

**SOUTH COUNTRY
INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

DECISION DATE: March 29, 2018 Development Application No. 2018-001

BEFORE: South Country Intermunicipal Subdivision & Development Appeal Board (Board)

Members:

Bill Chapman (Chair)

Melody Garner-Skiba

Pete Pelley

In the matter of the Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26, as amended (MGA);

and in the matter of the Town of Coaldale Land Use Bylaw No. 677-P-04-13 and amendments thereto (LUB);

and in the matter of an appeal by: Blaise Mac Neil
Coaldale, Alberta

of a decision of the Town of Coaldale Municipal Planning Commission (MPC), with respect to an application from LASCO & Associated Companies to construct an Asphalt Plant and Ancillary Use (Gravel Crusher) located on Ptn. NE14-09-20-W4M in the Town of Coaldale, Alberta, which was APPROVED subject to conditions, by the Municipal Planning Commission following a public hearing held on January 24th, 2018.

THE INFORMATION PART OF THE HEARING WAS DOCUMENTED

UPON PROVIDING THE appellants with a copy of the exhibits referred to in Appendix A attached hereto and there being no objections to the said exhibits.

UPON WRITTEN NOTICE of the Hearing of the appeal being given in accordance with Section 686 of the MGA.

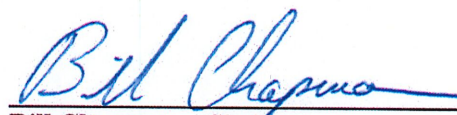
UPON HEARING at the said Hearing, held in the Town of Coaldale on March 20, 2018, the evidence adduced from and submissions made by the persons shown on Appendix B attached hereto.

UPON CONSIDERING the documents shown on a list attached to Appendix A, as being the documents produced and marked as exhibits at the Hearing in the presence of the persons referred to in Appendix B attached hereto.

UPON HEARING the oral representation of the said representatives and having regard to the LUB, and under the authority vested in the Board pursuant to the MGA, this Board has decided that the appeal be **DENIED** and the original decision of the Municipal Planning Commission of the Town of Coaldale to approve the development with conditions be **UPHELD** with revised conditions.

PURSUANT TO Section 687(2) of the MGA, written reasons for this decision have been furnished in this decision.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD



Bill Chapman - Chair

SOUTH COUNTRY
INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Development Application No. 2018-001

UPON HAVING HEARD what was alleged by the appellant, **upon having heard** what was alleged by the applicant, and **upon having heard** what was alleged by the Town of Coaldale representatives and **upon hearing** others listed in Appendix B of this decision and **upon having read** exhibits noted in Appendix A of this decision, the Board finds the facts to be as follows:

1. On December 21, 2017 LASCO & Associated Companies (applicant) submitted an application to the Town of Coaldale to construct an Asphalt Plant and Ancillary Use (Gravel Crusher) on lands legally described as Ptn. NE14-09-20-W4M. (exhibit E)
2. The subject parcel is designated as Industry - I in the LUB, Schedule 2, Land Use Districts. Asphalt Plant is categorized as a discretionary use.
3. Notification of the application was mailed to adjacent landowners and affected agencies; a notice was advertised in the January 16th, 2018 and January 23rd, 2018 editions of the Sunny South News prior to the hearing (exhibit F), and was posted on the Town of Coaldale website.
4. The applicant mailed an information circular to adjacent landowners and members of the chamber of commerce prior to the MPC meeting (exhibit H).
5. The development was approved, with conditions, at the January 24th, 2018 meeting of the Municipal Planning Commission. Exhibit D shows the Development Permit and associated site plan. Correspondence presented to the MPC at that hearing is shown in exhibit J.
6. A copy of the notice of decision was mailed to adjacent landowners and advertised in the January 30th, 2018 and February 6th, 2018 editions of the Sunny South News (exhibit M), and posted to the Town of Coaldale website.
7. A letter of appeal was received by the Town of Coaldale on February 19, 2018 from Blaise Mac Neil of 929 19b Avenue, Coaldale Alberta. In the letter, Mr. Mac Neil outlined concerns with respect to the development, generally noting concerns with respect to environmental considerations including but not limited to noise, dust, and other potential emissions; financial implications for nearby lot owners; and issues with the Town's process for approving the development (exhibit C).
8. Notice of the hearing was mailed to adjacent landowners and affected agencies and was advertised in the Sunny South News. In addition, community members who attended the MPC hearing and provided an email address to the Town were emailed a notice of the appeal hearing (exhibit B).
9. Alberta Transportation provided notice to the Board by way of email on March 5, 2018 confirming information initially provided to the MPC, indicating that a traffic impact assessment was not required and that the department had no concerns with the proposed development (exhibit S).
10. At 3:01pm on March 20th, 2018, Town of Coaldale Director of Planning and Development Spencer Croil received an email from the applicant indicating that the provided figures for traffic volumes had been in error, noting that the 75 trucks per week volume considered as part of the initial approval by the MPC was incorrect, and that the more accurate figure was 75 trucks per day.
11. At 3:09pm on March 20th, 2018, Mr. Croil communicated this information in an urgent notice to Alberta Transportation, who had previously indicated no concerns with the development and that a Traffic Impact Assessment would not be required.
12. At 3:31pm on March 20th, 2018, Alberta Transportation provided notice to Mr. Croil that a Traffic Impact Assessment would be required for the proposed development (exhibit X).
13. In a letter submitted to the Board dated March 6, 2018, Mr. Croil outlined the administrative procedures followed by the Town of Coaldale with respect to the processing of the development permit and the subsequent decision of the MPC, suggesting that the claims made by Mr. Mac Neil in the appeal letter with respect to his concerns with the application and decision process were unfounded and that the Town either met or exceeded the notification requirements for consideration of an application for a discretionary use (exhibit O).
14. At the hearing, Mr. Croil noted that Alberta Environment was provided correspondence with respect to the application, and that Alberta Environment had indicated to the Town that the development would

