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Notice of Decision

PEACE REGIONAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD NOTICE OF DECISION

IN THE MATTER OF AN APPEAL FILED BY KEN CANNING (APPELLANT) AGAINST THE DECISION OF THE DEVELOPMENT AUTHORITY OF THE COUNTY OF NORTHERN LIGHTS

File Number: 22PRSDAB001

Decision Date: June 15, 2022

Hearing held at: Town of Grimshaw Office (Council Chambers)

Date of Hearing: May 31, 2022.

Board Members: Monica Robinson (Chair)
Marvin Dueck
Theresa Johnson
Corrina Williams (Alternate)

Board Clerk: Larissa Hempler

Introduction

[1] On May 31, 2022, the Peace Regional Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on May 3, 2022 for an application by Peace Country Steel and Salvage Ltd. The appeal concerned the decision of the Development Authority, issued on April 12, 2022, to approve the application for following development:

Salvage Yard

[2] The subject property is on Lot 3 Plan 802087 (within SW 1-84-23-W5), located in the County of Northern Lights.

[3] The appeal hearing on May 31, 2022 was held through a combination of written submissions, oral presentations, and Via Zoom. The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit Application with attachments, including the proposed plan, relevant portions of municipal planning documents, pictures of the salvage contents, communication by email between Appellant, Development Authority and Secure Energy representatives;
- The approved Development Permit with conditions (DP-22-03); and
- The Appellant's written submission



Preliminary Matters

- [4] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance there was no opposition to the composition of the panel.
- [5] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

1) *Position of the Appellant, K. Canning:*

- [7] K. Canning stated that he was away at the time when a Council meeting was held, and the Council proceeded with the decision of approving the development. He submitted documentation to be taken to the Council meeting on April 12, 2022, with Anna Glover, a representative from the Municipal Planning Commission. He spoke to Gloria Dechant back in 2009, who was a Planning Commission officer at the time when he considered a subdivision development. He was told that the Steel Yard was zoned as Light Industrial, and he was assured that there were only five to seven trucks a week coming into the yard. He believes that the salvage yard had been sold many times and there was a requirement for a permit which the County of Northern Lights or the owner could not provide. He mentioned that once the development is approved, it will be always there and will, in his opinion, expand its operation.
- [8] He expressed his opposition to the development as it will negatively affect the well-being of residents who live on acreages that are located close to the salvage yard. He maintained that those residents acquired the acreages to have the peace and quiet of an acreage living and now they have to deal with steady noise from working heavy equipment to the point where it has become impossible to sit on the deck in the evening. The strong odor of stale gas and oil is present; the trucks run steady diminishing the quality of the roads. Trucks lose pieces of steel while traveling on the roads, which cause residents' vehicles' tires being flattened.
- [9] Mr. Canning is concerned that chemicals from salvaged vehicles will penetrate easily because the soil in the area is classified as class 4 – sandy loam soil. In his opinion, liquids from salvaged vehicles are not being properly removed or not removed at all. He believes that liquids seep through the ground and contaminate the soil. The Appellant provided a few photos to prove that the liquids are present on the ground.



- [10] According to K. Canning, on December 22, 2021, there was an explosion of an oil tank on the property that caused a fire and its force shook one of the resident's house. He added that there is a big pile of tires that should be kept in an enclosed area; these tires should be kept away from the vegetation area. In his opinion, if those tires were to catch on fire, there could be a disaster of losing houses nearby.
- [11] He has talked to other landowners in the area who all have the same concerns. He collected signatures of the twenty-two concerned residents who are in agreement with the appeal and agreed to have the Appellant to speak on their behalf.
- [12] Mr. Canning provided the following information in response to questions from the Board:
- a) He did his investigation regarding the number of rail cars by contacting the Canadian National Railway Company.
 - b) The County of Northern Lights sent a notification only to the adjacent landowners; he believes everyone affected should be notified, including him, as he is the owner of a forty-acre parcel located close to the salvage yard.
 - c) The soil classification (class four (4) soil) might not be good for agricultural development, but it is not suitable for a salvage yard either.
 - d) Water table at twelve feet is based on a few wells that he knows about, but it could be lower than ten feet.
 - e) Truckers who transport the salvage material informed him about chemical leakage.
 - f) He did not specify who requires storing used tires in a fenced area but believes they must be stored properly.
 - g) He did not witness containers being hauled away but they are left on the site.
 - h) On certain occasions, trucks have been parked outside the gate on the road, idling all night while they wait for the gate to open in the morning.
- 2) *Position of the Development Authority, Anna Glover, who provided the following information in response to questions from the Board.*
- [13] In response to clarify what the Development Permit was issued for, Anna Glover said it was a permit granting the usage of the existing salvage yard. No new construction or limitations placed on the permit. Permit request is to register the property as a salvage yard (M-1 General Industrial).



