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Appeal File Number:	025-STU-001
Application Number:	305305-24-D0290
Appeal Against:	Development Authority of Sturgeon County
Appellants:	Colby Clements
Date and Location of Hearing:	January 21, 2025 Council Chambers and Through Electronic Communications
Date of Decision:	February 4, 2025
SDAB Members:	Julius Buski (Chair), Lee Danchuk, Nicole Mackoway, Amanda Papadopoulos and Kristin Toms

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#### **NOTICE OF DECISION**

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**IN THE MATTER OF** an appeal by Colby Clements against the Development Authority's refusal to operate a home-based business level 3 – oilfield construction (rig matting and access) contracting located at SE 30-55-22-W4, 55416 Range Road 225 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 678(1) of the *Municipal Government Act*, R.S.A. 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 (LUB), and Sturgeon County's Municipal Development Plan (MDP), and any amendments thereto.
- [3] The following documents were received prior to the hearing and form 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;
  - 5. Appellants submission; and
  - 6. Adjacent Landowners submission.

#### **PRELIMINARY MATTERS**

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

## **PROCEDURAL MATTERS**

- [5] The hearing was scheduled to be heard on January 7, 2025 but was adjourned to January 21, 2025 as requested by the Appellant.
- [6] The appeal was filed on time and in accordance with section 686 of the MGA.
- [7] There were no objections to the proposed hearing process as outlined by the Presiding Officer.
- [8] There were no objections to the composition of the Board hearing the appeal.
- [9] The Board is satisfied that it has jurisdiction to deal with this matter.

## **MERIT HEARING**

- [10] The Appellant raised the following grounds of appeal:
  - He can limit the number of commercial trailers and sixteen wheelers to what is acceptable for a level 3 home based business along with keeping other machinery in covered storage.

## **RECOMMENDATION OF THE DEVELOPMENT AUTHORITY**

- [11] Carla Williams, representative of the Development Authority, provided a presentation which outlined the Development Authority's refusal of Development Permit 305305-24-D0290. In summary:
  - 1. The property is in the AG – Agriculture Major District north of the Sturgeon Industrial Park. It is 32.4 hectares (80 acres) in area and is currently developed with a single detached dwelling and farm use accessory buildings.
  - 2. There is no Local Planning Document (Area Structure Plan) for this area; therefore, the County's Municipal Development Plan 1313/13 (MDP) provides the overarching land use policies for this application.
  - 3. The proposed application is inconsistent with the MDP's Policy 5.4.6 which outlines that non-residential development that exceed the intent, purpose and intensity outlined in Sturgeon County's regulations shall be directed to relocate to lands appropriately designated for their intended use.
  - 4. The application is also inconsistent with the Land Use Bylaw 1385/17 which states:
    - Outdoor Storage means the storage of equipment, goods and materials in the open air. This includes the storage of items accessory to the principal use of a development, as well as laydown yards, vehicle or heavy equipment storage compounds, storage of construction material or modular trailers or storage unrelated to the principal use of the parcel or site.
    - Major Contractor Service means a premise used for the provision of building and construction services including landscaping, concrete, electrical, excavation, drilling, heating and plumbing or similar services of a construction nature which require exterior storage and warehouse space and may include manufacturing activities.
  - 5. A Home-Based Business Level 3 is a discretionary use within the AG district and is defined in the Land Use Bylaw 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.
  - 6. The number of commercial vehicles and trailers allowable for a Home-Based Business on an AG parcel, as outlined by the Land Use Bylaw is currently 3. An aerial photo dated April 23, 2024, was referenced as part of the review of the application. The photo confirmed the number of commercial vehicles and commercial trailers being stored on site exceed the number stated on

the application form. The Appellant noted which trucks were owned by Colby Clements Contracting Ltd, which were sold, and which trucks are owned by others being stored on the property. The Development Authority must review the application as submitted and take into consideration the activities and land use currently occurring on the property.

