
Appeal File Number:	020-STU-013
Appeal Against:	Development Authority of Sturgeon County
Appellant:	Martin Kaup
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 Martin Kaup against the Development Authority’s refusal to allow two shipping containers in the front yard located at Plan 1976TR; 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:
- Notice of Appeal;
 - A copy of the development permit application with attachments;
 - The Development Authority’s written decision;
 - Development Support Services Report; and
 - The Appellant’s submission.

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] The Appellant, Martin Kaup, requested an adjournment of the hearing until April 21, 2021 or until such time as the Board determines. The reasons for this request include:

- He finds it difficult to present an appeal in an electronic format and expects that the COVID-19 pandemic will subside permitting in-person hearings to continue sometime in 2021. He would prefer to present his appeal in person.
- He would like the opportunity to take photos of the property in question from the highway view and of the neighbours with shipping containers on their land and the condition of their property. He would also like to obtain photos throughout the County of properties with permitted shipping containers.
- He has received notification from the County of a tax sale on this property and needs time to communicate with the owners and inquire if the intention is to pay the tax arrears or proceed to tax sale.
- No third parties would be affected or prejudiced by the adjournment as the shipping containers have not been purchased or placed.

DEVELOPMENT AUTHORITY'S POSITION

[7] Yvonne Bilodeau, representative for the Development Authority, presented the Development Authority's position on the adjournment request:

- The Development Authority is not opposed to an adjournment as the shipping containers are not in place and this is not an application they are trying to remedy.
- Notwithstanding that the adjournment would not affect or prejudice any third parties, the *Municipal Government Act* allows for municipalities to proceed with virtual meeting and it is unknown when in-person hearings will return so that is not a valid reason for an adjournment.

ISSUES

[8] The Board considered the following issues:

1. Is it reasonable to grant an adjournment until April 2021 or an earlier date once the COVID-19 pandemic subsides and in-person SDAB hearings can resume safely?
2. Is it fair and reasonable to give the Appellant additional time to prepare for a merit hearing?

DECISION

[9] **The Board GRANTS an adjournment to November 17, 2020 at 2:00 p.m. Further, the Board directs that the November 17, 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, presumably April 2021 or an earlier date:

[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 advised he finds it difficult to present his appeal electronically and would prefer to present in person.

[11] 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.

- [12] 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.
- [13] 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.
- [14] 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, specifically that he would be more comfortable with an in-person hearing.
- [15] 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.
- [16] 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.
- [17] 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 November 17, 2020 merit hearing.
- [18] 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.
- [19] Due to the reasons stated above, the Board directs that the November 17, 2020 merit hearing be held through videoconference.

Issue 2: Regarding the request to provide additional time for the Appellant additional time to prepare for a merit hearing:

- [20] Prior to making a decision regarding the request to provide additional time for the Appellant to prepare for a merit hearing, the Board provided the Appellant the opportunity to make submissions as to why more time is needed to prepare for the merit hearing. The Appellant advised that he would like more time in order to take photos of the property from the highway view and of the neighbours who have shipping containers and the state of their property. He also wants to take photos throughout the County of properties with permitted shipping containers. The Appellant also advised that, on September 28, 2020, he received notification of a tax sale on this property and he requires time to communicate with the owners to see if the intention is to pay the tax arrears or to go to tax sale and if that would affect this appeal.
- [21] 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. In determining that an adjournment to November 17, 2020 is reasonable, the Board considered that seven weeks should provide ample time for the Appellant to take photographs, research other properties in the County with shipping containers, and confirm with the landowners their intentions with respect to the tax sale.
- [22] In granting the seven-week adjournment, the Board considered that the shipping containers have not yet been placed, and therefore no third parties would be affected or prejudiced by the adjournment.
- [23] Due to the reasons stated above, the Board has decided to grant an adjournment of the merit hearing to November 17, 2020 at 2:00 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

- Notice of Appeal;
- A copy of the subdivision application with attachments;
- The Subdivision Authority's written decision;
- Development Support Services Report; and
- The Appellants' submission.