



March 23, 2023

Roger Thorson & Patricia Mayner
8615 94 Ave
Fort Saskatchewan, AB T8L 2R7

**NOTICE OF DECISION OF THE
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

FILE NO: **1325-20/PLHOCC20230029**

APPEAL: **Development Permit Approval**

LAND USE DESIGNATION: **R1 – Single Detached Residential District**

LEGAL DESCRIPTION: **Lot 16, Block 54, Plan 4801TR**

CIVIC ADDRESS: **8611 94 Ave, Fort Saskatchewan**

IN THE MATTER OF AN APPEAL filed with the City of Fort Saskatchewan (the “City”) Subdivision and Development Appeal Board (the “Board”) pursuant to Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (the “MGA”). The Appeal Hearing was held on March 10, 2023 in Council Chambers of City Hall.

**It is the decision of the Board that the Appeal is DENIED, and
Development Permit PLHOCC020230029 is UPHELD.**

BEFORE:

Board Members:

Stew Hennig – Chair
Rudy Furrer
Birgit Blizzard

Administration:

Andrew Kaiser - Clerk for the Subdivision and Development Appeal Board
Jennifer Chapman– Alternate Clerk for the Subdivision and Development Appeal Board

PARTIES PRESENT AND PRELIMINARY MATTERS:

For the Appellant:

Roger Thorson & Patricia Mayner

For the Respondent:

Dean McCartney – Manager, Development Planning
Stacey Ofstie - Planning & Development Officer II } (the “Development Authority”)

For the Applicant:

Carl & Grace Richter

Speaking in support of the appeal:

There were no additional presentations.

Speaking in opposition to the appeal:

There were no additional presentations.

Written submissions opposed to the appeal were received from:
Anne Marie Kautz Harvey – 8606 94 Ave (neighbouring property owner)
Wendy Wright – 8607 – 94 Ave (neighbouring property owner)
Robert I.F. Thomas – 23 Westmews Cres (business customer)
James & Bonnie Clark – 8603 94 Ave (neighbouring property owner)

1. The Appellant filed a Notice of Appeal to the Board following the Development Authority’s issuance of a Development Permit to the applicant for property legally described as Lot 16, Block 54, Plan 4801TR and municipally described as 8611 84 Ave, Fort Saskatchewan, Alberta (the “Property”).
2. At the start of the Hearing, a motion was made by Rudy Furrer to appoint Stew Hennig as Chair. The motion was passed unanimously.
3. A motion was then made by Birgit Blizzard to adopt the agenda, as it was circulated to all parties. The motion was passed unanimously.
4. At the start of the hearing, the Chair provided an overview of the hearing process to all parties present. There were no objections to the proposed Hearing process.
5. The Chair requested confirmation from all parties in attendance that there was no opposition to the composition of the Board hearing the Appeal. None of the persons in attendance had any objection to the members of the Board hearing the Appeal.
6. Based on the information provided by the Development Authority, the Appeal appears to have been filed on time, in accordance with Section 686(1) of the MGA.

7. The Board was satisfied it had jurisdiction to deal with this matter. There were no objections raised at the Hearing regarding the Board's jurisdiction to deal with this matter.
8. The Clerk confirmed there were no changes to the agenda package at the commencement of the hearing.

SUMMARY OF EVIDENCE AND ARGUMENT:

9. The following is a summary of the oral evidence presented to the Board.

Development Authority Presentation:

10. The Board first heard from the Development Authority of the City.
11. The Development Authority provided an overview of the events leading up to the appeal, being: The Appellant is appealing the decision of the Development Authority to approve a development permit application of a Home Business at 8611 94 Ave. The Property is districted as R1 – Single Detached Residential District. Within this land use district, a Home Business is considered a discretionary use.
12. The Property is located within the McNichol neighbourhood which is identified as low density residential.
13. On January 20, 2023, a Home Occupation Development Permit application for 8611 94 Avenue was submitted to Planning & Development. On January 26, 2023, the Development Authority approved the application for a Home Business with the final date to file an appeal being February 16, 2023. Notifications were sent to adjacent properties as well as 5 properties across the street advising them of this approval in accordance with Land Use Bylaw Section 3.5.1. The approval was appealed by an adjacent landowner on February 14, 2023.
14. Through the application review process, it was determined by the Development Authority that the addition of a Home Business of this scale did not go beyond what is considered suitable for this residential district.
15. The new home business at 8611 94 Avenue is classified as Contractor Service.
16. The home business will have no client or employee visits to the residence therefore no impact would be created as there is no increase in vehicular traffic to the street.
17. The home business hours of operation are 7:00 am to 10:00 pm Monday to Friday and 9:00am to 10:00pm Saturday, Sunday and Statutory Holidays. These hours align with the Community Standards Bylaw C1-21 regarding quiet time hours.
18. The home business operates equipment that is commonly used in residential households.
19. If the SDAB supports the appeal and overturns or modifies the Development Authority's decision in favour of their own, the following conditions are recommended for inclusion, in addition to the standard conditions used by the SDAB:

- a. Not allow the Home Business development to continue.

OR

- b. Modify the permit.

20. In response to Board questions, the Development Authority advised that:

- a) This location originally had a home office permit in place since 2009. With a home office permit you are not permitted to extend any storage or activity into an accessory development such as a garage for example. Applying for a home-based business which does allow for activity to extend into an accessory development for the purpose of storage.

Applicant Presentation:

21. The Applicants started their home-based business in 2009 with required insurances and permits to operate snow removal and grass cutting business. The business mainly focuses on working with the senior population helping them out doing the best work they can. Their services are reasonable and takes a lot of the physical burden off their senior customers allowing them to possibly stay in their homes longer.
22. The Applicant states that they have built trust and relationships with their customers and still have some original customers since they started in 2009. They feel they are an asset to the community and appreciate any consideration to considering their services as the current permit allows them to.
23. The Applicant stated that they have a cargo trailer that they store off season equipment in while keeping the current seasonal equipment in the garage, which is also used on their own property. They do not store anything outside the garage.
24. The Applicant stated there is a flat deck trailer that is brought onto the property when they need to load up the tractor, lawn mowers etc., as needed for work, otherwise it stays in the storage yard (off-site). The trailer is brought onto their property when they need it for their own yard work or while working on other projects.
25. The Applicants assured the Board that no business takes place on their own property, the operation of equipment is done for the personal care of the Property.
26. In response to Board questions, the Applicants advised that:
 - a. On December 28, 2022 just prior to 7:00 am after loading up the tractor to leave as there was a heavy snowfall they received a phone call from the RCMP. Municipal Enforcement enquired if they had a permit to operate the business, which they responded that they did. Bylaw Officers informed Mr. and Mrs. Richter that starting a vehicle and loading up a trailer to leave the property was permitted. Following that conversation, they received a letter from the City of Fort Saskatchewan for a review of the permit. After a discussion with Planning & Development they were informed that if they wanted to store equipment on the property, the permit would need to be updated.

- b. The Applicants informed the Board that the equipment that they are using for the business is also used on the property for personal use.
- c. The Applicants explained that on the rare occasion that they are waiting for the dump to open or need a quick break the trailer has been parked on the driveway or on the street. The Applicants assured the board that this is rare and not for long periods of time. They do not create any traffic problems on the street.

Appellant Presentation:

- 27. The Appellant expressed to the Board that this is very emotional piece for the family. They have paid the appeal fee and taken time off work to attend the Hearing. It is not a new development and is a source of frustration for them. The business has been continuing to do operate on the Property for many years, and operations continue year-round and not restricted to winter.
- 28. The Appellant prepared a presentation for the Hearing, which is included in the revised package as Exhibit G.
- 29. The Appellants stated that they feel there is a pattern of behaviour that is disrespectful of “reasonableness” towards people and rules. The Appellant stated that there have been occasions when they told the Applicants to stop blowing snow onto their house and on multiple occasions asked them to stop piling the snow on their driveway.
- 30. The Appellant stated they live on a busy road with an average of 100 cars driving past in the morning. When leaving for work and backing up when there is snow piled up and for the Applicants to pile more snow on our property makes it that much more risky.
- 31. The Appellant has made complaint calls on different occasions to Municipal Enforcement which led to a Restorative Justice mediation effort in 2015 between both parties, the Appellant’s, and Applicant’s. Following mediation was more complaint calls by Mr. Thorson who feels that efforts at seeking enforcement has been unsuccessful.
- 32. The Appellant stated that the Applicants have had trailers and storage onsite for many years in the garage, contravening the existing home office development permit conditions.
- 33. The Appellant states that the intensity of business has increased over the years and is not compatible with the residential area.
- 34. The Appellant contacted Municipal Enforcement on December 28, 2022 at 6:15 am, to complain that the Applicants were operating their snow blower. The Officer on duty said that a resident had just called MES to ask if it was ok for the Applicant’s to go out and blow snow as a favour to neighbours. The Appellant feels that they purposely tried to cover their actions as “Good Samaritan” act, when in fact, feels that the Applicants were clearing snow for paid customers on the other side of their property.
- 35. The Appellants state that the Applicants operated a gas-powered snow blower on a Statutory holiday for 1.5 hours at 7:00 a.m.

36. The Appellant feels that the neighbourhood is high density and not low density, with limited parking, no alleys, and was developed in early – mid 1970's. The entrance to the Applicant's home is on the side of the driveway and not in the front. Anyone going in and out of the Applicants home using the side door is facing the Appellants side of the home where all the bedrooms are located. The bedroom walls on the side of the house facing the Applicants shake when the Applicants enter and leave their home.
37. The Appellant states that the Applicants have a security floodlight above the side entrance door to their home that shines light directly into the bedroom windows. This is affecting the Appellants family quality of life as they are not able to get proper sleep because of the lights.
38. The Appellant stated that the distance between their home and the Applicant's concrete driveway is 1.4 metres. All the bedrooms in the home are along the wall facing the driveway. This exposes them to noise, and emissions from exhaust. Noise, fumes, and snow from the gas-powered backpack blowers directly impact the basement bedrooms in addition to the main floor bedroom.
39. The Appellant wonders how their property value will be impacted by living next door to this home-based business and indicated that the land is not prescribed the use of a business as they are a residential area and not industrial.
40. The Appellants feel that the safety and enjoyment of their property is being affected by the operation of the Applicants business. The noise of trucks starting up and of equipment operating (snow blower) affects the family's ability to have proper rest and sleep.
41. The Appellant referred to Land Use Bylaw Section 3.9.4 a) i) to discuss the impacts to properties in the vicinity of developments and potential nuisance factors to indicate that they feel their property is being affected by the operation of this business. These factors cited by the Appellant are:
 - Traffic
 - Smoke
 - Other airborne emissions
 - Odours
 - Noise
42. The Appellant states that their property is the only one that is truly affected by this development due to the proximity of the home-based business.
43. The Appellant stated that they attempted on several occasions to state concerns to the Applicants. The Appellant has many sleep disturbances and still works full time from the home. They are personally affected.
44. The Appellant stated that vehicles, often more than one are start up before 7:00 a.m. on weekdays and 7:00 a.m. on weekends. The hours of operation are not being followed. Many times, the vehicles are started up before 7:00 a.m. in preparation to leave at 7:00 a.m.

45. The Appellant states that when the Applicant's trucks are backing up with their trailers into the main road that they are impacting the flow of traffic.
46. The Appellant enquired if there are employees coming to work on the property from off-site. The permit does not allow this, but the Appellant has observed people other than the Applicants at the Property assisting them.
47. The Appellant wanted to make a recommendation and request that if the Appeal is Approved the Appellants would like to receive a refund on their Appeal Fee.
48. The Appellants thanked the Board for listening to their Appeal and for allowing them enough time to present.
49. In response to Board questions, the Appellants stated:
 - a. If the permit is denied some of the issues could be resolved by ensuring that the applicant's work within the hours of the permit. Would prefer that the start time is 8:00 a.m. instead of 7:00 a.m. The Appellant states that in a perfect world, this business should not operate at all at the current location.
 - b. The original fence was wooden and in poor shape, after discussion with the neighbours (the Applicant's), it was decided that the cost would be shared to build a new fence. The Applicant's took it upon themselves to put up a wire fence when we were out of town. The fence is on the property line.

