

## SUBDIVISION AND DEVELOPMENT APPEAL BOARD FOR ROCKY VIEW COUNTY

Board Order: SDAB-2024-018

File: Stop Order 202302-0202

Appeal by: James E. Roberts  
Rolly Ashdown

Hearing Date: September 12, 2024

Decision Date: September 27, 2024

Board Members: B. Doherty, Presiding Officer  
M. Dunn, Member  
P. Farrar, Member  
K. Hubbauer, Member  
D. Premi, Member

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### DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

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#### INTRODUCTION

[1] Rocky View County's (the "County's") Development Authority issued Stop Order 202302-0202 to James E. Roberts (the "Owner") on August 16, 2024 pursuant to section 645 of the *Municipal Government Act* for establishing and operating an automobile recycling and salvage business without a valid development permit at 281044 Township Road 252 (the "Lands").

[2] On August 22, 2024, James E. Roberts and Rolly Ashdown (the "Appellants") filed an appeal on behalf of the Appellant with the Subdivision and Development Appeal Board for the County (the "Board") against the Development Authority's decision to issue a stop order under section 645 of the *Municipal Government Act* for the development on the Lands.

[3] A notice of hearing was circulated by email to the Appellants and the Development Authority on September 4, 2024 and was circulated by mail to landowners within the circulation area on August 30, 2024 in accordance with the *Municipal Government Act*, RSA 2000, c M-26 (the "*Municipal Government Act*") and the County's *Circulation and Notification Standards Policy C-327*.

[4] Upon notice being given to the appropriate parties and landowners within the circulation area, the appeals were heard on September 12, 2024 in the Council Chambers at the County Hall, located at 262075 Rocky View Point, Rocky View County, Alberta.

## DECISION

[5] For the reasons set out below, the appeal is allowed in part and the deadline for compliance with Stop Order 202302-0202 issued by the Development Authority on August 16, 2024 pursuant to section 645 of the *Municipal Government Act* is varied as follows:

- (1) the deadline to comply with the order to remove all equipment, vehicles, materials, structures or modifications to the Lands associated with the unauthorized business is extended to no later than 4pm, November 29, 2024.

[6] For clarity, the deadline to comply with the order to immediately cease all activity on the Lands associated with the business remains unchanged from the original deadline of 4pm, August 19, 2024.

## PRELIMINARY MATTERS

### Board Members

[7] At the beginning of the appeal hearing, the Presiding Officer of the hearing asked if any of the Board members that would hear and decide on the appeal had any conflicts of interest to disclose. None of the Board members had any conflicts of interest to disclose.

[8] Next, the Presiding Officer of the hearing asked if anyone in attendance objected to any of the Board members that would hear and decide on the appeal. No one in attendance objected to any of the Board members hearing and deciding on the appeal.

### Exhibits

[9] Next, the Clerk of the appeal hearing noted the materials distributed to the Board in advance of the hearing and the Presiding Officer asked if anyone in attendance had any objections to the Board accepting these materials as exhibits to consider as evidence at the appeal hearing. No one in attendance objected to the Board accepting these materials as exhibits and the materials were marked as exhibits.

[10] Next, the Presiding Officer asked if anyone in attendance had any new materials to submit as exhibits that were not previously distributed to the Board. Mr. Ashdown wished to submit new materials as exhibits for the Board to consider at the appeal hearing. The new materials submitted by Mr. Ashdown were

- (1) a letter from Bunt & Associates regarding a fee proposal for the completion of a transportation impact assessment (TIA), dated September 6, 2024; and
- (2) a letter from Osprey Engineering Inc. regarding the preparation of a wastewater demand analysis, potable water demand analysis, and conceptual stormwater management report, dated September 12, 2024.

[11] Upon asking if anyone in attendance objected to the new materials submitted by Mr. Ashdown being considered as evidence at the appeal hearing, the Development Authority did not object to the new materials being considered as evidence, but it did raise the following concerns:

- (1) the letter from Osprey Engineering Inc. has the incorrect address noted on the letter; and
- (2) the letter from Bunt & Associates does not have a complete address noted on the letter.

[12] The Board carefully considered the new materials submitted by the Appellants, as well as the concerns raised by the Development Authority, and decided to receive the new materials from Mr. Ashdown and enter them as exhibits for consideration as evidence at the appeal hearing. All exhibits for the appeal hearing are noted in Appendix 'A' at the end of this decision.

### Hearing Process

[13] Finally, the Presiding Officer outlined the process the Board would follow for the appeal hearing. No one in attendance objected to the process the Board would follow for the hearing.

### SUMMARY OF EVIDENCE

[14] The Board received written materials and heard verbal presentations from a number of people for the appeal hearing. The exhibits considered by the Board are listed in the exhibit list in Appendix "A" at the end of this decision.

