



## AGENDA

### INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD (ISDAB)

COUNCIL CHAMBER, LEDUC COUNTY CENTRE, NISKU

**Thursday, March 23, 2023**

1. **Order and Roll Call – 9:00 a.m.**
2. **Agenda Adoption**
3. **Previous minutes - Intermunicipal Subdivision and Development Appeal Board Meetings**
  - February 17, 2023 Development Permit D22-315, Roll #174030
4. **Subdivision and Development Appeal Hearing SDAB 02-2023**
  - \* a) **9:00 a.m.**

Apellant(s)	Cheryll Rafferty
Landowner's name	Cheryll and Helen Rafferty
Leduc County Municipal Roll #	37020
Legal description of subject property	Plan 5870 RSC, NW 18-50-21-W4
Municipal address	21557 Township Road 503
Nature of Stop Order	Contravention of the Leduc County Land Use Bylaw 7-08
Development permit application #	D06-166

5. **Next meeting date** - Thursday, March 23, 2022, commencing at 10:30 a.m.
6. **Adjournment**

**Legend**

**\* Items Attached To Agenda**

**\*\* To be provided**

**MINUTES OF THE INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD MEETING, LEDUC COUNTY, HELD ON THURSDAY, MARCH 23, 2023, 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 9:02 a.m., Thursday, March 23, 2023, by Chair Mary-Ann McDonald with board members Rick Thomas, Gerd Andres, Pat Rudiger and Kelly-Lynn Lewis present.

Present as well were the following:

- Joyce Gavan, Clerk
- Miranda Anderson, Recording Secretary
- Kala Raymond, Planner - Development Services
- Charlene Haverland, Manager - Development Services
- Cheryll Rafferty, Appellant
- Jadelyn Rafferty, Appellant's Daughter
- Michael Scheidl, Manager – Communications, Intergovernmental, and Legislative Services
- Clarence Nelson, Director – Enforcement Services (gallery)
- Renee Drover, Bylaw Enforcement Officer (gallery)

**Agenda Adoption**

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

Carried

**Adoption of Previous Minutes – February 17, 2023**

**02-23** Board member Andres -- that the February 17, 2023 Intermunicipal Subdivision and Development Appeal Board minutes be confirmed as circulated.

Carried

**Appeal by Cheryll Rafferty – Stop Order D06-166 for contravention of the Leduc County Land Use Bylaw 7-08, located at Plan 5870 RSC, NW 18-50-21-W4 / 21557 Township Road 503, Leduc County, Alberta, Roll #37020**

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Chair McDonald called the hearing to order at 9:02 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 Cheryll Rafferty, relating to Stop Order D06-166, issued by the Development Authority for contravention of the Leduc County Land Use Bylaw 7-08, located at Plan 5870 RSC, NW 18-50-21-W4 / 21557 Township Road 503, Leduc County, Alberta, Roll #37020.

The reasons for appeal submitted by Cheryll Rafferty within the notice of appeal dated February 28, 2023 are included in the agenda package on pages 13 – 15.



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

- 1) Notice of ISDAB Hearing, dated March 2, 2023
- 2) Appeal by Cheryll Rafferty, received March 1, 2023, including reasons for refusal and submission photos
- 3) Stop Order issued by the Development Authority on February 28, 2023
- 4) Development Authority's submission
  - a. Development Authority report
  - b. Leduc County GIS 2022 aerial map
  - c. Prior development approvals – Notice of Decision D06-166
  - d. Land Use Bylaw (LUB) Lake Watershed (LW) District
  - e. Site inspection photographs
  - f. Bold Xpression Farms website information
  - g. PowerPoint presentation
- 5) Appellant's submission, including Exhibits A – P, and video clip
- 6) Adjacent landowner submission – Sharon and Rick Smith

It was confirmed the appeal was submitted properly and is acceptable to the Board.

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.

