

**ROCKY VIEW COUNTY
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

Board Order No.: 2021-SDAB-006

File No.: 03316008 PRDP20202115

Appeal by: ReJean Levesque, Patrick Roy

Hearing Date: 2021 May 06
2021 May 27

Decision Date: 2021 June 10

Board Members: Wendy Metzger, Chair
Tricia Fehr
Hazel George

DEVELOPMENT APPEAL DECISION

INTRODUCTION

[1] This is an affected party appeal to the Rocky View County Subdivision and Development Appeal Board (the Board) from a decision of the Rocky View County Development Authority issued March 24, 2021. In this decision, the Development Authority approved a development permit application for industrial (medium) & outdoor storage, for a transportation company including truck trailer storage, single-lot regrading, the placement of clean fill, construction of an overheight fence, signage, and relaxation of the location and minimum rear yard setback requirement for parking and storage at 232071 Range Road 283 (Lot 1 Block 1 Plan 0214125) and located approximately 0.41 km (1/4 mile) north of Township Road 232 and on the west side of Range Road 283.

[2] Upon notice being given this appeal was heard electronically on May 6, 2021 and May 27, 2021 in accordance with the Meeting Procedures (COVID-19 Suppression) Regulation, Alberta Regulation 50/2020.

DECISION

[3] The appeal is allowed in part and the Development Authority's March 24, 2021 decision on PRDP20202115 is varied. A development permit shall be issued subject to the following conditions:

Description:

1. That Industrial (Medium) & Outdoor Storage, may take place on the subject site in general accordance with the revised application and drawings prepared by Planning Protocol 3 Ltd., File No. 720-01; dated August 2020 & February, 2021, subject to the amendments required in accordance with the conditions of this approval and shall including the following:
 - i. Transportation Company, including truck trailer and commercial vehicle outdoor storage;
 - ii. Conversion of the existing Dwelling, Single Detached to an Office and existing Accessory Buildings (shop & garage) for business use and storage;
 - iii. Parking & Storage of Truck Trailers and Commercial Vehicles;
 - a. That the minimum rear yard setback requirement for Parking & Storage **shall be relaxed from 6.00 m (19.68 ft.) to 0.00 m. (0.00 ft.);**
 - b. That the location of the Parking & Storage locations is permitted in accordance with the final site plan, as proposed;
 - iv. One (1) freestanding sign; One (1) fascia sign, approximately 0.55 sq. m (6.00 sq. ft.) in area; Wayfinding and ancillary signage;
 - v. Overheight Perimeter Fencing;
 - a. That the maximum fencing height **shall be relaxed from 1.82 m (6.00 ft.) to 2.74 m. (9.00 ft.) in height; shall be a chainlink fence with security slats the entire perimeter of the property**
 - vi. Site Grading.

Prior to Release:

2. That prior to the release of this permit, the Applicant/Owner shall submit a revised Landscape Plan, in accordance with Section 444(a) and Sections 253 through 261 of the County's Land Use Bylaw (LUB), to the satisfaction of the County including:
 - i. Identifying the minimum landscape area of 10% of the subject lands; **Required area: 1,618.74 sq. m.;**
 - ii. A minimum 6.00 m (19.69 ft.) wide landscaped yard that is adjacent to Range Road 283, with noted dimensions;
 - iii. One tree for every 40.00 sq. m (430.56 sq. ft.) of the landscaped area, to a minimum of four trees; **Required: 40;**
 - iv. One shrub for every 80.00 sq. m (861.11 sq. ft.) of the landscaped area shall be provided, to a minimum of six shrubs; **Required: 20;**
 - v. Deciduous trees shall be a minimum 63.00 mm (2.48 inches) caliper measured 450.0 mm (17.72 inches) from ground level;
 - vi. Coniferous trees shall be 2.50 m (8.20 ft.) in height.
3. That prior to the release of this permit, the Applicant/Owner shall submit a revised site plan showing that trucks and trailers are parked away from the north boundary, adjacent to the neighbouring residence.

