



REGIONAL MUNICIPALITY  
OF WOOD BUFFALO

SUBDIVISION AND DEVELOPMENT APPEAL BOARD

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

FILE NO. **SDAB-2016-008**

APPLICATION No.: **2016-DP-02364**

DEVELOPMENT: **Recycling Depot**

LAND USE DESIGNATION: **HC – Hamlet Commercial District**

LEGAL DESCRIPTION: **Lot 30A, Plan 832 1550**

CIVIC ADDRESS: **257 Northland Drive, Conklin, Alberta**

**IN THE MATTER OF AN APPEAL** filed with the Regional Municipality of Wood Buffalo Subdivision and Development Appeal Board (“the Board”) pursuant to Sections 685 and 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (“the Municipal Government Act”), the Appeal Hearing was held on Thursday, December 15, 2016, in the Jubilee Centre Council Chamber, 9909 Franklin Avenue, Fort McMurray, Alberta.

**BETWEEN:**

Conklin Resource Development Advisory Committee (CRDAC) (“the Appellant”)  
-and-  
Regional Municipality of Wood Buffalo (“the Municipality”)

**BEFORE:**

D. Secord, Chair  
A. Austin  
S. Schaffer  
R. Wells

**Administration:**

J. Wall, Clerk for the Subdivision and Development Appeal Board

- [1] Following the introduction of the Board, the Chair confirmed with the parties in attendance that there were no objections to the constitution of the Board.

### **PRELIMINARY MATTERS**

- [2] No preliminary matters were raised.

### **SUMMARY OF HEARING**

- [3] This Appeal is related to the approval of a Development Permit for a Recycling Depot. The area is zoned HC – Hamlet Commercial District under the Regional Municipality of Wood Buffalo *Land Use Bylaw 99/059* (“the Land Use Bylaw”) and the use is a discretionary use.
- [4] The Development Officer, A. Bevis, started the proceedings with a verbal presentation of her written report (Exhibit 3). The application for the development was received on September 20, 2016 and was circulated to internal and external stakeholders. Upon review the application was accepted by the Development Officer and the Development Permit was issued on October 27, 2016.
- [5] The Development Officer provided further detail regarding the proposed development, explaining that the business will serve local residents for their recycling needs by counting and refunding various types of beverage containers and will employ two people. She explained that the current landowner of 257 Northland Drive provided authorization to apply for the Change of Use Development Permit and also noted that the site had been previously used for a convenience store and a post office.
- [6] The Development Officer stated that the *Municipal Development Plan* and the *Conklin Area Structure Plan* designate the subject area as Community Core which supports small businesses such as convenience stores, restaurants and personal/commercial services. She stated that the proposed development is considered a small scale commercial service and is consistent with the intent of the *Municipal Development Plan* and the *Conklin Area Structure Plan*.
- [7] Ms. Bevis stated that it was determined that there was sufficient space for parking and adequate buffer from the proposed building to the adjacent properties, with approximately 36 meters to the houses at the rear, and 94 meters to the school. No traffic or noise impacts are anticipated due to the scale and location of the proposed development.

