

**AGENDA**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
LEDUC COUNTY  
COUNCIL CHAMBER, COUNTY CENTRE, NISKU, ALBERTA**

**Monday, March 19, 2018**

1. **Order and Roll Call** – 9:00 a.m.

2. **Organizational Meeting of the Board**

- a) Nomination of Chair
- b) Nomination of Vice Chair
- c) Proposed Meeting Dates (3<sup>rd</sup> Friday of each month, as required)

3. **Agenda Adoption**

4. **Adoption of Previous Minutes**

\* December 1, 2017 Subdivision and Development Appeal Board Meeting

5. **Subdivision and Development Appeal Hearing**

\* a) 9:00 a.m. D17-327 Appeal by Wilfred Peddy, Home Based Business Type 2  
Roll #1144021 (Landscaping) on Lot 1, Block 3, Plan 0420321, Pt. SE  
36-50-24-W4th (24034 Twp. Rd. Rd 505)

\* b) 10:00 a.m. D18-002 Appeal by Nicline Backhoe Services Ltd., Home Based  
Roll # 467000 Business Type 3 [General Contractor – Major -  
Excavation Services; Automotive and Equipment  
Repair]; Leave as Sited – Accessory Building  
(427.91 sq. m) and Sign (2.97 sq. m) on Block 1,  
Plan 9121277, Pt. NE 4-49-23-W4 (49072 Rge Rd 233)

6. **Next Meeting Date** – Friday, April 20, 2018 (or at the call of the Chair)

7. **Adjournment**

Legend

\* Items Attached To Agenda

**MINUTES OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD MEETING, LEDUC COUNTY, HELD ON MONDAY, MARCH 19, 2018 IN THE COUNCIL CHAMBER OF THE COUNTY CENTRE BUILDING, NISKU, ALBERTA.**

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**Order and Roll Call**

The meeting was called to order at 9:00 a.m., Monday, March 19, 2018 by Garrett Broadbent, Clerk of the Subdivision and Development Appeal Board and Board Members Mary-Ann McDonald, Doug Ruel, Rick Smith and Larry Wanchuk present. Board Member Shirley Jolly was absent for personal reasons.

Also present were Ms. Joyce Gavan, Recording Secretary and Mr. Colin Richards, Team Lead Development.

Present as well were three other individuals.

**Organizational Meeting of the Board**

Mr. Garrett Broadbent, Clerk, indicated that Bylaw No. 13-18 was adopted by Leduc County Council on March 13, 2018 which establishes the Subdivision and Development Appeal Board. This Bylaw repealed Bylaw No. 60-07, to come into compliance with the Modernized Municipal Government Act.

As per Bylaw No. 13-18 the Chair and Vice Chair are to be elected at the first meeting of each year or following appointment.

**Nominations for Chair**

Mr. Broadbent, Clerk, called for nominations for the position of Chair of the Subdivision and Development Appeal Board.

Board Member Smith nominated Board Member Mary-Ann McDonald for Chair.

**Nominations Cease - Chair**

**01-18** Board Member Wanchuk -- that nominations cease for Chair of the Subdivision and Development Appeal Board.

Carried

Mr. Broadbent declared Board Member McDonald elected, by Acclamation, as Chair of the Subdivision and Development Appeal Board.

**Assume the Chair**

Chair McDonald assumed the Chair.

**Nominations for Vice Chair**

Chair McDonald called for nominations for the position of Vice Chair of the Subdivision and Development Appeal Board.

Board Member Smith nominated Board Member Ruel for Vice Chair.

**Nominations Cease - Vice Chair**

**02-18** Board Member Smith -- that nominations cease for Vice Chair of the Subdivision and Development Appeal Board.

Carried

Chair McDonald declared Board Member Ruel elected as Vice Chair of the Subdivision and Development Appeal Board.

**Agenda Adoption**

**03-18** Board Member Smith -- that the Agenda for the March 19, 2018 Subdivision and Development Appeal Board meeting be accepted with the following addition and to be considered after the scheduled hearings:

- 2. d) Review Terms of Reference under Bylaw No. 13-18

Carried

**Adoption of Previous Minutes – December 1, 2017**

**04-18** Board Member Smit -- that the December 1, 2017 Subdivision and Development Appeal Board minutes be confirmed as circulated.

Carried

**Excuse Board Member Smith**

In accordance with Bylaw No. 13-18, Section 3 (Membership), Board Member Smith excused himself from participation in the remainder of the meeting due to only one Council member to participate in the meeting.

Councillor Smith exited the Council Chamber at 9:06 a.m.

**Appeal by Wilfred Peddy whereby Development Permit Application D17-327 was refused for a Home Based Business Type 2 (Landscaping) located at Lot 1, Block 3, Plan 0420321, Pt. SE 36-50-24-W4, (24034 Twp Rd 505).**

Chair McDonald called the hearing to order at 9:07 a.m. and introduced Board Members and staff.

Chair McDonald asked if any Board Member felt a need step down from this hearing within the boundaries of Conflict of Interest, and there was no one.

Chair McDonald asked if anyone had any objection to any of the members of the Subdivision and Development Appeal Board hearing this appeal, and there was no objection indicated.

Chair McDonald explained the purpose of the hearing, the order of presentation and the procedures to be followed.

Chair McDonald then called upon the Board Secretary to introduce the subject of this appeal.