[15] The Board heard verbal submissions from:

- (1) David Nielson, Bylaw Officer with Enforcement Services, for the Development Authority;
- (2) Lorraine Wesley, Manager of Enforcement Services, for the Development Authority;
- (3) Oksana Newmen, Senior Planner with Planning Services;
- (4) Rolly Ashdown, Appellant;
- (5) James E. Roberts, Appellant and Owner; and
- (6) Dan Burnett, neighbour in support of the appeal.

(collectively referred to as the "parties").

### David Nielson and Lorraine Wesley for the Development Authority and Oksana Newmen for Planning Services

[16] The Lands are located at 281044 Township Road 252, which is located at the northwest intersection of Range Road 281 and Township Road 252. The Lands are designated as Agricultural, General District (A-GEN) under *Land Use Bylaw C-8000-2020* (the "*Land Use Bylaw*") and are approximately 32.66 acres in area.

[17] The properties to the northeast and south of the Lands are also designated as A-GEN under the *Land Use Bylaw*, while the property to the northwest of the Lands is designated as Agricultural, Small Parcel District (A-SML) under the *Land Use Bylaw*. The Lands are being used by Mr. Roberts for the outside storage of business-related materials, which includes several shipping containers and a large number of vehicles in different stages of dereliction.

[18] The activities on the Lands are in contravention of sections 145, 146, and 174 of the *Land Use Bylaw*. Sections 145 and 146 of the *Land Use Bylaw* outlines site requirements for the Home-Based Business Type II use, while section 174 details the requirements for accessory buildings and shipping containers. The *Land Use Bylaw* also prescribes approved uses for each designation. The permitted and discretionary uses of the A-GEN designation are defined in section 304 of the *Land Use Bylaw*.

[19] An enforcement file was opened on February 21, 2023 after Enforcement Services received a phone call from a complainant informing them that a business may be operating on the Lands and inquiring about whether a development permit has been issued for the business and whether the Lands have the proper land use designation for the activities occurring on the Lands. According to the complainant, a number of passenger vehicles had been brought onto the Lands over a number of weeks.

[20] On March 2, 2023, Officer Nielson conducted a drive-by inspection of the Lands and noted that there were a number of vehicles neatly placed behind a row of trees running along the northwest boundary of the Lands. There were also a number of commercial-style vehicles, farm equipment, and other passenger vehicles dotted around the Lands in various stages of disrepair.

[21] On March 6, 2023, Officer Nielson spoke with Justin Robello, Supervisor of Planning and Development with Planning Services, who confirmed that the Lands are in contravention of the *Land Use Bylaw* and *Nuisance and Unightly Property Bylaw C-7690-2017* (the "*Nuisance and Unightly Property Bylaw*"). The Development Authority issued Mr. Roberts two separate bylaw compliance notices on April 2, 2023 to address both the contraventions of the *Land Use Bylaw* and the *Nuisance and Unightly Property Bylaw*.

[22] A site inspection was conducted by Officer Nielson on June 6, 2023 to determine whether the business was still operating on the Lands and whether a development permit application had been submitted for the operations on the Lands. Officer Nielson concluded that the business was continuing to operate, and that the County had yet to receive a development permit application.

[23] Officer Nielson met with Mr. Roberts on June 29, 2023 to discuss the contraventions on the Lands. It was at this time that Mr. Roberts informed Officer Nielson that he had provisionally sold the Lands to someone else, and that the new owner had been to the County Hall to submit a development permit application for the operation of the business on the Lands.

[24] The Development Authority informed the new owner that they were welcome to submit a development permit application for the operation of the business on the Lands, but that it is not permitted under the A-GEN designation of the *Land Use Bylaw* and that they would need to submit a redesignation application to have the Lands redesignated from A-GEN to the Industrial, Heavy District (I-HVY) designation of the *Land Use Bylaw*.

[25] Officer Nielson spoke with Mr. Roberts on July 6, 2023 who informed Officer Nielson that he had an understanding with his councillor that they would discuss an amendment to the Conrich Area Structure Plan needed to allow the redesignation of the Lands to move forward. The amendment to the Conrich Area Structure Plan pertains to the mandatory requirement to hook up with the County's water supply.

[26] Officer Nielson conducted a document search on September 18, 2023 and found that no development permit application had been submitted to the County for the operation of the business on the Lands. On September 20, 2023, Mr. Roberts informed Officer Nielson that he was still waiting to hear back from his councillor on an amendment to the Conrich Area Structure Plan. Officer Nielson requested that Mr. Roberts proceed with submitting his applications so that the compliance issues with the Lands could be addressed in the meantime.

[27] On September 21, 2023, Officer Nielson and his direct supervisor met with Mr. Roberts at the County Hall to discuss his redesignation and development permit applications. Mr. Roberts informed Officer Nielson that he was having troubles with submitting his applications and that he was making every attempt at being in compliance. Officer Nielson conducted another document search on October 19, 2023 and again found that no development permit application had yet been submitted to the County.