- [8] The Development Officer explained that the *Land Use Bylaw* defines a Recycling Depot as a development used for the buying and temporary storage of bottles, cans, tetrapaks, newspapers and similar household goods for reuse where all storage is contained within an enclosed building. She further explained that pick-up and delivery of goods is permitted.
- [9] Ms. Bevis further clarified that the Development Authority can impose conditions deemed appropriate, regarding regulations of the *Land Use Bylaw* as well as provisions of any statutory plan pertaining to the area. The Development Permit indicates that “*construction materials, including garbage, shall be stored so as not to create a nuisance to neighbouring properties*” and “*the building location, design and external finishes shall be as indicated on the approved drawings. Any changes to the approved plans shall be submitted to the Development Officer for further approval, even if the changes are minor in nature and are consistent with the regulations applied to the site.*” Both conditions will ensure that the Recycling Depot does not cause a negative effect to adjacent properties. If at any time the conditions are not being met, the Development Authority can enforce and will make certain the property comes into compliance.
- [10] The Planning and Development Department recommends that the Subdivision and Development Appeal Board uphold the decision and grant Development Permit 2016-DP-02364. The proposed development fulfills the intent of the land use district as well as the policies of the *Area Structure Plan*. The proposed development will have little effect on the use, enjoyment and value of the adjacent properties and the amenities of the neighbourhood as its operations are required to be contained within the building and must meet the conditions of the approved Development Permit.
- [11] Upon questioning by the Board, the Development Officer confirmed that the proposed development is considered a small commercial business. She also confirmed that a traffic impact study was not completed; however, the application was circulated to the Engineering Department and no concerns were raised.
- [12] The Development Officer confirmed that she did not look specifically at the parking requirements, but referred to Attachment 4 of the Planner’s Report (Exhibit 3) that shows that the lot size is large and would be able to accommodate parking for such a business.
- [13] Upon questioning from the Board regarding the potential for dangers from wildlife, the Development Officer responded that all the materials must be contained within the building so as to not attract animals.

- [14] The Development Officer clarified that the *Land Use Bylaw* is in the process of being re-written and that it will include the Community Core District once completed. At the present time, the land for the proposed development is designated Hamlet Commercial in the *Land Use Bylaw*.
- [15] In closing, the Development Officer outlined the process for circulating the permit to internal and external stakeholders noting the permit was circulated to municipal departments including First Nation and Métis Nation Relations, the Conklin Resource Development Advisory Committee (CRDAC) and the hamlet office. Comments can be submitted and a two week deadline is common practice.

#### Submission In Favor Of The Appeal

- [16] The Clerk read into the record a letter from V. Quintal-Nokohoo, resident, who expressed her concerns regarding the location of the proposed development (Exhibit 13), as well as letter in support from the Conklin Kids Do Care Club which was signed by 53 residents of the community (Exhibit 14).
- [17] The Board heard from the Appellant J. O'Donnell, Chief Executive Officer for the Conklin Resource Development Advisory Committee ("CRDAC") and Y. Cheng, Ackroyd LLP, Counsel for the Appellant.
- [18] Mr. O'Donnell and Mr. Cheng addressed the Board and explained that the CRDAC is a not for profit organization consisting of an appointed Board of Directors from the Conklin Community Association and the Conklin Métis Local 193, and is a major landholder in the community. Mr. O'Donnell gave a history of the planning issues and concerns within the community.
- [19] Mr. O'Donnell explained that the notification of the approval was not posted locally in the Conklin Newsletter, but was instead placed in the Fort McMurray Today, which is not circulated in Conklin. He indicated that there are many safety issues in the community and that there are issues with the lack of Bylaw enforcement and policing in the area. Mr. O'Donnell indicated that there are presently 16 open complaint files dealing with issues in the area. He noted that the CRDAC is providing funding for community policing until the situation is rectified. He also made reference to the higher rate of violent crime in the Conklin compared to Fort McMurray.

