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Our File Reference: 283964

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October 27, 2008

PLEASE REPLY TO EDMONTON OFFICE

**BY COURIER**

Subdivision and Development Appeal Board  
Lac Ste. Anne County  
Box 219  
Sangudo, Alberta T0E 2A0

Attn: Subdivision and Development Appeal Board

Dear Sir/Madam:

**Re: 1304-08; 08-D0303; Development Permit Application (the "Application")**  
**Applicant: Yellowhead Aggregates (the "Appellant")**  
**Aggregates Owner: Brian and Marjorie Turnbull**  
**N.W. 06-55-01-W5M, N.E. 06-55-W5M; S.W. 06-55-W5M**

We are solicitors for Yellowhead Aggregates, a division of Sureway Contracting Ltd. The Appellant hereby appeals to the Subdivision and Development Appeal Board (the "Board") of Lac Ste. Anne County for relief with respect to the Application. Therefore, kindly treat this letter as the Appellant's Notice of Appeal.

We also enclose herewith the filing fees for this appeal.

**I. Background**

By letter dated August 25, 2008, the Appellant filed an application to the Development Authority of Lac Ste. Anne County (the "County") for a permit to develop a Class 1 gravel pit and aggregates processing operation. The Application was duly received by the County on September 2, 2008.

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Open Houses were previously conducted by the Appellant on June 26, 2008 and August 14, 2008 to consult with landowners in respect of the Application and the proposed development.

The lands to be developed under the Application are designated under the County of Lac Ste. Anne *Land Use Bylaw No. 16-08* (the "Bylaw") as Agricultural "A", and the proposed use thereof by the Appellant for natural resource extraction and processing is listed in the Bylaw as a Discretionary Use.

By a report dated October 1, 2008, the Development Officer referred the Application to the County's Municipal Planning Commission ("MPC"), with a recommendation that the Application be approved subject to the conditions attached to the report. A copy of this report is attached to this letter.

At a meeting of the Lac Ste. Anne Development Committee and the MPC held on October 1, 2008, the MPC made the following decisions and directions (collectively, the "Decision"):

1. *Firstly the Development Officer is directed to return the two reports (from FFA and HCL) to the Developer, as the Municipal Planning Commission cannot consider information not tabled for consideration by other affected persons.*
2. *Secondly, the MPC determines that the application as submitted is incomplete and asks the Developer to submit the following additional information by October 31, 2008:*
  - (a) *A Noise Impact Assessment;*
  - (b) *A Groundwater Assessment;*
  - (c) *A Traffic Assessment (TLA) of both routes;*
  - (d) *An On Site Dust Control Plan; and*

*any other written submissions the Developer wishes to supply.*
3. *On or before November 21, 2008 the affected persons shall file any written submission, including expert reports.*
4. *The MPC's consideration of the application will be adjourned to 10 a.m. on December 10, 2008. The location will be this hall or if not available the location will be posted on the County's website. All written submissions will be posted on the County website or available for inspection at the County office. The MPC asks that all submissions be provided in electronic form (pdf) and one hard copy.*

## **II. Reasons for Appeal**

### **A. Jurisdiction of the Board**

We respectfully submit that the Board has jurisdiction to hear the within appeal by virtue of Sections 684 and 685 (1) (a) of the *MGA*, as follows:

1. As of October 13, 2008, forty days after the Application was received by the Development Authority, the MPC (upon referral by the Development Officer) had not made a decision on the Application. At the option of the Appellant, the Application is deemed to be refused; Section 684.
2. If a development authority fails or refuses to issue a development permit to a person, the person applying for the permit may appeal to the Board; Section 685 (1) (a).

**B. Application Filed in Accordance with Land Use Bylaw**

We respectfully submit the Application satisfied all requirements set forth and prescribed in the Bylaw in respect of the proposed development. Further, the Appellant also fully complied with the consultation and filing requirements set out in the County's *Guide to Sand and Gravel Pit Operations* (the "Guide").