Mr. Garrett Broadbent, Clerk, advised of the appeal by Wilfred Peddy whereby Development Permit Application D17-327 was refused for a Home Based Business Type 2 (Landscaping) located at Lot 1, Block 3, Plan 0420321, Pt. SE 36-50-24-W4, (24034 Twp Rd 505). The reasons for appeal are as follows:

1. When I submitted for a permit ( $\pm$ 11 years ago) to build the shop I was asked how come I wanted to build that big. I had advised it was for my tandem bobcats to be inside. It was advised at that time I run a small business.
2. The permit was approved to build the shop. It has been used for 11 years with no problem from people around me which were ok with it.
3. There are holiday trailers on it now which will be gone in May as my friend is looking for a yard in Nisku.

Mr. Broadbent advised the following information is attached for the Board:

- 1) Staff Report.
- 2) Notice of SDAB Hearing package dated February 26, 2018.
- 3) Development Permit Refusal dated February 8, 2018.
- 4) Development Permit Application D17-327.
- 5) Business Information Sheet.
- 6) Key Plan.
- 7) Air Photos.

The Board confirmed the appeal was submitted properly and acceptable to the Board.

Chair McDonald asked the Board Secretary to read/present any other relevant information and/or correspondence, and Mr. Broadbent advised there was none.

Chair McDonald called upon the Planning and Development Department to provide background information.

Mr. Colin Richards, Team Lead Development Services, provided the following information relating to the appeal by Wilfred Peddy:

1. The subject property is located immediately off of Township Road 505, approximately 800 m west of Range Road 240 and 1.2 km east of Beaumont's eastern boundary.
2. This is an appeal against the decision of the Leduc County Development Authority, whereby an application for a Home Occupation Type 2 for a landscaping business at the subject site was refused.
3. The appellant noted in the application that the proposed business would provide off site landscaping, gravel and snow removal services, operating from 7 am – 7 pm, six days a week and includes no additional employees beyond the residents of the on-site dwelling. It was indicated that the business operates 2 commercial vehicles, one being 1 ton or less, and the other being 5 ton or larger. It was indicated that there would be no outdoor storage associated with the business.
4. Development on the property consists of one dwelling and a single accessory building, which is related to the proposed Home Based Business on the site.
5. Surrounding development includes a country residential parcel immediately east of the site, with other surrounding properties being agricultural in scale, use and zoning.
6. In accordance with the Land Use Bylaw No. 07-08, the subject property is districted within the Country Residential (RC) District, in which all applications for a Home Based Business Type 2 are considered a discretionary land use.
7. The Development Authority refused the application for the following reasons:
  - 1) In accordance with Part 7.19.3(d) of the Home Based Business Type 2 regulations of the Land Use Bylaw, associated vehicles shall be limited to one commercial vehicle, not exceeding one (1) ton in weight. The proposed Home Based Business

- proposes the use of two commercial vehicles, with one being five (5) ton or larger, which exceeds the requirements of a Home Based Business Type 2.
- 2) In accordance with the information submitted in support of the application, the proposed business is more appropriately defined as a "Landscape Sales & Service" or "Home Based Business Type 3", which are neither permitted or discretionary uses within the Country Residential (RC) District, in accordance with Part 9.3 of the Land Use Bylaw.
8. The reasons for refusal noted that the application was considered beyond the scope of a Home Based Business Type 2 due to the size and amount of equipment required to operate the business. It was considered that the business would be more appropriately defined as a "Landscape Sales & Service" or "Home Based Business Type 3" development, neither of which are permissible within the Country Residential land use district of the Land Use Bylaw 7-08.
  9. In accordance with the Notice of Appeal, dated February 22, 2018, the appellant is appealing the decision of the Development Authority as they consider that they constructed the existing accessory building (shop) on the premises 11 years ago with an understanding from the Development Authority that it was to be utilized for a small home business. In addition, the appellant notes that in 11 years that the business has been operating on the premises, there have been no concerns raised from adjacent landowners.
  10. A planning history search of the subject property indicates a number of historical applications, summarized as follows:
    - 2006 – Application D06-062 was approved to leave as sited the existing shop.
    - 2004 – Application D04-310 was submitted for a single family dwelling with attached garage, shop and sea-can. The dwelling, garage and shop were approved and the sea-can was refused. The decision of the Development Authority was upheld by the SDAB.
    - 2004 – Application D04-031 for a dugout for vegetation management was approved by the Development Authority.
  11. During the referral of the application, the County received one adjacent landowner letter requesting additional information from the applicant to reflect the true nature of the business being operated which included:
    - a) specifying the locations and accumulated quantities of sand, gravel and topsoil associated to the business,
    - b) consideration of the business operating outside of the requested operating windows,
    - c) information regarding the storage and transportation of other equipment related to the landscaping business.
  12. In response to the lodging of the appeal by the appellant, a further adjacent landowner letter was received that provided the following observations and comments:
    - a) that the business is not 7 am to 7 pm as advised, it includes the hours between 7 pm and 7 am, especially during winter months,
    - b) that the projected traffic levels were underestimated in the application,
    - c) that the business also includes additional equipment and vehicles not declared within the application,
    - d) that the business includes the stockpiling of sand, soil and gravel to support landscaping activities, and
    - e) that the sale of neighbouring properties are being hindered by the business operations occurring on the appeal site and the adjacent property to the west.
  13. When reviewed against the key requirements of the Land Use Bylaw, the County considers that the proposed development of a landscaping business exceeds the maximum requirements of a Home Based Business Type 2. The Land Use Bylaw directs that Type 2

home businesses not utilize more than one commercial vehicle and the appellant indicates that two are required for the operation. The number of commercial vehicles required would render the business a Home Based Business Type 3, which is not permissible within the Country Residential District. Alternatively, the Development Authority considers that the proposed development could be classified as a Landscape Sales and Service operation, however, this use type, is again, not permissible within the Country Residential District.

