



AGENDA

INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD (ISDAB)

COUNCIL CHAMBER, LEDUC COUNTY CENTRE, NISKU

Friday, February 17, 2023

1. **Order and Roll Call – 9:00 a.m.**
3. **Agenda Adoption**
4. **Previous minutes - Intermunicipal Subdivision and Development Appeal Board Meetings**
 - January 20, 2023 - Stop Order, Roll #396030
5. **Subdivision and Development Appeal Hearing - SDAB_01-2023**
 - * a) **9:00 a.m.**

Appellant/Applicant name	Shamez Hassam
Landowner's name	Shamez Hassam
Leduc County Municipal Roll #	174030
Legal description of subject property	Lot 3, Block 1, Plan 1620324, Pt NW 32-49-22-W4
Municipal address	---
Nature of Development Permit	Dwelling, detached (464.52 m ² ; 5000 ft. ²) with attached garage/shop
Development permit application #	D22-315

6. **Next meeting date** - to be determined

7. **Adjournment**

Legend

* Items Attached To Agenda

** To be provided

MINUTES OF THE INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD MEETING, LEDUC COUNTY, HELD ON FRIDAY, FEBRUARY 17, 2023 IN THE COUNCIL CHAMBER OF THE COUNTY CENTRE BUILDING, NISKU, ALBERTA.

Order and Roll Call

The meeting was called to order at 9:00 a.m., Friday, February 17, 2023 by Chair Mary-Ann McDonald with Board Members Rick Thomas, Gerd Andres, Pat Rudiger and Dal Viridi present.

Present as well were the following:

- Joyce Gavan, Clerk
- Miranda Anderson, Recording Secretary
- Kala Raymond, Planner, Development Services
- Charlene Haverland, Manager, Development Services
- Shamez Hassam, Appellant

Agenda Adoption

01-23 Board member Rudiger -- that the agenda for the February 17, 2023 Intermunicipal Subdivision and Development Appeal Board meeting be accepted as circulated.

Carried

Adoption of Previous Minutes - January 20, 2023

02-23 Board member Andres -- that the January 20, 2023 Intermunicipal Subdivision and Development Appeal Board minutes be confirmed as circulated.

Carried

Appeal by Shamez Hassam - refusal of Development Permit D22-315 for dwelling, detached with attached garage/shop located at Lot 3, Block 1, Plan 1620324, Pt. NW 32-49-22-W4, Leduc County, Alberta, Roll #174030

Chair McDonald called the hearing to order at 9:00 a.m. and asked those in attendance to introduce themselves.

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

Joyce Gavan, Clerk, advised of the appeal by Shamez Hassam relating to refusal of Development Permit D22-315 issued by the Development Authority for proposed development of dwelling, detached (464.52 m²; 5000 sq.ft.²) with attached garage shop located at Lot 3, Block 1, Plan 1620324, Pt. NW 32-49-22-W4, Leduc County, Alberta.

The reasons for appeal submitted by Shamez Hassam within the notice of appeal received Jan. 24, 2023 stated the following:

- 1) Mechanical room, hot water tank and furnace will be on top of the bathroom to maximize space. The building is equipped with 16' ceilings with no second floor. Utilizing the otherwise wasted space above the bathroom is an efficient use of the space within this residence.
- 2) Myself, my wife and my 4 year old will be living in here until I build our permanent residence on this property, anticipated 3 years or so. Once our final residence is constructed, I would apply to



have the use of this residence changed. My ideal preference is to keep this as open as possible. We only plan to have this as a temporary residence on the property, it does not make financial sense to erect walls within the residence which are not required and would only be torn down and wasted upon completion of our permanent residence. If our family decided defined rooms were required, I plan to simply use modular, movable wall partitions, common in office spaces. I believe these wide-open floor plans (flats) are common in many large metropolitan areas.