- [20] Mr. Cheng gave an overview as to why the proposed development is inappropriate for the area. He stated that the land in question is designated Community Core in the *Conklin Area Structure Plan* and in the *Municipal Development Plan*. He referenced Map 4: Social Infrastructure Map and Map 11: Conklin Generalized Land Use Concept Map of the *Conklin Area Structure Plan* to illustrate the infrastructure and zoning in the community (Exhibit 12). Mr. Cheng stated that the *Conklin Area Structure Plan* gives a more local context than the *Land Use Bylaw* for planning decisions. At the present time, the Community Core consists of a school, recreation center, residential dwellings, a fire hall, a community office and a community hall. He stated that there are no commercial uses in the area and that commercial uses are typically found along Highway 881 and Northland Drive or in the industrial area further east of Northland Drive. The subject property is near a residential area, a school and a fire hall. He further stated that the Recycling Depot is not a neighbourhood use and should not be located in the Community Core.
- [21] Mr. Cheng requested that the Board revoke the decision of the Development Officer and deny the permit. He stated that granting the Development Permit is inappropriate and that the proposed use of the lands is incompatible with the surrounding area and is contrary to the intent of the *Municipal Development Plan* (Exhibit 15) and the *Conklin Area Structure Plan* (Exhibit 12). He stated the *Conklin Area Structure Plan* is the most recent planning document that the Board has available to it, which was completed in 2013.
- [22] Mr. Cheng stated the CRDAC is of the opinion that the proposed development will negatively impact the use, enjoyment and amenities of the surrounding area due to an increase in noise, traffic, and unsightliness which will create additional safety risks due to its proximity to the school and are not compatible in the Community Core. The CRDAC feels that the development should be located in an area designated for industrial or commercial use and that similar businesses and uses are located along Highway 881.
- [23] Mr. Cheng referenced Principle 3 of the *Conklin Area Structure Plan* that states: “*Street and traffic safety is a major concern due to the number and size of vehicle traffic travelling through the Hamlet to the nearby oil sands operations.*” The CRADC is of the opinion that there would be an increased safety risk from the Recycling Depot.

- [24] Mr. Cheng stated that the CRDAC is not opposed to the proposed development and is willing to work with the Applicant to find a more suitable site. He further explained that there are serviced lots available along the Highway 881 corridor which are much more appropriate and could better accommodate the recycling depot. The CRDAC requests that the Board uphold the appeal and deny the permit as it does not meet with the *Municipal Development Plan* or the *Conklin Area Structure Plan* and is a light industrial use better suited outside the Community Core. He also raised the issue of lack of consultation with the community members from the Applicant.
- [25] The Board inquired if there were animal attacks on people in the community. The Appellant was not aware of any attacks, however, did indicate that bear traps were requested from Forestry and that dogs have been attacked by bears and wolves.
- [26] E. Desjarlais, President of the Conklin Community Association, Vice-President, Conklin Métis Local and Director of the CRDAC, addressed the Board to express his concerns with the location of the proposed development. He feels that odors from the recycling depot will impact the neighbourhood and expressed his concerns that its proximity to the school is a safety issue for school children.
- [27] M. L'Hirondelle, Treasurer, Conklin Community Association, addressed the Board to express her concerns with the proposed development regarding odors, traffic, safety and the potential of wildlife being attracted to the area. She also raised concerns regarding the lack of consultation with community members.
- [28] G. Letendre, Secretary, Conklin Community Association, addressed the Board with her concerns regarding wildlife being attracted to the area. Ms. Letendre expressed concerns with the proximity of the recycling depot to the school, and further indicated that its location in the core of the community would affect the enjoyment of the neighbourhood and safety in the area.
- [29] M. Farrington, Chief Administrative Officer, Athabasca Tribal Council, addressed the Board in support of the appeal and requested that the appeal be upheld on the basis of the concerns raised by community members.
- [30] In closing, Legal Counsel for the Appellant stated that no review was conducted by either the Applicant or the Municipality regarding wildlife being attracted to the area. He also noted that the Applicant did not provide any evidence in the way of permits or other written documentation from the respective governing boards and authorities to demonstrate that the appropriate permits and approvals are in place authorizing the recycling depot.

Submission Opposed To The Appeal:

- [31] The Board heard submissions from M. Al Hattab, Applicant, who spoke in opposition to the appeal.
- [32] Mr. Al Hattab stated that the Recycling Depot will fill a gap that exists in the commercial sector of Conklin and will provide a much needed service in the residential community area as well as creating local employment for one and possibly two local residents.
- [33] He explained that the recycling depot was approved by the Beverage Container Management Board. Additionally, the Alberta Beverage Container Recycling Corporation has approved the location of the depot as it meets the criteria set forth for issuance of a permit, including designated customer parking for a minimum of five vehicles, a public washroom and is accessible in all weather conditions.
- [34] The Applicant further explained that due to the population of the area, this business is not required to be open seven days a week, but must be open at least 16 hours during the week and six hours on Saturdays. He stated that he is willing to keep the depot closed during school hours, including the drop off and pickup times, so as to ensure the safety of the children.
- [35] Mr. Al Hattab advised of his intent to implement a pick-up service from Conklin, Janvier and the surrounding areas to limit the traffic impact in the area. Given the scale of his proposed business, it does not make sense to operate out of a larger facility where rent is higher.
- [36] Upon being questioned by the Board regarding potential business growth, Mr. Al Hattab indicated that he has agreed to a one-year lease agreement with the land owner, and will operate on a month to month basis thereafter.
- [37] The Applicant explained that there is a criteria in order to meet the requirements of the Beverage Container Management Board in order to receive a permit for a recycling depot. He further explained that the he did not consult with members of the community, but that he is willing to work with the community members to decide what hours will work best for the community.
- [38] The Applicant also explained that the current business model would not support the required investment capital to build new facilities in the Highway 881 Commercial District, but that possibly after a few years this could be considered.

[39] The Applicant explained that he would not be using a semi-truck for transportation of the recycling as it is too costly and will be using a full size truck and will attach a single axle enclosed trailer. He indicated that he has not mitigated potential issues with wildlife but that recycling will not accumulate as his turnaround time is eight days.

[40] Upon conclusion, the Chair asked the parties present, if they felt that the hearing was conducted in a fair manner. No issues were brought to the Board's attention.

### **FINDINGS OF FACT**

[41] The Board makes the following findings of fact:

- a. The Property is zoned HC – Hamlet Commercial District;
- b. A Recycling Depot use is a Discretionary Use;
- c. On October 27, 2016 the Development Officer approved 2016-DP-02364 and the notice of the decision was communicated to the local effected agencies as per normal notification procedures, however, it was not advertised locally in the Conklin area by the Development Authority;
- d. The *Municipal Development Plan* and the *Conklin Area Structure Plan* has designated the Subject Area as Community Core.

### **DECISION**

[42] **It is the decision of the Subdivision and Development Appeal Board to uphold the appeal and deny Development Permit 2016-DP-02364.**

**REASONS FOR THE DECISION**

[43] The Board’s jurisdiction is found in section 687(3) of the *Municipal Government Act*:

- 687(3) *In determining an appeal, the subdivision and development appeal board*
- (a) *must act in accordance with any applicable ALSA regional plan;*
  - (a.1) *must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;*
  - (b) *must have regard to but is not bound by the subdivision and development regulations;*
  - (c) *may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;*
  - (d) *may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,*
    - (i) *the proposed development would not*
      - (A) *unduly interfere with the amenities of the neighbourhood, or*
      - (B) *materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,**and*
    - (ii) *the proposed development conforms with the use prescribed for that land or building in the land use bylaw.*

[44] In reaching its decision the Board considered the written and verbal presentations of all the parties. The Board was compelled by the submissions from the Appellant and the representatives from the community and is of the opinion that the proposed development is not an appropriate discretionary use within the Community Core area of Conklin.

[45] The Board considers the Recycling Depot to be general/light industrial in nature and is more suited in the Highway 881 Commercial District. Section 5.2.3 of the *Conklin Area Structure Plan* states “*Light industrial activities shall be directed to the east of Highway 881, south of Northland Drive*”.

[46] While the development may be a discretionary use in the *Land Use Bylaw*, the Board finds that the evidence presented clearly illustrates the proposed development is not in line with the *Municipal Development Plan* (Exhibit 15) and the *Conklin Area Structure Plan* (Exhibit 12). According to the definition of Community Core in the *Conklin Area Structure Plan* this zone intends to promote small scale retail and commercial/personal services as desired by the community.