4. That prior to the release of this permit, the Applicant/Owner shall submit details on the proposed Sea Containers, which will be located within the Outdoor Storage Areas. The number of units, dimensions and location shall be included on a site plan.
5. That prior to release of this permit, the Applicant/Owner shall submit a Geotechnical report prepared by a licensed professional. The report shall evaluate the soil characteristics, existing groundwater conditions and provide a recommendation on soil suitability for the proposed industrial use, in accordance with County Servicing Standards.
6. That prior to release of this permit, the Applicant/Owner shall submit a traffic impact assessment, addressing business operations, in accordance with the County Servicing Standards.
7. That prior to release of this permit, the Applicant/Owner shall submit a site specific storm water management plan, prepared by a qualified professional, assessing the post development site storm water management and any adverse impacts to neighbouring properties, to identify any storm water management measures that are required to be implemented to service the proposed development. The plan shall also include a final site grading plan.
 - i. If the findings of the plan require local improvements, the site specific storm water management plan shall provide an onsite storm water management strategy for the proposed development in accordance with the County Servicing Standards;
 - ii. This plan must mitigate any flooding impacts on the adjacent properties that are currently being experienced.
8. That prior to release of this permit, the Applicant/Owner shall contact County Road Operations and:
 - i. Discuss haul details for materials and equipment needed during construction/site development to confirm if Road Use Agreements will be required for any hauling along the County road system and to confirm the presence of County road ban restrictions;
 - ii. Discuss and arrange a pre-construction approach inspection, to verify that the existing approach location meets current standards and to confirm the County Servicing Standards to which the approach is to be upgraded to. The Applicant/Owner shall submit a New Road Approach application for the approach upgrade.
 - a. Written confirmation shall be received from County Road Operations confirming the status of this condition. Any required agreement or permits shall be obtained unless otherwise noted by County Road Operations.

Prior to Site & Building Occupancy:

9. That prior to occupancy of the site and/or buildings, the Applicant/Owner shall contact County Road Operations for an interim-construction inspection and a post-construction inspection for final acceptance of the upgraded Road Approach. If required.

10. That prior to occupancy of the site and/or buildings, the Applicant/Owner shall submit as-built drawings, certified by a professional engineer licensed to practice in the Province of Alberta. The as-built drawings shall include verification of as-built stormwater infrastructure (including but not limited to liner verification, traplow volumes, inverts), as-built sanitary infrastructure, as-built water infrastructure and any other information that is relevant to the approved Stormwater Management Plan.
11. That prior to occupancy of the site and/or buildings, all landscaping, parking, and final site surface completion shall be in place.
 - i. That should permission for occupancy of the site and/or buildings be requested during the months of October through May inclusive, occupancy shall be allowed without landscaping and final site surface completion provided that an Irrevocable Letter of Credit in the amount of 150.00% of the total cost of completing all the landscaping and final site surfaces required, shall be placed with Rocky View County to guarantee the works shall be completed by the 30th day of June immediately thereafter.

Permanent:

12. That any plan, technical submission, agreement, matter or understanding submitted and approved as part of the application or in response to a prior to issuance or occupancy condition, shall be implemented and adhered to in perpetuity.
13. That all landscaping shall be in accordance with the amended Landscape Plan, once approved.
14. That the quality and extent of landscaping shall be maintained for the life of the development.
15. That the hours of operation shall be Monday to Friday 8:00 a.m. to 6:00 p.m., not including Statutory Holidays.
16. That no more than 25 trailers and 25 trucks shall be stored on site at one time.
17. There shall be no parking and/or storage of trucks and trailers within 20m of the sites northern property line.
18. There shall be no more than 6 (six) employees or contractors on site at one time.
19. That the on-site generators shall be housed in a structure to dampen the effect of the noise of the generators with sound dampening material on the interior of the structure, and be built to surround the generators.
20. That the Applicant/Owner shall be responsible for irrigation and maintenance of all landscaped areas including the replacement of any deceased trees, shrubs or plants within 30 days or by June 30th of the next growing season.
21. That no potable water shall be used for landscaping or irrigation purposes. Water for irrigation and landscaping shall only be supplied by the re-use of stormwater.
22. That water servicing shall be by water cistern and sanitary sewage shall be contained in pump out tanks and transported off-site to an approved waste water receiving facility for disposal, unless otherwise permitted through the Province.
23. That once installed, the septic field method of sewage disposal shall be fully engineered and justified for the industrial/commercial development.

