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| Appeal File Number: | 021-STU-016 |
| Appeal Against: | Development Authority of Sturgeon County |
| Appellant: | Tammy Andersen |
| Date and Location of Hearing: | November 23, 2021 Via Videoconference |
| Date of Decision: | December 3, 2021 |
| SDAB Members: | Chair Julius Buski, Lee Danchuk, Dave Kluthe, Allan Montpellier, Amanda Papadopolous |

NOTICE OF DECISION

IN THE MATTER OF an appeal by Tammy Andersen against the Development Authority's issuance of a Stop Order for property located at SW 20-56-23-W4, Plan 2986KS, Lot A and SW 29-56-23-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 the evidence presented and considered provisions of the *Municipal Government Act* and Sturgeon County's Land Use Bylaw 1385/17 (the Land Use Bylaw or LUB), and any amendments thereto.
- [3] The following documents were received prior to the hearing and form part of the record:
- The Notice of Appeal;
 - A copy of the Stop Order;
 - Planning and Development Services Report;
 - Appellant's submission; and
 - Adjacent landowners' 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.

[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 Appellant raised the following grounds of appeal:

- The business is a historic farm that has been in operation since 1956. The farm primarily produces vegetables and is not an outdoor recreation centre.
- A Special Events Permit signed on July 8, 2021, in effect until December 31, 2021, states “In the absence of an Ag Tourism designation within the Sturgeon County Land Use Bylaw, whilst recognizing the value that Prairie Gardens and Adventure Farms provides the residents of Sturgeon County and beyond, this agreement is an amendment to the Special Events Bylaw 1329/14 for the remainder of 2021.”

RECOMMENDATION OF THE DEVELOPMENT AUTHORITY

Tyler McNab, representative for the Development Authority, provided a presentation which outlined the reasons for the Development Authority’s issuance of the Stop Order:

[10] Under Land Use Bylaw 1385/17, Prairie Gardens and Adventure Farm is considered two different types of development:

- An *Intensive Agriculture* use as per Part 18 of the Land Use Bylaw, which means a horticultural operation which may be accessory to an extensive agriculture or extensive livestock use that, generally operates on smaller tracts of land. Without restricting the generality of the foregoing, this may include nurseries, greenhouses, market gardens, u-pick farms, tree farms, fish farms, stud farms and sod farms. This use accommodates site visits to an agricultural parcel for customers for the purchasing of farm products. This does not include Cannabis Production and Distribution or Cannabis Retail Sales; and
- *Recreation Facility, Outdoor use* as per Part 18 of the Land Use Bylaw, which means development providing facilities which are available to the public at large for sports and active recreation conducted outdoors. Typical uses include golf courses, driving ranges, clubhouses, go-cart tracks, sports fields, tennis courts, unenclosed ice surfaces or rinks, rodeo grounds, athletic fields, boating facilities, swimming pools, bowling greens, riding stable and fitness trails. This use does not include a public park or shooting range.

[11] Prairie Gardens has been in operation for approximately 65 years and as such the *Intensive Agriculture* use may be considered a non-conforming use.

[12] A non-conforming use must be “lawful” at the time it is commenced. At the start of the *Intensive Agriculture* use in 1956, a development permit may not have been required and thus the use itself may have been a non-conforming use. However, under the MGA and the Land Use Bylaw, a non-conforming use cannot expand. Therefore, while the original use may be entitled to continue as a non-conforming use, the expansion cannot.