not require an Environmental Impact Assessment. Notwithstanding the notification from Alberta Environment, Mr. Croil highlighted that the MPC had included the requirement for an Environmental Impact Assessment to satisfy the Town's concerns with respect to the development as condition number 26 of their approval (exhibit D).

15. At the hearing, Ms. Kerry Gelrich, counsel for the Applicant, argued that Mr. Mac Neil was not a valid appellant in that he did not meet the established threshold of "affected person" as required in Section 685(2) the MGA, noting that the definition of "affected person" is not found in the MGA but has rather been established through decisions of the Alberta Courts including the Alberta Court of Appeal.
16. Ms. Gelrich submitted to the Board a decision of the Subdivision and Development Appeal Board of the City of Calgary (SDAB2013-0153) which considers the question of determining if an appellant meets the criteria of being an affected person (exhibit AA) through reference to legal decisions giving consideration to this question, as well as the publication by Frederick A. Law – *Planning Law and Practice in Alberta* (3rd ed., loose-leaf), (Edmonton: Juriliber, 2002).
17. The MGA, Section 685(2) states, *In addition to an applicant under subsection (1), any person affected by an order, decision, or development permit made or issued by a development authority may appeal to the subdivision and development appeal board.*
18. The MGA, Section 617 states, *the purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted*
 - a. *to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and*
 - b. *to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,*

without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.
19. The applicant submitted that the site is appropriately zoned as Industrial – I in the LUB, that it has access to all required services, that it provides good access to provincial highways, that the parcel is appropriately sized for the use, and that consideration of traffic impacts and other concerns relating generally to industrial development were considered during the process leading to applying the industrial district to this area in Coaldale.
20. The site is located in the northeast quadrant of the Town, near the solid waste transfer facility and municipal sewage lagoon, and is generally downwind of the Town as wind in the area generally travels in an easterly direction.
21. A residence is located on the adjacent parcel to the north of the subject property, owned by Mr. and Mrs. Kovacs. The residence is occupied by tenants and is located outside of the Town of Coaldale municipal boundary in Lethbridge County.
22. The residence is located 328 meters from the proposed asphalt plant and 247 meters from the proposed gravel crusher based on the drawings submitted by the applicant as part of the application and as shown in the presentation made to MPC by Spencer Croil (exhibit K16).
23. Lethbridge County requires Asphalt plants and other similar uses to be located not closer than 300 meters from residences. (exhibit K16).
24. Condition 25 of the development permit issued by the MPC required the applicant to resubmit drawings which show both the Asphalt plant and gravel crusher located no closer than 300 meters from the existing residence (exhibit D2).
25. Regulatory oversight of Asphalt plants is governed in Alberta by Alberta Environment by way of the *Code of Practice for Asphalt Paving Plants*, and ultimately, the *Environmental Protection and Enhancement Act*, and its associated regulations.
26. The MGA, Section 687(3)(a) states, *In determining an appeal, the subdivision and development appeal board must act in accordance with any applicable ALSA regional plan.*
27. The MGA, Section 687(3)(d) states, *In determining an appeal, the subdivision and development appeal board 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 subdivision 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 in the land use bylaw.

