

**STRATHCONA COUNTY**  
**Subdivision and Development Appeal Board**

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Appeal File Number: 2-2020  
Application Number: 2019-0892-DP  
Appeal Against: Development Authority of Strathcona County  
Appellant: Baldev and Fareda Singh  
Affected Persons: S. Sekyer  
Date and Location of Hearing: April 16, 2020  
at Sherwood Park, Alberta  
Date of Decision: April 29, 2020  
SDAB Members: Liam Kelly, Chair  
Aaron Corser  
Richard Paterson  
Gary Peckham

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**NOTICE OF DECISION**

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- [1] This hearing was facilitated via conference call in light of the COVID-19 pandemic and the need to maintain physical distancing. All parties consented to holding the hearing by electronic means.
- [2] This is the decision of the Strathcona County Subdivision and Development Appeal Board (the "SDAB") 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").
- [3] The appeal is from the decision of the Development Authority of Strathcona County ("Development Authority) to refuse to issue a development permit for a proposed home business, major - Trucking Business – on the property legally described as Lot 9, Plan 6756 NY and municipally described as 25, 52257 Range Road 231 (the "Property").

- [4] The Appellants are: Baldev and Fareda Singh (the "Appellant").
- [5] Appendix "A" attached to this decision includes a list of materials received by the SDAB related to this appeal, and a list of persons who made oral presentations at the hearing.
- [6] Appendix "B" attached to this decision includes a list of referenced legislation.
- [7] Appendix "C" attached to this decision includes a list of potential conditions of approval.

### **PROCEDURAL MATTER - SDAB COMPOSITION AND HEARING PROCESS**

- [8] None of the parties or any person present at the Hearing affected by this appeal raised objections to any of the SDAB members hearing this appeal.
- [9] No one objected to the hearing process or to using electronic means for the hearing.
- [10] There were no other jurisdictional or preliminary matters raised at the outset of the Hearing by any party or any person present at the Hearing affected by this appeal.
- [11] Upon confirming it had jurisdiction to hear this Appeal, the SDAB continued with the Hearing.

### **ISSUE**

- [12] The Appellant raised the following grounds of appeal:
  - a. The Appellant would like to continue to operate the trucking business out of the subject Property as this business provides employment for two (2) people and they have operated the business from the subject Property for the past number of years.
- [13] The issue before the SDAB arising from the above grounds of appeal are as follows:
  - a. Should the refusal of the development permit for the Proposed Home Business, Major be overturned by the Board?

## SUMMARY OF THE DEVELOPMENT AUTHORITY'S POSITION

- [14] On March 3, 2020, the Development Authority refused to issue development permit 2019-0892-DP (the "Development Permit") for the Home business, Major- Trucking Business "HB1 Trucking". The Development Authority submits that the SDAB should confirm the refusal of the development permit for the Home Business, Major on the Property.
- [15] The Development Authority submits:
- a. The subject Property is located in the RA – Rural Residential/ Agriculture zoning district of the Land Use Bylaw (LUB);
  - b. The purpose of the RA District is to promote an agriculture and rural lifestyle on properties between 8.0 ha and 32.0 ha including a range of more intensive agriculture and agriculture-related uses;
  - c. Home Business, Major is listed as a discretionary use in the RA – Rural Residential/ Agriculture zoning district pursuant to Section 9.10.2 of the LUB;
  - d. The subject Property is 20.03 acres (8.1 ha) and currently supports a single dwelling and one (1) accessory building (detached garage);
  - e. The development permit application was submitted by the Appellant on December 3, 2019;
  - f. The home business was first approved in December 2009 for a one-year period. As part of an appeal in 2012, the SDAB approved the next development permit for the home business for a two-year period. The home business was approved in February of 2014 for a three-year period and again in February 2017 for another three-year period;
  - g. The Appellant is proposing a home business, major use, which will employ two (2) non-resident on-site employees, have three heavy home business vehicles (a tandem dump truck unit and a tractor and tridem trailer unit), operate from 7am to 10pm, with no customers visiting the site. The proposed home business will use the den within the single dwelling (less than 30%) and the services provided by the proposed home business include hauling of raw material;
  - h. Section 1.17 of the LUB defines home business vehicle as, "any vehicle less than 5,500 kg or any trailer that is used in the operation of the home business that is normally maintained, parked, or stored on the lot of the home business. Items or equipment transported to and from the site of the home business in the box of a truck or on a trailer are not considered to be a home business vehicle";