[28] Officer Nielson conducted another drive-by inspection of the Lands on October 19, 2023 and noted that a number of additional vehicles had been placed on the Lands. Mr. Roberts subsequently informed Officer Nielson that he had a meeting scheduled for October 26, 2023 to discuss his resignation application and the amendment to the Conrich Area Structure Plan. At this time, Officer Nielson noted that Mr. Roberts had submitted applications for the shipping containers on the Lands.

[29] On December 6, 2023, Officer Nielson attending a pre-application meeting with Mr. Roberts, Mr. Ashdown, Lorraine Wesley (Manager of Enforcement Services), Oksana Newmen (Planner with Planning Services), and others to discuss what was needed to complete Mr. Roberts' applications and the timeframe. It was agreed at the pre-application meeting that Mr. Roberts would need to submit his applications by February 12, 2024, which included both a redesignation application and a master site development plan application for the Lands. A development permit application for the operation of the business on the Lands would only be considered after the redesignation and master site development plan applications are approved.

[30] Officer Nielson received word from Planning Services on February 29, 2024 that Mr. Roberts had submitted his redesignation and master site development plan applications. On April 26, 2024, Planning Services informed Officer Nielson that the County still needed more information from Mr. Roberts to be able to process his applications and that he had until May 24, 2024 to provide the required information to Planning Services.

[31] On June 17, 2024, Matt Boscarior, who is the Executive Director of Community Services, sent an email to Mr. Ashdown explaining that the County would not be approving another extension for Mr. Roberts' redesignation and master site development plan applications and that enforcement action would proceed. Officer Nielson spoke to Mr. Ashdown regarding the email from the Executive Director of Community Services and explained that the County had provided ample time and information for Mr. Roberts to provide complete applications. Mr. Nielson stated that he is left with little option but to move forward with enforcement action.

[32] Officer Nielson received an email from Mr. Ashdown on June 23, 2024 stating that he had spoken to Oksana Newman, who is a Senior Planner with Planning Services, and stated that he would submit the master site development application the week of June 26, 2024. On August 16, 2024, Officer Nielson received an email from Officer McKinley that he had issued a stop order to Mr. Roberts. Officer Nielson received the affidavit of service from Officer McKinley.

[33] Officer Nielson conducted a drive by inspection on August 29, 2024 and noted that the business had grown exponentially on the Lands.

- [34] In response to the Board's questions, the Development Authority and Planning Services stated:
- (1) Mr. Roberts' redesignation application requires a supporting master site development plan application, both of which would need to be approved before considering approval of a development permit application for the business operating on the Lands. Planning Services is currently dealing with the redesignation and master site development plan applications;
  - (2) the timeframe for Planning Services to process redesignation applications is generally 8-10 months, depending on the completeness of applications when they are submitted. Redesignation applications that are complete upon submission can be processed in short order, and applications that are not complete upon submission can take longer to process;
  - (3) Planning Services does not consider the information provided by Mr. Roberts for his redesignation and master site development plan applications as complete as there are technical studies that are required to be completed to support the applications which have not been provided to Planning Services;
  - (4) there is a provision within the Conrich Area Structure Plan that requires a master site development plan to support a redesignation application when a property is being redesignated to an industrial designation under the *Land Use Bylaw*. This provision in the Conrich Area Structure Plan has not been amended;
  - (5) while the Conrich Area Structure Plan anticipates the designation of the Lands to be industrial in nature and the Lands are identified in the first phase of the implementation of the Conrich Area Structure Plan, all of the properties surrounding the Lands have agricultural designations under the *Land Use Bylaw*. Although several properties are identified as industrial in the Conrich Area Structure Plan, no redesignations to facilitate industrial uses have occurred;
  - (6) despite the incompleteness of the applications, Planning Services has tentatively scheduled consideration of Mr. Roberts' redesignation and master site development planning applications by Council for October 22, 2024. The resignation application is to redesignate the Lands from A-GEN to I-HVY under the *Land Use Bylaw*;
  - (7) the timeframe for Planning Services to process a development permit application is generally 7-9 weeks, depending on the completeness of applications when they are submitted. The scale of the business operations on the Lands would far exceed the maximum allowed for a home-based business type II development permit under the *Land Use Bylaw*. It would not be a suitable nor appropriate development for a home-based business type II;
  - (8) home-based business type II under the *Land Use Bylaw* limits business operations from 18:00 hours to 8:00 hours. Officer Nielson did not observe the business operating within those prohibited hours. The enforcement action was based on a business operating on the Lands without a development permit not with the hours of operation or type of operation;
  - (9) as the Conrich Area Structure Plan requirement for mandatory hookup to a water and wastewater system is a "shall" statement, the expectation is that businesses located within the Conrich Area Structure Plan shall connect to water and wastewater services;

- (10) there were previous planning applications submitted in 2015 to facilitate a salt process facility on the Lands, but these are not related to the current applications submitted by Mr. Roberts; and
- (11) Mr. Ashdown and Mr. Roberts are not the owners of Babylon Recycling.

