



AGENDA

INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD (ISDAB)

COUNCIL CHAMBER, LEDUC COUNTY CENTRE, NISKU

Friday, August 19, 2022

1. **Order and Roll Call** – 9:00 a.m.
2. **Agenda Adoption**
3. **Adoption of Previous Minutes**
 - * June 3, 2022 Intermunicipal Subdivision and Development Appeal Board meeting
 - * July 21, 2022 Intermunicipal Subdivision and Development Appeal Board meeting
4. **Subdivision and Development Appeal Hearing SDAB 04-2022**
 - * a) **9:00 a.m.**

Apellant(s)	John Fraser
Applicant's name	Philip Kaiser, Kaiser Construction Ltd.
Landowner's name	John W. Fraser
Leduc County Municipal Roll #	1953040
Legal description of subject property	Lot 3, Block 1, Plan 1120771, Pt. SE 9-48-27-W4
Municipal address	27316 Twp Rd 481, Leduc County
Nature of Development Permit	Accessory building (shop) (222.96m ² ; 2400 ft ²) for personal residential accessory storage; variances
Development permit application #	D22-140

5. **Next meeting date** - August 31, 2022
6. **Adjournment**

Legend

*** Items Attached To Agenda**

MINUTES OF THE INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD MEETING, LEDUC COUNTY, HELD ON FRIDAY, AUGUST 19, 2022 IN THE COUNCIL CHAMBER OF THE COUNTY CENTRE BUILDING, NISKU, ALBERTA.

Order and Roll Call

The meeting was called to order at 9:01 a.m., Friday, August 19, 2022 by Chair Mary-Ann McDonald with Board Members Larry Wanchuk, Pat Rudiger, and Dalpreet Viridi present.

Present as well were the following:

- Joyce Gavan, Clerk
- Miranda Anderson, Recording Secretary
- Karen Mercer, Planner - Development Services
- John Fraser, Appellant

Agenda Adoption

01-22 Board Member Rudiger -- that the agenda for the August 19, 2022 Intermunicipal Subdivision and Development Appeal Board meeting be accepted as circulated.

Carried

Adoption of Previous Minutes – June 3, 2022

02-22 Board Member Wanchuk -- that the June 3, 2022 Intermunicipal Subdivision and Development Appeal Board minutes be confirmed as circulated.

Carried

Adoption of Previous Minutes – July 21, 2022

03-22 Board Member Rudiger -- that the July 21, 2022 Intermunicipal Subdivision and Development Appeal Board minutes be confirmed as circulated.

Carried

Appeal by John Fraser - refusal of Development Permit Application D22-140 to construct an accessory building (shop) – 222.96 m² (2,400 ft²) – for personal residential accessory storage, located at Lot 3, Block 1, Plan 1120771, Pt. SE-9-48-27-4 (27316 Twp Rd 481)

Chair McDonald called the hearing to order at 9:02 a.m. and provided introductory remarks.

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

Joyce Gavan, Clerk, advised of the appeal by John Fraser relating to the refusal by the development authority of Development Permit Application D22-140 for the construction of an accessory building (shop), which is considered a Discretionary Use within the WLW/CC Wizard Lake Watershed/Conjuring Creek District in accordance with Leduc County Land Use Bylaw 7-08, located at Lot 3, Block 1, Plan 1120771, Pt. SE-9-48-27-4, (27316 Twp Rd 481).

The reasons for appeal are:

- 1) Permit was refused due to the height and square footage of buildings.
- 2) There are multiple sheds in the area that are the same size or larger.



- 3) The building does not block any view of any other property or cause any issue with run-off or drainage.
- 4) Both neighbours are fine with the project and written confirmation can be provided as well as pictures of other buildings.

Clerk Joyce Gavan advised the following information is attached for the Board:

- 1) Appeal received July 20, 2022 from John Fraser.
- 2) Notice of Intermunicipal Subdivision and Development Appeal Board Hearing dated July 21, 2022.
- 3) Notice of Decision (refusal) by Development Authority issued July 15, 2022.
- 4) Development Authority's report, including site plan, development permit application D22-140, adjacent landowner referral area, and key plan.

The Board confirmed they have jurisdiction to hear this appeal and that the appeal was submitted properly and is acceptable.

Chair McDonald asked if any board member felt a need to step down from this hearing within the boundaries of conflict of interest, and there was no one.

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

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

Chair McDonald called upon the Development Authority to provide background information.