Both the *MGA* (Section 640 (2) (c)) and the Bylaw prescribe the requirements for applications submitted to the Development Authority for development permits. Section 640(2)(c) of the *MGA* instructs municipalities to establish, within their land use bylaws, a method of making decisions for development permits. Amongst other things, this provision states as follows:

(2) *A land use bylaw:*

(c) *must establish a method of making decisions on applications for development permits and issuing development permits for any development, including provision for*

...

(iii) *processing an application for, or issuing, canceling, suspending or refusing to issue, a development permit,*

... and

(vii) *any other matters necessary to regulate and control the issue of development permits that to the council appear necessary.*

Sections 14 and 52 of the Bylaw, as well as the Guide, identify the process, procedures and requirements relevant to the application for and issuance of a development permit. In the circumstances of the Application, all such processes, procedures and requirements were met or followed by the Appellant.

Notably, the Development Officer indicated in a report dated October 1, 2008 and addressed to the Lac Ste. Anne Development Committee and the MPC that the Application be approved subject to conditions attached thereto.

**C. Role of the MPC and the Development Committee**

The decisions and directions of the MPC and the Development Committee do not operate to prevent the Appellant from exercising its option under Section 684 of the *MGA* to make the within appeal.

The Appellant is entitled to rely upon the provisions of the *MGA*, the Bylaw and the Guide, without more, as to the processes, procedures and requirements for its application. As stated above, those provisions were duly followed.

Except as provided for in Section 14 (4) of the Bylaw, no provision in the *MGA*, the Bylaw or the Guide permits the Development Authority the powers to determine that an application is incomplete. Section 14 (4) of the Bylaw states as follows:

*When, in the opinion of the Development officer, sufficient details of the proposed development have not been included with an application for a development permit, the Development Authority may return the application to the applicant for further details. The application so returned shall not be determined to be in its final form until all required details have been submitted to the satisfaction of the Development Authority.*

In the circumstances at hand, the Development Officer recommended approval of the Application on October 1, 2008 in her report. As such, the operation of Section 14 (4) was thereafter exhausted.

#### ***D. Proposed Use of Lands Complies with the Bylaw***

The proposed use of the lands by the Appellant complies with the Bylaw, and in particular Section 52 thereof. As stated above, the proposed use for natural resource extraction and processing is listed in the Bylaw as a Discretionary Use. In addition, as per the County's Municipal Development Plan, the lands are within the designated Gravel Extraction Area.

### **III. Requested Relief**

The Appellant respectfully requests the following relief; that the Board:

- (a) Substitute the decision of the MPC and accept the Application as filed;
- (b) Substitute the decision of the MPC and approve the Application; and
- (c) Issue a Development Permit to the Appellant for the proposed use, on the conditions set out in the attached report of the Development Officer, subject to the following revisions to such conditions:
  - (i) Condition (5) be amended by adding the following to the end of the current provision: "The haul route may be revised by the Appellant and the Development Authority upon mutual agreement, with any change to the haul route to be confirmed in the Aggregate Haul Agreement."; and
  - (ii) Condition (9) be amended by adding the following to the end of the current provision: "In addition to the foregoing, processing activities shall be allowed to operate 24 hours per day, 7 days per week for up to 110 days per year."

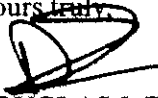
#### IV. Conclusion

The Appellant has fully complied with the legal framework surrounding the development permit process, including consulting with stakeholders on the proposed development. Likewise, the Appellants have fully cooperated with the MPC and the Development Officer to provide requested documents and information in a timely fashion.

Therefore, the Appellant requests that the Board grant the requested relief.

We look forward to the Board's advice with respect to the hearing of this matter.