- 3) I understand the floor plan indicates "Main floor shop plan." This is simply a title applied to the drawing by the draftsperson who completed the floor plan for me. I am contracting a company to erect the structure of the building. This company had supplied appropriate drawings for the application in relation to the structure alone. I contacted the draftsperson and simply requested they complete a floor plan with the requirements I provided. The use of the building was not discussed with the draftsperson, they applied the title on their own.
- 4) The presence of the shop door could be viewed as deceiving. I have no intention of using any portion of this structure as a garage or shop. The door is simply there for future use. I could modify the plans and not install the door at this time. This is not a desirable option for me as I would later be removing lumber, insulation, drywall and exterior cladding to install the door when the use of the building is changed, when our permanent residence is built on the property. This option would incur additional costs and create additional waste, my preference is to install the garage door now. No vehicles would be parked in this residence despite the intention to install the door. For our current vehicles, we would just park them outside.
- 5) I understand a kitchen layout was not included. The sink would share a wall with the washroom to accommodate plumbing requirements. The same applies to the washer and dryer and stove. I did not understand these additional details were required on the plan.
- 6) My wife and I are panning on having another child and so we don't want stairs for my wife and just want everything as open as possible, of course by meeting all safety codes. Our preference is just to have a wall closure for the bathroom. To bring as much enjoyment to my daughter and safety for my wife and at the same time to minimize cost, I prefer to not have any walls for such things as our bedroom, kitchen, living/family room, laundry room etc. I prefer everything open and if needed, I can put modular walls but again we hope to just live in an open space.
- 7) I bought this property so my family can enjoy acreage living. We are currently residing in a condo in the city, our hopes are to move to the acreage as soon as we can. Although we wish to experience acreage living as soon as we can, we do not want to rush the design of our dream home. Our hopes are to construct this residence and live in it until our dream home is constructed on our property. I am open to discussion and options to move forward.

Clerk Joyce Gavan advised the following submissions are provided as part of the hearing package for the Board:

- 1) Appeal received January 25, 2023 from Shamez Hassam.
- 2) Notice of refusal by Development Authority issued January 11, 2023.
- 3) Development Authority's submission.

Clerk Gavan confirmed the appeal was submitted properly before the Board; and further that the Board has jurisdiction to hear this appeal.

Chair McDonald asked if any board members felt a need to 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 Intermunicipal 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 presentations, and the procedures to be followed.

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

Planner Kala Raymond on behalf of the Development Authority provided a presentation relating to the refusal issued by the Development Authority:

- 1) Introduced the appeal for Development Permit D22-315.
- 2) Reviewed the location of proposed development per page 28 of the agenda package and shared an aerial image of the undeveloped lands (page 77).
- 3) Provided an overview of the review and referral process. The application was referred to adjacent neighbours, Leduc County internal departments, and external agencies, and no concerns were submitted.
- 4) Summarized AG – *Agricultural District* in section 9.1 of Land Use Bylaw (LUB) 7-08 (page 75), and noted that *dwelling, detached* is considered a discretionary use. The Development Authority determined the proposed structure did not fit the definition of a detached dwelling as per the definition under Part 11 of the LUB (page 76).
- 5) Reviewed the floor plan, found on pages 50 – 53 in the agenda package. It was deemed to be incomplete as the floor plan does not clearly identify sleeping and cooking areas and sanitary facilities. The second floor shows a washroom and sink but no facilities.
- 6) The applicant was advised to clearly show all cooking, sleeping and sanitary facilities.
- 7) The Development Authority concluded it is not in compliance with the LUB regulations and policies.
- 8) The Development Authority's decision was correctly and appropriately administered and should therefore be upheld.

Charlene Haverland, Manager, Development Services, provided a correction to the Board. The development itself was referred out, which is not typical for a permitted use. The Development Authority only refers out discretionary uses to adjacent landowners. In this case, it was referred out to adjacent landowners due to a confined feeding operation in the area, which does turn the permit into a discretionary use. Documents list the development as a permitted use, but because it went out for referral to adjacent landowners it was, in fact, discretionary.

Chair McDonald asked if there were any questions by the Board members of Development Authority staff and there was none.