7. The Land Use Bylaw allows for Outdoor Storage and Major Contractor Services use within industrial and direct control districts. The commercial vehicles and commercial trailers, wheel loaders, excavators and rig mats are used for industrial activities and are not typically stored or used on lands districted for AG purposes.
8. A variance should not be applied to a “use.” A relaxation of the Bylaw is not intended to be used as way to undermine the intent of the regulations. The number of commercial trucks/trailers and heavy equipment being stored on the site would be more appropriately located on industrial lands as an Outdoor Storage or Major Contractor Services use.
9. Pursuant to section 2.8.1 of Land Use Bylaw, the Development Authority may refuse an application for a discretionary use, where the proposed development does not conform to the Bylaw. The number of commercial vehicles and trailers stored on the site exceed the number that can be approved to operate a Home-Based Business Level 3. Outdoor Storage is neither a permitted nor discretionary use within the AG district and therefore the application was refused.

#### **SUMMARY OF APPELLANT’S POSITION**

[12] The Appellant, Colby Clements, and his Agent, Ken Sockett, attended the hearing and submitted that:

1. At the time of application Mr. Clements did not take the time to read the provisions of operating a Level 3 Home-Based business.
2. Mr. Clements is prepared to abide by the number of commercial vehicles allowed on the property and all the applicable rules and regulations.
3. Mr. Clements has a lease agreement with a property in Acheson and has made arrangements for the equipment to be stored at that site.
4. Mr. Clements has intentions to farm the land in the future and began the process this past year.

#### **SUBMISSIONS FROM AN ADJACENT LANDOWNERS**

[13] Mr. Tyler Thimer, on behalf of Ms. Annie Wachenko, attended the hearing and spoke in opposition of the appeal. He submitted that:

1. The spread of noxious weeds is becoming more present in agriculture land with increased traffic from outlying companies entering the area. There is a limited amount of money and effort that owners can spend to control the spread of the weeds.
2. The rig mats can contain oilfield drippings, and with them being stored near a wetland there is potential for contaminants dripping from the mat and entering into the watershed.
3. Mr. Thimer expressed concerns over the increase in heavy truck traffic on the area roads with the business being in the area, along with noise pollution caused from the backup alarms.
4. The business starts early in the morning and continues into the evening with lights and beacons in direct view of Ms. Wachenko’s property.

## **DECISION**

**[14] The Board DENIES the appeal and UPHOLDS the decision of the Development Authority made on November 21, 2024 to refuse development permit application 305305-24-D0290.**

## **REASONS FOR THE DECISION**

- [15] The application is for a Home-based Business Level 3. The subject property is zoned AG-Agriculture (Major). 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. Outdoor Storage of heavy equipment and materials is neither a permitted or discretionary use within the AG district.
- [16] The vehicles associated with the business as proposed by the Appellant would total sixteen (16) including trucks, trailers, wheel loader, trailers and excavators. Table 6.1 of the Land Use Bylaw outlines the maximum amount of commercial vehicles allowed is three (3) and the maximum amount of commercial trailers is three (3). The number of commercial vehicles and trailers exceed the number that can be approved to operate a Home-Based Business on an AG parcel.
- [17] The Board received evidence from the Development Authority, including photographs of the subject property that the number of vehicles on site is in excess of what is permitted under the regulations and reflects the intensity of the use which is beyond what the Land Use Bylaw contemplated for a Home-Based Business in the AG district.
- [18] The Board heard from the Development Authority that a reason for refusing the development permit is that the MDP Policy 5.4.6 which encourages industrial businesses to locate to industrial parks.
- [19] The Board heard from one adjacent property owner who raised concerns regarding increased traffic and noise pollution. Further, the hours of operation are from the early morning and continues into the evening hours and the lighting from the property shines through to her home and she finds that disruptive to the peace and enjoyment of her property.
- [20] Having determined that the nature of the proposed development meets the definition of Outdoor Storage and Major Contractor Service and is neither a permitted nor discretionary in the AG district. The Board was persuaded by the Development Authority that the variances for a Home-Based Business should not serve to circumvent the actual use, which is Industrial
- [21] For all of these reasons, the Board denies the appeal and upholds the decision of the Development Authority to refuse the development application.

Dated at the Town of Morinville, in the Province of Alberta, this 4<sup>th</sup> day of February, 2025.

A handwritten signature in blue ink, appearing to read 'J. Buski', is positioned above a horizontal line.

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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 subdivision application with attachments;
- The Subdivision Authority's written decision; and
- Planning & Development Services Report
- Appellants submission; and
- Adjacent Landowner submission