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

- 1) Introduced the appeal, including subject property location and background on stop order issuance (refer to page 27 of the agenda package).
- 2) Cited Leduc County Land Use Bylaw 7-08 (LUB) Section 6.7.1 and 6.7.2 (refer to page 30).
- 3) Shared the property location and site description (page 31) and aerial imagery (page 65).
- 4) The Breeding and Boarding Facility initially received development permit D06-166 under LUB 1665-83 in 2006. This bylaw is no longer in effect. Additionally, the closest dwelling to the subject lands is 93m to the east, and the subject lands are located 200m from a multi-lot subdivision.
- 5) The lands are located within the Lake Watershed (LW) District (refer to page 43).
- 6) Development definition shared as per LUB 7-08.
- 7) Since the approval of development permit D06-166, the facility has undergone significant changes. Referred Board to page 57 of agenda package. Changes include:
  - o Lighting that is interfering with neighbours' enjoyment of property (see pages 45 – 53)
  - o Outdoor storage offered (pages 60 – 61)



- Public outdoor use of the lands, allowing boarders to bring in outside instructors for lessons, training, riding, and outdoor clinics (i.e., roping clinics) (page 58)
- Change in Use of the hours and days of operation (page 54)
- 8) January 20, 2023 site inspection photos shared (pages 68 – 70).
- 9) The Development Authority sent an email to landowners after the site inspection, to follow up on a warning letter that was sent on November 21, 2022 with orders to cease outdoor lighting and submit a complete development permit application to address change of use on the lands by December 6, 2022.
  - The email instructed landowners to cease outdoor lighting between the hours of 9:00 p.m. – 7:00 a.m., and to submit the required information to make a complete development application.
- 10) January 31, 2023 – incomplete development permit application received.
- 11) November 22, 2022 – second site inspection conducted.
- 12) February 22, 2023 – site visit revealed that while some lights appeared to be shielded, the level of brightness was still excessive and affecting surrounding lands.
- 13) February 28, 2023 – stop order issued for noncompliance with the warning letter sent on November 21, 2022.
- 14) In the opinion of the Development Authority, the use of exterior lighting has been, and continues to be, excessive and inappropriate due to its cumulative nighttime intensity and remains a nuisance.
- 15) Slide shared with options to mitigate the light pollution (page 74).
- 16) In accordance with the stop order issued on February 28, 2023 and the information enclosed in the report, the Development Authority finds the landowners are operating outside of development permit D06-166.
- 17) To legally operate an equestrian facility, the landowners must submit a complete development permit application and seek to obtain approval for operation of the facility on the lands.
- 18) The Development Authority considers that the issuance of the stop order was correctly and appropriately administered in response to the contraventions outlined in this report and should be upheld in accordance with the *Municipal Government Act (MGA)* and Leduc County LUB 7-08.

Chair McDonald asked if there were any questions by the Board members of Development Authority staff.

In response to questions from Board members, Ms. Raymond advised the complainant's property is to the right of the appellant's property; their kitchen faces the appellant's property, in accordance with the aerial map (page 65).

Charlene Haverland, Manager - Development Services, provided further clarification on the file:

- In 1983, the LUB in effect allowed for uses to be developed within the County.
- The 2006 development permit was obtained for a boarding and breeding facility.
- In 2008, a new LUB was adopted by Leduc County.
- All development must be in compliance with the current bylaw. While a development permit was issued in 2006, the *MGA* allows for the Development Authority to reassess a business should a complaint be received by the County. This provides an opportunity for any business within the County to be reassessed for change of people in the neighbourhood, change of intensification, change of use, etc.



- The Development Authority determined that the business was exceeding the original 2006 development permit approval. Therefore, a request was made by the Development Authority to the landowner for an application for a new development permit.
- The landowner did apply for new development permit approval. Administration advised that the lights should be turned off due to intensification on the adjacent lands, until such time as a new development permit was approved.
- It is important to note that the 2006 permit is no longer valid due to the change of use intensification of the land, and that it is now considered an equestrian facility.
- The MGA gives the Development Authority the tools to reevaluate the business, which then comes into play as the stop order was issued because of the light intensification and the incomplete development permit application.
- There were ongoing requests for information to make the development permit application complete. The Development Authority gave an extension to January and then a further extension, and the stop order was issued after the January date.
- The Appellants requested another extension to April 30, 2023. The Development Authority feels this is a stall tactic.
- The Board's position is to consider if the stop order should be left in place or removed. The Development Authority feels it should be upheld until the appellants receive their appropriate Development Permit approval.

