

Appeals:

**Appeal File Number: 023-STU-020**

Appellants: Tammy Andersen

Development Permit Number: 305305-23-D0214

Legal Land Description: Plan 2986KS; Lot A; SW 20-56-23-W4, 56311 Lily Lake Road

**Appeal File Number: 023-STU-021**

Appellants: Tammy & Terrance Andersen

Development Permit Number: 305305-23-D0215

Legal Land Description: SW 29-56-23-W4, 23414 TWP 564

**Appeal File Number: 023-STU-023**

Appellant: Tammy Andersen

Development Permit Number: 305305-23-D0216

Legal Land Description Plan 2986KS; Lot A; SW 20-56-23-W4, 56311 Lily Lake Road

**Appeal File Number: 023-STU-024**

Appellants: Tammy & Terrance Andersen

Development Permit Number: 305305-23-D0212

Legal Land Description SW 29-56-23-W4, 23414 TWP 564

Appeal Against:

Development Authority of Sturgeon County

Date and Location of Hearing: October 11, 2023

Council Chambers and Through Electronic Communications

Date of Decision: October 26, 2023

SDAB Members:

Lee Danchuk (Presiding Officer), Mark Garrett, and Amanda Papadopoulos

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**NOTICE OF DECISION**

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**IN THE MATTER OF** appeals against the Development Authority's conditional approval of development permits 305305-23-D0214, 305305-23-D0215, 305305-23-D0216, and 305305-23-D0212:

- [1] This is the decision of the Sturgeon County Subdivision and Development Appeal Board (the “SDAB” or “Board”) on appeals 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 Notices of Appeal
  2. The development permit applications with attachments
  3. The Development Authority’s written decisions
  4. Planning & Development Services Report
  5. The Appellant’s written submissions
  6. Written submissions from adjacent landowners and other affected persons

#### **PROCEDURAL & PRELIMINARY MATTERS**

- [4] There were no objections to the proposed hearing process as outlined by the Presiding Officer and no adjournment requests.
- [5] There were no objections to the composition of the Board hearing the appeal.
- [6] The Board was advised that Appeal File Numbers 023-STU-023 and 023-STU-024 were filed past the legislated deadline. The Board agreed to listen to the merits of these appeals and reserved its decision regarding the Board’s jurisdiction to hear these appeals. The Board’s decision regarding this preliminary matter is outlined later in this written decision.
- [7] The Board decided to hear the four appeals concurrently as the issues are inextricably linked.

#### **ISSUES**

- [8] The Appellants raised the following issues:
1. The requirement for hard surface parking for the two temporary development permits would result in loss and permanent damage to good quality farmland where appropriate mitigation measures could be employed.
    - Condition 7 of Development Permit 305305-23-D0212 states “Parking for customers and employees shall be provided for onsite in accordance with the approved parking plan. The parking area shall be hard surfaced as per Sturgeon County’s General Municipal Servicing Standards (GMSS). At no time shall parking be permitted on a public road and/or road allowances”.

- Condition 7 of Development Permit 305305-23-D0216 states “Parking for customers and employees shall be provided for onsite in accordance with the approved parking plan. The parking area shall be hard surfaced as per Sturgeon County’s General Municipal Servicing Standards (GMSS). At no time shall parking be permitted on a public road and/or road allowances”.
2. The caps on vehicle visits are not informed by generally accepted planning or engineering principles, are inflexible, and would require the Appellants to undertake infrastructure improvements that would be unreasonably costly to a small business.
- Condition 2 of Development Permit 305305-23-D0214 states “The approval limits the daily operation to a cumulative maximum of 100 vehicle trips per day (50 vehicles in and out) for all activities on the property”.
  - Condition 2 of Development Permit 305305-23-D2015 states “The approval limits the daily operation to a cumulative maximum of 50 vehicle trips per day (25 vehicles in and out) for all activities on the property”.
  - Condition 4 of Development Permit 305305-23-D0216 states “The approval limits the daily operation to a cumulative maximum of 200 vehicle trips per day (100 vehicles in and out) for all activities on the property”.
  - Condition 5 of Development Permit 305305-23-D2012 states “The approval limits the daily operation to a cumulative maximum of 400 vehicle trips per day (200 vehicles in and out) for all activities on the property”.
3. The specific dates listed are an inflexible duplication already noted within the Traffic Accommodation Strategy which is under revision.
- Condition 2 of Development Permit 305305-23-D0216 limits the approval to specific dates.
  - Condition 3 of Development Permit 305305-23-D0212 limits the approval to specific dates.

