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Appeal File Number:	020-STU-013
Application Number:	305305-20-D0184
Appeal Against:	Development Authority of Sturgeon County
Appellant:	Martin Kaup
Date and Location of Hearing:	November 17, 2020 Held via Videoconference
Date of Decision:	December 2, 2020
SDAB Members:	Chair Julius Buski, Lee Danchuk, Alanna Hnatiw, Allan Montpellier, Amanda Papadopoulos

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### NOTICE OF DECISION

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**IN THE MATTER OF** an appeal by Martin Kaup of the Development Authority’s refusal to place two shipping containers in the front yard at Plan 1976TR;1;3 within Sturgeon County.

- [1] This is the decision of the Sturgeon County Subdivision and Development Appeal Board (the “SDAB” or “Board”) on an appeal filed with the SDAB pursuant to sections 685 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the “MGA” or “Act”).
- [2] In making this decision, the Board reviewed all the evidence presented and considered provisions of the *Municipal Government Act*, Sturgeon County’s Land Use Bylaw 1385/17 (the Land Use Bylaw or LUB), and Sturgeon County’s Municipal Development Plan (MDP), and any amendments thereto.
- [3] The following documents were received prior to the hearing and form part of the record:
- The Notice of Appeal;
  - A copy of the development permit application with attachments;
  - The Development Officer’s written decision;
  - Development Support Services Report; and
  - The Appellant’s submission.

### PRELIMINARY MATTERS

- [4] There were no preliminary matters addressed at the hearing.

### PROCEDURAL MATTERS

- [5] The appeal was filed on time and in accordance with section 686 of the MGA.

- [6] There were no objections to the proposed hearing process as outlined by the Chair.
- [7] There were no objections to the composition of the Board hearing the appeal.
- [8] The Board is satisfied that it has jurisdiction to deal with this matter.

#### **ISSUES**

- [9] The Appellant raised the following grounds of appeal:

The Appellant perceives that the Development Officer misinterprets the Land Use Bylaw, including section 6.27, Table 6.3 and Part 18.

#### **RECOMMENDATION OF THE DEVELOPMENT AUTHORITY**

Yvonne Bilodeau, representative for the Development Authority, provided a presentation which included a recommendation that development permit application 305305-20-D0184 be refused for the following reasons:

- [10] Section 6.27.1 of Land Use Bylaw 1385/17 states that shipping containers do not require a development permit if they comply with the provisions in Table 6.3 and the provisions of this section.
- [11] Table 6.3 of the Land Use Bylaw 1385/17 states that the maximum number of shipping containers allowed on a parcel without a development permit is zero (0) in the R4 District. The applicant is requesting two (2) shipping containers.
- [12] Section 6.27.6 of the Land Use Bylaw 1385/17 states that the storage of shipping containers in excess of the maximum amount for a district as listed in Table 6.3, shall be considered *outdoor storage* and will require a development permit. *Outdoor storage* is not a listed use in the R4 District.

#### **SUMMARY OF APPLICANT/APELLANT'S POSITION**

- [13] The applicant owns a 2.5 acre parcel in the hamlet of Villeneuve and it is the largest residential lot in the hamlet. The applicant is seeking to place two shipping containers in the front yard of the property as secure, rodent proof, lockable, clean storage.
- [14] Several neighbours have shipping containers on their property, which are used as permanent storage.
- [15] The containers will be used for permanent storage on the property and be equipped with a lock box.
- [16] The proposed shipping containers will be purchased new and will not be unsightly or cause visibility issues. There are a number of other structures in the community used for storage that are unsightly. The shipping containers would be aesthetically pleasing in comparison.