Karen Mercer, Planner - Development Services, provided a presentation relating to the refusal of Development Permit D22-140 issued by the Development Authority on July 15, 2022, highlighting the following:

1. This is an appeal against a decision of Leduc County Development Authority, whereby Development Permit D22-140 to construct an accessory building (shop), intended to be used as a personal residential accessory storage building, which exceeded the maximum allowable height and floor area requirements of the Land Use District was refused.
2. The subject property is approximately 6.05 acres and is located at 27316 Township Road 481, approximately 850 meters north of Wizard Lake. According to Leduc County records, this site is currently developed with a single family dwelling with attached garage and deck with permits issued for this development in 2018.
3. As detailed in the report, Part 3.6.1 of the Land Use Bylaw provides the Development Authority some latitude to consider and grant a variance under certain circumstances, such as the variance to a setback. However, Part 3.6.2 states that, notwithstanding Part 3.6.1, the Development Authority shall not grant a variance to site coverage, building area, floor area, building height, and dwellings per hectare. In this particular case, the applicant proposes to



exceed the maximum allowable height of an accessory building by 2m, and the maximum allowable floor area by approximately 22.96 m², and the Development Authority simply has no power to grant a variance with respect to these particular regulations.

4. This application was reviewed not only in accordance with the Leduc County Land Use Bylaw 7-08, but also in accordance with the overarching statutory plans being the Leduc County Municipal Development Plan and the Wizard Lake Area Structure Plan. It is the opinion of the Development Authority that the proposed development is in keeping with the applicable policies and desired outcomes of these plan areas as contained within those documents.
5. This application was referred to the adjacent land owners as indicated on the "Adjacent Land Owner Referral Area" attachment, and no comments or concerns had been received with respect to this proposed development from any of the adjacent landowners referred.
6. This application, including the drainage plan as provided by the applicants on May 23, 2022 with their application, was reviewed by Leduc County Engineering Services and it has been deemed acceptable as proposed. However, Engineering Services did indicate that as this parcel is less than 10 acres, only one access may be provided. If, for any purpose, these applicants were to pursue a second approach to this site, there is a separate application process that would need to be undertaken through the Leduc County Public Works and Engineering department, which also has an appeals process associated with it.
7. In summary, it is the opinion of the Development Authority that this proposed development is in alignment with the general intent and purpose of the district, and with the intent and policies contained within the overarching statutory plans, being the Municipal Development Plan and the Wizard Lake Area Structure Plan.

Chair McDonald asked if there were any questions by the Board members of the development authority staff.

In response to questions from Board members, Ms. Mercer advised of the following:

- The allowable percentage for lot coverage does not apply in this circumstance. The focus is building coverage, which is 200m² and which is exceeding by about 2m².
- There are no internal roads or cul-de-sacs. It is directly off the range road, but it is technically classified as a subdivision. It was approved in 2011 as a subdivision.

Chair McDonald called upon the appellant to speak to the appeal of Development Permit Application D22-140.

John Fraser, Appellant, provided the following:

1. The Appellant is interested in building a 40 x 60 shop on the property. As stated, it exceeds the height and square footage. The square footage could be altered, but the height restrictions would be challenging. The garage on the property is likely well over 16 ft.
2. The Appellant spoke with the neighbours on either side of the property and they were both ok with it. Refer to signed sheets indicating their support of the project. It is not blocking any views and is not blocking any drainage.
3. At first, there was miscommunication with the County about the rules in the area, which the Appellant stated was on his part. He went around within 2 miles of his property, however, and



there are at least 6-8 buildings that are the same size, if not larger. He is not sure if they were built with permits or not.

4. Many properties in the area have been allowed to build and the Appellant is just asking to be allowed to do the same.
5. The Appellant noted that the shop will match the house on the property and will bring up the value of the neighbourhood.

Chair McDonald asked if there were any questions by the Board members of John Fraser, Appellant.

In response to questions from Board members, Mr. Fraser advised of the following:

- The acreage size is 6.05 acres.
- The building will be 40' x 60' with two bay doors to be used as personal storage. It will not be used as a shop to fix vehicles.

Chair McDonald noted there was no one in attendance to speak to the subject appeal.

Chair McDonald called upon administrative staff to provide final comments.

Planner Karen Mercer provided the following final comments:

- The reasons for the refusal are based on regulations that are quite prohibitive for the development authority to vary anything within these specific types of variance requests.
- Otherwise, the development authority would use its own judgement and make its own decision—ensuring:
 - there are no impacts to adjacent landowners;
 - that the drainage is acceptable;
 - that it's in accordance with all the regulatory documents, being the Land Use Bylaw and the statutory plans in place in the area;
 - feel that the Development Authority has done that, and noted that there's nothing glaring that this would be unusual for the area or something that the development authority wouldn't support if it could.

Chair McDonald asked Board Members if they had any final questions of Administration.