- [13] The *Intensive Agriculture* use that existed in 1956 as a non-conforming use has expanded since that time and thus requires a new development permit to continue operations in their current state. Any expansion of a non-conforming use, such as any new buildings, no matter how small, would require a development permit per section 643(4) of the MGA:
- A non-conforming use of part of a lot may not be extended or transferred in whole or in part to any other part of the lot and no additional buildings may be constructed on the lot while the non-conforming use continues.*
- [14] Additionally, Prairie Gardens and Adventure Farm has created a second element to the operation being an “Adventure Farm”, which meets the *Recreation Facility, Outdoor* use within the Land Use Bylaw. The property is being used in a recreation and tourism focused manner including pricing for admission, event venue for parties, retreats and weddings, wagon rides, cannons, and other activities that do not have a direct link to a farm-product sale.
- [15] The *Recreation Facility, Outdoor* use is neither a permitted nor a discretionary use within the AG-Agriculture district and would require a redistricting of the property in order for a development permit to be approved.
- [16] On October 15, 2021, a Stop Order was personally served to Tammy Andersen by Sturgeon County’s Chief Administrative Officer, with an order to stop operations of the unpermitted *Intensive Agriculture* use and of the *Recreation Facility, Outdoor* use with an effective date of 12:01 a.m., Monday, October 18, 2021.
- [17] On October 27, 2021, Sturgeon County entered into a forbearance agreement with the Appellant that restricts Sturgeon County from enforcing the Land Use Bylaw or Stop Order in consideration of a series of tasks and deadlines that must be met by the Appellant.
- [18] In regard to the 2021 Special Event License issued to Prairie Gardens and Adventure Farm, the licence does not overrule the regulations within the Land Use Bylaw and contains the following wording:
- Nothing in this licence relieves any person from any requirement to obtain any additional licence, permit or approval under any other Bylaw of the Municipality or any provincial or federal statute or regulation.*
- [19] While in the past, Administration has chosen not to enforce aspects of the Land Use Bylaw, specifically the Appellant not having the adequate development permits for *Intensive Agriculture* use or *Recreation Facility, Outdoor*, the issuance of the Special Event License for 2021 has no bearing on the Stop Order issued.
- [20] The forbearance agreement allows the continuation of the development with some deadlines and restrictions up to October 22, 2022. Nothing approved in the Special Event License expiring on December 31, 2021 would be restricted as long as the Appellant complies with the forbearance agreement.

SUMMARY OF APPELLANT'S POSITION

[21] The Appellant has farmed on SW 20-56-23-W4, for over 37 years and on parcel SW 29-56-23-W4 for 20 years along with her husband. The land has been in production for over 100 years.

[22] This is an agriculture production facility that meets the definition of a farm in accordance with section 11.1 of the Land Use Bylaw.

[23] The operation fits within the *Extensive Agriculture* use as defined in the Land Use Bylaw as being:

An agricultural use including a system of tillage, which depends upon large areas of land for the raising of crops and includes customer site visits that are associated with the operations. This does not include Cannabis Production and Distribution.

The *Extensive Agriculture* use does not require a development permit under the Land Use Bylaw.

[24] The Appellant disagrees with Administration that the facility should be considered a *Recreation Facility, Outdoor* because they do not offer any of the specified activities under the definition in the Land Use Bylaw, which includes golf courses, driving ranges, clubhouses, go-cart tracks, sports fields, tennis courts, unenclosed ice surfaces or rinks, rodeo grounds, athletic fields, boating facilities, swimming pools, bowling greens, riding stables, or fitness trails.

[25] All activities offered, and value-added enterprises, are educational and directly linked to agricultural or horticultural production. These activities pre-date the version of the Land Use Bylaw adopted in 2017 as the facility has been in operation since 2001.

[26] The Appellant received no communication from the County after the adoption of the 2017 Land Use Bylaw to inform her of any amendments or to advise her of a requirement to apply for an *Intensive Agriculture* permit.

[27] There have been valid permits in place since 1964 and Special Event Permits signed every year since 2016.

[28] There were other options available that the County could have pursued prior to issuing the Stop Order and she has demonstrated her willingness to work collaboratively with the County.

[29] The Stop Order was not properly issued as the facility does not fall within the definition of *Recreation Facility, Outdoor*. It is an *Extensive Agriculture* use that does not require a development permit under the Land Use Bylaw.

SUBMISSIONS OF ADJACENT LANDOWNERS

- [30] Adjacent landowners Kevin Allen and Hugh Allen spoke in favour of the appeal, noting that the business is valuable to the community and that they have not experienced any negative impacts as a result of the development. The Appellant and her husband are pioneers of the industry and should be permitted to diversify their agricultural business to make it more profitable. The Board also received letters of support from residents and employees of the business.
- [31] Adjacent landowners Cheryl Gerlock, Fred Fibi, and Angela Sime spoke against the appeal, noting that there is constant noise from the property, that patrons have trespassed on neighbouring properties, that there are significant traffic and parking issues due to a large number of visitors to the facility, and that the Appellant has not complied with the conditions of her Special Events License by failing to notify neighbouring landowners of events occurring at the facility.

