
Appeal File Number: 023-STU-003
Application Number: 305305-23-D0008
Appeal Against: Development Authority of Sturgeon County
Applicant/Appellant: Kent Lamoureux
Date and Location of Hearing: March 21, 2023
Council Chambers and Through Electronic Communications
Date of Decision: April 5, 2023
SDAB Members: Julius Buski, Mark Garrett, Amanda Papadopoulos, Don Rigney

NOTICE OF DECISION

IN THE MATTER OF an appeal by Kent Lamoureux against the Development Authority’s approval to construct an accessory building (pole shed 60 feet by 80 feet) for personal storage at Plan 0827877; Block 1; Lot 3 (55011 Range Road 234) 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;
 4. Planning & Development Services Report; and
 5. Appellant’s written submission.

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.

ISSUE

- [9] The Appellant raised the following grounds of appeal:
- a. The construction of this building will further contribute to the development of this site that has operated a large-scale construction business for the last 3 years.
 - b. The traffic, subsequent dust, noise, and degradation of the road is a safety hazard, a nuisance, and is degrading the environment and personal health.
 - c. There is an unsafe level of traffic for the intersection at Highway 37 and Range Road 234.

RECOMMENDATION OF THE DEVELOPMENT AUTHORITY

- [10] Carla Williams, representative for the Development Authority, provided a presentation which outlined the Development Authority's approval of Development Permit 305305-23- D0008. In summary:

1. The subject parcel is districted as REC – Recreation; however, the land is currently not developed for this purpose. The property is 22 hectares (53.5 acres) developed with a single detached dwelling, a Farm Building Declaration for an ATCO type trailer, and a fabric structure.
2. A proposed accessory building was approved for personal use only. The proposed accessory building meets all regulations of the district with respect to setbacks and height. The building is proposed in a location that will not be visible to adjacent properties.
3. The appeal noted a large-scale construction business has been operating on the site involving truck traffic, dust, and noise for the past 3 years. Historical information of the activity on site is as follows:
 - February 26, 2021, a complaint was received regarding berm construction, stockpiling of gravel/fill, a dugout/borrow pit and potential operation of a business. Truck traffic was observed hauling material both in and out of the property.
 - March 10, 2021, a letter of inquiry was sent to the landowner of the subject parcel regarding a potential business being operated and site grading occurring without permit approval. Confirmation of the zoning of the parcel was also reiterated to the landowner.
 - May 13, 2021, Development Permit 305305-21-D0131 was issued for Site Grading for Landscape/Privacy Berm.

- August 5, 2021, a Warning Letter was sent to the landowner regarding Stockpiling and Outdoor Storage. Outdoor Storage means *the storage of equipment, goods, and materials in the open air. This includes storage of items accessory to the principal use of a parcel.*
 - October 21, 2021, the Development Authority met with the landowner onsite to inspect the property. The landscape berm, two Case tractors, a semi-trailer, and a pile of tires were observed onsite. At the time of inspection, it was noted that the parcel did not appear to have more equipment or material being stored than adjacent or nearby properties. There are several home-based businesses operating in the area, which contribute to traffic along Range Road 234.
 - January 12, 2022, Development Permit 305305-22-D0007 was issued for Stockpiling of Material for Yard Maintenance. A condition referencing noise and dust mitigation were included in the Site Grading and Stockpiling development permits.
 - Alberta Transportation approved separate Roadside Development permits for both the Site Grading and the Stockpiling of Material. The approvals did not regulate traffic to and from the site.
 - Sturgeon County Transportation Services confirmed in 2021 that the landowner paid for dust suppression on Range Road 234 for 200 metres from their approach south to Highway 37.
 - A Road Use Agreement was entered into with the County on March 30, 2022.
 - The County is aware of safety concerns at the intersection of Range Road 234 and Highway 37 as there are no turning lanes or shoulders to allow for safe access on and off of Highway 37. Data collected in 2021 shows the average daily traffic at this intersection was 389 vehicles.
4. Truck traffic and heavy equipment observed on the site may have been related to the site grading and the stockpiling approvals. These permits expired on December 1, 2022 and so there should be no further impacts to adjacent property owners.
 5. Neither a Home-Based Business (contractor) nor Outdoor storage is a listed use within the REC district.
 6. The Development Authority may refuse an application for a discretionary use, where the proposed development does not conform to the Land Use Bylaw. The application was approved as submitted as the accessory building met all regulations and is proposed to be for personal use only.

SUMMARY OF APPELLANT'S POSITION

[11] The Appellant, Kent Lamoureux, was in attendance and provided a verbal presentation, background information, and reasons for the appeal. In summary:

1. He is the owner of Poplar Woods. He intended to develop the land into a recreational facility but after planting trees he had the vision of a campground.

2. Development of a campground would require approval from Alberta Transportation and the development of a new intersection at a cost of \$1.3 million. The cost was not feasible, so he sold a 53-acre portion to the Applicant in 2017.
3. The Applicant is operating a commercial business from the property, which is impacting adjacent properties. Any further development on the property would support a commercial business which does not conform with the intent of the REC – Recreational District.
4. His home is approximately 100 metres south of the property line and the driveway to the adjacent property is to the north of the property line. There is constant traffic, noise, and dust that is created during the construction season with no dust control measures. He is unable to place any type of recreational facility adjacent to the fence due to these issues.
5. The development permit for a pole shed should be refused and the Applicant should seek to redistrict the land to allow for a commercial use where appropriate traffic controls will be imposed.

