
Appeal File Number:	020-STU-012
Appeal Against:	Development Authority of Sturgeon County
Appellants:	Todd Mahe
Agent:	Martin Kaup, Kaup Law Office
Date and Location of Hearing:	September 1, 2020 Held via Teleconference
Date of Decision:	September 14, 2020
SDAB Members:	Chair Julius Buski, Mark Garrett, Alanna Hnatiw, David Kluthe, Allan Montpellier

NOTICE OF DECISION

IN THE MATTER OF an appeal by Todd Mahe against the Development Authority's issuance of a Stop Order located at Plan 0222720; Block 1; Lot 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 section 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* and the Meeting Procedures (COVID-19 Suppression) Regulation 50/2020.
- [3] The following documents were received prior to the hearing and form part of the record:
- The Notice of Appeal, including the Appellant's reasons for appeal;
 - A copy of the Stop Order;
 - Development Services Report; and
 - Adjacent Landowners' submissions

PROCEDURAL MATTERS

- [4] The appeal was filed on time and in accordance with section 686 of the MGA.
- [5] The Board is satisfied that it has jurisdiction to deal with this matter.

PRELIMINARY MATTERS

- [6] Martin Kaup, Agent for the Appellant, requested an adjournment of the hearing until such time that the Sturgeon County offices reopen after the COVID-19 pandemic and an in-person hearing can be accommodated. The reasons for this request include:
- The Appellant, Mr. Mahe, recently retained Mr. Kaup as legal counsel and he requires time to be able to learn the facts of the case.
 - Since the County has had an ongoing enforcement file on this matter for the past 3 years, the Development Office has had ample time to prepare. Mr. Kaup received the SDAB agenda package with the Development Office's evidence on August 28, 2020, which did not allow sufficient time to prepare for the hearing.
 - An in-person hearing would allow for a better format and flow of the hearing. The file is extensive with photos and references to legislation that cannot be shared electronically, and it would be at a disadvantage to the Appellant to proceed with a hearing held through videoconference.
 - Mr. Kaup would like his client to be allowed time to tidy his property and to see if there are any other issues that arise. Tidying up of the property in the summer or fall months would result in rutting and vehicles getting stuck and so he would prefer to do this work while the ground is frozen. He identified December 31, 2020 as a reasonable timeline to complete this work.

DEVELOPMENT AUTHORITY'S POSITION

- [7] Craig Walker, representative for the Development Authority, presented the Development Authority's position on the adjournment request:
- A short adjournment of 2 to 4 weeks is reasonable, but any longer than 2 months would be unreasonable.
 - This has been an ongoing matter for 3 years and is the second Stop Order to be issued on this property. Enforcement was initiated by a citizen complaint and a long delay could potentially cause undue hardship for that landowner.

ISSUES

- [8] The Board considered the following issues:
1. Is it reasonable to grant an adjournment until the COVID-19 pandemic subsides and in-person SDAB hearings can resume safely?
 2. Is it reasonable to grant an adjournment until the ground freezes, presumably until December 31, 2020?

DECISION

- [9] **The Board GRANTS an adjournment to September 29, 2020 at 2:00 p.m. Further, the Board directs that the September 29, 2020 hearing be held through videoconference.**

REASONS FOR THE DECISION

Issue 1: Regarding the request to adjourn until the COVID-19 pandemic subsides and in-person SDAB hearings can resume safely:

- [10] Prior to making a decision regarding the request for an in-person hearing, the Board provided the Appellant the opportunity to make submissions as to why the hearing should proceed in

person. The Appellant's representative advised that an in-person hearing would allow for a better format and flow of the hearing. He claimed that the file is extensive with photos and references to legislation that he cannot share electronically and feels he would be at a disadvantage with a hearing held through videoconference.

- [11] In requesting an adjournment until in-person hearings could resume, the Appellant's representative referenced an email sent by the Board Secretary's on August 14, 2020 which, due to the COVID-19 pandemic, provided an option for the Appellant to request an adjournment until in-person hearings could resume. This Board finds that this email was sent in accordance with modified hearing procedures approved by the Board Chair in March 2020. These procedures were developed as the MGA contemplates in-person hearings and no direction regarding the conduct of hearings during the COVID-19 pandemic was provided by the Province at the time. The Meeting Procedures (COVID-19 Suppression) Regulation came into force on March 27, 2020 and the Board has since relied on it instead of the modified hearing procedures previously approved. Regardless, the Board finds that such correspondence does not imply that a request to adjourn until in-person hearings resume will be granted – such authority rests with the Board. The Board must consider each adjournment request on its own merits.
- [12] In considering the request to adjourn the hearing until such time that hearings can proceed in person, the Board referred to Alberta Regulation 50/2020, the Meeting Procedures (COVID-19 Suppression) Regulation (the Regulation), specifically section 3(1), which provides for public meetings to be held electronically. The Board finds that, pursuant to the Regulation, the public presence requirements of the *Municipal Government Act* (MGA) are met by holding an SDAB hearing electronically, including, without limitation, by teleconference, pursuant to the conditions provided in the Regulation.
- [13] The Board finds that the temporary suspension of the regular rules of meetings under the MGA, including SDAB hearings, as the name of the Regulation implies, is to suppress the transmission of the COVID-19 virus in Alberta.
- [14] As is a matter of public record, as was shared at the Sturgeon County Special Council Meeting of August 20, 2020, on August 18, 2020, the Sturgeon region's COVID-19 active case rate according to the Government of Alberta was 57.2 active cases per 100,000 people, which placed the region into a "Watch" status, resulting in provincial monitoring and discussions between the Province and Sturgeon County about the possible need for additional health measures. In response, on August 2020, Sturgeon County Council passed a Temporary Mandatory Face Coverings Bylaw to suppress the transmission of the COVID-19 virus in the region. Further, Council passed a motion for these measures to apply to all Sturgeon County facilities, including the Sturgeon County Centre building located within the Town of Morinville, where SDAB hearings are typically held.
- [15] In deciding that the hearing shall proceed through videoconference in consideration of the risk of the COVID-19 pandemic, the Board considered the reasons provided by the Appellant's representative, specifically that an in-person hearing would allow for a better format and flow of the hearing. Further, it was argued that the file is extensive with photos and references to

legislation that cannot be shared electronically, and that the Appellant would be at a disadvantage with a hearing held through videoconference.