- [14] Seventy-five percent of the parcel is class four (4) soil; the remaining twenty-five percent is classified as organic. Class four (4) soil has severe limitations that restrict the range of crops or require special conservation practices, or both.
- [15] The original permit application was made for a salvage yard in 1988; however, there is no record to be found to confirm if it was approved.
- [16] The Applicant did not undertake a thorough review of the site for the potential wetlands, following Alberta Environment and Parks' Wetland Policy directives because of the Appeal being filed against the development.
- [17] A secondary containment is a requirement.
- [18] She is not aware of the depths of the water table in the area, and she thought they would be difficult to get.
- [19] There were no soil or water samples taken. It is the responsibility of the Alberta Environment and Parks department according to Development Authority.
- [20] She was not aware of Council or Alberta Environment and Parks assessing the site.
- [21] There was no investigation on whether the Applicant is compliant with the approval conditions as the Development Permit is subject to an appeal.
- [22] There were no measurements provided on a map that was submitted along with the Development Permit application.
- [23] Theresa Van Oort, CAO of the County of Northern Lights, provided the following information in response to questions from the Board:
 - a.) In 1980, the land was rezoned by the previous authority responsible for the area, which was the Mackenzie Regional Planning Commission. It was rezoned to M1 General Industrial. There was no record to prove that, as all records were destroyed in a flood.
 - b.) The County of Northern Lights provided the Board with the information on the definition for a salvage yard: "Land and associated buildings used to store, dismantle, salvage, and recycle components from discarded vehicles, industrial equipment, demolished buildings, and other large items"
 - c.) The reason why the Council requested the owner of the Peace Country Steel and Salvage Ltd to apply for a permit is because the Appellant brought forward his concerns with the



development. The County could not grandfather something that was originally approved without knowing conditions of the original permit.

3) *Position of the Applicant, Peace Country Steel and Salvage Ltd.*

[24] The Applicant did not attend the hearing and there was no representative to speak on his behalf. The Board did not receive any written submissions or responses provided by the Applicant.

4) *Position of the representative of Secure Energy Ltd, Al LaPlante, who provided via Zoom the following information to the Board:*

[25] Secure Energy Ltd has been leasing the site since July 2021.

[26] To his knowledge, the salvage yard has operated for over forty years. He thinks it is a fair question that was brought by the residents regarding the zoning of the site: "What is the actual zoning in place there? Has it been zoned as industrial for the last forty years? Is it country residential? This is a very legitimate question and needs more investigation"

[27] Secure Energy Ltd has a "No Fluids Policy" – this is a provincial law. Alberta Environment and Parks visited the site numerous times during the last nine months and did not issue any orders to the company regarding any of the issues presented by the Appellant. Alberta Environment and Parks is the provincial authority that regulates all these matters.

[28] He cannot comment on the issue of trucks idling all night due to the cost of diesel at \$2.10 per liter. No one, he believes, run trucks all night at this cost.

[29] Secure Energy Ltd recycles metal that can be turned into steel and put to use again. Tires are mechanically cut off and neatly piled before they get taken to a different recycling facility. Secure Energy Ltd does not burn tires on the site.

[30] Secure Energy Ltd has radiation detectors on their scales. If detectors trigger, their employees are properly trained on how to reject the load. If there is no human health issue, that truck will be directed to a different facility that handles the issue.

[31] He does not believe that is the best location for an industrial use. There are numerous residences around and it is kind of a country residential area. Their goal is to relocate to the most suitable location.



[32] Mr. LaPlante provided the following information in response to questions from the Board:

- a) Tires, by law, do not need a containment. Secure Energy Ltd piles tires and so, by piling them, one can define as a containment. Tires get picked up and recycled on a regular basis.
- b) Secure Energy Ltd is actively looking for a different location throughout the region. They have two and a half years left with the current owner of the site, and when the lease is up, they will leave and clean the site.
- c) Secure Energy Ltd complies with the hours of operation that are stated on the Development Permit. Their hours are 7 am to 7 pm; however, there is another tenant on the site that does something with the forest fires and has heavy equipment as well. Mr. LaPlante cannot comment on the other tenant's hours of operation.
- d) When Secure Energy Ltd leaves, they will clean everything above the ground as per the terms of the lease. It is a responsibility of the landowner to clean everything below the ground.
- e) There are a few tenants on the land, but Secure Energy Ltd occupies the largest area of the land.
- f) Alberta Environment and Parks has to investigate all the complaints that are issued by the members of public. The process of investigation includes the site observation and if there is an issue, it also involves reviewing paperwork.
- g) Mr. LaPlante does not know how many times Alberta Environment and Parks had visited the site to conduct investigations. He mentioned that Secure Energy Ltd might not know if there was a complaint. The complaint could be on any of the following issues: noise, smell, soil, air quality.
- h) He does not know if there was any paperwork submitted by Alberta Environment and Parks to Secure Energy Ltd following a site visit or inspection.
- i) Mr. LaPlante resides in Calgary but visits the site once every three months.
- j) Policies and procedures of the company are referred by Mr. LaPlante as facts. Secure Energy Ltd has been in the industry for over thirty-five years strictly following their policies and procedures.