14. In addition to the above, an adjacent landowner concern suggests that the business operation is larger than suggested within the application. With regard to this, site visits by the Development Authority appear to support this claim, with outdoor storage of goods, materials and vehicles being observed on the site. These activities, are again, not considered permissible under the scope of a Home Based Business Type 2.
15. In consideration of the appellants submission that the Development Authority issued approval of the existing shop on the understanding that it would be utilized for commercial activity, a review of the planning history and a file search has not found any evidence to support this claim, nor do any of the historically planning approvals include a condition which allows for business use of the premises.
16. In summary, the Development Authority consider that the proposal exceeds the limitations of a Home Based Business Type 2 and would be better defined as a Home Based Business Type 3, or Landscape Sales and Service use type, neither of which are considered permitted or discretionary within the Country Residential (RC) District. Should the applicant wish to pursue such a business of this nature on the subject property, it is recommended that they work with the County to discuss an appropriate home business for the premises, or that a redistricting application be submitted to the County and considered by Council through the appropriate Public Hearing process.
17. Accordingly, administration recommend that the Subdivision and Development Appeal Board uphold the decision of the Development Authority to refuse Development Permit D17-327 for the reasons stipulated within the Notice of Decision.

Chair McDonald asked Board Members if there were any questions of the Development Authority.

In response to questions by Board Members, administrative staff advised of the following:

- Records show there was a permit to construct the shop, however no permits for operation of a business on that property.
- A copy of the letter from adjacent landowner will be provided to the Board Members.

Chair McDonald called upon the appellant to speak to the proposed development.

Mr. Wilfred Peddy, Appellant, provided the following information:

1. An application for the construction of the shop was submitted  $\pm 12$  years ago. It was advised at that time the reason for the shop was to run a small business and feel approval was provided for the business at that time.
2. I contacted the two landowners adjacent and neither one expressed concern. There have been no complaints received. I am surprised that the neighbour to the west has submitted a concern as there is a mess there with unauthorized residents.
3. The trailers on site will be removed by May.
4. The loader and tractor which was parked outside will also be parked inside the shop by May, 2018.
5. Just run a small operation for a developer in Beaumont.
6. The sea-can was recorded by the County upon an inspection and that has been removed.

7. Have slowed down my operation as I am looking to retire within two years; am home by 6:00 p.m. nightly. This is a small operation – the only vehicles that come in are b-trains to deliver sand and/or gravel. No dirt is stockpiled on site. Topsoil is hauled from a site off Range Road 243.
8. Feel my application was triggered when the County conducted an inspection on the property to the west due to unauthorized activity.
9. I do park some trailers at the back of an adjacent property.
10. There are no employees and I operate the machine myself.
11. The bobcat sits on the development site and only brought home when not in use.

Chair McDonald asked if there were any questions by the Board Members of the appellant.

In response to questions by Board Members, Mr. Peddy advised of the following:

- To the west of property there is a pile of gravel; it is dumped to the back of property on the adjacent landowner's property with his permission.
- In operation there are two, 1 ton trucks; four bobcats, one tandem truck and two trailers to haul topsoil (usually kept at site for topsoil), all of which can fit in the shop.
- There are two personal holiday trailers one of which is my daughter's.
- The gravel and dirt is stockpiled immediately adjacent of property ( $\pm$ 120 tonnes).
- No big trucks come onto property as it is hauled via Township Road 243.
- There is occasional snow dumped onto property, however no contamination is evident.

Clerk Broadbent read into the record the following correspondence:

- 1) January 5, 2018 email from Dale Sutherland, adjacent landowner, requesting additional details to capture activities in excess of two vehicles and 14 trips weekly operating from Sunday to Friday – 7:00 am to 7:00 pm with the following considerations:
  - locations and accumulated quantities of sand, gravel, topsoil and fill;
  - transportation and management of those volumes;
  - special considerations when operating outside of the applicant proposed business window; and
  - storage and transportation of other associated equipment for the support of the landscape business.
- 2) March 2, 2018 email from Dale Sutherland expressing that the following do not seem to be gaining visibility with the appellant's submission:
  - The definition of the activities that will define the development are vague and inaccurate. This business is not 0700 to 19:00 as submitted but also includes 1900 to 0700 hours especially in the winter months.
  - The traffic in and out of the property was underestimated by not including two trailered skid steer rigs, 5 ton dump truck and the trailer end dump for stockpiling landscape material.
  - There are additional pieces of equipment associated with the business such as: self-propelled industrial tiller, two trailer/skid steer/3 ton truck combos, one - 5 ton dump truck, one – 10k lb. + wheel loader.
  - The stockpiles of sands, soils and gravel to support landscape activities. The adjacent property dumping of undefined material.

A primary concern with the application and subsequent appeal is the lack of transparency related to the business activities. The general appearance of the appellant's property and the collaboration activities with the adjacent property to the west have resulted in comments back through our realtor from prospective buyers that state "too bad the property is next to a dump".

When myself or other neighbours in the area have applied for development permits (shop for me, RV storage for the Yee's, subdivision etc.) levels of detail were expected by the County. The expectation becomes that all applications should have the same scrutiny and appealing the process through the assumption that the business is automatically associated with a building permit is frankly insulting.

Mr. Peddy clarified that the number of trucks indicated above is incorrect; the use of the equipment referenced is stored on site and not used all year. Mr. Sutherland's property is for sale and can understand his concern. Reassured the Board that everything will be removed by May, 2018.

Board Member requested clarification with respect to the dumping of snow, and Mr. Peddy advised that the hauling of snow will be relocated. Environmental concerns were acknowledged.

Chair McDonald called upon anyone in attendance to speak in support or against the appeal and there was no one.