**Rolly Ashdown, Appellant**

[35] Mr. Ashdown is a consultant for Mr. Roberts, who is the owner of the Lands. The Lands are located within the Conrich Area Structure Plan which was adopted by Council in 2015. The Lands are the within furthest northeast quarter section located within the Conrich Area Structure Plan, which identifies the Lands for future heavy industrial uses. When the Conrich Area Structure Plan was adopted in 2013, it was expected that the future heavy industrial uses would be in place by now.

[36] Mr. Ashdown was on Council when the Conrich Area Structure Plan was adopted in 2013 and recalled that it would take around 8-10 years for the future uses identified in the Conrich Area Structure Plan to be implemented. Mr. Roberts spoke to Council around this time regarding the applications for a salt processing facility on the Lands.

[37] There is a CN Rail yard located to the southwest of the Lands, which is under federal jurisdiction. The CN Rail yard runs to about a half mile from the Lands and there are rail tracks that run through the Lands. There were discussions with CN Rail about running a spur line to the Lands to facilitate heavy industrial uses on the Lands, but the deal fell through.

[38] After the CN Rail spur line deal fell through, Mr. Roberts searched for new purchasers of the Lands. Babylon Recycling, which is owned by Hussein Mahmoud, was interested in purchasing the Lands as the property is well suited for industrial uses. Babylon Recycling struck a deal with Mr. Roberts to purchase the Lands.

[39] One of the allowable uses within the definition of the I-HVY designation of the *Land Use Bylaw* is wreckage and salvage yards as well as manufacturing and processing facilities, which would facilitate the business operating on the Lands. One of the nuisances of the business is the unsightly nature of the operations.

[40] Mr. Ashdown does not understand the wisdom of requiring a master site development application to support Mr. Roberts' redesignation application, as after receiving the proper land use designation the next step is to apply for a development permit for the business to operate on the Lands. The requirements of a development permit application and a master site development permit plan are the same.

[41] Because the Lands would only be used for one purpose, there does not seem to be a reason to require a master site development plan for the Lands. However, Mr. Ashdown and Mr. Roberts proceeded to submit a master site development plan after searching for previous examples of master site development plans approved by the County. They used the lightest-weight example, which is the Singer Master Site Development Plan, as the starting point for their master site development plan.

[42] There are a number of technical and engineering studies required to be completed to support the master site development plan. Mr. Ashdown and Mr. Roberts attempted to postpone the completion of these studies until their development permit application, but on the insistence of Planning Services these studies are now being completed to support the master site development plan application. Confirmation of these studies being ordered were provided by Mr. Ashdown in Exhibits #7 and #8 of this appeal hearing.

[43] Mr. Roberts and Mr. Ashdown are looking forward to being heard by Council on October 22, 2024. If their applications go well and the Lands are designated to I-HVY, they will immediately proceed to submitting a development permit application for the business operating on the Lands. They are prepared to meet the conditions of a development permit, particularly regarding screening.

[44] The operations of the business on the Lands includes the purchase of vehicles that have been written off but still have many good parts, the removal of liquids from the vehicles which are hauled offsite, and the dismantling of the vehicles to sell any of the salvageable parts at their Calgary operation. There are a few trips made to and from the Lands, which will be identified in a traffic impact assessment. There is no need for any enhanced sewage or water to facilitate the business on the Lands.

[45] When Mr. Ashdown looks through the Conrich Area Structure Plan, the Municipal Development Plan, and other statutory and non-statutory documents, he often sees the word “may” used but only sees the word “shall” used in the Conrich Area Structure Plan. The mandatory hookup to a water system required by the Conrich Area Structure Plan would be onerous.

[46] They would prefer if the Board’s decision on this appeal was in accordance with Option 1 provided in the Development Authority’s report (Exhibit #3) and would like to see that the word intensification be added to the wording of the stop order.

