
Appeal File Numbers:	022-STU-009
Application Number:	305305-20-D0183
Appeal Against:	Development Authority of Sturgeon County
Nature of Appeal:	Stop Order
Appellant:	Marley Broda
Date and Location of Hearing:	July 5, 2022 Council Chambers and Through Electronic Communications
Date of Decision:	July 19, 2022
SDAB Members:	Chair Julius Buski, Lee Danchuk, Alanna Hnatiw, Allan Montpellier, Amanda Papadopoulos

NOTICE OF DECISION

IN THE MATTER OF an appeal by Marley Broda against the Development Authority's cancellation of Development Permit 305305-20-D0183 – Home Based Business Level 3 - Carpentry Services for property located at 0621672; 1; 1; SE 29-54-27-W4 (27414 TWP 544) 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*, RSA 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 dated May 20, 2022;
 - Planning and Development Services Report;
 - The Appellant's submission; and
 - The 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] The Board is satisfied that it has jurisdiction to deal with this matter.
- [7] The parties agreed to make concurrent submissions on Appeal File Numbers 022-STU-008 (May 20, 2022 Stop Order) and 022-STU-009 (Cancellation of Development Permit 305305-20-D0183). As such, the Board is issuing a single set of reasons addressing both appeals.

ISSUES

- [8] The Appellant raised the following grounds of appeal:
- The requirements of the Development Permit have been fully or substantially complied with throughout the course of the business operations.
 - The business on the lands has been operated consciously in a manner that would not disrupt or impact neighbouring and adjacent properties.
 - Considerable measures have been taken to reduce the scale of the operations in a commercially reasonable manner, all while ensuring a positive working relationship with the County and with no abrupt or reckless measures taken that would unduly impact the livelihoods of the employees.

DEVELOPMENT AUTHORITY'S SUBMISSION

- [9] A development permit was issued in September 2020 to allow a Home Based Business Level 3 – Carpentry Services to operate on the property with conditions, including requiring that the development of future buildings have separate permits, restricting exterior storage, limiting the number of employees to 4, and requiring the development not to be a nuisance to adjacent properties.
- [10] In December 2020, the Development Authority began to receive complaints citing excessive employees and employee vehicles, number of commercial vehicles, and number of sea cans.
- [11] At that time, the Appellant indicated that she would voluntarily comply by reducing the number of sea cans from 10 to 5 in line with the requirements of the Land Use Bylaw.
- [12] In April 2021, the Appellant applied for an electrical permit to retrofit sea cans to data centres, which was refused since this is not permitted under the development permit issued.
- [13] In November 2021, the Development Authority received complaints that an excessive number of sea cans were located on the property. Upon investigation, it was estimated that there were 30 sea cans on the property.
- [14] On December 3, 2021, the Development Authority issued a warning letter seeking the Appellant to file a voluntary compliance plan by December 17, 2021. Upon negotiations, an updated deadline to January 21, 2022 to submit the voluntary compliance plan was agreed upon.

- [15] The voluntary compliance plan was submitted but deemed insufficient to address all outstanding compliance issues, including reducing the number of sea cans on the property to 5, bringing the proposed site plan into compliance with the approved development permit, removing unapproved structures including three fabric Quonsets and office trailer(s), addressing exterior storage exceedances, and screening exterior storage from roads. The voluntary compliance plan also did not address the nature of the business as a carpentry business, number of employees, hours of operation, or nuisance to neighbouring properties.
- [16] A Stop Order was issued on April 11, 2022 with a compliance date of May 9, 2022. The Stop Order sought an application for development and business permits for all accessory buildings, application for a new development permit for a home based business or rezoning of the property, and reduction of the number of sea cans on the property to 5.
- [17] On May 6, 2022, the Appellant submitted a report to the Development Authority indicating sea can relocation efforts and compliance with the exterior storage requirements of the approved development permit.
- [18] On May 20, 2022, a second Stop Order was issued, requiring, by June 10, 2022, that the landowners relocate the business to lands that have the appropriate zoning for an industrial use, rezone the existing lands, or apply for a new development permit to allow for more than 5 sea cans.

