

**LLOYDMINSTER SUBDIVISION AND DEVELOPMENT APPEAL BOARD DECISION**

APPEAL TO BE HEARD:	Notice of Contravention – Stop Order
Municipal Address:	5109 41 Street
Zoning:	General Commercial (GC)
Legal Description:	Block: 13 Plan: 7622291
Permit No.	Stop Order (DP 12586)
Appellant Name:	Nelson Commercial Real Estate Inc.

Introduction

1. On February 19, 2026, the Development Authority (DA) for the City of Lloydminster issued a Stop Order to the Appellant with respect to 5109 41 Street Lloydminster, Alberta, legally described as Block 13, Plan 7622291 (the Lands). The Stop Order was issued based on the Lands being used for indoor and outdoor storage for commercial purposes, a use not permitted under the current Land Use Bylaw No. 05-2025 zoning of General Commercial. A development permit had not been issued to approve the use of the Lands for the purpose of indoor and outdoor storage.
2. On March 10, 2026, the Appellant filed a Notice of Appeal with the Subdivision and Development Appeal Board (SDAB). The reasons for appeal are listed as:
  - (a) The use of the Lands is valid, as it is consistent with any permits issued and the City’s Land Use Bylaw 05-2025;
  - (b) If non-compliance is found, the alleged unauthorized use is a legal non-conforming use and can continue, notwithstanding that it may no longer comply with current land use or zoning rules. A legal non-conforming use is a complete defense to stop the order; and
  - (c) Such further and other grounds as may be advised upon disclosure of all relevant and material records from the City. The Appellant shall provide additional and fulsome submissions prior to the hearing of this appeal.

Preliminary Matters

3. There were no objections to the proposed procedure for the hearing or to any of the SDAB members hearing the appeal.

Summary of Hearing

4. Natasha Pidkowa, Manager, Planning for the City of Lloydminster, and Daina Young, legal counsel, represented the DA. Ms. Young made the presentation on behalf of the DA. The DA provided written submissions which were included in the SDAB Hearing agenda package. To summarize:
  - (a) The DA’s position is that the Stop Order was issued as the Appellant’s use of the lands is unlawful as it does not have a valid development permit and is not a legal non-conforming use.
  - (b) The DA issued a development permit in 1990 for a truss manufacturing shop as a discretionary use in the M1 – Light Industrial District.

- (c) The City's Zoning Bylaw No. 31-87 was in effect at the time the development permit was approved. The following provisions are from that bylaw:
    - (i) General industrial uses and Industrial storage were discretionary use classes for the M1 – Light Industrial District.
    - (ii) Section 22(2)(g) of the M1 – Light Industrial District required "*All driveways, parking areas and storage areas shall be paved with asphalt or concrete for a minimum distance of 15 metres (49.2 feet) from the front property line, plus 1.5 metres (4.9 feet) of concrete apron in from the existing curb and gutter.*"
    - (iii) Section 20(3)(a) required "*Visual screening a minimum of 2 metres (6.6 feet) high shall be provided by a solid fence or a combination of fence and soft landscaping where the site abuts a residential district and all storage, freight or trucking yards shall be enclosed or completely screened by buildings, trees, landscaped features or fences, or a combination thereof to provide effective screening from the ground to a height of two (2) metres (6.6 feet).*"
  - (d) The approved plans do not show outdoor storage. The site plan does not show any hard surfacing other than a concrete apron around the building. It does not show any screening. It only shows a chain link fence.
  - (e) Since issuance of the development permit, the land has been used by different tenants of various businesses as set out in the DA's written submissions.
  - (f) Under the City's current Land Use Bylaw 05-2025, which was adopted in 2025, the Lands are zoned as General Commercial. General Industrial Uses and Outdoor Storage are not allowable uses. The Lands are currently being used for indoor and outdoor storage.
  - (g) The authorized use of a truss shop is the only use that could be treated as a non-conforming use. Additionally, the outdoor storage represents either a new use or an intensification of the use that goes beyond the use approved pursuant to the 1990 development permit. Therefore, the current use is outside the scope of the 1990 development permit and is not a lawful non-conforming use.
  - (h) The requirements for estoppel are not met.
  - (i) Delay in enforcement does not preclude the DAA from taking enforcement action.
5. Scott Nelson of Nelson Commercial Real Estate Inc. and Cody Van de Veen, legal counsel, represented the Appellant. Mr. Van de Veen presented a summary of the written submissions provided by the Appellant, which are included in the SDAB Hearing agenda package. In summary:
- (a) The Lands have consistently been used, by various tenants, as industrial use. The use has consistently included indoor and outdoor storage. Therefore, the current use of the Lands is lawful non-conforming.
  - (b) Historical photographs show ongoing storage on the Lands.