## **RECOMMENDATION OF THE DEVELOPMENT AUTHORITY**

### **Preliminary Matter – Late Filing of Appeals 023-STU-023 and 023-STU-024**

- [9] With respect to the preliminary matter, Mr. Tyler McNab, representative of the Development Authority, requested that the Board determine that it does not have jurisdiction to hear Appeal File Numbers 023-STU-023 and 023-STU-024 as they were filed late in contravention of section 686(1)(a)(i)(A) of the *Municipal Government Act*.

[10] Mr. McNab further clarified that there was an error made on the Development Authority decision for Appeal File Number 023-STU-021. The Notice of Decision should state August 23, 2023 instead of August 18, 2023 and therefore the notice of appeal for this development permit was filed in time.

### **Issue 1 – Requirement for Hard Surface Parking**

[11] With respect to the requirement for hard surface parking, Mr. McNab submitted that Section 9.2 of the Land Use Bylaw requires hard surfacing as per the General Municipal Servicing Standards for all parking areas for development:

*9.2 All on-site parking facilities shall be so constructed that:*

*a) every on-site parking stall provided shall be hard surfaced if the access is from a road or lane which is hard surfaced; parking areas shall be paved or of a gravel mixture in accordance with the Sturgeon County's General Municipal Servicing Standards.*

[12] For development permits 305305-23-D0215 and 305305-23-D0214, the Development Authority supports the requirement as approved for parking to be hard surfaced as per the Land Use Bylaw as these diversified agriculture uses are permanent uses. Both permits have approved parking plans that meet the requirements of section 9.2 of the Land Use Bylaw and the proposed location for parking is already hard surfaced to the Development Authority's satisfaction.

[13] Development permits 305305-23-D0212 and 305305-23-D0216 are proposed to be temporary uses, only for the time period ending October 30, 2023. The land is classified as Class 2 Farmland, and pursuant to Policy C.3(d) of the Sturgeon County Municipal Development Plan, the Development Authority should support the agricultural industry or its associated operations.

*Sturgeon County will support the long-term outcome of the Neighbourhood by requiring that proposed non-Primary industry development on lands identified with Class 1 or Class 2 soil designations (as identified by the Canadian Land Inventory: Land Capability for Agriculture) support the agricultural industry or its associated operations.*

[14] The Development Authority does not have the variance authority under Section 2.4 of the Land Use Bylaw to grant this request. As such, hard surfacing was made a condition of the temporary development permits.

[15] The Development Authority does not consider parking on grass/cropland to be high risk during the proposed temporary uses proposed; therefore, if the Board finds that it has jurisdiction to hear these appeals, the Board should consider varying the hard surfacing requirements of section 9.2(a) of the Land Use Bylaw.

## **Issue 2 – Regulation of Traffic Volume to the Sites**

- [16] With respect to the regulation of traffic volume to the sites, Mr. McNab submitted that parcel access and safety are major concerns resulting in the issuance of a Stop Order and a past SDAB appeal. The Development Authority has received complaints of Prairie Gardens customers parking on arterial roadways and accessing the site as pedestrians, as well as congestion issues impacting the overall safety of the public. Administration has been working with the Appellants to finalize development permits for the operation that meet the requirements of the Land Use Bylaw and General Municipal Servicing Standards.
- [17] As part of these requirements and subsequent discussions between the Appellants and County Administration, a Traffic Impact Brief was supplied to the County by a qualified professional with final submission on September 9, 2023. The Traffic Impact Brief was not fully accepted by Sturgeon County Engineering Services; however, the recommendations of the Traffic Impact Brief were taken into consideration of the development permits as part of ensuring access safety is maintained.
- [18] Development permit applications 305305-23-D0212 and 305305-23-D0216 included a Traffic Accommodation Plan submitted August 17, 2023 that proposed several dates that the development traffic volume was expected to exceed the safe construction of the existing access. As such, the above permits were temporarily approved strictly for the dates applied for and expiring on October 30, 2023.
- [19] The Appellant has upgraded the intersections at both the north and south sites to the full Type I intersection standards.
- [20] In the subject development permits approved on August 23, 2023, the Development Authority, on the advice of the County's Engineering Services, reviewed and approved the permits in accordance with the Highway Geometric Design Guide, General Municipal Servicing Standards, in consideration of a Traffic Accommodation Plan that treats the development traffic as a temporary hazard and temporarily allows the development to exceed safe design access.
- [21] In September 2023, the Appellant submitted an updated Traffic Accommodation Plan requesting up to 800 vehicles per day (1,600 vehicle trips per day). This request was denied on safety grounds and non-conformance with the Highway Geometric Design Guide, General Municipal Servicing Standards.
- [22] Pursuant to section 9.1 of the Land Use Bylaw and Policy 1.4.9 of the Municipal Development Plan, the Development Authority is required to ensure access to the development meets the General Municipal Servicing Standards C.3.1.1, G.1.4 and G.4.1. This requirement limits access to the sites to 100 vehicle trips per day for the south site and 50 vehicle trips per day to the north site.