Those Speaking in Favour of the Appeal:

50. There were no Parties in favour of the Appeal.

Those Speaking in Opposition to the Appeal:

51. Anne Marie Kautz Harvey submitted a letter in opposition of the Appeal.
52. Wendy Wright submitted a letter in opposition of the Appeal.
53. Robert I.F. Thomas submitted a letter in opposition of the Appeal.
54. James & Bonnie Clark submitted a letter in opposition of the Appeal.

Additional Questions of the Board:

55. *Question to the Development Authority:* The Board asked if the permitted hours of operation to run the business is the same for all residents? The Development Authority informed the board that the hours apply to all residents and come from Community Standards Bylaw. Starting a vehicle during "Night Time" meaning the period beginning at 10:00 PM and ending the following day at 7:00 AM (weekdays), and 9AM (Weekends/Statutory Holiday) is not in the Development Authority's opinion considered to be an external noise but they are not the enforcers of the Bylaw, complaints are heard by Municipal Enforcement.

56. *Question to the Development Authority:* The Board enquired if there is a time limit on how long a vehicle can idle. The Development Authority does not believe that there is, however, they are not the subject matter expert of the Community Standards Bylaw.
57. *Question to the Development Authority:* The Board enquired what control mechanisms and enforcement are in place for ensuring the Community Standards Bylaw is followed. The Development Authority stated that "quiet hours" are enforced by Municipal Enforcement Services. Any noise complaints would go through them to enforce the Community Standards Bylaw. Complaints related to the Development Permit and not pertaining to the conditions on the permit, the Development Authority can start enforcement under the Land Use Bylaw which typically starts with a reminder letter outlining the conditions of the permit. Further enforcement can take place.
58. *Question to the Development Authority:* The Board asked if the conditions on the development permit are not followed, can the development permit be pulled? The Development Authority stated that it wouldn't be that the permit would be pulled, but rather enforcement could result in fines, it could also result in a Stop Order which has an Appeal process.
59. *Question to the Development Authority:* The Board requested clarification of the use of business equipment vs. personal equipment. The Development Authority confirmed that a resident can own a lawn mower and snow blower regardless of if it is being used for business as well as for personal use during the hours under the Community Standards Bylaw.
60. *Question to the Development Authority:* The Board asked if the appeal is granted and the permit is denied, does the home office permit remain in affect? The Development Authority confirmed that it does remain in effect.
61. *Question to the Development Authority:* The Board asked if the equipment listed on the permit is all that will be used? Or is there a limit? The Development Authority informed the Board that the development permit has Conditions of the Development Approval listed under Exhibit B-3 of the agenda package.
62. *Question to the Development Authority:* The Board asked for clarification on a question that is asked on the Development Permit application. If the business has employees working in the residence that do not live in the residence, would they not be considered an employee and if so, would this be permitted? The Development Authority stated that the Land Use Bylaw does allow for one employee that does not reside at the location of the business to work for a home-based business, however this was not requested when the Applicant's applied for the home-based business, and therefore we did not permit it. The home business can have employees that work off site. They cannot have an employee working at the location of the home-based business.
63. *Question to the Development Authority:* The Board asked if there any other controls or remedies that they would like them to consider when determining the outcome of today's Appeal Hearing? The Development Authority informed the Board they have the authority to vary the permit with further restrictions or conditions to the Permit.
64. *Question to the Development Authority:* The Board requested clarification on if City sets a timeline for parking on private driveway's and if there a limit on the number of vehicles

stored in the driveway? The Development Authority indicated that there is no limitation according to the Traffic Control Bylaw C17-22.