Ms. Raymond provided answers to further questions from the Board:

- When administration deemed the original submission of the application incomplete, a letter was sent on February 17, 2023, with all of the information required.
  - They require landowner authorization (signature on application).
  - Site plan showing how the lands are being used.
  - A floor plan for any structure used by the public along with elevation drawings/photographs.
  - Drainage plan prepared by an Alberta Land Surveyor.
  - Additional business information outlined in the letter.
  - Light mitigation plan.
- While the landowner submitted a development permit application, they believed the 2006 permit would remain valid; however, it is no longer valid as there has been a change of the intensification of the use. Receiving the complete application will allow the Development Authority to determine the new intensity.
- The lighting complaint initiated this process of investigation into the intensification of use.

Ms. Haverland provided answers to further questions from the Board:

- The County has a policy that went to Council; when it comes to landowner complaints, administration can no longer bring a complaint forward to the Development Authority. It has to be directed through a Council member or come directly from a resident.
- For any complaint that comes in, the Development Authority has a responsibility to follow up on the complaint and then research what is happening on the land.
- If the ISDAB upholds the stop order, the appellants will have to cease the use of the lights of the land and cease public use of the land. It does not address the boarding of horses. The original permit gave permission for boarding and breeding. They now offer training, clinics, etc., which would be considered the public uses of the land.

- The Development Authority is not rejecting the development permit; they just need a complete application to assess and decide.
- The development permit approval is from 2006; the development permit application is from present day but is incomplete. As the Development Authority, they have the authority to deem it refused but have not done that. They have been trying to work with the applicant to let them know what is needed for a complete application.
- The Development Authority met with the applicant in the Fall, and they were very compliant. They gave them to January to submit the required information. A request was submitted for another extension, which the Development Authority has not supported.

Chair McDonald called upon the appellants to speak to the appeal.

Jadelyn and Cheryll Rafferty, appellants, provided the following:

- With regards to their barn, they have provided an email from Safety Codes staff (Appendix A), which states that the farm building declaration is exempt from requiring a development permit (electrical and gas permits were obtained).
- With regards to the warning letter that was issued on November 21, 2022, Ms. Haverland and Ms. Raymond explained that a new permit would be best to address lighting issues.
- Ms. Haverland suggested to the appellants that they submit an incomplete application by the January 31 deadline, and that an extension would then be granted for 90 days, to which the appellants agreed. This would allow the appellants to increase business opportunities and operate with limited restrictions to what they enjoy. The operating hours were adjusted with the boarders. The appellants were not aware of the requirements of their existing development permit.
- When speaking with Councillor Smith (the adjacent neighbour) about their business, he had told them they had all that was needed and didn't require another permit. The appellants were shocked when they received the call from Ms. Raymond, and they immediately informed their boarders of the new required hours.
- There were no more lessons, and the last clinic that took place was in July and the last lesson/training took place in October. Since October, there has been no public use of the facility. They are closed on Mondays. The hours were late in being updated on the website because they forgot how to update their website. The hours have now been removed completely.
- With regards to the lighting, they received advice from Ms. Raymond on November 29 in person and on July 26 in a phone call, to downcast the lights or add blinders to reduce the light pollution. They reviewed the warning letter together and Ms. Raymond advised that they install friendly outdoor lighting and reduce by 50% as well as turn the lights off by 9:00 p.m. and they would be fine.
- The appellants complied. They put a large blinder on the main light and downcast any lights interfering with the neighbouring property. They set one light on a timer for 9:00 p.m. They set the time wrong on the second light and it went off at 9:30 p.m. As they have to stand on the very top of the ladder to change the timer, they are waiting for the snow and ice to melt for safety considerations.
- Another item of concern was the height restrictions on the light poles. The appellant's poles are only 16 ft in height and not attached at the top, so would actually fall under 16 ft. No one has asked to come do an inspection or check the height of the lights.





