
Appeal File Number: 020-STU-012
Appeal Against: Development Authority of Sturgeon County
Appellant: Todd Mahe
Agent: Tyrone Powell
Date and Location of Hearing: September 29, 2020
Held via Teleconference
Date of Decision: October 13, 2020
SDAB Members: Chair Julius Buski, Wayne Bokenfohr, Lee Danchuk, David Kluthe, Amanda Papadopolous

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*, 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;
 - Development Services Report
 - Appellant's Agent's submissions; and
 - Adjacent Landowners' submissions

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's Agent 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:
- Denies that a permit is required to store and work on equipment on my property.

RECOMMENDATION OF THE DEVELOPMENT AUTHORITY

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

- [10] Section 2.1.1 of the County's Land Use Bylaw No. 1385/17, states:
Except as otherwise provided in this Bylaw or in the *Municipal Government Act*:
a) no development shall be undertaken within the County unless a development permit has been issued; and
b) no person shall carry out or continue a development except in accordance with the terms and conditions of a development permit.
- [11] Section 1.6 of the Land Use Bylaw defines "development" as:
(a) An excavation or stockpile and the creation of either of them, or
(b) A building, addition to a building, replacement or repair of a building and the construction or placing in, on, over or under land of any of them, or
(c) A change of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building, or
(d) A change in the intensity of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the intensity of use of the land or building.
- [12] Section 2.3 of the Land Use Bylaw outlines a number of developments that do not require development permits provided that they are in conformance with the applicable regulations of the Land Use Bylaw and are carried out or performed in accordance with all other applicable legislation, regulations and bylaws. With the exception of sections 2.3.1(g) and 2.3.1(w), related to shipping containers and recreational vehicles respectively, none of the exemptions provided for in section 16 of the Land Use Bylaw are relevant in this case.

- [13] Section 645 of the *MGA* allows a Development Authority to direct a Stop Order to persons including those who are either the registered owner, the person in possession of the land or building, and/or the person responsible for the contravention of the *MGA* or the Land Use Bylaw to stop the development or use of the land or carry out any actions required by the Stop Order.

At present, the Lands do not comply with the Land Use Bylaw and include the following contraventions:

- [14] **Unauthorized developments exist on the lands.** Specifically, two modular trailers (ATCO trailers) have been placed on the lands and connected by flooring and roofing structures without a development permit. Further, there are two shipping containers present on the lands. Only one may exist on the property without a development permit being issued.
- [15] **An unauthorized business is being operated on the lands.** Based on the inspection completed by the County, there are a number of items present on the lands which confirm the operation of a business either working in the oil and gas industry or engaged in salvaging materials related to the oil and gas industry. The items include, but are not limited to, utility trailers both with and without additional equipment on them (fans, oilfield piping, equipment), tanker trailers, tanks that would hold water, oil or other materials, sand/gravel semi-trailers, a backhoe, a “Clean Harbors Energy and Industrial Services” GMC box truck, a GMC big rig truck, and a number of other vehicles, some of which include business markings (i.e. “TnT Production Testing Inc.” and “Arctic Environmental Services”). The unauthorized business constitutes a development on the lands for which no development permit has been issued by the County. Alternatively, the presence of the above noted items constitutes outdoor storage under the Land Use Bylaw, which is neither a permitted nor discretionary use on the lands.
- [16] **An unauthorized residence is present within the shop.** The existing shop on the lands is being used in a manner inconsistent with the development. Development Permit D-185-2001 was issued on July 5, 2001 for a “farm shop building”. At the time of the inspection, the second floor of the shop was being used for residential purposes. Such use is inconsistent with Development Permit D-185-2001.

SUMMARY OF APPLICANT/APELLANT’S POSITION

- [17] The Appellant does not dispute the validity of the Stop Order or whether it was issued correctly, but is requesting an extension of the deadlines imposed for a period of 9 to 12 months
- [18] The Applicant has made significant strides in cleaning the property. For example, vehicles have been removed and construction on the modular homes has ceased.
- [19] An auction broker has been contacted to pick up the gas and oil equipment. It is being stored temporarily on the site as it is expensive to place it elsewhere.
- [20] More time is requested to obtain the valid permits to complete the building. Mr. Mahe will not continue without valid authorization.

- [21] Trees will be planted around the yard to make it visually pleasing and not unsightly as mentioned by the neighbour.
- [22] All activity has stopped until the proper permits can be obtained, and if they cannot be obtained, Mr. Mahe will look at relocating somewhere more suitable to his current and future needs.

DECISION

- [23] **The Board UPHOLDS the Stop Order issued by the Development Authority on July 22, 2020 and AMENDS the Stop Order to set the deadlines to comply with conditions #2, 3, 4 and 5 to 4:00 p.m. on November 1, 2020.**

REASONS FOR THE DECISION

- [24] 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.
- [25] The Appellant's Agent 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 and that, under Sturgeon County's Land Use Bylaw, a development permit is required.
- [26] Having determined that the Stop Order was properly applied and that a development permit is required, the Board considered the timelines prescribed in the Stop Order issued on July 22, 2020. The Board notes that the Development Authority has ordered the property owner to:
1. Immediately cease construction and/or other work on the two modular trailers (ATCO) trailers;
 2. Remove the two modular trailers and all structures used to connect or stabilize them by 4:00 p.m. on November 1, 2020;
 3. Remove one of the shipping containers by 4:00 p.m. on November 1, 2020;
 4. Immediately cease operation of the unauthorized business and remove all associated equipment and vehicles, including all equipment, machinery or vehicles related to oilfield construction or service work, by 4:00 p.m. on September 1, 2020; and
 5. Immediately cease the use of the existing shop for residential purposes and remove any items related to the same, including items used for sleeping, cooking, and or/bathing, by 4:00 p.m. on September 1, 2020.
- [27] In extending the deadlines for the landowner to immediately cease operation of the unauthorized business and remove all associated equipment and vehicles, including all equipment, machinery or vehicles related to oilfield construction or service work, and immediately cease the use of the existing shop for residential purposes and remove any items

related to the same, including items used for sleeping, cooking, and or/bathing from 4:00 p.m. on September 1, 2020 to 4:00 p.m. on November 1, 2020, the Board considered that, as of the day of the hearing, October 2, 2020, two of the deadlines occur in the past. Further, the Board considered the Appellant's efforts to improve the condition of the property, and extended the deadline by two months as the Board finds that such an extension is reasonable if the landowner continues to work at the pace described by his Agent at the hearing.

- [28] 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 conditions #2, 3, 4 and 5 to November 1, 2020 at 4:00 p.m..

Dated at the Town of Morinville, in the Province of Alberta, this 13TH day of October, 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;
- A copy of the Stop Order;
- Development Services Report
- Appellant's Agent's submissions; and
- Adjacent Landowners' submissions