In response to a question from a Board Member, Ms. Mercer advised:

- There were several properties noted and several permits issued throughout the area.
- There appears to be some agricultural buildings, which would not require a permit.
- There looks to be a couple oversized buildings that may have been approved prior to this 2009 regulation coming into effect.
- There were a few buildings that looked like they may have fallen under this regulation, but the development authority didn't dig deeper to see if there were appeal decisions made.

Chair McDonald asked Board members if they had any further questions, and there were none.

Chair McDonald called upon the appellant to provide final comments.

John Fraser noted that they are not trying to build anything out of the ordinary. One can see the neighbour's 40' x 60' building from their house. We are not trying to build a big, ugly structure that will cause any type of harm to the area.

Chair McDonald asked if Board members had any questions for Mr. Fraser, and there were none.

Chair McDonald asked the Appellant John Fraser, if he felt he received a fair hearing, and he responded affirmative.

Conclusion of Public Hearing

Chair McDonald declared the hearing concluded at 9:18 a.m.

Mr. Fraser and staff member Mercer

Mr. Fraser and staff member Mercer exited the meeting at 9:19 a.m.

In-Camera

04-22 Board Member Viridi -- that the Intermunicipal Subdivision and Development Appeal Board meet in-camera.

Carried

The in-camera session commenced at 9:20 a.m.

Revert to Intermunicipal Subdivision and Development Appeal Board Meeting

05-22 Board Member Rudiger -- that the in-camera session revert to the Intermunicipal Subdivision and Development Appeal Board meeting.

Carried

The in-camera session reverted to the Intermunicipal Subdivision and Development Appeal Board meeting at 9:24 a.m.

Appeal by John Fraser - refusal of Development Permit Application D22-140 to construct an accessory building (shop) – 222.96 m² (2,400 ft²) – for personal residential accessory storage, located at Lot 3, Block 1, Plan 1120771, Pt. SE-9-48-27-4 (27316 Twp Rd 481)

06-22 Board Member Viridi -- that the Intermunicipal Subdivision and Development Appeal Board allow the appeal by John Fraser, on behalf of Philip Kaiser, Kaiser Construction, and conditionally approves Development Permit Application D22-140 for an accessory building (shop) (222.96 m²; 2,400 sq ft) for personal residential accessory storage on Lot 3, Block 1, Plan 1120771, Pt. SE 9-48-27-W4 (27316 Twp Rd 481).

Findings of Fact

- 1) The proposed development is considered a Discretionary Use within the Wizard Lake Watershed/Conjuring Creek (WLW/CC) District in accordance with the Leduc County Land Use Bylaw.
- 2) The application proposed the development for an accessory building (shop) for personal residential accessory storage.



- 3) The proposed development exceeds the maximum allowable height and floor area requirements of the Wizard Lake Watershed/Conjuring Creek.
- 4) The appellant is requesting a variance to the accessory building to 7.07 m (23 ft, 2 in) in height with a floor area of 222.96 m² (2,400 sq ft).
- 5) Part 9.28.5(b) of Leduc County Land Use Bylaw No. 7-08 states that the maximum allowable height of an accessory building is not to exceed 5m (16.4 ft), not to exceed 1 storey. Part 9.28.8(b) states that the maximum floor area of accessory buildings (combined) shall not exceed 200 m² (2,152 sq. ft.), maximum of 5% of the site.
- 6) The Development Authority was bound to refuse Development Permit Application D22-140 in accordance with Part 3.6.2 that states, "*the development authority shall not grant a variance to site coverage, building area, floor area, building height and dwellings per acre.*" *Shall* is an operative word that means the action is obligatory.
- 7) The appellant submitted two letters of support from the next door neighbours and there were no objections submitted.
- 8) There was one comment received from Leduc County Engineering Services, indicating there are no concerns with the proposed drainage on this site, and that the existing approach is approved as existing. However, the department has also advised that the future driveway, as noted on the site plan, will not be approved as this parcel is less than 10 acres, and as such only one access is permitted.

The Board considered the following legislation in making their decision:

1. Land Use Bylaw No. 7-08:

The subject property is considered a discretionary use within the Wizard Lake Watershed/Conjuring Creek (WLW/CC) District. The purpose of this district is to protect the integrity of the lake and watershed, preserve tree cover and minimize adverse environmental impacts while allowing for minimal development of recreational and agricultural uses as well as residential development on larger lots at lower densities.