- [16] In determining the way the hearing will proceed, the Board is tasked with determining what is a fair process in all the circumstances, not what one party would prefer. The Development Office did not raise objection with proceeding with a hearing by videoconference.
- [17] The Board was not persuaded that a hearing held through videoconference would impair the Appellant's ability to share evidence with the Board. When hearing notices are sent to the parties, it is requested that written submissions, when possible, be disclosed in advance to be circulated in the agenda package at least 4 days before the hearing. Doing so allows the Board members and the parties an opportunity to familiarize themselves with the content in advance of the hearing. The agenda packages are page numbered and can easily be referred to during the hearing.
- [18] The Board uses the Microsoft Teams videoconference platform, which allows both parties to share their computer screens using the software. Mr. Kaup demonstrated an ability to successfully participate in the preliminary hearing using the Microsoft Teams software, and if he is unfamiliar with the functionality, the Board encourages him to contact the Board's Administration who can provide a brief orientation prior to the September 29, 2020 merit hearing.
- [19] The Board has successfully held all other hearings since April 2020 through teleconference and has not found that it has impaired the rights of parties. No circumstances were raised by Mr. Kaup to indicate that there was special accommodation required in this instance.
- [20] Due to the reasons stated above, the Board directs that the September 29, 2020 merit hearing be held through videoconference.

Issue 2: Regarding the request to grant an adjournment until the ground freezes, presumably until December 31, 2020:

- [21] Prior to making a decision regarding the request for the hearing to be adjourned until the ground freezes, the Board provided the Appellant the opportunity to make submissions as to why this would be an appropriate length of adjournment. The Appellant's representative advised that he was recently retained as legal counsel by the Appellant. Since the County has had an ongoing enforcement file on this matter for the past 3 years, the Development Office has had ample time to prepare. Mr. Kaup received the SDAB agenda package with the Development Office's evidence on August 28, 2020, which did not allow sufficient time to prepare for the hearing. Further, he would like his client to be allowed time to tidy his property and see if there are any other issues that arise. Requiring tidying up of the property in the summer or fall months would result in rutting and vehicles getting stuck and so he would prefer to do this work while the ground is frozen. He identified December 31, 2020 as a reasonable date for the adjourned hearing.
- [22] The Board recognizes that the timelines for an SDAB hearing in the MGA are short; pursuant to section 686(2) of the MGA, an SDAB must hear an appeal within 30 days of the appeal being

received. In the context of an SDAB hearing, the principles of natural justice mean that affected persons have a right to be heard and have a fair opportunity to state their case. This includes the right to have legal representation. In determining that an adjournment to September 29, 2020 is reasonable, the Board considered it appropriate to give Mr. Kaup additional time to become familiar with the file in order to prepare his case and properly advise his client in advance of the merit hearing.

- [23] The Board finds that, in the SDAB agenda package sent to Mr. Kaup on August 28, 2020, the Development Office disclosed 130 pages of evidence. The Board finds it reasonable to give Mr. Kaup more than 4 days to be able to read and respond to this evidence, particularly as the enforcement file is extensive as indicated by the Development Officer.
- [24] The Board finds that, although the MGA states that an SDAB has the authority to set aside a Stop Order, the SDAB's authority has been further defined by case law, and the Board's focus must be on whether or not the Stop Order was properly issued by the Development Authority in the first instance, and if so, whether the alleged contravention exists. The Board's jurisdiction is therefore quite limited in this case, essentially, to determining whether or not the landowner requires a development permit under the County's Land Use Bylaw.
- [25] The Appellant's representative did not draw a nexus between the issue before the Board of whether a development permit is required and the need for the ground to freeze in order for the Appellant to remove vehicles and other equipment from the property. Further, granting the adjournment to allow time to tidy up the property is effectively granting the Appellant the recourse he may receive in advance of the Board hearing the appeal.
- [26] The Board heard from the Development Officer that the Stop Order was issued as a result of a neighbour's complaint. In determining the appropriate time for an adjournment, the Board considered the neighbouring property owner's right to enjoy his property and the impact of an adjournment until the ground freezes on his rights. Due to the narrow issue before the Board, and the fact that there are live complaints against the property, the Board did not find it reasonable to the complainant to adjourn the hearing for an extended period of time.
- [27] The Board finds that an adjournment of 4 weeks, until the Board's next regularly scheduled hearing date of September 29, 2020, is a reasonable amount of time to allow Mr. Kaup the opportunity to prepare his evidence, considering the Development Office disclosed its evidence on August 28, 2020.
- [28] Due to the reasons stated above, the Board has decided to grant an adjournment of the merit hearing to September 29, 2020 at 2:00 p.m.

Dated at the Town of Morinville, in the Province of Alberta, this 14TH day of September, 2020.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD
Sturgeon County



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, including the Appellant's reasons for appeal;
- A copy of the Stop Order;
- Development Services Report; and
- Adjacent Landowners' submissions