- i. Section 1.17 of the LUB defines home business vehicle, heavy "as any vehicle 5,500 kg or heavier that is used in the operation of the home business that is normally maintained, parked, or stored on the lot of the home business. Items or equipment transported to and from the site of the home business in the box of a truck or on a trailer are not considered to be a heavy home business vehicle";
- j. Section 6.12.1(b) of the LUB - Letters from adjacent residents have indicated non-support for the proposed home business, major as it has created a nuisance (increased non-local traffic and noise);
- k. Section 6.12.1(h) of the LUB - due to its potential generation of increased non-local traffic, potential off-site impacts and nuisance due to increased non-local traffic and increased noise, the proposed home business, major is more appropriately located in a commercial or industrial Zoning District;
- l. Section 6.12.4(b)(ii) of the LUB - Development Enforcement inspections found that the home business has operated with more than four (4) home business vehicles or heavy home business vehicles, which was in contradiction to the previously approved development permit conditions (2017-0002-DP Condition #1);
- m. On two (2) separate occasions, Development Enforcement conducted inspections as a result of a LUB Enforcement Complainant, and there were more than four (4) heavy vehicles on the Property;
- n. Section 2.15.2(b) of the LUB - the proposed home business, major better aligns with industrial uses rather than agricultural uses. Accordingly, the proposed home business, major is not compatible with the general purpose of the RA – Rural Residential/Agriculture Zoning District;
- o. Section 2.15.2(e) of the LUB - The uses of land in the surrounding area to the proposed home business, major include low density country residential dwellings, agriculture general and rural residential/agriculture. Letters from adjacent residents have indicated non-support for the proposed home business, major as it has created a nuisance. Accordingly, the proposed home business, major is not compatible with the adjacent residential dwellings in terms of land use;
- p. Section 2.15.2(h) of the LUB - The proposed home business, major will create adverse effects because it creates increased non-local traffic and increased noise due to the heavy home business vehicles. Due to the proposed heavy home business vehicles, the adverse effects cannot be adequately mitigated;

- q. Section 2.15.2(j) of the LUB - The proposed home business, major creates increased non-local traffic and increased noise due to the heavy home business vehicles. Letters from adjacent residents have indicated non-support for the proposed home business, major as it has created a nuisance. Accordingly, the proposed home business, major creates a nuisance;
- r. Section 2.15.3 of the LUB - The proposed home business, major creates a significant nuisance because the proposed heavy home business vehicles creates increased non-local traffic and noise that extends beyond the property boundary of the lot containing the proposed home business, major;

### **SUMMARY OF THE APPELLANT'S POSITION**

[16] The Appellant was accompanied by S. Hucilak. S. Hucilak spoke in addition to Baldev Singh and together, their presentation is written as THE APPELLANT'S POSIITON.

[17] The Appellant submits:

- a. The noise that neighbours have complained about is not from his business or the Property, but rather is coming from a neighbouring property where landscaping work has been taking place;
- b. The business has been operating from the Property for 10 years without any issues;
- c. There are six (6) vehicles registered to the Home Business, Major, and most of the vehicles are usually stored in Edmonton, not on the Property;
- d. The neighbour (affected person) has a personal conflict with the Appellant since he is no longer personally able to use the Property with his all-terrain vehicle.

### **SUMMARY OF THE AFFECTED PERSONS' POSITION**

[18] S. Sekyer owns the property at 109, 23020 Township Road 522, directly south, which backs onto the subject Property. It is the position of S. Sekyer that the appeal be denied.

[19] The Affected Persons submit:

- e. The Appellant has not abided by many of the regulations set out for him in operating his home-based business;

- f. The incessant noise is the major issue as at times it has been unbearable;
- g. The noise has affected his quality of life over the past decade;
- h. Attempts have been made to amicably address the noise concerns; however, the noise has continued to be an issue;
- i. There once was a partial sound barrier of trees on the Property, but the Appellant removed most of the trees which has created more of a problem with the noise; and
- j. He is not motivated by any personal conflict with the Appellant and the statement about the use of the Property for all-terrain vehicles is false.