24. That if water servicing is desired to continue using the existing Water Well, the Applicant/Owner shall submit proof of licensing and approval from Alberta Environment & Parks, prior to operation.
25. That no topsoil shall be removed from the site.
26. That all on-site lighting shall be "dark sky" and all private lighting including site security lighting and parking area lighting shall be designed to conserve energy, reduce glare and reduce uplight. All development shall be required to demonstrate lighting design that reduces the extent of spill-over glare and eliminates glare as viewed from nearby residential properties.
27. That all garbage and waste for this site shall be disposed of with environmentally-appropriate waste disposal methods. The waste shall be stored in weatherproof and animal proof containers in the garbage bins and screened from view by all adjacent properties and public thoroughfares.
28. That there shall be a minimum of 4 identified parking stalls maintained on-site at all times, in general accordance with the revised Site Plan, as prepared by Planning Protocol 3 Ltd., File No: 720-01, dated February, 2021.
29. That all customer, employee and business parking shall be restricted to the subject property boundaries.
30. That all outside storage of equipment, materials, and vehicles related to the business shall be contained to the subject property boundaries.
31. That unless permitted within this approval, all buildings and Outdoor Storage buildings (including Sea Containers), Parking and Storage areas, shall comply with the Industrial Light setback requirements noted in Section 442 and Section 443 of the County's LUB.
32. That the Applicant/Owner shall be responsible for rectifying any adverse effect on adjacent lands from drainage alteration.
33. That during emergent night time operations, back up alarms on trailer trucks or commercial vehicles shall not be used and shall be replaced with strobe lights.
34. That any truck trailer or commercial vehicle idling or truck activity onsite shall be in accordance with the County's Noise Bylaw C-5772-2003.
35. That any future development construction, including the proposed business office, signage or phases of development shall require separate Development Permit approval. *Note, any onsite wayfinding or ancillary signage (such as onsite directions, security details, trespassing, etc.) does not require future Development Permit approval.*
36. That dust control shall be maintained on the site at all times and that the Owner shall take whatever means necessary to keep visible dust from blowing onto adjacent lands.
37. That the entire site shall be maintained in a neat and orderly manner at all times to the satisfaction of the County.

Advisory:

38. That during construction, and thereafter, all construction and building materials shall be maintained onsite in a neat and orderly manner. Any debris or garbage shall be stored/placed in garbage bins and disposed of at an approved disposal facility.
39. That during construction, the County's Noise Control Bylaw C-5772-2003 must be adhered to at all times.

40. That while on site the trucks shall not reverse, but use the turnarounds on site.
41. That the site shall remain free of restricted and noxious weeds and be maintained in accordance with the Alberta Weed Control Act [*Statutes of Alberta, 2008 Chapter W-5.1; Current as of December 15, 2017*].
42. That Change of Use Building Permits and applicable sub-trade permits shall be obtained through Building Services, using the Commercial/Industrial Checklist requirements, for conversion of the existing dwelling, single detached for office purposes and the existing residential accessory building, for business storage.
Note: That all buildings shall conform to the National Energy Code 2011, with documentation provided at Building Permit stage.
43. That all other government compliances and approvals are the sole responsibility of the Applicant/Owner.
44. That any impacts to wetlands will require Alberta Environment and Parks approvals for disturbance and compensation.
45. That if the development authorized by this Development Permit is not commenced with reasonable diligence within twelve (12) months from the date of issue, and completed within twenty-four (24) months of the date of issue, the permit is deemed to be null unless an extension to this permit shall first have been granted by the Development Authority.
46. That if the Development Permit is not issued by **AUGUST 31, 2021** or the approved extension date, then this approval is null and void and the Development Permit shall not be issued.
47. That this permit shall be valid for one year from the date of permit of issuance.

Note: The Applicant/Owner shall be responsible for all Alberta Environment approvals/compensation if any wetland is impacted by the placement of the topsoil, prior to commencement.

BACKGROUND

[4] On July 23, 2021, Rodney Potrie of Planning Protocol 3 Inc. (the Applicant) submitted a development permit application for industrial (medium) & outdoor storage, for a transportation company including truck trailer storage, single-lot regrading, the placement of clean fill, construction of an overheight fence, signage, and relaxation of the location and minimum rear yard setback requirement for parking and storage on the Lands.