APPELLANT'S SUBMISSION

- [19] The Home Based Business Level 3 for a carpentry business is the best fit for this development. The Appellant did not mislead the Development Authority as to the nature of the carpentry business.
- [20] Carpentry services is not a term defined in the Land Use Bylaw. The Southern Alberta Institute of Technology (SAIT) Carpenter Program Information submitted to the Board establishes that carpentry is not limited to woodworking but includes "the construction, erection, and repair of wood, wood substitutes, steel, and other materials." Crypto container construction seems very technical and new and therefore not traditionally considered carpentry, but the Board must open its mind to metal fabrication as a carpentry business.
- [21] The Appellant made efforts to work with the Development Authority. The Appellant reduced the number of shipping containers on the lands from 38 to 4. There has been substantial, if not full, compliance with the Stop Order.
- [22] The development has not substantially impacted neighbouring property owners. There is a 10-metre tree stand between the Hansen's subdivision and the property. Some of closest neighbours live 150 away and 300 metres away, approximately, which is a significant distance.
- [23] A Noise Audit has been provided, which demonstrates that the noise emanating from the property is not offensive and is in the range of inside average urban home noises, a quiet street, normal conversation at 1 metre, and moderate rainfall. The property is nearby other types of developments that cause noise, including gravel extraction, an airport, and extensive agricultural operations.
- [24] Letters have been submitted by adjacent landowners both in support and in opposition to the proposed development, submitted in approximately equal numbers. Some of the information submitted in opposition to the development is inaccurate and cannot be substantiated.

- [25] Had the Appellant heard concerns with respect to business operations, she would have taken measures to address them. When the County raised concerns, the Appellant took measures to address them, regardless of the merit of the concerns. The Appellant wants to maintain a positive working relationship with the County.
- [26] The Appellant is a steward of the County. She employs local people. She offers an innovative business. She is a proponent of agriculture in the area. Her operations, both farming and carpentry business, are beneficial to the community and accord with the Municipal Development Plan and other comments that the County has raised with respect to the development and retention of businesses throughout the County.
- [27] In addition to the carpentry business, this property is a working farm. There are 97 cows, including 75 that are supposed to be calving this year. The Appellant has certain farming rights, including agricultural buildings without the requirement of permits. The Development Authority has not recognized this.
- [28] This is a small business run by the Appellant. Ms. Broda recently gave birth, right at the time that the Stop Order was issued. She has four children and works hard to raise them all, on top of operating an active farm. There is need to give an appropriate amount of time for her and her small team to come up with a solution to this very significant problem.
- [29] This development permit is not transferrable to any future landowners. The Appellant is a reputable business owner, and the Board does not need to be concerned with the future of the business should the Brodas sell their property in the future.

SUBMISSIONS BY ADJACENT LANDOWNERS

- [30] Darcy and Shauna Grainger and Chase Majeau attended the hearing and spoke in favour of the appeal. The Board also received a written submission from Brett Majeau in favour of the appeal.
- [31] The Board received written submissions from Brian and Trudy Wohlgemuth, Dennis and Terry Dutton, Donna Tregidgo and Bert McEwen, and Karen Lore opposing the appeal.