- [17] The wording and definitions outlined in the Land Use Bylaw are unclear and the Development Authority is not consistently or properly applying the provisions of the Bylaw. For example, section 6.27.6 states that “The storage of shipping containers in excess of the maximum amount for a district as listed in Table. 6.3 shall be considered *outdoor storage* and will require a *development permit*”. The applicant seeks to use the shipping containers for permanent storage and does not intend to store the shipping containers on the parcel.
- [18] On at least two other occasions, the Development Authority has approved shipping containers as accessory buildings in land use districts that did not permit shipping containers without a development permit, and where *outdoor storage* was listed neither as a permitted nor a discretionary use.
- [19] Since the Land Use Bylaw is unclear, it should be interpreted in the applicant’s favour. Further, the Land Use Bylaw should not be interpreted so as to restrict the property owner’s rights unless there is a demonstrated reason to do so.

## DECISION

- [20] **The Board GRANTS the appeal, REVOKES the decision of the Development Authority made on August 31, 2020 to refuse development permit application 305305-20-D0184, and APPROVES the development permit with the following conditions:**

### Permit Conditions:

1. The following setbacks to the property lines be adhered to as proposed:

Front yard:	30.5 m (100ft)
Side yard:	9.2m (30ft)
2. The shipping containers shall be screened from view to the satisfaction of the Development Authority.
3. The shipping containers shall not be structurally altered or structurally modified, nor stacked.
4. The exterior treatment of the shipping containers shall be compatible with other buildings in the vicinity.
5. The shipping containers shall be used for storage purposes only and shall not be used to store dangerous or hazardous materials or as a dwelling.
6. Drainage measures undertaken as part of a development shall not negatively impact adjacent parcels by way of flooding or inundation through the redirection of surface water. In the event that the drainage of a development is found to affect adjacent parcels, all mitigating measures required to remedy the problem including drainage structures, drainage easements and retaining walls shall be at the sole expense of the landowner of the parcel where the mitigating measures are required.
7. The applicant/landowner shall adhere to the documents registered on title. No development shall encroach on or be erected on an easement or right-of-way unless the owner of the

encroaching structure has obtained written consent from the owner or licensee to which the easement or right-of-way has been granted.

8. If the development authorized by this permit is not commenced within 12 months from the date of its issuance, or is not carried out with reasonable diligence, the permit approval ceases and the permit is deemed to be void, unless an extension to this period has previously been granted by the Development Authority.

**Advisory Notes:**

1. Please contact Alberta 1 Call at 1-800-242-3447 for utility locates at least two days prior to the commencement of construction. The development cannot encroach into or over a utility easement or right of way.
2. It is the responsibility of the developer to ensure that the applicant/landowner complies with any federal or provincial laws/legislation and that any required permits are obtained. All development will comply and be consistent with any license, permit, approval, authorization, regulation, or directive established by the Alberta Energy Regulator and Alberta Environment. The applicant/landowner must also comply with the conditions of any easement of covenant which affects the development.

**REASONS FOR THE DECISION**

- [21] The Board finds Table 6.3 in the Land Use Bylaw states that shipping containers are not permitted in the R4 district without a development permit, and, in accordance with section 6.27.6, the storage of *shipping containers* in excess of the maximum amount for the district as listed in Table 6.3 shall be considered *outdoor storage* and requires a *development permit*.
- [22] The Board referred to the definition of *outdoor storage* as prescribed in the Land Use Bylaw, which means the “storage of equipment, goods and materials in the open air”. The Board was persuaded by the Appellant’s argument that the use of the shipping containers in question are for contained storage, not the storage of equipment, goods, and materials in the open air. Therefore, the Board considered whether *shipping containers* should be considered an alternate use within the Land Use Bylaw.
- [23] The Board referred to the definition of *accessory building*, which was the use that the Development Authority relied on in approving Development Permits 305305-19-D0133 and 305305-20-D0146, as provided in the Appellant’s disclosure. In the Land Use Bylaw, *accessory building* means “a building or structure that is incidental, subordinate and located on the same parcel as the principal building, but does not include a building or structure used for human habitation and does not include shipping containers”.
- [24] Development Permit 305305-19-D0133, approved on June 7, 2019, includes a description of work as “Accessory Building/Use – to place two shipping containers for storage purposes (Morinville Leisure Centre)”. This property is located in the Direct Control District 5 – County Campus. Table 6.3 prescribing the maximum number of shipping containers in each district does not address Direct Control districts, and therefore the Board referred to section 16.5 of the Land Use Bylaw which prescribes the regulations specific to the DC5 – Direct Control District 5 – County Campus District. This district does not include *outdoor storage* or *shipping containers* as