- The appellants made necessary adjustments and did everything requested to be in compliance with Planning and Development. The appellants did not hear back and thought that meant things were acceptable. There has been a breakdown of communication between both parties, and clear and precise information was not relayed.
- The matter of outdoor storage was only brought to the appellant's attention when they read the appeal agenda package. On the original map provided for the 2006 permit, it shows an area marked as "trailer parking." The 2006 permit also states that there will be adequate onsite parking and does not specify whether it is parking for a passenger vehicle or a trailer.
- None of the boarders have trailers on the property; everything on the property is currently owned by the appellants.
- The equestrian facility definition states that it is used for the training of horses and riders and may include boarding. The appellant's facility has always been for boarding and has never been designated for training. A boarder did have some training on her own horses. They were unaware of the restrictions and as soon as they found out, they ceased this activity. They were also unaware that a coach coming in to instruct would be classified as a public use.
- Training has never been a service offered, nor do they plan to offer training.
- With respect to the September 26 complaint about an increase in traffic; they had contractors coming in for construction on the barn, which would have been updated with or without the business. Clients don't come often – perhaps two to three vehicles per week. Busy days only make up about 5% of the traffic that comes down that road. Their current permit allows for up to 24 vehicles per month.
- On the October 6 County visual inspection, the County said they could not see intensification of use from the road. The appellants are willing to make arrangements to have the County come in to see how the property is being used.
- On November 17, the County did an online search and found that the operating hours were outside of what was allowed on the existing permit. Once they were made aware, they changed the hours.
- There have been no events, lessons, or training since they have been made aware of the permit restrictions. The appellants are trying to be compliant. They are essentially operating as a boarding and breeding facility at this time.
- With respect to the January 20 inspection, some lights were downcasted with blinders on. On one of the main bright lights, the blinder blew off and they had to take it down and add a new blinder in the high winds.
- The lights that stay on are not for business use; the appellant comes home between 3:00 – 5:00 a.m. and needs them for safety.
- On February 22, another visual site inspection was conducted at 9:20 p.m. and the County stated that the lights were still bright. One light was shut off at 9:00 p.m.; one of the lights near the front of the property was not in use; and one of the timers had been set incorrectly in error and shut off at 9:30 p.m.
- On February 28, the stop order was issued. The appellants thought they were doing what they needed to do. There has been a lack of communication on both sides. They are not intentionally disobeying; they are trying to address situations as they arise. There are only two personal lights on

*Handwritten signature/initials in blue ink.*

in the evening, and they shut off all lights except for one on the day of the stop order. Now only the lights on the buildings are on.

- The neighbours (complainants) said that the lighting is satisfactory right now.
- There have been no clients coming to use the facility on Mondays since October when they were made aware of the acceptable operating hours. Gates are locked on Mondays (except in emergencies).
- Administration did a November online search; a recent online search would show they are now in compliance in current permit.
- Events mentioned on website are not taking place on the property; they do camping, trail rides, etc. offsite. They did remove this wording from the website to be in compliance.
- With regards to their ambition to do therapeutic sessions with the horses, this would be a ten-year plan to get set up.
- On March 10, the appellants went to speak with their neighbours (the Smith's), and they advised they are happy to work with them and find a way that the lights won't affect them. They will be getting together this weekend to discuss.
- Another neighbour has provided a letter of support, included in the agenda package (Exhibit G).
- The appellants are not intentionally trying to break any rules. The initial complaint was due to a breakdown in communication. They did change the lights seven times, downcasted them and added blinders. There was no indication that it wasn't satisfactory, so they assumed that they were in compliance. They have since followed all the instructions of Planning and Development.
- Ms. Raymond initially told them they didn't need a drainage plan, and now the stop order says they need one. They are not really sure what is needed and are confused. A professional Alberta Land Surveyor told them a drainage plan would not be required.
- The appellants were told to submit their incomplete development permit application at the end of January and that they would be granted a 90-day extension.
- On March 1 they spoke with Ms. Raymond and thought she had stated that an extension to April 30 would be granted. They want to submit the complete application prior to that and are not trying to avoid it. The application is 70% complete.
- Measurement from closest light to complainant's house is 273m and measures at 90 lumens, but appellants are willing to work with the complainants. Complainants said they would be willing to allow the light to be on until 10:00 p.m.
- They are only a boarding facility, and this is the first time hearing their old permit is no longer valid.
- Ms. Raymond had advised that they could change the way they were operating to be in compliance with the current permit. They were given a choice to make changes to operate under the original permit or to submit an application for a new permit.
- They have changed everything needed to be in compliance until they can get a new permit.
- The appellants are not operating as an equestrian facility and supplied examples of such facilities, such as Shadowlands, CR Horsemanship, and Mystic Meadows in their agenda submission. These meet the equestrian facility definition and provide training to riders (boarding comes second to them).