Part 3.6.1 states the Development Authority may issue a development permit granting a variance of a requirement of the Bylaw provided:

- (a) the proposed use complies with those prescribed in the Bylaw;
- (b) compliance of the development with a site requirement of the Bylaw is prevented or impeded by unique circumstances that are not common to neighbouring lands;
- (c) the development is consistent with the general intent of the district and the overall character of the area;
- (d) the development will not unduly interfere with the amenities of the area or materially affect the use, enjoyment or value of nearby properties; or
- (e) sufficient measures have been taken to remedy any impacts on nearby properties.

Part 3.6.2 - notwithstanding 3.6.1, the Development Authority shall not grant a variance to site coverage, building area, floor area, building height and dwellings per hectare.

2. Section 687(3)(c) and (d) Municipal Government Act

In determining an appeal, the subdivision and development appeal board:



- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order of decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw, if, in its opinion,
 - (i) the proposed development would not:
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
 - and
 - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

In consideration of the legislation stated above, the Board concludes:

- 1) *the Board has jurisdiction under the Municipal Government Act, Section 687(3)(c) and (d) to vary a development permit or any condition; and*
- 2) *the proposed development conforms with the use prescribed for the land within the Wizard Lake Watershed/Conjuring Creek (WLW/CC) district of the Land Use Bylaw and will not unduly interfere with the amenities of the area or materially affect the use, enjoyment or value of nearby properties.*

Conditional Approval conditions

In consideration of the above, the Intermunicipal Subdivision and Development Appeal Board approves Development Permit Application D22-140, 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.
- 2. The approved development shall be located as shown on the attached approved site plan dated August 19, 2022. Any new approaches represented on the site plan are regarded as conceptual only and shall be applied for through a separate approval process.
- 3. A variance, in accordance with Part 3, Section 3.6, 3.6.1 of Land Use Bylaw 7-08 has been granted for the following:
 - a. Part 9, 9.28.5(b) the height of the proposed accessory building is approved at 70.7m (23'2"); and
 - b. Part 9, 9.28.8(b) the maximum floor area of the proposed accessory building is approved at 222.96m² (2400ft²).
- 4. The approved accessory building shall be constructed and finished in a manner compatible with the existing building(s).
- 5. The approved accessory building(s) shall not be used as a dwelling(s) unless specifically approved as a dwelling by a separate development permit.
- 6. The approved accessory building(s) shall be used as a personal residential accessory building(s) for the storage and maintenance of property belonging to the residents of the parcel and not for business purposes. At no time in the future, unless specifically permitted by the County, shall the accessory building(s) be used for industrial or commercial purposes.
- 7. The applicant shall not remove any living tree species other than what is required for the construction of the development and to ensure the safety of the residents.



8. If any infilling is required as a result of this development, a new Development Permit and a Road Use Agreement will be required.
9. The applicant/landowner shall provide firefighting access at all times to the satisfaction of Leduc County Fire Services.
10. The existing 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/landowner must rectify any damage to the approach or County roadway.
11. Any proposed 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 Engineering and Utilities.
12. The movement of construction material onto the property may require the applicant to enter into a Road Use Agreement with the County. The applicant must contact Public Works and Engineering prior to the movement of construction material to discuss this requirement.
13. Lot drainage shall be provided in accordance with the drainage plan submitted on May 23, 2022.
14. The development shall not cause any adverse drainage impact on adjacent properties or flooding of nearby ditches in excess of their capabilities.
15. 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.
16. No further development, expansion or change in use is permitted unless approved by Leduc County.

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. The County administers the Safety Codes Act and you must obtain any Safety Codes (building, electrical, gas or plumbing) permit(s) required prior to commencing construction. Increased setback distances from property lines, and/or modifications to plans for proposed buildings may be required in order to achieve compliance under the Alberta Safety Codes Act.
3. To contact Leduc Utilities & Engineering and Road Operations at 780-979-6185 regarding approach approvals and Road Use Agreements as required. Please note that on a parcel of less than 10 acres in size, only one (1) approach may be approved.
4. To contact Leduc County Fire Services at 780-955-7099 regarding compliance with the Alberta Fire Code.
5. Please be advised that this development may initiate inspections from the Assessment Department. If you would like to schedule an appointment or have questions, please contact the Assessment Department at 780-955-6412.

Development Permit D22-140 shall expire after one year from the date of decision unless development has commenced.

Carried

Next Meeting

The next scheduled Intermunicipal Subdivision and Development Appeal Board meeting will be held on Wednesday, August 31, 2022, commencing at 1:00 p.m.



Adjournment

07-22 Board Member Rudiger -- that the Intermunicipal Subdivision and Development Appeal Board meeting be adjourned.

Carried

The Intermunicipal Subdivision and Development Appeal Board meeting concluded at 9:30 a.m.



Chair



Clerk