[5] The Lands are approximately 1.61 hectares (4.00 acres) in area and owned by 2249324 Alberta Ltd. (Balwinder Dhanoa) (the Owner).

[6] The Lands' land use designation is Industrial, Light District (I-LHT) under Land Use Bylaw C-8000-2020 (the *Land Use Bylaw*).

[7] On March 24, 2021, the Development Authority issued the written conditional approval for the industrial (medium) & outdoor storage on the Lands.

[8] On April 6, 2021, Rejean Levesque and Patrick Roy (the Appellant's) filed an affected party appeal of the Development Authority's decision to conditionally approve the industrial (medium) & outdoor storage. The appeal was received on time in accordance with section 686(1)(b) of the *Municipal Government Act* RSA 2000, c M-26 (MGA).

[9] A notice of hearing was circulated to the Appellant, Applicant, Development Authority, and adjacent landowners in accordance with the MGA and Rocky View County Council Policy C-327, *Circulation and Notification Standards*.

SUMMARY OF EVIDENCE

[10] The Board heard verbal submissions from:

- (1) Jacqueline Targett, Senior Development Officer for the Development Authority;
- (2) Heather McInnes, Planning and Development Supervisor for the Development Authority;
- (3) Patrick Roy, the Appellant; and
- (4) Rejean Levesque, the Appellant
- (5) Rodney Potrie, the Applicant.

[11] The written documents submitted as exhibits and considered by the Board are listed in the exhibit list at the end of this decision.

May 6, 2021

Development Authority's Submissions

[12] The Lands are four acres in size and surrounded by Agricultural business and Industrial Light properties.

[13] There is a single detached dwelling and accessory building on site.

[14] The property falls under the City of Calgary Intermunicipal Development Plan, there was no response received from the City regarding this application.

[15] The application is for Industrial Medium and outdoor storage for a transportation company, West Pacific Transport.

[16] West Pacific Transport ships and transports goods and services from Vancouver to the Western Canadian Provinces.

[17] The onsite operations include an office onsite located in the single detached dwelling, that will be converted; storage of materials and equipment within the accessory buildings, that will also be converted to Commercial Use; and, outdoor storage of truck trailers and commercial vehicles

[18] The hours of operation are proposed Monday to Friday 7am to 6pm.

[19] There are three full time employees who all reside off site.

[20] An eight foot over height chain link perimeter fencing with a one foot barbed wire top is proposed as a security measure, this a variance of 37% from the *Land Use Bylaw*.

[21] It is estimated that up to 30 trailers and 25 trucks will be stored on site.

[22] One business sign is proposed at the entrance along the driveway and one fascia sign is proposed at the location of the dwelling.

[23] This application is the result of an Enforcement Action as the business was occupying on site with various elements pre-completed before proper approvals were obtained. These include the commencement of business operations, site stripping and grading including a grade change up to 3 feet, partial paving, fencing installation and some storage onsite.

[24] A future office is proposed to be constructed at the front of the site, however, currently all current operations are out of the dwelling onsite.

[25] A variance was required for the storage areas due to the proximity to the main building.

[26] The western and southern storage area locations are propping a zero metre setback from the perimeter fencing, the required variance is 6 (six) metres therefore a 100% variance was required.

[27] The future 2-storey office located on the far east side of the property is not part of this application and if developed would require a new development permit application.

[28] The Municipal Planning Commission approved the Application on March 24, 2021, with several pre-release conditions including a site specific stormwater management plan, landscaping, screening, traffic impact assessment and geotechnical reports.

[29] On April 6, 2021 the affected party appealed the Application.

[30] The Agricultural lands surrounding the property did not submit any concern with the Application.

[31] Range Road 283 is paved to an industrial standard.

[32] The land use for the property is industrial light, the permit is for industrial medium. This is a common industrial use and allows for a variety of industrial activity.

[33] The Shepard area structure plan is still in the proposed state and not currently valid. However, the properties are in a transitional area to commercial.