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

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

- Appellants will pursue a permit with extended hours and opportunity to bring in trainers and instructors.
- They have been operating since 2015. They moved into Leduc County in 2021. Prior to that, they were a small-scale operation for friends.
- The appellant is the landowner.
- The appellants were dealing with Sharon Smith and asked her if the lighting was acceptable. She said to leave it and see if her husband and son were bothered by it. There was a falling out and there was no further communication from them.
- They adjusted the lights seven times and had no idea if it was acceptable to them because from their vantagepoint the lights looked fine.
- Development permit D06-166 is not in the appellant's name. The appellants became aware of the development permit after a phone call from the Development Authority.
- The appellants were operating because Councillor Smith had told them they were okay to operate. They should have looked into it further.
- There is no training nor events taking place at this time. The 2006 permit specifies boarding, breeding, and seminars/workshops.
- The appellants are working to get their complete application submitted as soon as possible.
- The appellants believe that they are now conforming to the stop order – no lessons, events, or lights.
- The appellants would need additional lighting during business hours.

Chair McDonald asked if there was anyone who wished to speak in support of the appeal (opposed to the Stop Order) 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.

Kala Raymond, Development Authority, provided the following final comments:

- The February 28, 2023 stop order was issued in response to noncompliance with the November 22, 2022 warning letter. Both the warning letter and the stop order requested the landowner to cease using the lights and to submit a complete development permit application. Ample time has been provided for the landowner to comply with these requests.



- On February 23, 2023, the landowner requested an extension to April 30, 2023, to submit a complete development permit application. This may be considered excessive as they were requested to submit by December 6, 2022.
- Additionally, the Development Authority granted an extension to the warning letter to submit all the required documentation from December 6, 2022 to January 31, 2023.
- The facility has been found to be operating outside of what was previously approved in 2006. Permit D06-166 was for a boarding and breeding facility with equipment storage and a meeting room. The permit also supports the preparation of horses for sale and boarding of racehorses/show horses in a straw bale barn. The permit also supports a straw bale barn with meeting room to host birdwatching seminars, horse photography workshops, aromatherapy seminars, herb and gardening courses, as well as other types of talks.
- Development permit D06-166 also states that no further expansion, development, or change of use is permitted unless new development permit is obtained (see pages 33 - 38 for a full copy of the conditions).
- Submitting a new development permit will address the change in business as well as the use of outdoor lighting, outdoor storage, public use and operation of the land, change in operating days and hours, and will allow the Development Authority to consider the business operations as they exist in 2023.
- The Development Authority requests that the stop order be upheld until a new development permit application is obtained.

Ms. Haverland, provided the following clarification:

- The Board is here to determine if the stop order should be removed; they are not here to determine if a development permit is required, or what the requirements of a development permit are.
- The appellants have already acknowledged a change of intensification by submitting a new development permit application. Ms. Haverland believes that the appellants do wish to comply.
- The development permit could provide the approval they need to operate the outdoor lights.
- No matter what the Notice of Decision is, it provides an opportunity to appeal for both the applicant and the adjacent landowners and provides an outcome to this file.
- The stop order should remain in effect until the complete development permit application is submitted and a decision is received from the Development Authority.
- The stop order did not just speak to the ceasing of lights; it explicitly stated that they need to submit a complete development permit application. This is still a breach because they have not submitted a complete application.
- Turning the lights on or off, changing the hours on the website, etc. does not help the Development Authority and only delays the process. It doesn't help them to get a Notice of Decision for the business to operate.

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

In response to a question from a Board member, Ms. Haverland advised a development permit, once approved, stays with the land for life. However, a development permit approval is active unless there has been a lapse in use over 6 months or there is a change in use.



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

Chair McDonald called upon the appellants to provide final comments:

The appellants provided the following closing comments:

- With respect to the December 6 deadline for the permit, the appellants were unaware about the permit until they met with Planning and Development on November 29. This timeline was unrealistic to complete a full application package. Planning and Development had requested January 3, but with the holidays, the appellants asked for January 31, to which Ms. Haverland agreed. Ms. Haverland had advised that for the January 31, 2023 application, if submitted incomplete, a 90-day extension would follow.
- The appellants are not trying to drag this out, they are just trying to figure out what is needed for a complete application.
- They are leaving the lights out and are going to talk to the Smith's to see what works for them in terms of their lighting.
- They are operating within the boundaries of their current permit, which is why they feel the stop order should not be upheld. They are complying and are confused about why the stop order was issued when the extension was granted.

Chair McDonald asked if Board members had any questions for the appellants and there were none.

Chair McDonald asked Ms. Rafferty if she felt she received a fair hearing, and she responded affirmative.

#### **Conclusion of Public Hearing**

Chair McDonald declared the hearing concluded at 10:17 a.m.