Having regard to the findings of fact, and having regard for the Land Use Policies, Land Use Bylaw No. 677-P-04-13 and the Subdivision and Development Regulation, the Subdivision and Development Appeal Board makes the following decision: that the appeal be **DENIED** and the original decision of the **Municipal Planning Commission of the Town of Coaldale to approve the development with conditions be UPHELD with revised conditions as follows:**

CONDITION(S):

1. Must obtain approval of a Building Permit from Superior Safety Codes Inc. at (403) 320-0734 prior to commencement.
2. Must contact Alberta 1st Call (1-800-242-3447) and Dig Shaw (1-866-344-7429) to locate any utility lines prior to commencement.
3. Setbacks to conform to the site plan that was attached as part of the Development Permit application and to the current Land Use Bylaw 677-P-04-13, Schedule 2, Industry-I.
4. A person to whom a Development Permit for Industrial building has been issued shall provide the Designated Officer, prior to construction, a letter from a qualified Alberta Land Surveyor confirming that a qualified Alberta Land Surveyor conducted the Stakeout of the site for construction.
5. Refuse and or garbage during construction shall be in appropriate containers and shall be properly screened and placed in an approved enclosure until removed for disposal.
6. Any outstanding fees and deposits associated with the development application must be paid prior to the release of the permit.
7. The applicant/owner shall comply with Land Use Bylaw No. 677-P-04-13, Schedule 11, Off-Street Parking & Loading Requirements.
8. For safe work-site purposes, it is recommended that the civic address of the site be displayed so it is visible from the street at all times during construction in the event that emergency services personnel are called to attend the site.
9. Excess dirt and mud that is tracked onto sidewalks and roads shall be cleaned up promptly as to not impact the neighbourhood.
10. A professionally prepared landscaping plan for along 11th street MUST be submitted to and approved by the Town of Coaldale before the issuance of this development permit and will then form part of the drawing set.
11. A professionally prepared landscaping plan for along 11th Avenue MUST be submitted to and approved by the Town of Coaldale before issuance of this development permit and will then form part of the drawing set.
12. The following refundable landscaping fees are required:
 - a. 50% of the cost of the landscaping as per the professionally prepared plan for the areas along 11th street, 10th avenue and 8th street
 - b. 100% of the cost of the landscaping as per the professionally prepared plan for the area along 11th avenue.
13. Owner/applicant shall enter into a Development Agreement with the Town of Coaldale which may make reference to the provision of servicing, drainage, storm water management, site grading plans, fencing, landscaping, off-site levy and development fees, garbage/refuse pick-up area, fencing, etc., and any other matter that the Town of Coaldale deems necessary prior to commencement. Agreement shall be registered on title.
14. Site lighting MUST be appropriately shielded for the benefit of neighboring properties and MUST make use of full cutoff fixtures that direct light downward and minimize glare and light trespass to the roadway or other surrounding properties
15. Site access from 8th street will be temporary until such time as 11 Avenue is developed. At such time, the temporary access MUST be removed and the area turned back into municipal reserve space and fully landscaped at the applicant's expense as per a landscaping plan that is approved by the Town of Coaldale.
16. With respect to the bordering county's requirements, plans MUST be shown as to how the working area will be buffered from the nearest dwelling if a 300 metre separation cannot be obtained.
17. Outdoor storage areas MUST be suitably enclosed by a fence or wall or screened with landscaping to the satisfaction of the Designated Officer or Municipal Planning Commission as per Land Use Bylaw 677-P-04-13, Schedule 10, Industrial, Commercial and Warehousing Performance Standards.
18. This development permit does not include the office or shop buildings.
19. A dust control plan MUST be in place so that neighbouring properties will not be affected by the dust created by the equipment and activities on site.
20. All buildings and structures MUST be setback 5 meters from the abandoned well located on the property.