Patrick Roy and Rejean Levesque submissions - the Appellant's

[34] The Levesque family has lived on the property and has been a business owner for over 20 years.

[35] Mr. Levesque constructed the shop on the property in 2012. At that time Mr. Levesque was told when he applied for the permits for the shop that he could not raise the land.

[36] The land was level prior to the construction next door, the slope goes towards the Levesque property's septic field.

[37] Planted over 300 trees on the property.

[38] Packed all the clay sloping towards the Levesque property, there was a complaint made in spring 2020. The site was not shut down or fined.

[39] There were at least 500 trucks that moved dirt on the applicant's property, all the trees on the property were removed.

[40] There is now water flooding the septic field and flooding the house.

[41] The original grade of the applicant's property was level with the grade of the Levesque.

[42] They were told to shut down but continued working.

[43] The existing shop on the applicant's property is at the grade that the Levesque's would like the property graded at.

[44] Would like an engineered solution to the stormwater issues. There hasn't been an issue with flooding in the 20 years the Levesque's have lived on the property.

[45] All the work on the applicant's property was done without permits.

[46] Have there been any geotechnical reports done on the applicant's property? Without permits and inspections how does anyone know what is under the dirt to raise the grade.

[47] There was non stop dust when they were bringing in all of the dirt for the property.

[48] During the winter all the snow from the applicant's property was piled against the fence between the two properties, which caused flooding when the snow melted.

[49] The Levesque's had to move their bees due to flooding, even after moving them they are still being flooded.

[50] There is noise from the site 24 hours a day 7 days a week between the trucks turning around and the refrigeration trucks.

[51] The Levesque's had to put up additional fencing for their dog after the applicant complained about the dog.

- [52] The clay is packed and allows the rain to run into the Levesque's yard.
- [53] The Levesque's would like there to be consequences for the applicant proceeding with development without permits.
- [54] The grading was raised by 2 to 3 feet and then an 8-9 foot fence was added.
- [55] Would like some privacy with regards to the fence so that everyone doesn't look onto the Levesque property.
- [56] There is more than one truck that backs up at a time and they take a long time to back up so there is constant beeping from the backup beacons.
- [57] It is a 24/7 operation not 7am to 5pm as the applicant has stated that it is.
- [58] There is garbage collecting on the Levesque property from the applicant's property.

May 27, 2021

Patrick Roy and Rejean Levesque submissions - the Appellant's

- [59] Despite a complaint they did not stop working, there has been so much damage done.
- [60] The operation is a 24/7 operation there are generators running all night 300 feet away from a residence. There was no impact study done on the surrounding neighbours.
- [61] The Levesque's septic field has blown out there is grey water everywhere.
- [62] There was no due diligence done on the part of the applicant, even though the Levesque's told them many times to get a permit, and complained many times to enforcement.
- [63] The applicant does not care that the Levesque's property, septic and basement floods.

Rodney Potrie submissions– the Applicant in opposition of the appeal

- [64] Mr. Potrie stated that the landowner is Western Pacific Transport (WPT Ltd) a private limited trucking company established on 2004 in Delta, BC. They are a small family-owned trucking operation that started from nothing. It has gradually grown over the decades into a company with about 45 trucks.
- [65] Mr. Potrie stated that much of the company's business consists of deliveries from Vancouver across Western Canada. In late 2019, they started looking for expansion into Alberta. They saw Calgary as a great Trans-Canada connection. This area is ideal due to the proximity to Glenmore Trail and Hwy 1. The lands are a part of the Shepard Industrial ASP which designated this whole area as industrial development.
- [66] Mr. Potrie stated that the properties on both sides are already approved for industrial uses.

[67] Mr. Potrie stated that improvements were necessary to groom the site into what WPT needed.

[68] Mr. Potrie stated that a knowledgeable local contractor was sought out to do the work. The contractor was instructed to make sure all local rules and regulations were strictly adhered to.

[69] Stripping and grading of the site commenced in late March 2020.

[70] Construction proceeded from April and was completed by mid June 2020.

[71] Mr. Potrie stated that the New Landowner was managing the work long distance from Vancouver.

[72] Mr. Potrie stated that in June 2020 it became known to WPT for the first time, that the contractor who had been given a strict instruction to abide by all local rules and regulations, did not follow the rules when he is obliged to do so. The contractor was immediately fired and the construction ceased.