*Standard C.3.1.1 - The Developer's Engineer shall be responsible for determining an estimated annual average daily traffic (AADT) generated by the development in order to determine the required cross sectional elements and pavement structure. Section G provides a geometric design table and cross sections for the various roadway classifications.*

*Standard G.1.4 - It is the Developer's responsibility to satisfy, in addition to these requirements, all regulations and conditions required, but not limited to, the most current edition of the following: Alberta Highway Design Guide.*

*Standard G.4.1 - It is the Developer's responsibility to assess the traffic impacts associated with a proposed land development. This assessment must include a projection of the average annual daily traffic (AADT) over a 20-year design life for the internal subdivision roads as well as any adjacent provincial highways or municipal roadways.*

- [23] It is the Development Authority's position that the Board does not have jurisdiction to vary this requirement in consideration of section 687(3) of the *Municipal Government Act* requiring that the Board to comply with statutory plans, including Policy 1.4.9 of the Sturgeon County Municipal Development Plan, which states:

*Shall ensure that both subdivision and development meet or exceed the standards outlined within the Sturgeon County General Municipal Servicing Standards.*

- [24] The Development Authority submitted that the Board could require the Appellant to enter into a Development Agreement to the Development Authority's satisfaction to fully engineer and construct as a municipal improvement at the Appellants' own cost the Type II or Type III intersection(s) required to ensure the development meets the GMSS. Otherwise, the conditions of approval limiting the south site to 100 vehicle trips per day, and the north site to 50 vehicle trips per day should be maintained.

### **Issue 3 – Fixed Dates**

- [25] The Development Authority submitted that the use of fixed dates for temporary permits was appropriate.

## **SUMMARY OF APPELLANTS' POSITION**

### **Issue 1 – Requirement for Hard Surface Parking**

- [26] The Appellant, Tam Andersen, submitted that Prairie Gardens was established in 1956 and has been serving Sturgeon County for 67 years. Prairie Gardens is fully permitted as a Diversified Agriculture Operation; however, the conditions of the development permits under appeal add barriers that do not allow the business to remain sustainable.

- [27] The Appellant submitted that permanent hard surfaced parking areas should not be required for seasonal activities. Stripping Alberta #1 topsoil is contrary to the Soil Conservation Act of Alberta, and it will kill the trees along the windbreak. Mitigations such as using pasture, hay, or grassland provide safe auxiliary parking.

### **Issue 2 – Regulation of Traffic Volume to the Sites**

- [28] The Appellant submitted that the Development Authority employed improper methodology in regulating traffic volume to the sites. Rather than regulating the number of vehicles allowed to access the site per day, she submitted that the application of the Average Annual Daily Traffic methodology should consider the seasonality of the business, being busy in the fall and quiet in the winter and spring. Imposing a daily vehicle maximum for a popular agritourism operation, particularly in the fall, is unworkable.
- [29] Further, the Appellant has made efforts to regulate traffic to the site, including selling tickets online, erecting signage, encouraging carpooling, positioning business hours so as not to conflict with peak traffic periods, and cooperating with Sturgeon County with efforts such as reducing the maximum speeds through the area.
- [30] Upgrades to the intersection as required by the Development Authority are estimated in the millions of dollars and would be unreasonably costly to a small business.

### **Issue 3 – Fixed Dates**

- [31] The Appellant expressed concern regarding the inflexibility associated with fixed dates for the temporary development permit approvals.

## **DECISION AND REASONS FOR DECISION**

### **SDAB File 023-STU-023 (Development Permit 305305-23-D0216) and 023-STU-024 (Development Permit 305305-23-D0212)**

- [32] **The Board finds that it does not have jurisdiction to hear these appeals.** Section 686(1)(a)(i)(A) of the *Municipal Government Act* (MGA) states that a development appeal is commenced by filing a notice of appeal, containing reasons, with the Board within 21 days after the date on which the written decision is given under section 642. The written decisions were given on August 23, 2023. Both appeals were received on September 21, 2023, which is more than 21 days after the date on which the written decision was given.
- [33] The Board does not have any authority to extend the timelines set out in section 686(1)(a)(i)(A) of the MGA for any reason. Therefore, as the appeals were filed after the deadline, the Board does not have jurisdiction to hear these appeals.
- [34] Since the Board finds that it does not have jurisdiction to hear these appeals, the Board cannot address the issues raised by the Appellants regarding the requirement for hard-surfaced parking, regulation of traffic volume to the sites, or approval dates with respect to these temporary permits.