Chair McDonald asked if Technical Staff to provide final comments.

Mr. Richards provided the following closing comments:

- Reminder to the Board, that the appeal is dealing with the classification of the districting; the operation is in conjunction with the landscaping business.
- The refusal was given for reasons stated and staff recommends that redistricting be applied for.
- The Board should be aware that on Feb 21, 2018 a stop order was issued on the adjacent property to the west.

Chair McDonald asked the appellant if he had any final comments, and Mr. Peddy provided the following closing comments:

- Wishing to retire in two years so am winding down; have sold some equipment e.g. trailers, truck.
- This is not a big business being operated and operate solely on my own.
- Store as much equipment as possible on job site.
- The excess equipment will be removed by May, 2018 and the yard will become clear as will be stored inside the shop.
- I did talk to Mr. Sutherland and he advised of no objection so am surprised with the email submitted. Feel a lot of the objection is as a result that Mr. Sutherland has his property for sale and the unauthorized activity on the property to the west impacts potential sale.

Chair McDonald asked the appellant if he felt he received a fair hearing, and Mr. Peddy responded affirmatively.

### **Conclusion of Public Hearing**

Chair McDonald declared the Public Hearing concluded at 9:53 a.m.





**Recess**

The meeting recessed at 9:54 a.m. and reconvened at 10:00 a.m. with Chair Mary-Ann McDonald and Board Members Larry Wanchuk and Doug Ruel present.

Also present were Mr. Garrett Broadbent, Clerk; Ms. Joyce Gavan, Recording Secretary; and Mr. Colin Richards, Team Lead Development Services.

**Appeal by Pauline and Nicholas Plesman, Nicline Backhoe Services Ltd., whereby Development Permit Application D18-002 was refused for a Home Based Business Type 3 (General Contractor – Major Excavation Services; Automotive and Equipment Repair); Leave as Sited – Accessory Building (427.91 sq.m) and Sign (2.97 sq.m) located at Block 1, Plan 9121277, Pt. NE 4-49-23-W4, (49072 Range Road 233).**

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Chair McDonald called the hearing to order at 10:01 a.m. and introduced Board Members and staff.

Chair McDonald asked if any Board Member felt a need step down from this hearing within the boundaries of Conflict of Interest, and there was no one.

Chair McDonald asked if anyone had any objection to any of the members of the Subdivision and Development Appeal Board hearing this appeal, and there was no objection indicated.

Chair McDonald explained the purpose of the hearing, the order of presentation and the procedures to be followed.

Chair McDonald then called upon the Clerk to introduce the subject of this appeal.

Mr. Garrett Broadbent, Clerk, advised of the appeal by Pauline and Nicholas Plesman, Nicline Backhoe Services Ltd., whereby Development Permit Application D18-002 was refused for a Home Based Business Type 3 (General Contractor – Major Excavation Services; Automotive and Equipment Repair); Leave as Sited – Accessory Building (427.91 sq.m) and Sign (2.97 sq.m) located at Block 1, Plan 9121277, Pt. NE 4-49-23-W4, (49072 Range Road 233). The reasons for appeal are as follows:

1. Part 7.19.1 (d) – the accessory building is not being used for more than 50% as previously stated on our original application. Of the 50 ft. X 10 ft. building, 36% is being used by Nicline Backhoe Services Ltd.  
There is only “1” business operating on the said property. That being Nicline Backhoe Services Ltd., a company limited, not exclusive to excavating. All the business is being done through Nicline Backhoe Services Ltd.  
As part of our business we do agricultural site development, and Agricultural repair. Agriculture related business is 30% of our income.
2. Part 7.19.4 (b) – the clearing on the map is not all storage. There is approximately an area 50 ft. X 100 ft. that is used for storage made of concrete blocks that holds commodities and equipment attachments. There is a large turn about that is also part of the 10000 sq. m. There is also a parking area that is 75 ft. X 100 ft. Upon request someone from the County is welcome to come out and do a site evaluation.  
The outdoor storage area we have is 200 metres from the road, and is not visible to any neighbour or passer-byes. There were no neighbours that brought any complaints or

concerns forward regarding our application for an at home based business. So we feel that is another reason for you to consider relaxing your policy.

3. Part 7.19.4 (c) – the sign we have at the end of the driveway is 4 ft. X 5 ft. We were unaware that there was regulations on signage set by the County. We are willing to either change the sign or remove it.
4. Part 7.19.4 (e) vehicles – we have 4 vehicles one ton or less. One of which is parked in the house garage. There is one gravel truck with associated trailers on site. We are selling the 2<sup>nd</sup> gravel truck in the spring of 2018.
5. It is because of the economic downturn that we find ourselves needing to diversify. We have been on the property for 15 years operating Nicline Backhoe Services Ltd. Previously we had a 160 acre parcel of land/farm where after selling our dairy we started the excavating business.
6. We have never been asked or told that we needed a permit. It is only after being in business for 18 years we find this out. There is nothing about the business that is going to change; the foot print will remain the same. No additional buildings or clearing of existing trees, no additional employees or equipment is being added.
7. Having you reverse your decision and granting us this permit would be greatly appreciated.

Mr. Broadbent advised the following information is attached for the Board:

- 1) Staff Report.
- 2) Appeal Received March 1, 2018.
- 3) Notice of SDAB Hearing package dated March 1, 2018.
- 4) Development Permit Refusal dated February 23, 2018.
- 5) Development Permit Application D18-002.
- 6) Business Information Sheet
- 7) Key Plan.

The Board confirmed the appeal was submitted properly and acceptable to the Board.