- (c) Prior to 2025, the various iterations of the City's land use bylaw allowed General Industrial Uses in the zoning of the Lands.
  - (d) The seven-part test set out by the Supreme Court of Canada in the Olivier decision (cited in the Appellant's written submissions) applies and the current use of the Lands is a non-conforming use.
  - (e) The current use of the Lands is consistent with the use permitted by the development permit issued in 1990. The use remained consistent for decades, with no enforcement from the DA.
  - (f) The City issued business licenses to the various tenants operating on the Lands since the truss manufacturing shop ceased operations, which demonstrates that the uses on the Lands conformed with the 1990 development permit. The DA is estopped from taking the position that the current use of the Lands is not a non-conforming use.
6. Mr. Nelson provided additional context on behalf of the Appellant.
- (a) The Appellant applied for a rezoning of the Lands. City administration pulled the application because the proposed zoning allowed for storage and the City did not want storage on the Lands.
  - (b) No complaints have been made about the storage use of the Lands.
  - (c) The City has not acted in good faith.
7. The SDAB members posed several questions to Mr. Nelson and the DA. Following is a summary of those questions and responses:
- (a) The SDAB asked Mr. Nelson to provide a timeline of the use of the Lands from the time the development permit was issued in 1990 to present.
    - (i) The existing building was built to replace a truss plant building that was demolished to accommodate the development of Superstore. This business operated at this location until approximately 2009 when it moved to a location further west.
    - (ii) The City interfered with negotiations with a prospective tenant because the City did not want outdoor storage on the Lands even though it was allowed. Mr. Nelson referenced a picture provided in the Appellant's submissions where there is so much stored outside you could hardly see the ground. It is hard to grasp the DA's position that outdoor storage was never allowed.
    - (iii) Mr. Van de Veen added that you can see evidence of outdoor storage in the pictures dated 1975, 2004, 2008, 2011, 2015, 2024, 2025, and 2026.
  - (b) The SDAB asked Mr. Van de Veen if the purpose of the land changed in 2009 after the truss shop left.

- (i) In 2009 Nelson Lumber vacated the Lands and the Lands were then sold. The change in ownership and change of business necessitated the change in storage type. Clearly the intended use of the Lands was for storage.
    - (ii) The storage use of the Lands rationally evolved. The storage relates to the industrial use, and the storage uses are going to change ever so slightly depending on the tenant and their specific purposes.
  - (c) The SDAB asked the DA about communication among City departments. For example if someone applies for a business license, does the City check to see whether there is a development permit that is consistent with the business license?
    - (i) Ms. Young replied that at the time the business licenses referred to in the materials were issued, it was not the practice of the finance department to reach out to the planning department to verify the existence of a development permit and its purpose.
    - (ii) The practice has since changed and the finance department is now in the practice of reaching out to planning to confirm the use matches the development permit. In fact, that is how this issue was first brought forth to the City. An application for a business license was refused due to the required development permit not being in place for the Lands.
  - (d) As a follow up, the SDAB asked Ms. Pidkowa to verify when the change in practice took place.
    - (i) Communication between departments increased in the last 5 to 10 years.
  - (e) The SDAB asked the Appellant if the Lands are currently listed for lease and if so, in that listing how the Lands are being marketed?
    - (i) Mr. Nelson replied he is unsure if the Lands are currently listed.
  - (f) The SDAB asked Mr. Nelson about the intended use of the Lands at the time of the rezoning application.
    - (i) Mr. Nelson could not recall the exact zoning classification that was the subject of the application.
    - (ii) He reiterated that the application was pulled due to the City not wanting any type of outdoor storage.
  - (g) The SDAB asked the DA whether there is any documentation relating to the rezoning application.
    - (i) There is extensive documentation, which can be provided if required.
8. Both parties confirmed that they had a fair hearing.