[47] In response to the Board’s questions, Mr. Ashdown stated:

- (1) the business operations began on the Lands shortly after Mr. Roberts and Babylon Recycling had reached an acceptable agreement on the sale and purchase of the Lands in early 2023. The business operations intensified over time until enforcement action began;
- (2) the business operating on the Lands enjoyed success and got busier and busier, which is why the operations on the Lands have intensified over time. They were not informed that the business operations could not intensify until the stop order was issued;
- (3) the first application by Mr. Roberts was submitted in early 2023 due to the business operations that were occurring on the Lands and to comply with the County’s rules. Mr. Roberts is still the owner of the Lands – the business operating on the Lands and the ownership of the Lands are different. The purchase and sale of the Lands has not closed;
- (4) there is no dust generated from the business operating on the Lands, and Mr. Roberts has screening that he is prepared to install when a development permit is issued. Mr. Roberts does not want to install the screening until he knows where it must be placed as required by the conditions of a development permit;



- (5) the technical and engineering studies that were recently ordered (Exhibits #7 and #8) were not ordered sooner because they did not believe that they should be required in the first place, which is explained in their master site development plan. They were, however, informed by Planning Services that the studies would be required;
- (6) the fluids removed by the vehicles are stored on the Lands for a short time and are then shipped offsite, and tires from the vehicles are stored on the Lands and he assumes that the tires are then periodically removed and recycled;
- (7) The business operations on the Lands are for recycling purposes and are environmentally sound. Very little water is used by the business operations and there is an existing well on the Lands, which is adequate for the residential uses on the Lands;
- (8) there is no crushing occurring on the Lands, but in the future there may be an opportunity for crushing to occur on the Lands. The Lands are located next to a CN Rail yard, which could include a spur line to the Lands as considered in the previous applications for a salt processing facility on the Lands;
- (9) Mr. Roberts is responsible for completing the redesignation and master site development plan applications. The purchase and sale of the Lands was intended to close a few weeks ago but the enforcement action has delayed the closing of the sale;
- (10) the original enforcement complaint on the Lands occurred in early 2023 and the stop order was issued in August 2024; and
- (11) Mr. Ashdown is not sure if the wording of the Conrich Area Structure Plan trumps the wording of other statutory plan such as a municipal development plan. Other statutory plans mention “may” statements when referring to hooking up to water and wastewater services. It is his belief that Council is considering adjusting the wording of this part of the Conrich Area Structure Plan.

#### **Dan Burnett, Neighbour in Support of the Appeal**

[48] Mr. Burnett’s property is directly adjacent to the Lands. When Babylon Recycling moved their operations onto the Lands, they had great concern as they are the most adjacent property to the Lands. He had not interacted with the owner of the Lands, Mr. Roberts, until the purchase and sale agreement was underway.

[49] After meeting with Mr. Roberts and the others involved in the agreement, they assuaged his concerns by showing their dedication and responsibility to the Lands, specifically with how they would manage the liquids from the vehicles. Mr. Burnett has been to the Lands on numerous occasions since, as recently as the day before this appeal hearing, and did not observe any contamination or other concerns.

[50] There are fencing materials on the Lands that Mr. Roberts confirmed would be installed once they knew where on the Lands it would be required by the County. There is back and forth going on between the County and those involved with the business operations on the Lands, and this is slowing down the progress of the entire area.

[51] Mr. Burnett has owned his property for close to 10 years and he has not had agricultural uses on the Lands in that time. With the CN Rail yard nearby, the area is not a great location for residences and agricultural uses. There is a water line that runs nearby that they are not allowed to connect to, which means that any development to take place in the area involves millions of dollars of bureaucracy, which is stifling the development of the area.

**James E. Roberts, Appellant and Owner**

[52] Mr. Roberts is the owner of the Lands. He has been attempting to sell the Lands since the CN Rail yard moved into the area, which operates about 75 yards directly behind his residence. The CN Rail operations include what is known as “switching,” which is when they bring a train out of the yard to add more cars to the train before returning the train to the yards. This occurred at 3:00 am on the day of the appeal hearing, for example, which makes it difficult for the area to support residential uses on the Lands.

[53] In March 2016, the CN Rail operations had set portions of the Lands on fire, which left only Mr. Roberts’ residence intact – his shop, machine shed, farming equipment, tools, and other things needed to farm the Lands had been destroyed. The damages from the fire were estimated at \$1.5 million.

[54] Mr. Roberts proceeded to sue CN Rail for damages and his insurance company for recovery. His insurance covered things that he might do wrong but not things that others, including CN Rail, might do wrong. Despite being underinsured, Mr. Roberts received a payout from his insurance company, but did not receive any assistance from CN Rail during or after the fire. After entering into mediation with CN Rail, Mr. Roberts was compensated for around \$500,000 less than his claim.

[55] When the Conrich Area Structure Plan was under development, Planning Services made site visits to the Lands at the time and agreed that the Lands are no longer suitable for residential and agricultural uses due to the operations of the CN Rail yard, which is why Mr. Roberts’ and Mr. Burnett’s properties were included for future industrial uses in the Conrich Area Structure Plan. Mr. Ashdown was on Council at this time.

[56] Forty years ago, the area would have been primarily agricultural in nature, but once CN Rail moved in and Conrich and Chestermere started to expand and grow in population, the area stopped being a peaceful rural area. Mr. Roberts has had a couple of interested buyers since that time who were interested in converting the Lands for industrial uses, but he was unable to complete the sales due to interference from CN Rail. Potential buyers of the Lands would have had to construct roads around the CN Rail crossing at great expense.