Chair McDonald called upon the appellant, Shamez Hassam, to speak to the appeal.

Shamez Hassam, appellant, provided the following:



- The intent is to have this as a residence with as open as floor plan as possible for two years. They are excited to move onto the acreage right away, but don't want to rush their dream home. They want to build in 1 – 3 years and are looking at floor plans.
- As for the garage door, they have no intention to use it while living in the building and will keep vehicles outdoors. A garage door is not needed now but it makes more financial sense to put it in initially.

Chair McDonald asked if there were any questions by the Board members of Mr. Hassam.

In response to questions from Board members, Shamez Hassam advised of the following:

- They have a smaller scale house plan of what they want and feel in about 6 months they will have their floor plans. Following that, it will take a year to a year and a half to build, so he doesn't see it exceeding two years.
- Once the residence is converted to a shop, he will use most of the 5,000 sq. ft. of space to park vehicles, and to have a play area for his daughter. He may use 1,000 sq. ft. for storage.
- He has put a deposit for the building and he has a company chosen for the construction. He is thinking it will take six months to build the proposed building.
- The plan down the road is to keep it as open as possible. He wants open space for his daughter and wants to have more children. He could do modular or moveable walls, but it's not his plan for the long term.
- He is open to submitting a full application that includes the future home and secondary accessory building all together. He just learned this could be an option recently and he could do that if needed.

In response to questions from Board members, Charlene Haverland advised of the following:

- Met with the Applicant and gave some options of what happens when you apply for a dwelling that represents a shop.
- The Development Authority looks at it as accessory building with a custodial suite. There is no law stating they need walls, but they cannot park vehicles inside and live in it at the same time; this would be a safety codes matter.
- If the Board were to approve the dwelling, the applicant will not have support for a permitted use of a house when he's ready to build because he's only allowed one dwelling on the property and this accessory building will now be considered a dwelling.
- Can do a change of use from dwelling to accessory building when applying for the home.
- The applicant can put in an application for the dwelling and the accessory building at the same time. Currently the LUB does not allow an accessory building without a dwelling.
- The appellant is asking for a 5,000 sq. ft. shop which is now discretionary because it is over 1,000 sq. ft. The shop itself would have to be supported by adjacent landowners because it's oversize.
- No simple solution to give a permit for what he wants at this time.
- Secondary dwellings are only allowable as a mobile home.



- More people are coming forward with these types of applications and this will be considered in the Land Use Bylaw (LUB) rewrite; anticipate June 2024 for these LUB amendments.
- Any development permit always makes note of the safety codes and departments they need to contact to be in compliance.

Chair McDonald asked if there was anyone who wished to speak in support of the appeal (in favour of the proposed development) and there was no one.

Chair McDonald asked if there was anyone who wished to speak against the appeal (in support of the refusal by the development authority) and there was no one.

Chair McDonald asked if there were any written submissions and the Clerk confirmed there were none.

Chair McDonald called upon administrative staff to provide final comments.

Planner Kala Raymond provided the following final comments:

- Through the review process it was determined that the proposed structure doesn't meet the definition of a dwelling or of a dwelling detached in accordance with part 11 of the LUB.
- As it states, the dwelling shall be separate and self-contained from other buildings and areas within a building. This ensures the single family residential use is fit for human habitation and is able to serve as a single household.
- The Development Authority considers the proposed development would result in the accessory building being the principal use of the lands.
- It is the opinion of the Development Authority that the absence of a principal use or building on the land makes this development an accessory building, and by that means, inappropriate, as by its own definition, an accessory building must be an accessory to a principal building or use on the lands.

Chair McDonald asked Board Members if they had any questions of administration, and there were none.

Chair McDonald called upon the appellant to provide final comments. Shamez Hassam had no further comments.

Chair McDonald asked Shamez Hassam if he felt he received a fair hearing, and Shamez responded affirmative.

Conclusion of Public Hearing

Chair McDonald declared the hearing concluded at 9:24 a.m.