- [47] The Board also notes that the CRDAC has indicated that there are fully serviced vacant lots in the Highway 881 commercial district and is willing to work with the Applicant to find a more suitable location.
- [48] The Board finds that the proposed development does not meet Principle 3 of the *Conklin Area Structure Plan* which intends to promote community safety as street and traffic safety is a major concern due to the number and size of vehicle traffic travelling through the Hamlet to the nearby oil sands operations.
- [49] The Board finds that submissions of the affected parties clearly show that the proposed development is not desired by the community. Principle 5 of the *Conklin Area Structure Plan* states:
- “Within the Hamlet, the proposed Community Core will accommodate a mix of uses to promote increased opportunities for small scale retail and commercial/personal services as desired by the community.”*
- [50] The Board is of the opinion that in order to foster responsible development in the RMWB, the Municipality must do its due diligence to work in conjunction with the requirement of the *Municipal Development Plan* and the *Area Structure Plans*. Both documents are an integral part to fostering healthy rural community growth.
- [51] The Board also had safety concerns for the lack of detail in the Development Permit application process for mitigation of wildlife, and a traffic impact study. Therefore, in keeping with the vision of the *Municipal Development Plan* and the *Conklin Area Structure Plan* the Board encourages the parties to work together to find a more desirable location for the recycling depot.
- [52] The Board realizes that the *Municipal Development Plan* and the *Conklin Area Structure Plan* are not consistent with the current *Land Use Bylaw* and would hope that when the bylaw rewrite is completed the three documents will be integrated with each other.
- [53] Based on the balance of all the evidence and aforementioned factors and in the absence of any other relevant evidence, the Board finds that the Applicant has not discharged the burden of demonstrating that the proposed recycling business would not: (a) unduly interfere with the amenities of the neighbourhood or (b) materially interfere with or affect the use and enjoyment of neighbouring properties.

[54] Moreover, in weighing all the evidence and aforementioned factors, the Board finds that the Applicant provided insufficient compelling planning rationale in opposition of the application.

[55] 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

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 30<sup>th</sup> day of December 2016.

per CHAIR:  
Vice-Chair, Sean Schaffer

**APPENDIX "A"****DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:**

<b>EXHIBIT NO.</b>	<b>FILED BY:</b>	<b>ITEM</b>	<b>DATE FILED</b>
1.	Appellant	Notice of Appeal	11-14-2016
2.	Planner	Development Permit	11-14-2016
3.	Planner	Planners Report	12-02-2016
4.	Applicant	Applicant Submission- Conklin Bottle Depot and Maps	12-07-2016
5.	Affected Party	Submission – C. Johnson	12-08-2016
6.	Affected Party	Submission - K. Reck	12-08-2016
7.	Affected Party	Submission - R. Quintal	12-08-2016
8.	Affected Party	Submission - Chipewyan Prairie IRC	12-08-2016
9.	Affected Party	Submission - Y. McCallum - CRDAC Elder Board Director	12-08-2016
10.	Affected Party	Submission - D. Woytkiv President Willow Lake Community Association	12-08-2016
11.	Affected Party	Submission - J. Nokohoo Javier Dene Wood Buffalo Community Association	12-08-2016
12.	Appellant	Conklin Area Structure Plan	12-09-2016
13.	Affected Party	Submission – V. Quintal-Nokohoo	12-14-2016
14.	Affected Party	Submission – Conklin Kids Do Care Club	12-15-2016
15.	Appellant	Book of Authorities of Conklin Resource Development Advisory Committee	12-15-2016

**APPENDIX “B”****REPRESENTATIONS**

	<b>PERSON APPEARING</b>	<b>CAPACITY</b>
1.	A. Bevis	Development Officer - Planning and Development Regional Municipality of Wood Buffalo
2.	J. O'Donnell	Appellant - Chief Executive Officer, Conklin Resource Development Advisory Committee
3.	Y. Cheng, Ackroyd LLP	Legal Counsel - Conklin Resource Development Advisory Committee
4.	M. Al Hattab	Applicant
5.	E. Desjarlais	Affected Party
6.	M. L'Hirondelle	Affected Party
7.	G. Letendre	Affected Party
8.	M. Farrington	Affected Party