21. The applicant **MUST** submit to the Town of Coaldale a copy of their registration under the Environmental Protection and Enhancement Act Code of Practice for Asphalt Paving Plants from Alberta Environment.
22. The applicant/owner shall comply with Land Use Bylaw No. 677-P-04-13, Schedule 10, Industrial, Commercial and Warehousing Performance Standards.
23. A professionally prepared site servicing plan showing the location, size, connection points and other details regarding the servicing of the site by Town utilities and the utilities provided by other agencies, **MUST** be submitted to and approved by the Town of Coaldale before issuance of this development permit and will then form a part of the drawing set.
24. A professionally prepared stormwater management plan **MUST** be submitted to and approved by the Town of Coaldale before issuance of this development permit and will then form a part of the drawing set.
25. A professionally prepared site plan showing the site reconfigured with the asphalt plant and gravel crusher relocated in order that they are both at least 300 metres away from the nearest residence, measured from the closest point of the equipment to the closest point of the foundation of the residence, **MUST** be submitted to and approved by the Town of Coaldale before issuance of this development permit and will then form a part of the drawing set.
26. A professionally prepared Environmental Impact Assessment (EIA) **MUST** be submitted and approved by the Town of Coaldale before issuance of this development permit.
27. A detailed nuisance mitigation strategy enforceable by the Town of Coaldale **MUST** be submitted and approved by the Town of Coaldale before issuance of the development permit.
28. A Traffic Impact Assessment (TIA) is required to be completed by a qualified professional and submitted to Alberta Transportation and the Town of Coaldale for approval prior to the permit being issued.

REASONS:

THAT the Subdivision and Development Appeal Board encompasses the findings of fact within these reasons, and as a result:

1. Based on the plain and ordinary meaning of the words in section 685 of the MGA, the scheme of the Act, and the contextual and purposive interpretation of the Act, the Board finds that the Legislature intended that section 685 only gives the right to appeal to those persons identified in this section. In the Board's view the Legislature could not have intended the word "affected" to refer to any resident of the Town of Coaldale or a person operating a business within the town. The Board finds that the interpretation provided above is appropriate given the outlined purpose of Part 17 of the MGA as outlined in section 617 of the MGA.
2. The Board finds that a person, as referred to in section 685(2) of the MGA, other than the applicant must establish that he or she is affected by the decision of the MPC in order to establish their right to appeal to the Subdivision and Development Appeal Board.
3. Upon consideration of the case law as outlined in the decision of the City of Calgary Subdivision and Development Appeal Board decision (exhibit AA), the Board finds that the meaning "affected person" requires an appellant to show a degree of effect from a development permit approval which is greater than the average person and that they are genuinely and relevantly affected.
4. Upon careful consideration of the evidence presented by the appellant, the Board determined that there was no reasonable grounds to determine that Mr. Mac Neil was "genuinely and relevantly affected" by the proposed development, and rather that the concerns laid out in his initial appeal letter and subsequent submissions to the Board, including his presentation and oral evidence submitted at the hearing, were general in nature and pertained, approximately, to concerns which were purported to be expressed broadly on behalf of the residents of Coaldale and/or nearby residents of Lethbridge County.
5. The Board finds that, given the above, their jurisdiction to hear and contemplate other considerations brought forth by the appellant and other parties at the hearing is extremely limited.
6. Notwithstanding the above, the Board considered the question of if the administrative process encompassing the initial approval by the Municipal Planning Commission, particularly with respect to whether appropriate notification of the application and subsequent decision was provided to residents and adjacent landowners. The Board is satisfied that the Town met and exceeded the required standards regarding both the pre-decision notice of receipt of the application and the post-decision notification of the decision as per the requirements of the LUB and MGA, as outlined in exhibit O.
7. Notwithstanding the above, the Board gave consideration to the correspondence from Alberta Transportation (exhibit X) pertaining to new information with respect to the volume of traffic projected to be generated by the Development. The Board notes that the increase from projected heavy truck traffic of 75 trips per week to 75 trips per day is a substantial increase to that volume and represents a realistic and tangible concern for the Town and other affected parties. In considering this correspondence, the Board is of the opinion that the requirement for the applicant to prepare a Traffic Impact Assessment to the satisfaction of Alberta Transportation, and any resulting mitigation measures which arise from the assessment, will appropriately address the concerns raised with respect to traffic resulting from the development. The Board notes that

inclusion of a condition on the development approval requiring a traffic impact assessment is appropriate because, in the Board's opinion, the original decision not to require a TIA was due to the applicant providing incorrect information as part of their application, and furthermore, that Alberta Transportation and not the Town of Coaldale has jurisdiction over the maintenance and operation of Provincial Infrastructure and that the requirement for the applicant to prepare a TIA is appropriately at the discretion of Alberta Transportation.