[57] Babylon Recycling approached Mr. Roberts through his realtor because the Lands met the requirements that they had – they do not have intensive traffic or require additional roads, do not require additional water or wastewater infrastructure, and do not require many employees on site to operate the business. The business operates from approximately 9:00 am to 6:00 pm and had been operating at a different location prior to moving operations to the Lands before being evicted from their previous location.

[58] After being evicted from their previous location, Babylon Recycling needed a location for their business operations, and Mr. Roberts thought that they could move their vehicles onto the Lands without issues while he completed the purchase and sale agreement with Babylon Recycling and worked on securing the proper permits with the County. This began in early January 2023. Since Babylon Recycling began business operations on the Lands, Mr. Roberts has been surprised at how little mess they have left behind. Fluids, tires, and parts are removed from the vehicles and deal with as needed.

[59] After Mr. Roberts had a fairly firm deal in place with Babylon Recycling, he began looking for a new property to move to and found one northwest of the town of Olds. Mr. Roberts began packing his stuff and storing it in sea cans on the Lands. He was not aware of the requirements for sea cans and that they would require a development permit, even though they were being used temporarily during his move to the new property.

[60] In early April 2023, Mr. Roberts met with Planning Services to discuss what applications would be required for the Lands, including the pre-application meeting mentioned by Officer Nielson. The only concern at that time was the “shall” statement in the Conrich Area Structure Plan that requires mandatory hookup to a water and wastewater system.

[61] There is a potable waterline running down the east side of Township Road 281, which is intended to serve the needs of some locations in Conrich, including CN Rail. However, connection to this waterline is cost prohibitive with a cost of several million dollars. The other option was running another waterline even further than the one running down the east side of the Lands, which would be even more cost prohibitive.

[62] Mr. Roberts submitted a redesignation application in April 2023 and time passed. During that time, Mr. Roberts had discussions with Councillor Greg Boehlke who mentioned that he should carry on until fall 2023, when it was anticipated that Council would review the Conrich Area Structure Plan.

[63] This did not occur, and in the meantime Mr. Roberts’ redesignation application had yet to be brought forward for consideration by Council. The file managers with Planning Services had changed and the application stayed dormant. It is at this point that Officer Nielson visited the Lands for enforcement purposes, which had the effect of accelerating the processing of Mr. Roberts’ redesignation application.

[64] Because of issues with the redesignation application, the purchase and sale agreement has not yet been completed with Babylon Recycling. They are currently waiting on a decision from Council to proceed. He was not aware of some of the policies in the Conrich Area Structure Plan until he started the redesignation process.

[65] Mr. Roberts is pleading for more time so that his redesignation and master site development plan applications can be considered by Council. If Babylon Recycling is required to hookup to water and wastewater services, they will have to move their operations somewhere else due to the cost associated with connecting to a water and wastewater service.

[66] In response to the Board’s questions, Mr. Roberts stated:

- (1) he was not aware of the complaints filed with the County in April 2023. He did not receive the complaints until he filed his appeal with the Board. He does not believe that the complaints are sensible as there is practically no noise, dust, or debris generated by the business operations on the Lands. He monitors debris closely, as much of it is generated by the CN Rail yard; and
- (2) he was aware right away that the Lands were not in compliance with the *Land Use Bylaw* by letting Babylon Recycling move their business operations onto the Lands after more or less finalizing the sale of the Lands to Babylon Recycling in early January 2023.

### **Rolly Ashdown's Rebuttal, Appellant**

[67] Mr. Ashdown did not have a rebuttal but did raise the issue including the wording "further intensification" into the language of the stop order if the Board were to uphold the Development Authority's decision to issue the stop order. He would like to see that language included in the stop order.

[68] Mr. Ashdown felt that he had a fair opportunity to present his evidence to the Board, but he did note that he was not permitted to present alternate wording of the stop order during the appeal hearing.

## **JURISDICTION, FINDINGS, AND REASONS FOR DECISION**

### **Jurisdiction of the Board**

[69] The Board finds that it has the authority to hear and decide on this appeal pursuant to section 687 of the *Municipal Government Act*. The Development Authority's August 16, 2024 decision to issue a stop order to James E. Roberts pursuant to section 645 of the *Municipal Government Act* can be appealed pursuant to section 685(1) of the *Municipal Government Act*, which allows an appeal by the person affected by the Development Authority's decision, who in this case is Mr. Roberts.

### **Findings of Fact**

[70] The Board reviewed all evidence and arguments, written and verbal, and focused on the most relevant evidence and arguments. The Board also considered the context of the development permit application, consideration of impacts, the merits of the application, and all applicable legislation, plans, and policies.