[73] Local Consultants were immediately retained; Planners, (Planning Protocol, Engineers, Osprey Engineering, Surveyors, CIMA, Geomatics, Geotechnical Engineers, Almor testing. Proper applications we prepared and submitted to the County; Development Permit (DP change of use), Stripping and grading DP July 23, 2020.

[74] During the construction period of March - June 2020, a legal surveyor was retained to determine the precise legal boundaries so a perimeter fence could be constructed. The legal survey determined that many of the neighbours items encroached onto the applicant's property such as mobile home, bee factory, and many more miscellaneous parked items.

[75] Mr. Potrie stated that the neighbour was asked politely, to please remove the said encroaching items and given time to do so, and was told that a fence would be installed 2 feet inside our property line. The encroaching items were removed by the appellant, but Mr. Potrie stated that this appeal is essentially sour grapes due to having to remove encroaching items which have essentially encroached for free for years.

[76] Mr. Potrie stated that the applicant has completed stripping and grading to ensure that no drainage travels onto the appellant's property. The drainage was designed to specifically ensure that flooding doesn't happen. Small portions of the site did require lifting in order to ensure positive drainage to the storm pond.

[77] Mr. Potrie stated that there was a huge amount (2 – 2 ½ ft) of topsoil stripped off of the site and then replaced by clean mineral fill, topped with pit run to bring it back up to original grade. The only exception to this is one or two isolated areas in order to achieve positive drainage towards the applicant's storm pond. All storm water will be retained on site and directed to the storm pond.

[78] Mr. Potrie stated that the work on site is not complete as all construction ceased pending approval and the outcome of the appeal.

[79] Mr. Potrie stated that from the outset it has always been the applicant's objective to contain all storm water on site. It is precisely for this purpose the contractor and other professionals were retained.

[80] From investigation of the appellant's site, the real estate listing boasts passive income of \$125,000.00 annually from two rental suites in the house, two rental suites in the shop and another rental from a RV that is hooked up to onsite year-round water and sewer services. This in addition to the actual residence itself. A total of 6 residential units all contributing to the septic system.

[81] Mr. Potrie stated that the applicant believes that it is the sheer number of contributing residential units that contribute to the sewer system failure and not runoff from the applicant's site.

[82] The applicant has taken, and will take all steps necessary to contain all storm water on their site. They have an interim storm pond, and will, once the permit is approved, complete a storm water plan for the site.

[83] There is no storm pond on the appellant's parcel. This combined with the fact that the appellant does not seem to have a drainage plan in place may contribute to the septic system failure and overall drainage issues on the site.

[84] The applicant believes that the appellant's issues are mostly self induced and don't result from external sources.

[85] Mr. Potrie stated that the applicant is willing to make improvements to the site in line with the appellant's concerns including the following:

- (1) reducing the site coverage,
- (2) the addition of chain link fencing with future security slats added,
- (3) the addition of a 24/7 security system,
- (4) reduction of operational hours,
- (5) moving the trucks to the west and south side of the property,
- (6) the inclusion of landscaping,
- (7) working to utilize the existing buildings and transition to new buildings over the next two years,
- (8) restricting the truck noise and movement after hours and minimize noise during operating hours,
- (9) no weekend activity, and
- (10) having the trucks not back up in the early morning or after hours to eliminate the back up beeper sounds.

[86] Mr. Potrie stated that the appellants land is also industrial not residential even though a lot of the concerns noted by the appellant's are residential in nature.

[87] Mr. Potrie stated that the applicant is trying to mitigate all concerns as best as they can.

[88] Refrigeration trucks do cause a constant hum.

[89] Mr. Potrie asked if the appellants had permits for all their things on their land.

Patrick Roy and Rejean Levesque rebuttal submissions – the Appellant's

[90] Mr. Roy stated that the company owns land in British Columbia and have had to do something like this before, the rules are standard across the board.

[91] The applicant's have been lying since the beginning about having a contract there has been no contract.

[92] It is a truck stop that is next door, every day and night there is more than one truck making noise.

[93] When things started to go wrong on the site that is when Mr. Roy started asking if they indeed had permits.