5) *Position of Other Affected Parties:* Clayton Canning, Timothy Hewko and Michael Irving

[33] The aforementioned persons spoke in support of the appeal as neighboring landowners. They reechoed the concerns raised by the appellant.

Decision

[34] The appeal is **ALLOWED**, and the decision of the Development Authority is **OVERTURNED**. The Development Permit **IS NOT GRANTED**.

Reasons for Decision

[35] The Board's jurisdiction is found in section 687(3) of the *Municipal Government Act*. In making this decision, the Board has examined the relevant documents and has considered the oral and written submissions made by the Development Authority and the Appellant.

[36] This appeal concerns the decision of the Development Authority of the County of Northern Lights regarding the approval of a Salvage Yard.

[37] The property is currently zoned General Industrial under the County of Northern Lights Land Use Bylaw. Under section K9 (1) of the County of Northern Lights Land Use Bylaw, a Salvage Yard is a Discretionary Use under the General Industrial zoning.

[38] Section B Definitions of the Land Use Bylaw further divides General Industrial uses into two categories: General Industrial Type I and General Industrial Type II. Following are the definitions for the two classes of General Industrial uses:

- i. "General Industrial Type I" means those developments where activities and uses are primarily carried on within an enclosed building and no significant nuisance factor is created or apparent outside an enclosed building. Any development, even though fully enclosed, where, in the opinion of the Development Authority there is significant risk of interfering with the amenity of adjacent sites because of the nature of the site, materials or processes, shall not be considered a General Industry Type 1;
- ii. "General Industrial Type II" means those developments in which all or a portion of the activities and uses are carried on outdoors, without any significant nuisance or environmental factors such as noise, appearance, or odour, extending beyond the boundaries of the site. Any development where the risk of interfering with the amenity of adjacent or nearby sites, because of the nature of the site, materials or processes, cannot be successfully mitigated shall not be allowed.



- [39] Based on the definitions provided above, Salvage yard falls under General Industrial Type II. The Board does not believe that the nuisance factors listed in this definition could be mitigated prior to extending beyond the boundary of the site. Therefore, in accordance with this provision of the County of Northern Lights Land Use Bylaw this development must not be allowed.
- [40] The Development Authority approved the development subject to complying with twenty conditions.
- [41] The Board considered conditions attached to the permit, but it was clear from the information shared that there was no mechanism in place to monitor the Applicant's compliance. The Board was not satisfied with the fact that the County of Northern Lights currently has no ability to enforce the conditions.
- [42] Per County of Northern Lights' Industrial Development Policies, as outlined in the Municipal Development Plan:
- 6.3.2 (e) "For all industrial development proposals located within the Grimshaw Gravels Aquifer, the Applicant shall submit a geotechnical assessment prepared by a qualified professional engineer that indicates the suitability of the subject lands, and provides an assessment of water table conditions".
- [43] The subject site falls within the Grimshaw Gravels Proposed Risk Zone. Due to Soil Quality described as Class 4 (loamy soil, possessing a mixture of clay, sand, and humus that is suitable for farming), there is a risk of liquid substances penetrating soil. The Appellant had a soil sampling conducted that proved to be as a Class 4 soil. The Board confirmed with the Development Authority that there were no assessments done prior the permit approval.
- [44] Per County of Northern Lights' Industrial Development Policies, as outlined in the Municipal Development Plan:
- 6.3.4(a) "No industrial development shall be permitted where the depth to the aquifer is less than five meters (16.40 feet) from the base of the building foundation".
- [45] The Appellant confirmed the depths of the water tables in the area range from eight to twelve feet. The Board was not satisfied with the response from the Development Authority not knowing the depth of water table in the area.
- [46] Per County of Northern Lights' Industrial Development Policies, as outlined in the Municipal Development Plan:



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6.3.8 “Through provisions in the Land Use Bylaw, the County shall ensure that adequate buffers or transitional land uses are maintained between industrial and non-industrial uses when the potential exists for significant land use conflicts with regard to noise, vibration, dust, odor, or other safety risks”.

[47] The Appellant owns a forty-acre parcel north of the Salvage Yard site. In opposing the development, the Appellant cited concerns for noise, air quality, water and soil contamination, dust, and road condition. The Appellant made a statement to the Board that once the development is approved, it will always be there undermining the well being of surrounded residents. The Board was not satisfied that adequate restrictions could be put in place or enforced by the County to ensure the elimination of the conflicts between the industrial use of salvage yard and the neighboring residential properties.

Issued this 15th Day of June, 2022 for the Peace Regional Subdivision and Development Appeal Board.

Per: 
Monica Robinson, Chair

Appeals:

This decision may be appealed to the Court of Appeal of Alberta on a question of law or jurisdiction, pursuant to Section 688 of the Municipal Government Act, R.S.A. 200q c.M-26. This section requires an application for leave to be filed with the Court of Appeal of Alberta within 30 days of receipt of this decision

Enforcement:

When a decision has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Municipality.