[71] The Board finds the following as fact:

- (1) the Lands are located at 281044 Township Road 252, are designated as A-GEN under the *Land Use Bylaw*, and are owned by James E. Roberts;
- (2) an automobile recycling and salvage business has been established and is operating on the Lands without a valid development permit;
- (3) the Development Authority issued a stop order on August 16, 2024 to James E. Roberts for the establishment and operation of an automobile recycling and salvage business on the Lands without a valid development permit;
- (4) the appeal by the Appellants was filed on August 22, 2024, which was filed on time in accordance with section 686(1) of the *Municipal Government Act*; and
- (5) upon filing of the appeal by the Appellants, notice of the appeal hearing was provided in accordance with the *Municipal Government Act* and the County's *Circulation and Notification Standards Policy*.

**Issue 1 – Has a Contravention of the Land Use Bylaw Occurred?**

[72] The Board’s duty when deciding on an appeal of a stop order is outlined in section 687(3) of the *Municipal Government Act*, which includes the need to determine whether development is occurring on the Lands without a valid development permit in contravention of the *Land Use Bylaw*.

[73] The Board, therefore, finds it prudent to begin by considering whether a contravention of the *Land Use Bylaw* has indeed occurred, which includes considering whether there is development occurring on the Lands, whether a development permit is required for the development occurring on the Lands, and whether a development permit has been issued for the development occurring on the Lands.

[74] In determining whether a contravention of the *Land Use Bylaw* has occurred, the Board first considered how the *Land Use Bylaw* defines development, which is the following:

**“Development” means:**

- a) An excavation or stockpile and the creation of either of them, or
- b) A building or an addition to or replacement or repair of a building and the construction or placing of any of them on, in, over or under land, or
- c) A change of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building, or
- d) A change in the intensity of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the intensity of use of the land or building.

[75] In addition to the definition of development provided by the *Land Use Bylaw*, the Board further considered section 90 of the *Land Use Bylaw*, which states:

*“Except as provided in Section 92, no person shall commence any development unless a Development Permit has been issued.”*

[76] The Board heard evidence from the Development Authority that a business has been established and is operating on the Lands without a valid development permit. The business operating on the Lands is an automobile recycling and salvage business, which includes the outside storage of business-related materials on the Lands. The Development Authority has observed the intensification of the business operations over time through multiple site inspections and site visits to the Lands, and the Appellants noted that the business has enjoyed success since it began operating on the Lands.

[77] The Board, after considering the sections of the *Land Use Bylaw* noted above, as well as the evidence provided by the Development Authority and the Appellants, finds that development is occurring on the Lands in the form of an automobile recycling and salvage business, which is operated on the Lands by Babylon Recycling with the permission of Mr. Roberts, who is the current owner of the Lands. The Board finds that the business operations occurring on the Lands has caused a change in the use of the Lands and a change in the intensity of the use of the Lands pursuant to subsections c) and d) of the definition of development provided in the *Land Use Bylaw*.

[78] The Board further finds, after considering section 90 of the *Land Use Bylaw*, as well as the evidence provided by the Development Authority, that a development permit is required for the development occurring on the Lands. The business operations occurring on the Lands are not exempt from the requirements of a development permit under section 92 of the *Land Use Bylaw*, which means that a development permit is required for the development occurring on the Lands pursuant to section 90 of the *Land Use Bylaw*.

[79] Finally, after considering the evidence provided by the Development Authority, the Board finds that a development permit has not been issued for the development occurring on the Lands, despite one being required under section 90 of the *Land Use Bylaw*. The Board did not hear evidence to the contrary from the Appellants. In fact, the Appellants were forthright in admitting that a business has been operating on the Lands without a valid development permit dating back to at least early 2023, and that the business operations on the Lands have steadily intensified since that time, which was corroborated by the evidence provided by the Development Authority.

[80] The Board, therefore, concludes that a contravention of the *Land Use Bylaw* has occurred and that the Development Authority was correct in issuing a stop order for the development occurring on the Lands, in the form of an automobile recycling and salvage business operating on the Lands, pursuant to section 645 of the *Municipal Government Act*.

***Issue 2 – Should the Stop Order Issued by the Development Authority be Confirmed, Revoked, or Varied?***

[81] Having found that a contravention of the *Land Use Bylaw* has occurred in the form of development occurring on the Lands without a valid development permit, and having found that the Development Authority was correct in issuing a stop order under section 645 of the *Municipal Government Act*, the Board next considered its powers under section 687(3) of the *Municipal Government Act* to confirm, revoke, or vary the stop order issued by the Development Authority.

[82] While the Board was provided with a detailed account of the history and background leading up to the establishment and operation of the business on the Lands, the Board was not provided with evidence from the Appellants that directly related to matters under the Board's jurisdiction, such as whether the stop order should be confirmed, revoked, or varied. The Board, ultimately, was not provided with satisfactory reasons to justify either revoking or substantially varying the stop order issued by the Development Authority.