#### **Recess**

The hearing recessed at 10:17 a.m. and reconvened at 11:10 a.m. with the following people in attendance: Chair McDonald and Board Members Rick Thomas, Pat Rudiger, Gerd Andres and Kelly-Lynn Lewis.

Present as well were the following:

- Joyce Gavan, Clerk
- Miranda Anderson, Recording Secretary

#### **In-Camera**

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

Carried

The in-camera session commenced at 11:10 a.m.



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

**04-23** 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 11:37 a.m.

**Appeal by Cheryll Rafferty – Stop Order D06-166 for contravention of the Leduc County Land Use Bylaw 7-08, located at Plan 5870 RSC, NW 18-50-21-W4 / 21557 Township Road 503, Leduc County, Alberta, Roll #37020**

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**05-23** Board Member Thomas -- that the Intermunicipal Subdivision and Development Appeal Board disallow the appeal by Cheryll Rafferty to set aside the Stop Order and upholds the issuance of the Stop Order by the Development Authority dated February 28, 2023.

**Preliminary matters**

1. The Board is satisfied that the Stop Order complies with the technical requirements of Section 645 of the *Municipal Government Act*, and was received by Cheryll Rafferty, appellant/landowner; and Helen Rafferty, landowner, on the day it was made, and therefore was issued properly.
2. The Chair confirmed with the parties in attendance that there was no opposition to the composition of the Board.
3. The Board confirmed they have jurisdiction to hear the appeal in accordance with S. 686(1.1) of the *Municipal Government Act*, RSA 2000, c M-26.
4. The Board confirmed the appeal meets the requirements of Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 relating to filing notice of appeal.

**Findings of fact**

1. The subject of the appeal is related to the Development Authority's issuance of a Stop Order against the lands located at 21557 Township Road 503 owned by Cheryll and Helen Rafferty in contravention of the following:
  - the use of outdoor lighting interferes with the use and enjoyment of neighbouring properties on the lands;
  - there has been no development approval for exterior lighting on the "lands"; and
  - operation of an equestrian facility without a valid development permit.
2. A complaint was submitted to the County on September 26, 2022 concerning the operation of the equestrian facility, which initiated the inspection/investigation on the subject lands, by the development authority.
3. The following development permit approvals have been issued on the subject property:
  - D06-166 issued July 14, 2006 for a boarding and breeding facility - equipment storage and meeting / conference room
  - D21-268 issued September 24, 2021 to leave as sited (2) accessory structures (shelters).



The development permit approvals stay with the land until a change of use / change of intensity of land or a building, or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building.

4. The appellant, Cheryll Rafferty, and her daughter Jadelyn Rafferty moved onto the property in 2021. Cheryll Rafferty and Helen Rafferty are the owners of the subject property. The appellant and her daughter submitted there has been miscommunication and confusion with the Leduc County development authority in attempting to come into compliance with the County as follows:
  - clarification around the validity of Development Permit D06-166 was confusing; they were advised D06-166 is no longer valid as the district was changed to Lake Watershed (LW) District. Were advised to submit a new development permit application for the operation of an equestrian facility in accordance with the requirements of the Leduc County Land Use Bylaw.
  - Were also instructed to submit an incomplete application by January 31, 2023 and to request an extension for an additional 90 day period. A date was not included within the request which was a miscommunication.
  - With respect to the lighting, they were advised to put up blinders to reduce the glare by 50% and not use them at night. The blinder was added and timers were put on the other lights used for “business”. There are personal use lights used for safety and emergency concerns which need to stay on.
5. The County development authority have communicated with the appellant confirming the approved development permits previously issued and provided clarification that any intensification or change in use would require the submission of a new development permit application. Further meetings and communications have occurred around the process and requirements for coming into compliance.
6. The development permit application was deemed incomplete on January 31, 2023 and requested additional information to be submitted by March 3, 2023. On February 23, 2023 the applicant requested another extension date until April 30, 2023.
7. On February 22, 2023 a visual site inspection was conducted from the road at 9:20 p.m. which revealed the lights remained on and it was determined the level of brightness remained excessive, as several lights remained without shields which were affecting surrounding lands due to their cumulative nighttime intensity.
8. The Stop Order was issued on February 28, 2023 in response to non-compliance of the warning letter sent on November 21, 2022 concerning the land use violations and the continued non-compliance of not submitting a complete development permit application.
9. The appellant/landowner indicated a complete application will be submitted in the next few weeks to come into compliance and in the meantime the lights will not be turned on to cause disruption to the adjacent landowners.

