yards from Highway 44.

SUMMARY OF APPLICANT'S POSITION

- [13] The Applicant, Yuri Wishloff, Allied Paving Ltd., submitted that:
1. The primary goal of the project is to increase the safety for all users of Highway 44.
 2. The proposed temporary asphalt plant location is ideal due to the close proximity to the road project area and the aggregate and other materials required for the asphalt mix.
 3. Allied Paving Ltd. is very diligent in monitoring their operation and dust suppression efforts to ensure Alberta Environment regulations are met.
 4. The company can direct their contract truck drivers not to use engine-retarder brakes when entering or leaving the property where the asphalt plant would be located to mitigate noise concerns, and management and staff are available to hear and work to resolve any concerns from the public.
 5. He performed visual inspection of the proposed haul route and observed no substantial issues with visibility for the truck drivers at the Heidelberg property approach to Township 554, nor at the intersection at Highway 44.

SUBMISSIONS FROM OTHER AFFECTED PERSONS

- [14] Ms. Christene Feist, Heidelberg Materials Canada Ltd., owner of the subject parcel, spoke in opposition to the appeal, stating that:
1. With a road improvement project of this size, there may be some increase to normal operations at the site.
 2. Heidelberg Materials continues to maintain dust suppression at their expense as required by the current road use agreement, and strives to work with residents to resolve any complaints.
 3. If the development permit were to be revoked, the asphalt plant would need to be located at an alternate site, causing a larger increase in truck traffic as the aggregate materials would need to be hauled from the property to the asphalt plant location.
 4. The project was bid with the assumption that the asphalt plant would be located on-property. Moving the plant location would significantly increase project costs and may delay the project for Alberta Transportation.

DECISION

- [15] **The Board DENIES the appeals and CONFIRMS the decision of the Development Authority made on April 28, 2023 to approve development permit 305305-23-D0092.**

REASONS FOR THE DECISION

- [16] The parcel is districted RE – Resource Extraction District. The purpose of the district is to provide for the extraction, processing and stockpiling of on-site natural resources on lands. *Temporary asphalt plant* is a discretionary use in RE District.
- [17] The Appellants raised concerns of air quality, environmental impacts, noise, dust, and traffic safety as reasons the Board should refuse the development permit. The Appellants provided oral evidence of existing issues given that resource extraction is occurring in the area.
- [18] The Appellants did not disclose any documentary evidence to substantiate their claims of existing air quality, noise, dust, or traffic safety concerns. Further, aside from identifying the hours of operation extending into the evening and on Saturdays as differentiating from

existing resource extraction operations, the Appellants were not able to demonstrate how the temporary asphalt plant would exacerbate concerns resulting from existing, permitted resource extraction operations.

- [19] The Board heard that there is a history of temporary asphalt plants being used successfully on the subject parcel to achieve project efficiency. The property owner of the subject parcel identified existing road use agreement requirements, including dust suppression on internal roads and along the haul route, which mitigate the negative impacts of truck traffic in the area.
- [20] The Board also notes development permit condition #9, which requires the Applicant to ensure that dust and noise control measures are undertaken to prevent such items becoming an annoyance to neighbouring landowners. This includes dust suppression to the satisfaction of the Development Officer and noise mitigation from any machinery or equipment.
- [21] The Board referred to section 6.34.2 of the Land Use Bylaw, which states that a temporary asphalt plant shall not be located within 400m (1,312.3ft) of a dwelling. The Development Officer advised that the dwelling owned by the Appellants is approximately 890m from the proposed temporary asphalt plant, more than double the minimal distance provided in the Land Use Bylaw.
- [22] The Board heard from the Appellant that they have made complaints to Sturgeon County in the past for similar concerns with dust suppression and were satisfied with the remedies from the County. The Board is satisfied that Sturgeon County will continue to diligently accept and address any complaints they receive from affected parties.
- [23] The Board finds that the proposed temporary development would not materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and the proposed development conforms with the use prescribed for that land in the Land Use Bylaw, which is a temporary asphalt plant.
- [24] For all of these reasons, the Board has decided to deny the appeals and confirm the decision of the Development Authority made on April 28, 2023 to approve development permit 305305-23-D0092.

Dated at the Town of Morinville, in the Province of Alberta, this 20th day of June, 2023.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD
Sturgeon County



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 & Development Services Report