permitted or discretionary uses. *Shipping containers* are not *accessory buildings* as they are particularly excluded in the definition provided in the Land Use Bylaw. Therefore, the Board finds that the list of uses in this district is not exhaustive and may include *shipping containers*.

- [25] The Board also considered Development Permit 305305-20-D0146, which was approved on July 13, 2020. The description of work listed in this permit is “to construct an accessory building (28ft x 53ft – to place roof over and to enclose 2 shipping containers) with a variance to the side yard setback”. This development was in the R2 – Country Estate Residential District. This district does not include *outdoor storage* or *shipping containers* as permitted or discretionary uses. The shipping containers are not *accessory buildings* as they are particularly excluded in the definition provided in the Land Use Bylaw. Therefore, the Board finds that the list of uses in this district is not exhaustive and may include *shipping containers*.
- [26] The Board does not find section 6.27.6 of the Land Use Bylaw helpful in that the applicant seeks to permanently site the two shipping containers, not store them as this section refers to. Further, the interpretation of the Land Use Bylaw that shipping containers constitute *outdoor storage*, which, defined above, implies storage in the open air, is also an inaccurate use. *Shipping containers* are particularly excluded from the definition of an *accessory building* in the Land Use Bylaw. Further, as there is currently no principal dwelling on the parcel, the Board could not properly imply this use as there is no principal building for the storage containers to be accessory to.
- [27] As in the two cases identified above, the Board finds that the list of permitted and discretionary uses in the R4 – Hamlet Serviced District is not exhaustive. The Board finds that the shipping containers, as proposed, are a discretionary use in the R4 – Hamlet Serviced District and therefore the Board has jurisdiction to grant the development permit.
- [28] The Appellant provided photographs of sheds and other storage in the community, many of which the Board found to be unsightly. The Board received evidence from the Appellant that the shipping containers in question would be purchased new and therefore would be more aesthetically pleasing than other storage structures in the community. Further, it is a condition of the development permit that the exterior treatment of the shipping containers be compatible with other buildings in the vicinity.
- [29] The Development Officer noted that one resident expressed opposition but did not make a submission to the Board and therefore the Board placed no weight on this evidence. The Board did not receive submissions from any neighbouring property owners expressing opposition to the proposed development and therefore the Board is satisfied that the development would not materially affect the enjoyment of neighbouring parcels of land such that it should be refused.
- [30] For all of these reasons, the Board has decided to grant the appeal, revoke the decision of the Development Authority, and approve the development permit with the conditions noted above.

Dated at the Town of Morinville, in the Province of Alberta, this 2<sup>nd</sup> day of December 2020.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
Sturgeon County



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Julius Buski, Chair

*Pursuant to Section 688(1)(a) of the Municipal Government Act (MGA), an appeal of a decision of the Subdivision and Development Appeal Board lies with the Alberta Court of Appeal on a matter of law or jurisdiction. In accordance with Section 688(2)(a), if a decision is being considered, an application for permission to appeal must be filed and served within 30 days after the issuance of the decision and, notice of the application for permission must be provided to the Subdivision and Development Appeal Board and in accordance with Section 688(2)(b), any other persons that the judge directs.*

**APPENDIX "A"**  
**List of Submissions**

- The Notice of Appeal;
- A copy of the development permit application with attachments;
- The Development Officer's written decision;
- Development Support Services Report; and
- The Appellant's submission