Yours truly,



DOUGLAS I. EVANCHUK

DIE/dld

cc. Ms. Marlea Sleeman, Yellowhead Aggregates

PLANNING/DEVELOPMENT OFFICER'S REPORT – KAREN  
DEVELOPMENT COMMITTEE & MUNICIPAL PLANNING COMMISSION MEETING

October 1, 2008

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**ACTION ITEMS**

**1. MUNICIPAL PLANNING COMMISSION**

**2. Development Permits**

Development permit 08-D0303, Applicant: Sureway Contracting Ltd. operating as Yellowhead Aggregates/Owner: Brian and Marjene Turnbull to operate a class I gravel pit within N1/2 & S.W. 06-55-01-W5M, Tax Roll 5501062001, 3001 & 4001 Div. 2

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**Description of Permit:**

The above land is designated Agricultural "A" in the Land Use Bylaw 16-08 Natural resource extraction and processing is listed as a Discretionary Use.

As per the Municipal Development Plan the above lands are within the Gravel Extraction Area, however not within the permitted use area.

The application is to Operate a Class I gravel pit for approximately 10 years. Including crushing and washing.

The applicant held an Open House June 26, 2008 and August 14, 2008, there were a number of landowners in attendance at both open houses.

This is a proposed dry pit operation; the sand and gravel extraction will not exceed 70 ft. Therefore impact to adjacent residential water wells is not anticipated.

The applicant is requesting hours of operation for the "Extraction Only Area" to be scheduled for 5 days a week 12 hours day 7 am to 7pm. The "Extraction and Processing Area" to operate 24/7. (see sketch 4 of 9)

**Timing of Operations**

Proposed hours of operation are 24 hours/day and 7 days/week. Operations, in general (stripping, mining, crushing, hauling, reclamation) may be ongoing throughout the year, with different processes occurring at different times. On average, 100 loads/day will be hauled, with a maximum daily load limit not to exceed 200 loads/day. It is expected that the busiest period for hauling operations is May to October, but hauling operations could be conducted year round.

**Recommendation:**

Approve subject to the following conditions:

## **GRAVEL PIT PERMIT CONDITIONS**

- (1) That all aspects of the extraction and reclamation operation take place in full compliance with an approved plan as submitted to Alberta Environment. The applicant shall comply with the Code of Practice for Pits.
- (2) Activities other than, extraction, hauling and reclamation are prohibited within 402 metres of a parcel designated as Country Residential.
- (3) The developer to post appropriate signage on and about the property (i.e. trucks turning, danger open pit). and to fence all property lines adjacent to public road ways or within 100 metres of a residential dwelling. Location of all signage to be determined in cooperation with Public Works.
- (4) Property to be securely gated and lock when not in use.
- (5) The haul route will be north on Range Road 20 to township road 552, then west to Secondary Highway 777.
- (6) Developer to enter into a Aggregate Haul Agreement with Lac Ste. Anne County, this agreement includes dust control, road maintenance and security, signage, hours of hauling etc.
- (7) All trucks to be clearly marked as per Provincial Legislation.
- (8) Gravel extraction be carried out so as to create a minimum of dust, noise and environmental disturbance. In this regard, the County may require the implementation of administrative controls to minimize the impact of noise and dust beyond the boundaries of the site.
- (9) Hours of operation for each activity as follows:  
All operations shall be considered to be allowed to operate on a 12 hr./day shift Monday to Friday  
  
Closed on Sunday, statutory holidays including New Year's Day, Alberta Family Day, Good Friday, Victoria Day, Canada Day, Labour Day, Remembrance Day and Christmas Day.
- (10) Preserve all existing stands of trees and shrubbery outside the development area for environmental and sound attenuation purposes.
- (11) A 3 metre buffer to be maintained along property lines.
- (12) Appropriate trash bins to be located on site, no garbage to be imported to site, all seasonal shut down garbage, recyclables and used oil to be removed to an approved disposal facility;

- (13) Portable commercially serviced toilets to be used at all times;
- (14) *Operational / Development Permit is subject to ten (10) year term.*
- (15) *Weed control measures to be in place for life of pit. Work with Lac Ste. Anne County's Agricultural Service Board to develop and implement an active weed control program for the gravel pit operation. Contact Geoff Thompson – Agricultural Fieldman 1-866-880-5722*
- (16) *Failure to comply with any of the listed conditions will nullify the development permit;*