Chair McDonald asked the Board Secretary to read/present any other relevant information and/or correspondence, and Mr. Broadbent advised there was none.

Chair McDonald called upon the Planning and Development Department to provide background information.

Mr. Colin Richards, Team Lead Development Services, provided the following information relating to the appeal by Nicline Backhoe Services Ltd.:

1. This is an appeal against the decision of the Leduc County Development Authority, whereby an application for a Home Occupation Type 3 for a general contractor and automotive and equipment repair business at the site was refused.
2. The subject property is located immediately off of Range Road 233 and  $\pm 1.2$  km north of Township Road 490.
3. Development on the property consists of one dwelling and a single accessory building, which is related to the proposed Home Based Business on the site.
4. In accordance with the Land Use Bylaw No. 07-08, the subject property and areas immediately surrounding the site are districted within the Agricultural (AG) District, in which all applications for a Home Based Business Type 3 are considered a discretionary land use.
5. The appellant noted in the application that the proposal seeks the approval of an existing excavating business and heavy duty mechanical service. It was indicated that the business

would include the storage of equipment, gravel and other materials and operate from 7 am to 6 pm, Monday through Friday on a given week.

6. It was noted that the business operates 8 commercial vehicles, 6 being one ton or less, and the other two being 5 ton or larger. It was indicated that there would be 6,317 sq.m (68,000 sq. ft.) of outdoor storage associated with the business.
7. The Development Authority refused the application for five reasons and summarized as follows:
  - 1) That the business occupies over 50% of the accessory building on the premises, contrary to the 50% maximum usage as stipulated within the Land Use Bylaw No. 07-08.
  - 2) That the proposal seeks to operate two businesses from the property, contrary to Land Use Bylaw regulations that limit home businesses to one single ancillary business.
  - 3) That the proposal seeks to utilize 6,317 sq.m (68,000 sq.ft) of outdoor storage, which exceeds the maximum allowance of 92.9 sq.m (1,312 sq.ft).
  - 4) That the proposed signage for the business at 3 sq.m in size, exceeds the maximum allowable signage for a home business, which is defined at 1 sq.m.
  - 5) That the business proposes the use of 8 commercial vehicles, which exceeds the maximum allowable number of commercial vehicles which is defined as a maximum of two.
  - 6) The reasons for refusal noted that the application was considered beyond the scope of a Home Based Business Type 3 due to the size and amount of equipment required to operate the business. It was considered that the business would be more appropriately defined as a "*Landscape Sales & Service*" or "*Home Based Business Type 3*" development, neither of which are permissible within the Country Residential land use district of the Land Use Bylaw 7-08.
8. In accordance with the Notice of Appeal, dated February 28, 2018, the appellant is appealing the decision of the Development Authority based on a number of reasons summarized below:
  - That only 36% of the accessory building is being used for business purposes, rather than the 99% as indicated on the original application.
  - That there is only one business operating on the premises, as the excavation business and automotive repair business both operate under the same company name; Nicline Backhoe Services Ltd.
  - That the outdoor storage element is only 465 sq.m (5,000 sq.ft.).
  - That the outdoor storage is located 200 metres from the road, and therefore provides no visual intrusion.
  - That there were no objections raised against the proposed development.
  - That the sign can be changed or removed if required.
  - That the commercial vehicle numbers include 4 trucks which are one ton or less, and that one of the gravel trucks will be sold in the spring of 2018.
  - That the economic downturn requires business diversification.
  - That the business has been operating for 15 years and were never told by the County that a permit was required.Based on the above, the appellant has requested that the SDAB relax the requirements of the Land Use Bylaw No. 07-08 and allow the proposed business on the site.
9. A planning history search of the subject property indicated there was one historical application on the property from 2007, whereby Application D07-193 was approved for a mobile home as a temporary second residence for a period of five years.

10. The proposal to establish an excavation business and automotive repair facility on the site as a Home Based Business Type 3 was refused by the Development Authority for the reasons outlined in the Notice of Decision and as discussed earlier in this report.
11. During the processing of the application, it was noted that the business operations are already occurring on the property, and with this, the unauthorized clearing of a large area of the forested area of the property.
12. When reviewed against the key requirements of the Land Use Bylaw 7-08, the County considers that the proposed business operations far exceed the maximum allowable requirements of a Home Based Business Type 3 and refused the development accordingly, for the 5 reasons noted in the Notice of Decision.
13. With regard to the first reason for refusal, that the business occupies 99% of the accessory building on the premises, this exceeds the maximum consideration of 50% building usage as stipulated within Part 7.19.1(d) of the Land Use Bylaw 7-08.
14. The 99% usage of the accessory building for the business was declared by the applicant within the Business Information Sheet submitted in support of the application. In support of the appeal, the appellant has indicated in the Notice of Appeal that only 36% of the accessory building is being utilized for business purposes.
15. In response to this, the County does acknowledge that a 36% usage of an accessory building may be acceptable for a home based business, but notwithstanding this new information, the Development Authority remains unable to offer support of the proposal based on the other reasons for refusal, as discussed below.
16. The second reason for refusal notes that the proposal seeks to operate two businesses from the property. Part 7.19.1(f) of the Land Use Bylaw directs that home businesses are limited to one single business per parcel of land and this regulation was the basis in which this reason for refusal was provided.
17. In response to this, the appellant advises that there is only one business operating on the premises as the excavation business and automotive repair business both operate under the same company name; Nicline Backhoe Services Ltd.
18. Regarding the above, the Development Authority considers that notwithstanding that the operations both function under the same company name, that they are indeed two separate land use types, which should be treated as multiple businesses. The appellant indicated within the original application that the proposed home business encompassed an excavating business, which includes the storage of equipment, gravel, and other materials; and a heavy duty mechanical services operation. When these uses are reviewed against the Land Use Bylaw 7-08, they would be classified as two separate use types, likely *Contractor Service, General* and *Automotive and Equipment Repair*, or similar. Should separate uses such as these be proposed on a single property that allows consideration for such uses, such as the Industrial District, the Development Authority would require that both uses are applied for. The Development Authority have applied the same logic to this proposal, and consider that regardless of the ownership, that the proposal includes 2 separate businesses.
19. The third reason for refusal was provided as the proposal includes 6,317 sq.m (68,000 sq. ft.) of outdoor storage, which exceeds the maximum allowance of 92.9 sq.m (1,000 sq. ft.) defined in Part 7.19.4(c) of the Land Use Bylaw 7-08. This amount of outdoor storage calculates to be 6,224 sq.m (67,000 sq. ft.) larger than the maximum allowable consideration of outdoor storage.
20. The appellant has indicated in the Notice of Appeal that that the outdoor storage element is only 465 sq.m (5,000 sq. ft.) and that the other areas are utilized for vehicle turning and parking.
21. In response to this, the Development Authority considers that the outdoor storage area is more closely reflected to be the scale indicated within the Notice of Decision, however,