SUMMARY OF APPLICANT'S POSITION

[12] Don, Steven, and Andrew Doblanko were in attendance and provided a verbal presentation. In summary:

1. The property was purchased from Kent Lamoureux in 2017.
2. They upgraded the approach for the shared driveway in cooperation with Mr. Lamoureux but then had a disagreement about payment.
3. Due to the recreational zoning of the land, the goal is to create a campground, but the modifications required for the access are expensive. They are looking into the regulations regarding the development of a campground.
4. A privacy berm is currently being created on the property, which explains the truck traffic to and from the property. The trucks belong to them and not a private company.
5. They have tried to mitigate the dust and noise issues by informing drivers to drive no more than 10 km/hr as they enter and leave the property.
6. They have paid for dust control measures and watered the driveway in the past.
7. They have purchased 100 mature pine trees to be planted along the berm to mitigate concerns with noise and dust.

8. The proposed development is an accessory building for a pole shed. There is a personal dispute between neighbours which has initiated this appeal.

SUBMISSIONS FROM OTHER AFFECTED PERSONS

- [13] Cindy Felix, adjacent property owner, spoke in favour of the appeal, noting concern of the number of trucks travelling to and from the property and the safety issues this causes. She also questioned the compatibility of the commercial use with the recreational zoning of the property.

DECISION

- [14] **The Board DENIES the appeal and CONFIRMS the decision of the Development Authority made on February 6, 2023 to approve development permit application 305305-23-D0008.**

REASONS FOR THE DECISION

- [15] The application is to construct an accessory building, 446 square metre pole shed for personal use.
- [16] The subject property is zoned REC - Recreational. The general purpose of the REC district is to accommodate development intended to provide commercial indoor and outdoor recreational facilities and related land uses. These uses are larger in scale and may have greater on-site and off-site impacts.
- [17] The parcel has an approved single detached dwelling, a discretionary use, which is the principal building on the land. Pursuant to the Land Use Bylaw, a principal building means a building which constitutes the primary purpose for which the parcel is used and is the main building among one or more buildings on the site.
- [18] The proposed pole shed is considered an accessory building to the principal single detached dwelling use. Pursuant to the Land Use Bylaw, an accessory building means a building or structure that is incidental, subordinate and located on the same parcel as the principal building, but does not include a building or structure used for human habitation.
- [19] The Board received evidence from the Development Officer that the proposed development meets all regulations of the district with respect to setbacks and height. Further, the Development Officer submitted that the accessory building is proposed in a location that will not be visible to adjacent properties.
- [20] The Appellant and an adjacent landowner submitted to the Board that there is a commercial business operating on the site, demonstrated by the large volume of truck traffic to and from the site, resulting in noise, dust, and overall safety concerns for residents living in the vicinity of the development. The Appellant submitted that these factors negatively impact his ability to develop the recreational use of his land.
- [21] The Board considered the Appellant's documentary evidence, specifically, photographs of the subject property showing machinery, stockpiling of culverts, trucks causing dust on a

gravel road, and excavation, which the Appellant submits demonstrates that a full-scale construction business is operating on the property. One photograph includes a notation that, on June 7, 2022, the Appellant observed over 100 trucks travelling to and from the site.

- [22] The Board heard from the Development Officer that a permit for stockpiling of material and yard maintenance was issued on January 12, 2022 and expired on December 1, 2022. This permit had a number of conditions, including Alberta Transportation permits for site grading and stockpiling, dust suppression, a road use agreement with Sturgeon County, and a condition referencing noise and dust mitigation.
- [23] The Board finds that the photographs supplied by the Appellant are consistent with the permit issued for the stockpiling of material for yard maintenance. There is no evidence that the activities photographed occurred outside of that timeframe.
- [24] Email correspondence between the Development Officer and the Applicant states that the purpose of the pole shed is “to keep our tractors and pickups inside and out of the weather”. This demonstrates that the intent of the accessory building is for personal, not commercial, use.
- [25] The Board is satisfied that the proposed pole shed meets the definition of an accessory building pursuant to the Land Use Bylaw and meets all Land Use Bylaw regulations. A decision not to grant the development permit for personal use requires the Board to seek to regulate the user of the accessory building, and not the use, which is not within the Board’s purview.
- [26] Having determined that the proposed development conforms with the Land Use Bylaw, the Board contemplated how the proposed pole shed would impact adjacent properties owners. The Board received no submissions from the Appellant or adjacent property owner regarding how the pole shed specifically would impact the enjoyment or value of their properties.
- [27] Further, the Board is satisfied that condition #8 of the Development Permit provide clear guidance to the Applicant regarding how the accessory building is to be used: Condition #8: “The accessory building shall not be used for purposes related to the operation of any commercial business and shall be used for personal storage only”. Enforcement of the development permit will be carried out by the Development Office as any development permit issued by Sturgeon County.
- [28] For all of these reasons, the Board has decided to deny the appeal, confirm the decision of the Development Authority, and approve the development permit with conditions as noted in the approval dated February 6, 2023.

Dated at the Town of Morinville, in the Province of Alberta, this 5th day of April, 2023.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD
Sturgeon County

A handwritten signature in blue ink, appearing to read "J. Buski", is centered on the page.

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