Recess

The hearing recessed at 9:25 a.m. and reconvened at 9:27 a.m. with the following people in attendance: Chair McDonald and Board Members Rick Thomas, Pat Rudiger, Gerd Andres and Dal Viridi present.

Present as well were the following:



- Joyce Gavan, Clerk
- Miranda Anderson, Recording Secretary

In-Camera

03-23 Board Member Andres -- that the Intermunicipal Subdivision and Development Appeal Board meet in-camera.

Carried

The in-camera session commenced at 9:28 a.m.

Revert to Intermunicipal Subdivision and Development Appeal Board Meeting

04-23 Board Member Thomas -- 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 9:39 a.m.

Shamez Hassam - refusal of Development Permit D22-315 for dwelling, detached with attached garage/shop located at Lot 3, Block 1, Plan 1620324, Pt. NW 32-49-22-W4, Leduc County, Alberta, Roll #174030

05-23 Board Member Andres -- that the Intermunicipal Subdivision and Development Appeal Board disallow the appeal by Shamez Hassam and upholds the refusal by the Development Authority dated January 11, 2023.

Preliminary matters

1. The Board confirmed the appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, RSA 2000, c M-26.
2. The Chair confirmed with the parties in attendance that there was no opposition to the composition of the Board.

Findings of fact

1. The subject lands are comprised of 4.0 ha (9.98 ac) of land and have not yet been developed.
2. The subject lands are located within the Agricultural (AG) District in accordance with the Leduc County Land Use Bylaw 7-08.
3. It was clarified by the Development Authority, that in accordance with Part 9.1 of the Leduc County Land Use Bylaw, a dwelling, detached is considered a "*permitted use*" within the Agricultural District. However, in this instance because the proposed development is situated within the minimum separation distance of a Confined Feeding Operation (CFO) the use is considered as "*discretionary*" and that is why the referral included adjacent landowners and referral agencies.
4. There were no concerns received after referral to adjacent landowners and referral agencies.
5. The appellant intends to reside within the proposed development until the permanent residence on this property is built, ± 3 years or so.
6. The floor plan submitted did not identify clear boundaries for living quarters (i.e. bedrooms, kitchen, bathroom, living area) and the appellant indicated his intent to keep everything open as possible with just a wall closure for the bathroom; no walls for bedroom, kitchen, living/family room, laundry room etc. If necessary, he could put up temporary modular walls.



7. The site plan indicates a 5,000 square foot shop with a 14' wide overhead garage door. The appellant indicated he had no intention to park vehicles inside the proposed development and that the garage door is for future use only and is included for economical reasons.
8. The current architectural layout shows a safety hazard with the potential to allow hazardous materials to enter within the proposed temporary residence.
9. In accordance with Part 11 of the Leduc County Land Use Bylaw, an accessory development must be incidental and subordinate to a principal use or principal building located on the same lot.

Legislative framework

The Board considered the following legislation in making their decision:

Municipal Development Plan

Dwelling, Principal - the primary dwelling unit on a parcel of land.

Leduc County Land Use Bylaw 7-08

Part 9.1.2 allows a dwelling, detached to be considered as a discretionary land use within the Agricultural land use district if situated within the minimum separation distance of a Confined Feeding Operation (CFO).

Part 9.1.3 allows an accessory building greater than 120.0m² (1,292 ft.²) to be considered as a discretionary land use within the AG District.

Part 9.1.5(b) states that a maximum number of dwellings on a lot less than 32.4 ha (80.0 ac) shall have no more than one principal dwelling and one dwelling, secondary in accordance with the provision of Section 7.11 of this Bylaw.

Part 7.11.5 states that on a lot between 0.8 ha (2.0 ac) and 32.4 ha (80.0 ac) in area, a dwelling, secondary may be approved subject to the following conditions:

- (b) on a lot between 2.0 ha (4.9 ac) and 32.4 ha (80.0 ac), a dwelling, secondary may not include a dwelling, detached but may include a dwelling, manufactured home; a dwelling, garden suite; or dwelling, custodial suite on a discretionary basis.