## Decision

9. The SDAB upholds the Stop Order issued by the DA but varies the Stop Order to extend the time for compliance to May 31, 2027.


## Reason for Decision

10. When dealing with a Stop Order, the SDAB's jurisdiction is limited to determining whether the Stop Order was properly issued (whether the technical requirements were met) and whether there is a contravention of the *Municipal Government Act* (MGA) or land use bylaw. The SDAB cannot consider the merits of the development. In short, whether the use is suitable or appropriate is not relevant when dealing with a Stop Order.
11. The Appellant did not argue that the technical requirements of the MGA relating to issuance of the Stop Order were not met. Based on the information provided, the SDAB finds that the technical requirements for issuance of the Stop Order were met.
12. The Appellant acknowledged that the current use of the Lands is not an allowable use under the current zoning set out in the City's Land Use Bylaw 05-2025.
13. The issue centred on whether the current use of the Lands is a non-conforming use.
14. The Olivier decision does not apply in Alberta. The statutory scheme related to non-conforming uses in Alberta is different. Under section 616 of the MGA, the use must be a specific lawful use in order to gain the non-conforming use protection set out in section 643 of the MGA. Therefore, the SDAB's focus is directed at determining what legal use of the Lands existed as of the date the City adopted the Land Use Bylaw 05-2025. This determination necessitates an examination of the 1990 development permit and what it approved.
15. The 1990 development permit specifically approved a truss manufacturing shop. The SDAB accepts the argument that this approval could extend to other similar manufacturing uses. The SDAB also accepts that the truss manufacturing shop involved some outdoor storage.
16. Under section 616 of the MGA, a change in use or change in intensity of use is a development. Therefore, a development permit is required to change the use or change the intensity of the use.
17. Based on the evidence presented, the SDAB finds that the use of the Lands has materially changed since the issuance of the 1990 development permit. The 1990 development permit approved a manufacturing use that arguably included ancillary storage related to the manufacturing use. The current use of the Lands involves storage as a principal use, which is beyond the scope of the 1990 development permit.
18. Regarding the estoppel argument, the SDAB agrees with the DA that lack of enforcement does not create an estoppel.
19. The SDAB acknowledges the argument that the business licenses that the City issued over the years could potentially amount to a representation that the uses over the years were within the 1990 development permit. However, in the present case, the SDAB is of the view that the issuance of the business license does not amount to an

unambiguous representation that the use of the Lands met all land use requirements. Further, the Appellant did not point to any reliance on the alleged representation.

20. The SDAB has extended the time for compliance with the terms of the Stop Order in recognition of the indication from the DA that in order to obtain a development permit for the current use of the Lands, it will be necessary to apply to rezone the Lands. The SDAB recognizes that this process could take some time and therefore has extended the time for compliance to allow the Appellant to pursue a rezoning should it wish to do so.

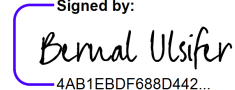
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SDAB Clerk, Hailey Stark

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SDAB Chair, Bernal Ulsifer

### **IMPORTANT INFORMATION FOR APPELLANT**

This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M26.