
Appeal File Number: 020-STU-020
Appeal Against: Development Authority of Sturgeon County
Appellant: Mindy Wood
Date and Location of Hearing: December 15, 2020
Held via Videoconference
Date of Decision: December 22, 2020
SDAB Members: Chair Lee Danchuk, Mark Garrett, Alanna Hnatiw, Dave Kluthe,
Amanda Papadopolous

NOTICE OF DECISION

IN THE MATTER OF an appeal by Mindy Wood against the Development Authority's issuance of a Stop Order located at Plan 0626864; Block 1; Lot 42 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*, 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 Stop Order;
 - Planning and Development Services Report; and
 - Adjacent Landowners' 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. The Appellant agreed to proceed with the hearing via videoconference as permitted by the Meeting Procedures (COVID-19) Suppression Regulation.
- [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.

ISSUE

- [9] The Appellant raised the following grounds of appeal:
- The Appellant purchased the home in 2018 without any knowledge of problems with respect to development.
 - Due to personal circumstance and weather conditions, more time is required to investigate the issues.
 - The lot will be listed for sale in the near future.

RECOMMENDATION OF THE DEVELOPMENT AUTHORITY

Carla Williams, representative for the Development Authority, provided a presentation which outlined the Development Authority's issuance of the Stop Order:

- [10] The shed is currently located on a concrete pad that runs along the side of the dwelling up to the property line boundary thereby directing surface water towards Lot 41. An aerial photo measurement taken of the existing shed reveals the structure is approximately 23 square metres (250 square feet) in floor area, therefore requiring a development and building permit. In accordance with section 12.2.4 of the Land Use Bylaw, the minimum side yard setback for an accessory building in the R2 – Country Estate Residential District is 2.5 metres. Further, section 6.1.7 of the Land Use Bylaw states that an accessory building shall be located a minimum of 1.9 metres from the principal dwelling.
- [11] The survey provided by the developer of Lot 41 indicated discrepancies in the grading and confirms the development on Lot 42, does not comply with Development Permit 305305-07-D0476. The survey prepared by Hagen Surveys indicates an existing grade elevation of 682.88 metres and 683.13 metres respectively, which is approximately 1.35 metres and 2 metres lower than the approved design elevation. The approved plot plan indicated the north east corner elevation to be 687.05 metres and the existing grade is 686.62 metres, further indicating the area is lower than originally designed.
- [12] Rather than requiring Lot 42 to be completely regraded to the design grade, a reasonable solution would be that an engineer be consulted to provide a grading plan, designed to specify necessary design elevations, surface gradients, swale locations, retaining wall specifications, and any other drainage information required to establish the grading relationship between the two lots to the satisfaction of the County's Engineering Services Department.

Therefore, the Stop Order was issued requiring compliance of the Land Use Bylaw by:

- [13] Removing the shed from the property or moving the shed to meet the minimum required setbacks by November 20, 2020. The shed must be relocated to be at least 2.5 metres from the side and rear property lines and at least 1.9 metres away from the principal dwelling. A completed development permit application is required should the shed remain on the property – to be provided by November 20, 2020.
- [14] Providing an engineered grading plan for review by the County, that details and specifies the design elevations, surface gradients, swale locations and/or retaining wall specifications, concrete removal, and other drainage information required in order to establish a positive grading relationship between Lot 42 and Lot 41 by November 20, 2020.
- [15] Once the engineered grading plan has been accepted and approved, regrading and any construction as indicated by the approved plan has to occur by April 1, 2021, to the satisfaction of the County.
- [16] Given that the landowner of Lot 42 was sent the initial letter of inquiry regarding the shed on July 15, 2020 and the survey of the lot grading discrepancies was provided on September 1, 2020, it seemed reasonable that the shed could be moved and that an engineered grading plan be provided by November 20, 2020.

SUMMARY OF APPELLANT'S POSITION

- [17] The Appellant purchased the home in 2018 and accepted title insurance. She was unaware of any issues with the drainage at that time.
- [18] The Appellant has since faced some personal circumstances which has made it difficult for her to meet the conditions as outlined on the Stop Order.
- [19] She is currently in contact with the lawyer who she retained for the purchase of the home to inquire about the title insurance and what it may cover financially.
- [20] There is a Court Order now in place and the home must be listed for sale.
- [21] There is no other suitable location for the shed and therefore it must be dismantled.

DECISION

- [22] **The Board UPHOLDS the Stop Order issued by the Development Authority on November 6, 2020 and AMENDS the Stop Order to set the deadlines to comply with condition #2 to January 29, 2021 and conditions #1 and #3 to June 25, 2021.**

REASONS FOR THE DECISION

- [23] The Board finds that, although the MGA states that the Board 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 may uphold a Stop Order but exercise its discretion and give the recipient more time to comply with the terms of the Order.
- [24] The Appellant did not dispute that the Stop Order was properly issued or that the development is in contravention of the Land Use Bylaw. Therefore, the Board finds that the Stop Order was properly applied.
- [25] Having determined that the Stop Order was properly applied, the Board considered the timelines prescribed in the Stop Order. The Board notes that the Development Authority has ordered the property owner to:
1. Remove the shed from the property or move the shed to meet the minimum required setbacks by November 20, 2020. The shed must be relocated to be at least 2.5 metres from the side and rear property lines and at least 1.9 metres away from the dwelling. A completed development permit application is required should the shed remain on the property – to be provided by November 20, 2020.
 2. Provide an engineered grading plan for review by the County, that details and specifies the design elevations, surface gradients, swale locations and/or retaining wall specifications, concrete removal, and other drainage information required in order to establish a positive grading relationship between Lot 42 and Lot 41 by November 20, 2020.
 3. Once the engineered grading plan has been accepted and approved, regrading and any construction as indicated by the approved plan has to occur by April 1, 2021, to the satisfaction of the County.
- [26] In extending the deadline for the landowner to provide an engineered grading plan to January 29, 2021, the Board considered that, as a result of this appeal, the original deadlines could not have been met and now occur in the past. Considering that the landowner was sent the initial letter of inquiry regarding the shed on July 15, 2020, that the survey of the lot grading discrepancies was provided on September 1, 2020, and that holiday season may delay the landowner's efforts to secure the resources required to address this matter, the Board determined that an extension to January 29, 2021 is reasonable.
- [27] In extending the deadline for the landowner to remove the shed and undertake construction to bring the property in compliance with the engineered grading plan to June 25, 2021, the Board considered that, as a result of this appeal, the original deadlines could not have been met and now occur in the past. Further, the Board considered that removal of the shed in winter conditions is not ideal. Given that the shed has been in its current location for a number of years, extending the deadline to remove the shed by two months does not prejudice the adjacent landowner. Further, undertaking construction to bring the property in compliance

with the engineered grading plan in spring and summer conditions will be easier than in cold winter and wet spring conditions. As the grading has been non-compliant for several years, such an extension should not add any undue duress on the adjacent landowner.

- [28] The Board heard evidence from the Development Officer that the Stop Order has been registered on the title of the property and therefore extending timelines to comply with the Stop Order would not prejudice a potential home buyer as the title would identify the outstanding shed and grading issues.
- [29] For all of these reasons, the Board has decided to uphold the Stop Order issued by the Development Authority and set the deadline to comply with condition #2 to January 29, 2021 and conditions #1 and #3 to June 25, 2021.

Dated at the Town of Morinville, in the Province of Alberta, this 22nd day of December, 2020.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD
Sturgeon County



Lee Danchuk, 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 Stop Order;
- Planning and Development Services Report; and
- Adjacent Landowners' submission