DECISION

- [32] **The Board UPHOLDS the Stop Order issued by the Development Authority on October 15, 2021 and AMENDS the Stop Order to set the deadline to comply to October 22, 2022.**

REASONS FOR THE DECISION

- [33] In dealing with a Stop Order, the Board's inquiry is confined to whether or not the Stop Order was properly issued by the Development Authority. In order to make this determination, the Board must determine whether there has been a contravention of the MGA or the Land Use Bylaw. Evidence relating to the merits of the proposed development or community support for the proposed development is not relevant. If the Board determines that there has been a contravention, then the Board may uphold a Stop Order but exercise its discretion and give the recipient more time to comply with the terms of the Order.
- [34] The Board finds that the properties in question are zoned AG – Agriculture, and that the following approvals relate to these properties:
- 1972 – a Building Permit was issued for a Residence.
 - 1973 – a Letter was issued allowing for the operation of a Garden Tool Rental Centre.
 - 1978 – a Building Permit was issued for a Mobile Home.
 - 1979 – a Building Permit was issued for a Mobile Home.
 - 1997 – A Development Permit was issued for the construction of two, 27-foot wide greenhouses for wholesale growing with no retail access.
 - Since 2017 – multiple “Event Tent” Building permits were issued for use with events on these properties.
 - July 2021 – a Special Event License was issued allowing a series of events to be approved pursuant to Bylaw 1329/14.
- [35] The Board considered the evidence presented, including excerpts from the Prairie Gardens and Adventure Farm website presented by the Development Officer that the business has expanded from a greenhouse operation with a prohibition on retail access to a facility that provides train/wagon rides, corn mazes, a petting farm, camp and bonfire sites, workshops, parties, retreats, weddings, birthdays, holidays, a pumpkin and corn cannon, and other recreation and tourism activities. The Appellant submitted to the Board that not only does the business sell

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products on the property, but patrons must purchase an agricultural product as part of the price of admission.

- [36] The photographs provided by adjacent landowners of visitors to the facility parking in highway ditches support the Development Officer's assertion that the development has become more intensive over time as the construction of two greenhouses with a prohibition of retail access would not generate the traffic and parking issues demonstrated by the adjacent landowners. Adjacent landowners submitted that the number of visitors has increased, creating traffic, parking, and safety concerns.
- [37] The Board received several letters of support from adjacent landowners and received verbal submissions from neighbouring property owners expressing support for this local business and the benefits it provides, including employment opportunities for local people. The Board does not find employment considerations legitimate land use planning purposes, and therefore placed no weight on these submissions.
- [38] The Appellant provided evidence that she received a Special Event License that allows her to continue to operate to December 31, 2021. The Board finds that the issuance of the 2021 Special Event License does not override Land Use Bylaw regulations. The License itself provides:

Nothing in this licence relieves any person from any requirement to obtain any additional licence, permit or approval under any other Bylaw of the Municipality or any provincial or federal statute or regulation.

- [39] The Board considered whether the activities on the property fall within *Extensive Agriculture* use or *Intensive Agriculture* use. The Land Use Bylaw sets out the following definitions:

Extensive Agriculture means an agricultural use including a system of tillage, which depends upon large areas of land for the raising of crops and includes customer site visits that are associated with the operations. This does not include Cannabis Production and Distribution.

Intensive Agriculture means a horticultural operation which may be accessory to an extensive agriculture or extensive livestock use that, generally operates on smaller tracts of land. Without restricting the generality of the foregoing, this may include nurseries, greenhouses, market gardens, u-pick farms, tree farms, fish farms, stud farms and sod farms. This use accommodates site visits to an agricultural parcel for customers for the purchasing of farm products. This does not include Cannabis Production and Distribution or Cannabis Retail Sales.

Based on the evidence as set out above, the Board is of the view that the activities occurring at the property go beyond the *Extensive Agriculture* use and fit within the *Intensive Agriculture* use.

The Board then considered whether the *Intensive Agriculture* use is a non-conforming use that does not require a development permit.

- [40] Section 643 of MGA states that where there is a use or a building on a parcel of land which when it was commenced was legal at that time, that it will continue to be a legal non-conforming use even if there are subsequent amendments to the Land Use Bylaw. The Board finds that although the two approved greenhouses may be a non-conforming use, the recreational and tourism aspects of the business are an expansion of the non-conforming use and therefore require a development permit.
- [41] The Board finds that, due to the increased intensity of use beyond what was approved, the Stop Order was properly applied.
- [42] Having determined that the Stop Order was properly applied, the Board considered the timelines to comply with the Stop Order. The Board considered the forbearance agreement disclosed by the Development Officer, specifically section 6, which provides that no enforcement of the Stop Order shall take place until October 22, 2022. The timelines in the forbearance agreement were mutually agreed to by both parties and therefore the Board considers them reasonable and applies them to the Stop Order.
- [43] For these reasons, the Board upholds the Stop Order and sets the deadline to comply to October 22, 2022.



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 Stop Order;
- Planning and Development Services Report;
- The Appellant's submissions; and
- The Adjacent Landowners' submission