65. *Question to the Applicant:* The Board asked the Applicant's if the half-tonne business work vehicle was a diesel fuel or gas? The Applicant respond that no, it is not a diesel. They own a 2003 Avalanche that is licensed and insured for commercial use.
66. *Question to the Applicant:* The Board asked the Applicant if they felt the hours on the development permit are appropriate for operating the business and the Applicant responded Yes.
67. *Question to the Applicant:* The Board asked the Applicant if the intensity of work is the same year-round and the Applicant responded yes, the business is year-round, and the intensity depends on the weather.
68. *Question to the Applicant:* The Board asked the Applicants if they have the same issues with the Appellant during the summer months as they do in the winter and the Applicants responded they tend to get more complaints from the Appellants during the winter months.
69. *Question to the Applicant:* The Board asked the Applicants if they were aware of the conditions on the development permit are that they cannot conduct business before 7AM. That includes starting vehicles. The Applicants responded that it was a misunderstanding. They understood that if you need to be at work at 7AM, you aren't leaving the house at 7AM. You need to give yourself enough time to warm up the vehicle and drive to the place of work. They were told by the RCMP that people come and go at all hours of the day and night and can start their vehicles at any time.
70. *Question to the Applicant:* The Board asked the Applicants if both trailers are ever stored onsite at the same time? The applicants responded, no. We have one trailer that is for our personal use that was stored at our property for a short time while being repaired. As soon as it was fixed it was moved to the storage lot. The flat deck trailer is used for both personal and business use and is also stored off-site.
71. *Question to the Applicant:* The Board asked the Applicant if the spotlight/flood light that the Appellant mentioned is something that can be redirected or remedy? The Applicants responded the light is a motion sensor light only and not a spot or flood light. It only comes on in the nighttime. It has a small range and the bulb is only 40 watts. The light in question can be seen on the photo located within the Appellants presentation (Exhibit G).
72. *Question to the Applicant:* The Board asked the Applicant if limiting the hours of business to not permit you to start the work vehicles before the permitted time cause undue hardship to your business and the Applicant responded that they would be able to make it work.
73. *Question to the Development Authority:* The Board enquired where the fence is located on the property line and the Development Authority provided a drawing for the Board which can be found in Exhibit H.

Closing Comments of the Development Authority:

- 74. The Development Authority had no further submissions beyond what was included in their written submission and presentation to the Board.

Closing Comments from the Applicant

- 75. The Applicant confirmed that they do not have any employees.
- 76. The Applicant stated they try to limit the number of times they are starting vehicles and moving them, but the weather doesn't always cooperate.
- 77. The Applicants stated that over all the years that they have been doing this business they have not run into any other concerns other than with the Appellants.
- 78. The Applicants stated that they try to be reasonable and are not out to cause any problems with the Appellants. However, they have a business that requires them to work specified hours.
- 79. The Applicants stated that they are not the only neighbours the Appellant has had issues with.
- 80. The Applicants stated their business is their livelihood. They are hoping that they can retire in a couple years' time. They want to move forward and want to live their life in peace.
- 81. The Applicants wanted to state that they are not trying to decline the value of the property and don't understand why the Appellants would make a statement about the property value.

Closing Comments from the Appellant:

- 82. The Appellant suggested if the Board varies that permit, that one of the resolutions could be for the Applicant to do some sound attenuation to dampen noise levels.
- 83. The Appellant suggested that if the Applicants were to start work at 9 AM then many of the complaints and issues with noise would be resolved.
- 84. The Appellants requested clarification of the Hours of Operations and were informed that they are consistent with the Community Standards Bylaw. Monday – Friday 7:00 am to 10 pm, and Saturday, Sunday, and Statutory Holidays 9:00 am – 10:00 pm.
- 85. Appellant stated that they feel they are getting “lip service” from Municipal Enforcement and hate the feeling that the Board is going to be in favour of the Applicant.
- 86. The Appellant stated that they have asked numerous times that the Applicant not operate the snow blower as it causes her migraines, but they continue to operate it.
- 87. The Appellants want to ensure that they are being heard. They understand that they have a right to make a living but her wellbeing and health cannot be at the expense.

88. The Appellants stated that their rights are not being heard, their quality of life is impacted.

At the close of the hearing the parties acknowledged that they felt they had been provided with adequate opportunity to state their case and felt that the hearing process was conducted in a fair and impartial manner.