should the appellant seek a reduced outdoor storage area of 465 sq.m (5,000 sq. ft.) it must be noted that this area still remains 372 sq.m (4,000 sq. ft.) larger than any storage area that could be approved under the home business use type.

22. Furthermore, it is acknowledged that the outdoor storage area is occurring within an area in which extensive tree clearing has occurred and a file search indicates that no approvals for such clearing were issued, which is contrary to Part 6.16 of the Land Use Bylaw 7-08 that requires clearing operations to obtain a Development Permit.
23. The fourth reason for refusal references that the proposed signage for the business at 3 sq.m in size, exceeds the maximum allowable signage for a home business, which is defined at 1 sq. m in accordance with Part 7.19.4(c) of the Land Use Bylaw No. 07-08.
24. In response to this, the appellant indicates that the sign can be reduced or removed if required.
25. The fifth reason for refusal references the 8 commercial vehicles associated with the business as noted in the Business Information Sheet submitted in support of the application. Part 7.19.4 (e) specifies that a Home Based Business Type 3 utilize no more than 2 commercial vehicles, with one being under 1 ton in weight and one being over 1 ton in weight.
26. In response to this, the appellant discusses in the Notice of Appeal that the true number of commercial vehicles associated with the business includes 4 trucks under 1 ton and 2 gravel trucks, of which one will be sold in spring of 2018.
27. Notwithstanding these updated commercial vehicle numbers, the Development Authority notes that these still surpass the maximum number allowed for a Type 3 home business, and therefore would still not be able to gain support under the Land Use Bylaw 7-08.
28. In summary, the Development Authority consider that the proposal far exceeds the limitations of a Home Based Business Type 3 and would be better defined under a number of more intensive uses suited to a defined business or industrial park.
29. Should the applicant wish to pursue large-scale commercial/industrial business of this nature on the subject property, it is recommended that a redistricting application be submitted to the County and considered by Council through the appropriate Public Hearing process.
30. Accordingly, administration recommend that the Subdivision and Development Appeal board uphold the decision of the Development Authority to refuse Development Permit D18-002 for the reasons stipulated within the Notice of Decision and that the operation cease operation immediately and the landowners work with the County to replant any trees that have been removed without the required permits.

Chair McDonald asked Board Members if there were any questions of the Development Authority, and there were none.

Chair McDonald called upon the appellant to speak to the proposed development.

Mrs. Pauline Plesman and her son Kevin, Appellants, provided the following information:

1. The tree clearing included an old clump of trees which were blocking a turn-about. After clearing out the turn-about was usable.
2. The subject property is  $\pm 75$  acres which is not a small parcel; wish to utilize the land and this operation provides a good fit.
3. No neighbours have expressed concern.
4. Did not realize a permit was required until the former Councillor for this area brought it to our attention.



5. With respect to the property photo shown by staff, this is an old photo and the stuff depicted is not accurate as a lot of it has been removed/cleaned up.
6. Run only one business; my husband hauls gravel for the County which is part of excavating. Are not trying to add a separate business.
7. Nicline Backhoe Services Ltd. is not limited to excavating – it's one business doing multiple things.
8. Have three pieces of equipment.
9. Kevin is a heavy duty mechanic and utilizes the shop in the winter months for his employment.
10. About 80% of work is done for Leduc County of which a business permit is pulled. Had we known a permit was required we would have applied. Have been operating Nicline Excavating Services Ltd. for 18 years now.
11. Moved onto property ±15 years ago.

Chair McDonald asked if there were any questions by the Board Members of the appellant(s).

In response to questions by Board Members, Mrs. Plesman and her son, Kevin, advised of the following:

- Approximately 30% of business includes repairs (e.g. to backhoe) and excavating.
- The gravel brought in for the stockpiling of gravelling is extracted from a local gravel pit. There is no contaminated soil accepted.
- By the turn-around is where stockpiling is stored; there are cement blocks separating products e.g. washed gravel, sand washed and road crushed gravel.
- Have one company name with primary use for excavating; In winter the shop is utilized for mechanical repairs.
- Everything is run under Nicline Backhoe Services Ltd.
- When bought property about 15 years ago, the assessor asked what the property was being used for and the signage was addressed.
- Once the sign was erected the taxes increased; there was no concerns with the erection of the signage until now.
- There is no truck or business traffic coming onto property; we haul it out with our trucks e.g. 3-4 trips per week.
- This property is not farmable due to the tree coverage.