**SDAB File 023-STU-020 (Development Permit 305305-23-D0214) and SDAB File 023-STU-021 (Development Permit 305305-23-D0215)**

- [35] **The Board confirms the decision of the Development Authority to approve Development Permits 305305-23-D0214 and 305305-23-D0215 with the conditions recommended by the Development Authority.**

**Issue 1 – Requirement for Hard Surface Parking**

- [36] The Board heard from the Development Authority that these sites currently have hard-surfaced parking. The Board referred to section 9.2.2(a) of the Land Use Bylaw, which states that every on-site parking stall provided shall be hard surfaced if the access is from a road or lane which is hard surfaced and parking areas shall be paved or of a gravel mixture in accordance with Sturgeon County's General Municipal Servicing Standards. In consideration of this requirement of the Land Use Bylaw, and considering that this requirement is already being met, the Board confirms this condition of the subject development permits.

**Issue 2 – Regulation of Traffic Volume to the Site**

- [37] The Appellant submitted that the methodology used by the Development Authority to regulate traffic volume to the site is inflexible, excessive, and does not appropriately consider the seasonal nature of the business. The Board heard from the Appellant that she submitted a Traffic Impact Brief and that the intersection of Lily Lake Road and the business has been upgraded to a full Type I standard, but that the cost to upgrade the intersection to a Type II intersection is infeasible for a small business. The Board finds that the cost related to the upgrading of the intersection is not a proper planning consideration and therefore the Board placed no weight on this argument.
- [38] The Board received submissions from the Appellant's daughter, adjacent landowners, and employees of Prairie Gardens indicating support for the continuation of the business based on the importance of agricultural diversification, the personal qualities of the business owners, and the positive economic impact of the business in the community. The Board finds that these are not relevant planning considerations and therefore placed no weight on these submissions.
- [39] The Board heard from the Development Authority that the regulation of traffic to the sites is to ensure the safety of motorists and pedestrians. The Board received one submission in opposition to the appeals, citing ongoing safety concerns and continued non-compliance with County regulations.
- [40] The Development Authority submitted *Figure D7.4 Traffic Volume Warrant Chart for At-Grade Intersection Treatment on Two-Lane Rural Highways (Design Speeds 100, 110, 120 km/h)* of the Alberta Infrastructure Highway Geometric Design Guide. The Appellant submitted that the County's Engineer misinterpreted these requirements, resulting in stricter traffic volume requirements than necessary. However, the Board agreed with the Development Authority's interpretation of the requirements.



[41] Section 687(3)(a.2) of the *Municipal Government Act* provides that, in determining an appeal, the Board must comply with any applicable statutory plans. The MDP is a statutory plan. The Board finds that it does not have jurisdiction to vary the requirements of Sturgeon County's General Municipal Servicing Standards, including Standards C.3.1.1, G.1.4, and G.4.1 as Policy 1.4.9 of the MDP requires that subdivision and development meet or exceed the standards outlined within the Sturgeon County General Municipal Servicing Standards. The Board notes that Policy 1.4.9 of the MDP is set out in mandatory language, in that it uses the words "shall ensure". The Board is therefore required to comply with this policy and does not have jurisdiction to vary the requirements of the GMSS.

### **Issue 3 – Fixed Dates**

[42] Since the Board determined that it does not have jurisdiction to deal with the temporary permits as they were filed late, the Board cannot address the issue of the inflexibility of the fixed dates for the temporary approvals.

[43] For all of these reasons, the Board finds that it does not have jurisdiction to hear Appeal File Numbers 023-STU-023 and 023-STU-024, and confirms the decision of the Development Authority to approve Development Permits 305305-23-D0214 and 305305-23-D0215 with the conditions recommended by the Development Authority.

Dated at the Town of Morinville, in the Province of Alberta, this 26<sup>th</sup> day of October, 2023.



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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 Notices of Appeal
- Copies of the development permit applications with attachments
- The Development Officer's written decisions
- Planning & Development Services Report
- Appellant's written submission
- Appellant's presentations
- Adjacent Landowner / Other Affected person written submissions