## **FINDINGS**

[20] The SDAB finds:

- a. The Property is located in the RA – Rural Residential/ Agriculture zoning district of the Land Use Bylaw (LUB);
- b. The purpose of the RA District is to promote an agriculture and rural lifestyle on properties between 8.0 ha and 32.0 ha including a range of more intensive agriculture and agriculture-related uses;
- c. Home Business, Major is listed as a discretionary use in the RA – Rural Residential/ Agriculture zoning district pursuant to Section 9.10.2 of the LUB;
- d. The subject Property is 20.03 acres (8.1 ha) and currently supports a single dwelling and one (1) accessory building (detached garage);
- e. The development permit application was submitted by the Appellant on December 3, 2019;
- f. The home business was first approved in December 2009 and subsequent permits (four (4)) have been granted, with varying lengths of time, either by the SDAB or the Development Authority;

- g. The Appellant is proposing a home business, major use, to operate from the Property which will include hauling of raw material and would:
  - a. employ two (2) non-resident on-site employees;
  - b. have three heavy home business vehicles
    - i. (a tandem dump truck unit and a tractor and tridem trailer unit);
  - c. operate from 7am to 10pm, with no customers visiting the site;
  - d. use of the den within the single dwelling (less than 30%);
  - e. and the services provided by the proposed home business include hauling of raw material;
- h. Section 1.17 of the LUB defines home business vehicle as, "any vehicle less than 5,500 kg or any trailer that is used in the operation of the home business that is normally maintained, parked, or stored on the lot of the home business. Items or equipment transported to and from the site of the home business in the box of a truck or on a trailer are not considered to be a home business vehicle";
- i. Section 1.17 of the LUB defines heavy home business vehicle as any vehicle 5,500 kg or heavier that is used in the operation of the home business that is normally maintained, parked, or stored on the lot of the home business. Items or equipment transported to and from the site of the home business in the box of a truck or on a trailer are not considered to be a heavy home business vehicle";
- j. The Appellant's proposed Home Business, Major does generate noise;
- k. There are limited noise mitigation opportunities available;
- l. Development Enforcement conducted two (2) inspections as a result of a LUB Enforcement Complainant, and there were more than four (4) heavy home business vehicles on the Property; and
- m. The proposed home business, major aligns more with industrial uses than agricultural uses.

## **DECISION**

- [21] The appeal is denied and the decision of the Development Authority to refuse to issue a development permit for the proposed Home Business, Major on the Property is confirmed.

## REASONS FOR THE DECISION

[22] Section 687 (3)(b) and (c) of the MGA states that the SDAB:

*must have regard to but is not bound by the subdivision and development regulations;*

*may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;*

[23] The Appellant submits that six (6) vehicles are registered to the Home Business, Major, and that they are usually stored in Edmonton and not on the Property.

a. When the Board questioned the Appellant on the number of registered vehicles, he noted that there were 6, but in the follow up questions the Appellant noted that he was not including the trailers as vehicles. The Board notes that section 1.17 of LUB defines Home Business Vehicle as "any vehicle less than 5,500 kg or any trailer that is used in the operation of the home business that is normally maintained, parked, or stored on the lot of the home business. Items or equipment transported to and from the site of the home business in the box of a truck or on a trailer are not considered to be a home business vehicle."

b. The Board was not persuaded by the testimony of the Appellant because the Development Authority and the Affected Person submitted photographs from multiple years that show an excess of heavy home business vehicles on the Property.

[24] The Affected Person asserts that the proposed Home Business, Major is not compatible with the rural surroundings and affects the use and enjoyment of his property.

a. The Board was persuaded by the Affected Person's testimony which was supported by the photographic evidence provided in the submissions. The photographs document the changes in landscape, particularly the removal of trees that would have provided sound mitigation, and the number of heavy home business vehicles visible on the Property. The Board was convinced by the Affected Person's assertions that the noise generated by the home business is a nuisance and excessive for the Property's zoning district.