DECISION:

89. It is the decision of the Board that the appeal be DENIED, and the Development Permit be UPHELD.

FINDINGS OF FACT:

90. The Board makes the findings of fact set out below:
91. The Property is located at Lot 16, Block 54, Plan 4801TR, and municipally described as 8611 94 Ave, Fort Saskatchewan, Alberta.
92. The Property is zoned as R1 – Single Detached Residential District.
93. Permit PLHOCC20230029 authorized the use of “Home Business”.
94. Within this Land Use District, a Home Business is considered a discretionary use.
95. The Property is located within the McNichol Neighbourhood which is identified as low density residential.
96. There was already an approved Development Permit issued for a Home Office (D-09-461) at the Property.
97. The Home Business is compatible with the neighbouring uses.

REASONS FOR THE DECISION:

98. The Board’s jurisdiction is found in section 687(3) of the *Municipal Government Act*. In making this decision, the Board has examined the provisions of the *Land Use Bylaw*, all applicable statutory plans, and has considered the oral and written submissions made by the Development Authority, the Appellant, the Applicant, and those speaking both in favour of the appeal and in opposition to the Appeal.

Affected Persons

99. Under section MGA section 697(1)(c), the Board must hear from those given notice and under section 687(1)(d), from those claiming to be affected. In this case, all of the persons speaking were either given notice of the hearing, or were affected due to proximity. Therefore, the Board finds as a fact that all of the speakers were affected and the Board was entitled to hear from them.

100. The Board also received written submissions for their consideration. The Board accepted and considered the submissions of all parties excepting R. Thomas, as they were not an affected person.

ALSA Regional Plan

101. There is no ALSA regional plan applicable to the Property. Therefore, the Board need not consider this plan.

Land Use Policies

102. The SDAB recognizes the Alberta Land Use Policies established as per Section 622 of the MGA and has conducted the hearing to allow for meaningful participation from all parties. The Board noted there was no comment from the parties about the Land Use Policies and in the absence of any evidence that the matter before it was contradictory to the Land Use Policies, the Board finds there is compliance with the Land Use Policies.

Statutory Plans

103. The Board was not provided with evidence from the Development Authority about the City's statutory plans. There was no comment from the parties about the statutory plans and in the absence of any evidence that the matter before it was contradictory to the statutory plans, the Board finds there is compliance with the statutory plans.

Subdivision and Development Regulations

104. The Board must have regard for the Subdivision and Development Regulations in making its decision. Neither the Development Authority nor the Appellants raised the Subdivision and Development Regulations. The Board found no conflict between the Subdivision and Development Regulations and the subject of this permit.

Land Use Bylaw


105. The Board heard evidence from the Development Authority that the Development Permit authorizes the use of a Home Business – Contractor Service – Snow Removal & Lawn Care and that the development is in accordance with, and meets the requirements of, Section 5.25. The Board agrees.
106. The Board considered the development application and the evidence presented by all parties in the course of the hearing, weighing it against the provisions of Section 3.9.4(a)i; the Board determined that the development would not produce nuisance factors outside of what is considered reasonable for a residential district.
107. The Board gave regard to section 3.9.4(a)ii. which states that "*the design, character and appearance of the proposed development and, in particular, whether it is reasonably compatible with, and complementary to the surrounding properties and land use*". The Board determined that based on the merits of the application the proposed development is reasonably compatible and complementary to surrounding properties and meets the requirements of the Land Use Bylaw.

MERITS OF THE APPEAL:

108. For the above reasons the appeal is DENIED and the Development Authority's approval of Development Permit PLHOCC20230029 is UPHELD.

Dated at the City of Fort Saskatchewan in the Province of Alberta, this 23 day of March, 2023.

Clerk: _____


Signed by Jennifer Chapman – Clerk to the
Subdivision and Development Appeal Board.

The decision of the Subdivision and Development Appeal Board is final and binding on all parties, subject only to appeal to the Court of Appeal under Section 688 of the *Municipal Government Act*, R.S.A 2000, c. M-26