Chair McDonald noted there was no one in attendance to speak in support or against the appeal.

Chair McDonald asked administrative staff if there was any correspondence submitted, and there was none.

Chair McDonald asked if Technical Staff had any final comments.

Mr. Richards provided the following closing comments:

- The subject property is classified as Agricultural (AG) and the scope of the business is not in compliance.
- The reasons for refusal have been identified.

Chair McDonald asked the appellant(s) if they had any final comments, and Mrs. Plesman and her son, Kevin, provided the following closing comments:

- Are not changing the scope of business but want to come into compliance and be able to continue operating Nicline Backhoe Services Ltd.
- There were no objections submitted and are operating a legitimate business.
- Have been successfully operating for ±15 years and were not aware a development permit was required.

Chair McDonald asked the appellant(s) if they felt they received a fair hearing, and Mrs. Plesman responded affirmatively.

### **Conclusion of Public Hearing**

Chair McDonald declared the Public Hearing concluded at 10:37 a.m.

### **Mr. Richards; Mr. and Mrs. Plesman and One Individual**

Mr. Richards; Mr. and Mrs. Plesman and one individual exited the Council Chamber at 10:38 a.m.

### **In Camera**

**05-18** Board Member Wanchuk -- that the Subdivision and Development Appeal Board meet In Camera.

Carried

The In Camera session commenced at 10:39 a.m.

### **Revert to Subdivision and Development Appeal Board Meeting**

**06-18** Board Member Wanchuk -- that the In Camera session revert to the Subdivision and Development Appeal Board meeting.

Carried

The In Camera session reverted to the Subdivision and Development Appeal Board meeting at 12:10 p.m.

### **Appeal by Wilfred Peddy whereby Development Permit Application D17-327 was refused for a Home Based Business Type 2 (Landscaping) located at Lot 1, Block 3, Plan 0420321, Pt. SE 36-50-24-W4, (24034 Twp Rd 505).**

**07-18** Board Member Wanchuk -- that Subdivision and Development Appeal Board allow the appeal by Wilfred Peddy and conditionally approves Development Permit Application D17-327 for a Home Based Business Type 2 (Landscaping) located at Lot 1, Block 3, Plan 0420321, Pt. SE 36-50-24-W4, (24034 Twp Rd 505).

### **Findings of Fact**

1. The appeal is dealing with the refusal of a Home Occupation Type 2 for a landscaping business.
2. This operation has been in existence for ±11 years. The appellant assumed approval was provided at the time the development permit was issued for the shop.
3. The refusal noted the application was considered beyond the scope of a Home Based Business Type 2 due to the size and amount of equipment required to operate the business.
4. There was a concern submitted from an adjacent landowner with respect to hours of operation, traffic in and out of property, pieces of equipment associated with the business and stockpiles of materials.
5. The appellant, Mr. Peddy, provided the following:

- Additional equipment is being stored on site for friends and/or family and that equipment will be removed by May, 2018.
- The desire is to manage the property as a type 2 home based business.
- Action is being taken to come into compliance by selling equipment and the removal of trailers.
- There is a decline in business hours (home by 6:00 p.m.) due to the desire to retire within the next two years. Winter hours vary due to the removal of snow services.
- Mr. Peddy is the sole employee.
- The neighbours were approached by Mr. Peddy with respect to the operation in attempt to address any concerns.

Conditional Approval Conditions

Development Permit Application D17-327 is approved subject to the following conditions:

1. Approval for a Home Based Business Type 2 is granted based on the information provided by the applicant for the approved development only and no other development.
2. Approval is granted for a period of two (2) years. On or before two (2) years from the effective date of this permit, the Home Based Business shall cease to operate unless a development permit extending this time has been approved by Leduc County.
3. The approved development shall be located as shown on the submitted site plan.
4. Hours of operation shall be 7:00 a.m. to 6:00 p.m. however may vary during winter months for snow removal off site.
5. A home based business shall not impose any impact on the community, such as noise, smoke, steam, odor, dust, vibration, glare or traffic that is offensive or excessive in the opinion of the Development Authority.
6. There shall be no more than one commercial unit associated with the home based business in operation on the site at any time.
7. There shall be no more than one employee in addition to the resident and members of the resident's family who permanently reside in the dwelling.
8. Outdoor storage of materials associated with the home based business is prohibited.
9. The business owner should avoid idling a commercial vehicle for longer than five (5) consecutive minutes in a one-hour period when the temperature is above zero degrees celsius and longer than fifteen (15) consecutive minutes in a one-hour period when the temperature is below zero.
10. The site shall be maintained in a neat and orderly manner including the containment of all construction materials and refuse, to the satisfaction of the Development Authority.
11. The development shall not cause any adverse drainage impact on adjacent properties or flooding of nearby ditches in excess of their capabilities.
12. The approach must be maintained to avoid any damage to the County owned road surface due to construction activity. A post development inspection will be conducted and the applicant/land owner must rectify any damage to the approach or County roadway.
13. All new accesses, approaches or upgrades, including driveways required off of a Leduc County public roadway, as a result of the development shall first require an Access





Application to be provided to the satisfaction of, and approved by Leduc County Public Works and Engineering.

14. No further development, expansion or change in use is permitted unless approved by Leduc County.

Failure to comply with any of the preceding conditions will render this permit null and void.

The applicant is also advised of the following:

1. This Development Permit is issued under the Leduc County Land Use Bylaw 7-08. It does not exempt you from compliance with any other municipal bylaw or statutory plan applicable to the approved development, any relevant federal and provincial statute or regulation, or any easement, covenant, agreement or contract affecting the subject lands.
2. To contact Leduc Public Works & Engineering at 780-979-6185 regarding approach approvals and Road Use Agreements as required.