[83] With that being said, the primary duty of the Board is to ensure that developments comply with the requirements of the *Land Use Bylaw*, and that developments that do not comply with the *Land Use Bylaw* are brought into compliance with its requirements. The stop order issued by the Development Authority issued two orders to Mr. Roberts to bring the Lands into compliance with the *Land Use Bylaw*:

- (1) to immediately cease all business activities on the Lands no later than 4 PM on August 19, 2024; and
- (2) to remove all equipment, vehicles, materials, structures, or modifications associated with the business from the Lands no later than 4 PM on October 25, 2024.

[84] When considering its duty to ensure compliance with the *Land Use Bylaw*, the Board finds it necessary to provide the Appellants with additional time to comply with the order to remove all equipment, vehicles, materials, etc. associated with the automobile recycling and salvage business from the Lands. The Board heard from Planning Services and the Appellants that Mr. Roberts' redesignation and master site development plan applications, which would facilitate a future development permit application for the development occurring on the Lands, will be considered by Council at a public hearing scheduled for October 22, 2024.

[85] To provide the best possible chance for the Lands to be brought into compliance with the *Land Use Bylaw*, the Board has extended the deadline for compliance with the second order included in Stop Order 202302-0202 from 4 PM on October 25, 2024 to 4 PM on November 29, 2024. This will provide the Appellants with an opportunity to have Mr. Roberts' redesignation and master site development plan applications considered by Council, the outcome of which will determine the possible future uses of the Lands, which may or may not allow for the operation of an automobile recycling and salvage business.

[86] Finally, the Board would like to note that Stop Order 202302-0202 was validly issued by the Development Authority under section 645 of the *Municipal Government Act* for the following reasons, even though the validity of the stop order was not raised by any of the parties during the appeal hearing:

- (1) Stop Order 202302-0202 was delivered to Mr. Roberts on the same day it was issued by the Development Authority as required by section 645(2.1) of the *Municipal Government Act*;
- (2) Mr. Roberts is the owner of the Lands and is responsible for allowing the development to occur on the Lands without a valid development permit as required by section 645(2) of the *Municipal Government Act*; and
- (3) the two orders issued to Mr. Roberts in Stop Order 202302-0202 are both permitted under section 645(2) of the *Municipal Government Act*.

[87] Given that there were previous misunderstandings on the part of the Appellants with the requirements of Stop Order 202302-0202, the Board would like to make it clear that all business operations on the Lands are to cease immediately. This portion of the order is not limited to further intensification of the Lands but instead includes all past, current, and future business operations on the Lands.

[88] While the Board heard evidence from the parties on the following matters, the Board did not consider these matters when making its decision on this appeal as they were not relevant to the Board's considerations:

- (1) the background between the Appellants and Planning Services regarding Mr. Roberts' redesignation and master site development plan applications;
- (2) the future land use strategy for the area surrounding the Lands identified in the Conrich Area Structure Plan and the timeframe and phasing for implementing the future land use strategy;
- (3) the requirement for mandatory hookup to a water and wastewater system under the Conrich Area Structure Plan and the feasibility of such requirement for the Appellants;
- (4) attempts by Mr. Roberts to sell the Lands, including the potential purchase and sale agreement between Mr. Roberts and Babylon Recycling;

- (5) past issues between the Appellants and CN Rail; and
- (6) past planning and development applications associated with the Lands.

[89] For the reasons set out above, the appeal is allowed in part and the deadline for compliance with Stop Order 202302-0202 issued by the Development Authority on August 16, 2024 pursuant to section 645 of the *Municipal Government Act* is varied as follows:

- (1) the deadline to comply with the order to remove all equipment, vehicles, materials, structures or modifications to the Lands associated with the unauthorized business is extended to no later than 4pm, November 29, 2024.

[90] For clarity, the deadline to comply with the order to immediately cease all activity on the Lands associated with the business remains unchanged from the original deadline of 4pm, August 19, 2024.

Dated at Rocky View County, in the Province of Alberta on September 27, 2024.



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Bob Doherty, Presiding Officer  
Subdivision and Development Appeal Board



**APPENDIX 'A': EXHIBIT LIST**

Submissions marked as exhibits and considered by the Board:

<b>Exhibit</b>	<b>Description</b>	<b>Pages</b>
1.	Notice of Appeal	1
2.	Notice of Hearing	2
3.	Development Authority Report	6
4.	Stop Order 202302-0202	5
5.	Letter in Opposition of Appeal	1
6.	Development Authority Presentation	26
7.	Letter from Bunt & Associates (submitted at the hearing)	1
8.	Letter from Osprey Engineering Inc. (submitted at the hearing)	1