[94] The applicant took out all the trees and topsoil on the property and put down clay.

[95] The grading is now sloped towards the appellants that causes flooding.

[96] June 22 they were ordered to shut down, July 23 they were still working without a valid permit.

[97] It took a full month to shut the site down and it still wasn't shut down after that. They still continued to develop the land, trenching in wires, grading and installing fencing.

[98] They piled snow on the property line and there is constant garbage from the site.

[99] Mr. Potrie spoke about the rental income of the property that is talked about in the listing for the property but the property is for sale due to the issues next door. The rental is retirement income.

[100] Mr. Roy stated the shop was built in 2012 and they have had 8 years with no issues. Mr. Roy and Mr. Levesque's brother live in the shop. The shop passed all inspections when it was built and has upgraded heated floors.

[101] The pounding from the compacting on the applicant's property caused cracks in the stucco on the shop.

[102] The bees were moved due to flooding not because they were on the applicant's property.

[103] Mr. Roy stated that the pond on their property is grassed in but there is still a pond there, it is not perfect but it takes money and they don't have the money to do it perfectly.

[104] There are a lot of home based business in the area.

[105] There are other neighbours farther away from the site than the appellants that are complaining about the noise.

[106] The applicant's have put up screening but they haven't fixed the water problem. The site is clay and it is non-porous that's why there is flooding happening.

[107] The applicant's never shut the site down even with the threats of fines.

[108] Mr. Roy stated that they tried to stop the process before it went too far by submitting complaints.

[109] Mr. Roy stated that they have been complaining about this property for over a year and a half, when is something going to be done about it?

FINDINGS & REASONS FOR DECISION

[110] The Board finds that industrial (medium) is a discretionary use in an Industrial, Light District (I-LHT), as outlined in section 437 of the Land Use Bylaw.

[111] The Board finds it has the authority to make a decision on this matter pursuant to section 687(3)(d) of the *Municipal Government Act*.

[112] The Board reviewed all evidence and arguments, written and oral, submitted by the parties and focused on the most relevant evidence and arguments in outlining its reasons. The Board also considered the context of the proposed development, sound planning considerations, the merits of the application, and all applicable legislation, plans, and policies.

[113] The Board is satisfied that the proposed industrial (medium) is compatible with the transitional nature of the area.

[114] The Board understands the concerns about flooding and noise from the proposed development. For this reason, the Board amended the approval conditions to rectify these issues.

[115] The Board is satisfied that the amended conditions of approval that require additional setbacks, privacy slat installation for the chain link fence, a Storm Water Management Plan that mitigates flooding on the adjacent properties, strict hours of operation, storage restrictions, the limiting of employees and contractors and noise deafening structures for the generators will address the Appellant's and neighbours concerns about the proposed development's impact on the adjacent properties.

[116] Given the above findings and pursuant to section 687 of the *Municipal Government Act*, the Board finds that with the new conditions, the proposed industrial (medium) would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The Board also finds the proposed development conforms to the use prescribed for the Lands in the *Land Use Bylaw*.

CONCLUSION

[117] For the reasons set out above, the appeal is allowed in part and the Development Authority's March 24, 2021 decision on PRDP20202115 is varied.

Dated at Rocky View County, in the Province of Alberta on June 10, 2021.



Wendy Metzger, Chair
Subdivision and Development Appeal Board

EXHIBIT LIST

Documents presented at the hearing and considered by the Board

- | NO. | ITEM |
|------------|---|
| 1. | Development Authority's Report to the Board May 6, 2021 (34 pages) |
| 2. | Development Authority's Report to the Board May 27, 2021 (33 pages) |
| 3. | Development Authority's PowerPoint (9 pages) |
| 4. | Appellant Exhibit 1 Part 1 (25 pages) |
| 5. | Appellant Exhibit 1 Part 2 (25 pages) |
| 6. | Appellant Exhibit 1 Part 3 (25 pages) |
| 7. | Appellant Exhibit 2 (video - 3m16s) |
| 8. | Appellant Exhibit 3 (video - 59s) |
| 9. | Appellant Exhibit 4 (video - 8m48s) |
| 10. | Applicant Exhibit (34 pages) |