Development Permit D17-327 shall expire after one year from the date of decision unless development has commenced.

Carried

**Appeal by Pauline and Nicholas Plesman, Nicline Backhoe Services Ltd., whereby Development Permit Application D18-002 was refused for a Home Based Business Type 3 (General Contractor – Major Excavation Services; Automotive and Equipment Repair); Leave as Sited – Accessory Building (427.91 sq.m) and Sign (2.97 sq.m) located at Block 1, Plan 9121277, Pt. NE 4-49-23-W4, (49072 Range Road 233).**

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**08-18** Board Member Ruel -- that Subdivision and Development Appeal Board allow the appeal by Pauline and Nicholas Plesman, Nicline Backhoe Services Ltd., and conditionally approves Development Permit Application D18-022 for a Home Based Business Type 3 (General Contractor – Major Excavation Services; Automotive and Equipment Repair); Leave as Sited – Accessory Building (427.91 sq.m) and Reduce Signage (1 sq.m) located at Block 1, Plan 9121277, Pt. NE 4-49-23-W4, (49072 Range Road 233).

Findings of Fact

1. The subject property is within the Agricultural (AG) District in accordance with the Leduc County Land Use Bylaw No. 7-08.
2. The subject site is  $\pm 74$  acres and the majority is tree covered.
3. The operation on this site has existed for  $\pm 15$  years and the appellants indicated they were unaware a permit was required.
4. The 2015 aerial photograph is out of date as the appellant stated that the open area has been cleaned up and the outside storage of materials is contained within pre-cast concrete blocks which is not visible from the roadway.
5. All business activity is under the company name of Nicline Backhoe Services.
6. Agricultural related business is 30% of the business income.
7. The mechanical operation is done in the winter.
8. The signage is not in compliance due to the size exceeding 7.19.4 (c) of the Land Use Bylaw.
9. There were no objections submitted.
10. In accordance with 9.1.3 of the Agricultural District regulations a *Home Based Business Type 3* is listed as a discretionary use. Part 3.4.5(b) states that the Development Authority

shall consider an application for development and may approve it, with or without conditions, or refuse it if it is discretionary use and it complies with the Bylaw.

Conditional Approval Conditions

Development Permit Application D18-002 is approved subject to the following conditions:

1. Approval is granted based on the information provided by the applicant for the approved development only and no other development which includes the mechanic work to be limited the Home Based Business Type 3 operation.
2. Approval is granted for a period of two (2) years. On or before two (2) years from the effective date of this permit, the Home Based Business shall cease to operate unless a development permit extending this time has been approved by Leduc County.
3. The proposed development shall be located as shown on the submitted site plan.
4. The home based business shall be operated in accordance with the approved business information sheet submitted by the applicant.
5. A home based business shall not impose any impact on the community, such as noise, smoke, steam, odor, dust, vibration, glare or traffic that is offensive or excessive in the opinion of the Development Authority.
6. There shall be no more than two commercial vehicle(s), including a one ton vehicle and one additional vehicle over one ton, which may include a semi-truck and trailer in size associated with the home based business on the site at any time.
7. There shall be no more than three non-resident employee(s).
8. Outdoor storage of materials associated with the home based business shall be limited to the cleared area identified within the site plan and must be kept in an orderly manner.
9. On-site signage shall be limited to (1) non-illuminated identification sign not exceeding 1.0 Square Metre (10.0 sq ft.) in size.
10. The site shall be maintained in a neat and orderly manner including the containment of all construction materials and refuse, to the satisfaction of the Development Authority.
11. The development shall not cause any adverse drainage impact on adjacent properties or flooding of nearby ditches in excess of their capabilities.
12. The approach must be maintained to avoid any damage to the County owned road surface due to construction activity. A post development inspection will be conducted and the applicant/land owner must rectify any damage to the approach or County roadway.
13. All new accesses, approaches or upgrades, including driveways required off of a Leduc County public roadway, as a result of the development shall first require an Access Application to be provided to the satisfaction of, and approved by Leduc County Public Works and Engineering.
14. No further development, expansion or change in use is permitted unless approved by Leduc County.

Failure to comply with any of the preceding conditions will render this permit null and void.

The applicant is also advised of the following:



1. This Development Permit is issued under the Leduc County Land Use Bylaw 7-08. It does not exempt you from compliance with any other municipal bylaw or statutory plan applicable to the approved development, any relevant federal and provincial statute or regulation, or any easement, covenant, agreement or contract affecting the subject lands.
2. To contact Leduc Public Works & Engineering at 780-979-6185 regarding approach approvals and Road Use Agreements as required.

Development Permit D18-002 shall expire after one year from the date of decision unless development has commenced.

Carried

**Bylaw No. 13-18 – Terms of Reference**

The Board reviewed Bylaw No. 13-18 with respect to terms of office of the Board Members.

**Next Meeting**

The next scheduled Subdivision and Development Appeal Board meeting will be held at the Call of the Chair.

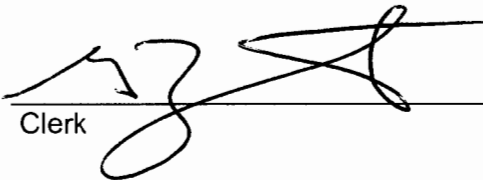
**Adjournment**

**09-18** Chair McDonald -- that the Subdivision and Development Appeal Board meeting be adjourned.

Carried

The Subdivision and Development Appeal Board meeting concluded at 12:21 p.m.

  
Chair

  
Clerk