Part 6.4.1 states that the proposed development within or adjacent to a multi-lot residential subdivision, shall be designed, constructed and maintained to the satisfaction of the Development Authority with respect to its appearance.

Part 6.4.2 states that when reviewing the design and appearance of a development, the Development Authority shall consider the quality and durability of finishing materials, aesthetic compatibility with surrounding development, visual impacts on roadways and other public areas, site security, public safety, and any other factors deemed to be relevant.

Part Eleven - Definitions

Accessory building means, for the purpose of administering the provisions of Part Nine - District Regulations, a building that is incidental and subordinate to a principal use or principal building on the same lot and is more than 10.0 m² (107.6 ft.²) in area and 2.0 m (6.5 ft.) in height.

Accessory development means a use or building that is incidental and subordinate to a principal use or principal building located on the same lot.

Dwelling means a self-contained building or part of a building used for human habitation and usually containing living, sleeping, cooking, eating and sanitary facilities for a single household.



Dwelling, detached means a dwelling that is separate from other buildings and constructed or assembled on site upon a permanent foundation and includes a dwelling, modular.

Use, Principal means the primary purpose for which a building or site is used. There shall be no more than one principal use on a lot unless specifically permitted in this Bylaw.

Reasons for decision

In consideration of the above, the Board concludes:

1. That the proposed development does not represent a dwelling, detached land use in accordance with Part 11 - Leduc County Land Use Bylaw. As submitted, the structure shows no interior walls nor self-contained parts of the building used for human habitation containing living, sleeping, cooking, eating and sanitary facilities.
2. The submitted floor plan shows a 14' wide overhead garage door, which presents a safety concern of vehicles, equipment or toxic materials within or near the proposed living space.
3. There is an opportunity for the appellant/applicant to work with the development authority to submit an appropriate application that will satisfy the Leduc County Land Use Bylaw limitations.

Decision

In consideration of the above, the Intermunicipal Subdivision and Development Appeal Board concludes the proposed development does not comply with Leduc County Land Use Bylaw No. 7-08 and accordingly Development Permit Application D22-315 is refused for the following reasons:

1. In accordance with the Leduc County Land Use Bylaw 7-08, Part 11 the definition of a dwelling, the Intermunicipal Subdivision and Development Appeal Board considers that the proposed development is an *Accessory Building* and not a *Dwelling, Detached*. The structure does not have a self-contained area from the attached garage that is fit for human habitation or serves as a single household, according to Part 11 - Definition of a *Dwelling*.
2. The floor plan proposes no delineated areas such as access to the mechanical room, including the hot water tank and furnace, a laundry room, a kitchen layout, bedrooms, self-contained vehicle storage, etc. Particularly, the sleeping and living areas are not separate from the attached garage. Additionally, the floor plan provided indicates that the building is a main floor shop plan of 5000 sq.ft. and not a dwelling, detached.
3. In accordance with Part 11 - Definitions of the Land Use Bylaw, all accessory development is to be incidental and subordinate to a principal use or principal building located on the same lot. A *Principal Use* means the primary purpose for which a building or site is used. Based upon the interior layout, design, and size of the building, the Intermunicipal Subdivision and Development Appeal Board considers that the proposed development would result in an accessory building being the principal use. Hence, the absence of a principle use or building results in this *Accessory Building* not complying with the requirements of Leduc County Land Use Bylaw 7-08.

Other importation information for the appellant/applicant

- This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. An application for leave to the appeal must be made to the Court of Appeal within 30 days after the issuance of this decision and notice of the application must be given to the Intermunicipal Subdivision and Development Appeal Board and any other persons that the court directs.



Next Meeting

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

Adjournment

06-23 Board Member Thomas -- that the Intermunicipal Subdivision and Development Appeal Board meeting be adjourned.

Carried

The Intermunicipal Subdivision and Development Appeal Board meeting concluded at 9:40 a.m.


Chair


Clerk