#### **Legislative framework**

The Board considered the following legislation in making their decision:

### **Municipal Government Act (MGA)**

#### **Section 645 Stop Order**

- (1) If a development authority finds that a development, land use or use of a building is not in accordance with
  - (a) this Part or a land use bylaw or regulations under this Part, or
  - (b) a development permit or subdivision approval, the development authority may act under subsection (2).
- (2) If subsection (1) applies, the development authority may, by written notice, order the owner, the person in possession of the land or building or the person responsible for the contravention, or any or all of them, to
  - (a) stop the development or use of the land or building in whole or in part as directed by the notice,
  - (b) demolish, remove or replace the development, or
  - (c) carry out any other actions required by the notice so that the development or use of the land or building complies with this Part, the land use bylaw or regulations under this Part, a development permit or a subdivision approval, within the time set out in the notice.
- (2.1) A notice referred to in subsection (2) must specify the date on which the order was made, must contain any other information required by the regulations and must be given or sent to the person or persons referred to in subsection (2) on the same day the decision is made.
- (3) A person who receives a notice referred to in subsection (2) may appeal to the subdivision and development appeal board in accordance with section 685.

#### **Section 646 Enforcement of Stop Order**

- (1) If a person fails or refuses to comply with an order directed to the person under section 645 or an order of a subdivision and development appeal board under section 687, the municipality may, in accordance with section 542, enter on the land or building and take any action necessary to carry out the order.
- (2) A municipality may register a caveat under the *Land Titles Act* in respect of an order referred to in subsection (1) against the certificate of title for the land that is the subject of the order.
- (3) If a municipality registers a caveat under subsection (2), the municipality must discharge the caveat when the order has been complied with.

#### **Section 685 Grounds for Appeal**

- (1) If a development authority
  - (c) issues an order under section 645, the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

### **Leduc County Land Use Bylaw No. 7-08**

#### **3.1 Development Requiring a Permit**

- 3.1.1 Any use or development of lands, buildings or signs in the County requires a valid development permit unless it is specifically exempted from requiring a development permit by this Bylaw or by federal or provincial legislation.





4.1 General Provisions

- 4.1.1 No person shall commence any development or take any action that is contrary to the provisions of the Bylaw or to any permit or order issued under it.
- 4.1.2 A Development Authority may enforce the provisions of the Bylaw, and any permit or order issued under it.
- 4.1.3 After serving reasonable notice, a designated officer may enter a property in order to verify that a contravention exists or that an action required under Section 4.2 of this Bylaw has been completed.
- 4.1.4 If a person fails to comply with an order issued under Section 4.2 of the bylaw, a designated officer may take whatever lawful action is necessary to ensure compliance.

4.2 Stop Orders

- 4.2.1 If a development, land use, or building is found to contravene provisions of this Bylaw or conditions of a permit or order issued under this Bylaw, a Development Authority may serve the landowner, occupant or other person responsible with an order to:
  - (a) stop the development or the use of the land or building in whole or in part as directed by the notice;
  - (b) demolish, remove, or replace the development, or
  - (c) carry out any other action required by the notice to ensure compliance with this Bylaw or the conditions of a permit or order issued under this bylaw.
- 4.2.2 An order issued under this section shall specify a date for completing the required action.

4.3 Enforcement of Stop Orders

- 4.3.1 The County may register a caveat against the Certificate of Title for land that is the subject of an order under Section 4.2 of this Bylaw. The caveat shall be discharged upon achieving compliance with the order.
- 4.3.2 Costs to the County resulting from enforcement actions taken to achieve compliance with an order under Section 4.2 of this Bylaw may be added to the tax roll of lands subject to the order.

4.4 Offences and Penalties

- 4.4.1 A person who contravenes or fails to comply with provisions of this *Bylaw* and any decision, condition or order made under it, or who obstructs or hinders any person in the administration or enforcement of this *Bylaw*, is guilty of an offence under the *Act*.
- 4.4.2 A person who is guilty of an offence under the *Act* is liable to a fine and/or imprisonment.

6.4 Design and Appearance of Development

- 6.4.2 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.