[25] When considering factors set out in 2.15.2 and 2.15.3 of the LUB and the various submissions provided by the Development Authority and Affected Person, the SDAB finds that the scale of the proposed Home Business, Major is not compatible with the general purpose of the zoning district because of the noise and nuisance to neighbouring properties and because the adverse effects cannot be adequately mitigated.

DATED at Strathcona County, in the Province of Alberta, this 29<sup>th</sup> day of April 2020.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD



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Liam Kelly, Chair

Pursuant to section 688 of the *Municipal Government Act*, RSA 2000, c M-26, an appeal lies to the Court of Appeal on a question of law or jurisdiction with respect to this decision of the Subdivision and Development Appeal Board.

**APPENDIX "A"**  
**List of Submissions**

<b>Printed Materials:</b>	<b>Consisting of:</b>
Application file	17 pages
Decision of Development Officer	4 pages
Notice of Appeal	2 pages
Notice of Hearing	6 pages
Submission received from the Development Officer prior to hearing (PowerPoint Presentation, speaking notes and potential conditions)	38 pages
Submission received from Affected Person (S. Sekyer)	9 pages

<b>Persons who made oral presentations:</b>	
<b>Name:</b>	<b>Capacity:</b>
Chris Gow	Coordinator, Development Permitting, Planning & Development Services, Strathcona County
Meghan Thompson	Industrial Planning Officer, Planning and Development Services, Strathcona County
Kendra Andrews	Development Enforcement Officer
Baldev Singh	Appellant
Sparky Hucilak	Speaker present in addition to the Appellant, on his behalf
Spencer Sekyer	Affected Person

**APPENDIX "B"**  
**Legislation Cited**

**Land Use Bylaw 6-2015**

**PART 1: INTERPRETATION OF THIS BYLAW**

<b>Section</b>	<b>1.17</b>	<b>Definitions</b>
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**ABUT or ABUTTING** means immediately contiguous to, or physically touching, and when used with respect to lots or sites, means to share a common property line.

**HOME BUSINESS, MAJOR\*** means a home business which shall:

- not be considered on a lot less than 2.02 ha;
- occupy a maximum of 30 percent of the dwelling unit's gross floor area plus a maximum of 30 percent of the gross floor area of all accessory buildings; and
- not exceed six (6) non-resident, on-site employees

**HOME BUSINESS VEHICLE** means any vehicle less than 5,500 kg or any trailer that is used in the operation of the home business that is normally maintained, parked, or stored on the lot of the home business. Items or equipment transported to and from the site of the home business in the box of a truck or on a trailer are not considered to be a home business vehicle.

**HOME BUSINESS VEHICLE, HEAVY** means any vehicle 5,500 kg or heavier that is used in the operation of the home business that is normally maintained, parked, or stored on the lot of the home business. Items or equipment transported to and from the site of the home business in the box of a truck or on a trailer are not considered to be a heavy home business vehicle.

**PART 2: OPERATIONS AND ADMINISTRATIVE PROCEDURES**

	<b>2.15</b>	<b>DISCRETION EXERCISED BY THE DEVELOPMENT AUTHORITY</b>
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	<b>2.15.2</b>	The Development Authority may approve a discretionary use provided that the Development Authority determines that the proposed development:
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	(b)	is compatible with the general purpose of the Zoning District;
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	(e)	is compatible with surrounding areas in terms of land use, scale of development, and potential effects on the stability or rehabilitation of the area;
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	(h)	any potential adverse effect can be adequately mitigated;
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	(j)	the proposed development does not create a nuisance.
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	<b>2.15.3</b>	<b>In determining the significance of a nuisance, the Development Authority may consider:</b>
	(a)	the expected magnitude and consequence of the effect or nuisance;
	(b)	b) the expected extent, frequency, and duration of exposure to the effect or nuisance;
	(c)	c) the use and sensitivity of adjacent or nearby sites relative to the effect or nuisance;
	(d)	d) adherence to relevant environmental legislation or widely recognized performance standards; and
	(e)	e) the reliability and record of the proposed methods, equipment and techniques in controlling or mitigating detrimental effects or nuisances