INFORMATIVE

1. The Board acknowledges that there was considerable interest in this matter, noting both the quality and volume of correspondence received with respect to this appeal (both in favour and opposed) and the significant community presence at the hearing. The Board acknowledges that, in rendering their decision to deny the appeal on the grounds that the appellant did not meet the standard required by provincial law, they have a severely limited ability to consider the issues raised by the appellant and members of the public. With that noted, the Board did consider these issues during the hearing and during their deliberations, and noted the following:
 - a. With respect to concerns raised about traffic from the development, the Board is satisfied that the requirement to complete a Traffic Impact Assessment (Condition 28), which may in turn result in the requirement for infrastructural improvements, including but not limited to road and/or intersectional upgrades, will appropriately address these concerns.
 - b. With respect to concerns raised generally about environmental matters, emissions, and dust from the resulting operation, the Board is satisfied that a number of conditions of the approval, including but not limited to conditions 19, 21, 26, and 27, will appropriately address these concerns. The Board further notes that, over and above any requirement and/or restriction placed on the operation by the Town of Coaldale through the development permit process, the operation will be subject to strict provincial regulation through the *Code of Practice for Asphalt Paving Plants*, and ultimately, the *Environmental Protection and Enhancement Act*, its associated regulations, and all other applicable laws.
 - c. With respect to concerns raised regarding the impact of the development on the area contained in the Intermunicipal Development Plan (Town of Coaldale/Lethbridge County) area, the Board was satisfied that Lethbridge County had no concerns with respect to the development.
 - d. With respect to the issue of section 687(3) of the MGA raised by the appellant, the Board notes that the language found in section 687(3)(d)(i) relates specifically to the Board making a decision on a permit which the Board has determined does not otherwise comply with the LUB. The Board is not of the opinion that the proposed development does not comply with the LUB.

APPENDIX A

Exhibits presented at Hearing:

NO.	ITEM
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| A. | Notice of Hearing and Subject Parcel Map |
| B. | List of Persons Notified |
| C. | Letter of Appeal |
| D. | Development Permit and Approved Site Plan |
| E. | Application for Development Permit |
| F. | Notice of MPC Meeting – Sunny South News |
| G. | Notice of Application to Adjacent landowners |
| H. | Information Circular Sent by Applicant Prior to MPC Hearing |
| I. | Staff Report from January 24, 2018 MPC Hearing |
| J. | Letters Presented at MPC Hearing |
| K. | Additional Staff Presentation to Municipal Development Authority |
| L. | Minutes from January 24, 2018 MPC Hearing |
| M. | Notice of Decision |
| N. | PowerPoint Presentation prepared by Applicant |
| O. | Letter from Town of Coaldale Director of Planning & Community Development |
| P. | Additional Submission from Appellant |
| Q. | Correspondence Received by SDAB Secretary in Support of the Application |
| R. | Correspondence Received by SDAB Secretary Opposed to the Application |
| S. | Correspondence from Alberta Transportation |
| T. | Relevant Sections of Town of Coaldale Land Use Bylaw No. 677-P-04-13 |
| U. | Additional Correspondence in Support of the Application |
| V. | Presentation to the SDAB from the Applicant |
| W. | Presentation to the SDAB from the Appellant |
| X. | Additional Correspondence from AB Transportation |
| Y. | Additional Presentation from the Town of Coaldale |
| Z. | Additional Sections of Land Use Bylaw (Ability to Appeal) |
| AA. | Decision of the City of Calgary Subdivision and Development Appeal Board SDAB2013-0153 |
| BB. | Map Showing Subject Parcel and Home Address of Appellant |
| CC. | Submission by Lindsey Leusink Opposed to the Application |
| DD. | Submissions by Donald, Debbie, and Marina Kovacs Opposed to the Application |

APPENDIX B

Persons who gave evidence or made submissions at the Hearing:

NAME	CAPACITY
Spencer Croil	Director of Planning and Development, Town of Coaldale
Rich Thiessen (LASCO & Associated Companies)	Applicant
Kerry Gelrich	Legal Counsel for Applicant
Blaise Mac Neil	Appellant
Glen Gibb	Coaldale Resident
Haydn Down	Coaldale Resident
Barb Gertzen	Coaldale Resident
Dennis Kemp	Coaldale Resident
Moe Just	Lethbridge County Resident
Suzanna Neufeld	Coaldale Resident
Nick Deleeuw	Coaldale Resident
Jennifer Ashmore	Coaldale Resident
Lindsay Leucink	Lethbridge County Resident
Marina Kovacs	Lethbridge County Resident – Adjacent Landowner
Don Kovacs	Lethbridge County Resident – Adjacent Landowner
Don Perks	Coaldale Resident
Holly Vaselenak	Coaldale Resident
Simon Bos	Lethbridge County Resident – Adjacent Landowner