6.7 Lighting

- 6.7.1 Outdoor lighting on a site shall be located and designed so as to not interfere with the use and enjoyment of neighbouring properties, or with the safe and effective use of public roadways.
- 6.7.2 The maximum permitted height for a freestanding light pole is 9.0m (29.5 ft.) above building grade unless otherwise determined by the Development Authority who shall have

regard for the scale and character of adjacent development and any matters of aesthetics or public safety considered to be relevant.

## 7.23 Outdoor Storage

### 7.23.1 The following shall apply in all Districts:

- (a) No person shall store goods, products, materials or equipment outside of a building unless the storage is subject of an approved development permit or deemed by the Development Authority to be an integral part of another use that has been approved or does not require a development permit.
- (b) Outdoor storage areas may be required to be screened from view by means of fencing, shrubbery, trees and other landscaping to the satisfaction of the Development Authority.
- (c) No outdoor storage activity may be undertaken if in the opinion of the Development Authority it would unduly interfere with amenities of the district or adversely affect neighbouring lots by reasons of excessive noise, smoke, steam, odour, glare, dust, vibration, refuse matter or other noxious or hazardous emissions.
- (d) Outdoor storage areas shall be located, developed and maintained in a neat and orderly manner to the satisfaction of the Development Authority.

## 9.18 Lake Watershed (LW) District

### 9.18.1 General Purpose

The purpose of this district is to protect the integrity of the lakes and watersheds, preserving tree cover, and minimizing adverse environmental impacts while allowing for minimal development of recreational, residential and agricultural uses. Lot sizes in this district shall be between 1.0 ha (2.5 ac) and 2.0 ha (4.9 ac) for a country residential acreage and no less than 8.0 ha (19.8 ac) for a residential woodlot. Notwithstanding the above, the minimum lot size if the site is within 400m of the Lake shall be 2 ha (5.0 ac).

### 9.18.2 Discretionary Uses - Equestrian Facility

## Part Eleven - Definitions

*Development* means:

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

*Equestrian Facility* means a facility used for the training of horses and riders and may include facilities for horse boarding and grooming, horse shows and equestrian competitions.

*Outdoor Storage* means the accessory storage of equipment, goods and materials in the open air where such storage of goods and materials does not involve the use of permanent structures or the material alteration of the existing state of the land.

### **Reasons for decision**

In consideration of the above, the Board concludes it is appropriate to uphold the issuance of the Stop Order for the following reasons:

1. The Development Authority had the authority to issue a Stop Order in accordance with Section 645(1)(a) of the Municipal Government Act (MGA) in consideration of the time the complaint was received on September 26, 2022 until February 17, 2023 when the development permit application was deemed incomplete.
2. The appellant/landowner intend to come into compliance with the submission of a complete development permit application which will then provide the opportunity for the development authority to review the application and make a decision for the proposed use as an equestrian facility.

### **Decision**

In consideration of the above, the Intermunicipal Subdivision and Development Appeal Board concludes the subject lands do not comply with Leduc County Land Use Bylaw No. 7-08 and accordingly, the appellant/landowner Cheryll and Helen Rafferty are hereby ordered to **Stop** all unauthorized activities at the subject lands and comply with the Leduc County Land Use Bylaw 7-08 by taking the following actions:

1. Immediately cease the use of the lights on “the Lands”.
2. Immediately cease the public use (events such as riding, lessons, clinics, and training sessions) of the Equestrian Facility on “the Lands” until such time that you have received a development permit from the Development Authority. The Development Authority finds that the business is operating outside of development approval D06-166.
3. Submit a complete development permit application as requested in the incomplete application letter sent to you on February 17, 2023, as well as application fees.

Carried

### **Other importation information for the appellants/applicant**

- In the event that this Stop Order is not complied with within the time limit provided, Leduc County has the authority to enter onto the lands and take any action necessary to carry out this Stop Order, in accordance with Sections 646 and 642 of the Municipal Government Act, and may seek an injunction or other relief from the Court of King’s Bench of Alberta pursuant to Section 554 of the Municipal Government Act.
- Further, Leduc County has the authority to add the costs and expenses to carry out this Stop Order to the tax roll for the lands pursuant to Section 553.1(1) of the Municipal Government Act.
- 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 issue 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 on March 23, 2023 at 10:30 a.m.



**Adjournment**

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

Carried

The Intermunicipal Subdivision and Development Appeal Board meeting concluded at 11:38 a.m.

  
Chair

  
Clerk