## **PART 6: SPECIFIC USE REGULATIONS**

<b>Section</b>	<b>6.12</b>	<b>HOME BUSINESS</b>
	<b>6.12.1</b>	All home businesses (minor, intermediate, major) shall comply with the following general regulations:
	(b)	nuisance shall not be generated by a home business;
	(h)	where the Development Officer determines that a proposed home business would be more appropriately located in a commercial or industrial Zoning District due to the proposed scale, potential traffic generation, potential off-site impact or nuisance, the Development Officer shall not approve a development permit
	<b>6.12.4</b>	A home business, major shall be a temporary use, in accordance with the provisions of Section 6.12.1, the definition in Part 1 of this Bylaw, and the following:
	(b)(ii)	ii) no more than four (4) home business vehicles or heavy home business vehicles; and

**APPENDIX "C"**  
**POTENTIAL CONDITIONS OF APPROVAL**

Development Appeal No.: 2-2020  
Appellant: Baldev Singh  
Proposed Development: PROPOSED Home Business, Major Use – Trucking Business "HB1  
Trucking"  
Legal Description: Lot 9, Plan 6756NY  
NE 13-52-23-W4  
25, 52257 Range Road 231 (Sconadale)

1. That the proposed major home business (trucking business) shall be developed in conformance with the plans and information approved with this application. **In this regard, no more than three (3) heavy home business vehicles (a tandem dump truck unit and a tractor and tridem trailer unit) associated with the home business may be parked on site. Further, vehicle trips shall be restricted to 7:00am to 10:00pm Monday to Saturday & 10:00am to 6:00pm Sunday and Statutory Holidays.** Any change or intensification to the proposed home business may require a new development permit application. Please contact Strathcona County Development Services at 780-464-8080 regarding any changes to the proposed home business.
2. That the vehicles (tandem dump truck unit and a tractor and tridem trailer unit) shall be parked indoors or outdoors only in a location which is not generally visible from a public road or an adjacent property to the satisfaction of the Development Officer. In this regard, the appellant shall provide adequate screening of any outdoor parking area from adjacent property owners.
3. That storage of materials or goods related to the major home business must be located within the principal dwelling and/or accessory structure and no exterior storage is permitted. In this regard, the truck shall not contain any materials and/or loads when returning to the subject property.
4. That there shall be no home business clients or customers visiting the subject property.
5. The home business shall be operated by the permanent resident(s) of the principal dwelling and shall employ two (2) non-resident, on-site employee.
6. That noise, vibration, smoke, dust, odors, heat, glare, electrical or radio disturbance detectable beyond the property boundary shall not be produced by the home business. At all times the privacy and enjoyment of adjacent residences shall be preserved and the amenities of the neighbourhood maintained. In this regard, maintenance and repair of the trucks must not occur on site.
7. That the home business shall not occupy more than 30% of the gross floor area of the principal dwelling and no more than 30% of the gross floor area of all accessory structures.

8. This permit is valid for a temporary period, **expiring one year from date of approval**. If you wish to continue to operate the home business past the above date, then a new application must be submitted, accompanied by the appropriate fee, at least one month prior to expiry of the permit.
9. The home business may have one (1) non-illuminated fascia sign, a maximum of 1.5m<sup>2</sup> in area or a free-standing sign with a maximum height of 2.44m and a maximum sign area of 1.5m<sup>2</sup>. The message on the sign shall be restricted to the name and nature of the business. The sign shall also be placed entirely on private property and shall not be located within the road right-of-way.
10. That the permit may be revoked at any time if, in the opinion of the Development Officer, the operation of the home business has violated any provision of the bylaw or conditions of the development permit.
11. Failing to conform to the aforementioned conditions would render this permit invalid.

Furthermore, the applicant is advised:

1. Transportation and Agriculture Services may be contacted at 780-417-7100 regarding information about road bans.
2. **That when a permit for a temporary use expires, a new application is required. Such application shall be dealt with as a first application and there shall be no obligation to approve it on the basis that a previous permit had been issued.**
3. That approval of this application does not excuse the applicant from ascertaining and complying with the requirements of other municipal bylaws, easements, environmental reserve easements, covenants, conservation agreements, development agreements, or Provincial or Federal statutes or regulations.