DECISION OF THE BOARD WITH RESPECT TO THE STOP ORDER

- [32] **The Board UPHOLDS the Stop Order issued by the Development Authority on May 20, 2022 and VARIES the Order as follows:**

- **References to the cancellation of Development Permit 305305-20-D0183 are struck.**
- **References of non-compliance related to misrepresentation of the business, deviation from the approved drawings, and absence of development and building permits for the three accessory buildings and trailer(s) (Violations 2, 3, and 4) are struck.**
- **Directions to relocate the business to lands that have an Industrial Use zoning, apply for developing permits for the existing business, and apply for development and building permits for all accessory buildings (Directions 1 and 2) are struck.**
- **The deadline to comply with the Stop Order is extended from June 10, 2022 to January 20, 2023.**

REASONS FOR THE DECISION WITH RESPECT TO THE STOP ORDER

- [33] In addressing the Stop Order, the Board's inquiry is confined to whether or not the Stop Order was properly issued by the Development Authority. In order to make this determination, the Board must determine whether there has been a contravention of the *Municipal Government Act*, the Land Use Bylaw, or Development Permit conditions.
- [34] The Board finds that the property in question is districted AG – Agricultural, and that the development permit was issued for a Home Based Business Level 3, which is a discretionary use in the AG district.
- [35] The Board finds that Development Permit 305305-20-D0183 does not regulate the number of shipping containers (sea cans) on the property and therefore the general provisions of the Land Use Bylaw apply.
- [36] The Board finds that, pursuant to section 6.27.1 of the Land Use Bylaw, the maximum number of shipping containers without a development permit in the AG district is 5. Therefore, the Appellant is permitted to have no more than 5 sea cans on the property and any exceedances constitute a breach of the Land Use Bylaw.
- [37] The Board received evidence in the form of photographs supplied by the Development Authority, dated May 26, 2022, 6 days after the issuance of the Stop Order, that there were more than 5 sea cans on the property. While the exact number of sea cans is indeterminable due to the varying angles of the photographs taken from public property or adjacent landowners' properties given the absence of a formal inspection, it is clear to the Board that the number of sea cans exceeds the 5 permitted by the Land Use Bylaw.
- [38] The Board considered the other non-compliance matters identified in the Stop Order, including absence of development permits and business permits for the three accessory buildings (fabric Quonsets) and trailer(s). The Board received submissions that the property operates an extensive agricultural operation in addition to the carpentry business. The Board heard from the Development Authority that it is the County's practice to request farm building confirmation attestations from landowners in such situations to confirm which buildings are related to extensive agricultural operations and which are accessory to another development.
- [39] Prior to issuing the Stop Order, the Board finds that the proper processes were not followed to confirm the use of the buildings. The Board is persuaded by the Appellant that she was never advised of the requirement for farm building confirmation attestations for the extensive agricultural operation. The Development Authority did not undertake a formal inspection process pursuant to the Municipal Government Act and therefore the Board cannot conclude that these structures are accessory to the home based business. For these reasons, the Stop Order is varied to strike any requirement for the Appellant to apply for development or business permits for the structures on the property.
- [40] Apart from the number of sea cans, the alleged violations of the Land Use Bylaw and Development Permit were not established on the evidence before the Board.

- [41] The Stop Order has a compliance date of June 10, 2022, which occurs in the past due to the filing of the appeal, and therefore an extension is warranted. Having determined that there has been a contravention of the Land Use Bylaw, the Board finds that it may exercise its discretion and give the recipient more time to comply with the terms of the Order.
- [42] In determining the length of time reasonable for the Appellant to comply with the varied Stop Order, the Board considered the submissions of the parties. The Appellant requested a 6-month extension to come into compliance, given the personal situation of the landowners and the reliance of employees on the business. The Development Authority responded that the Appellant has essentially been on notice since the December 2021 warning letter that the property is non-compliant with the Land Use Bylaw and therefore such an extension may not be reasonable.
- [43] In granting a 6-month extension to January 20, 2023, the Board weighed the arguments of the parties, recognizing that the Appellant must consider her options, and that a decision to redistrict the lands, for example, would take a number of months to process. Based on the submissions received, the Appellant has significantly reduced the number of sea cans on the property, and therefore the impacts to neighbouring property owners, if any, should be mitigated until such time that the Appellant is able to determine the long-term plan for the business.

DECISION OF THE BOARD WITH RESPECT TO THE CANCELLATION OF THE DEVELOPMENT PERMIT

- [44] **The Board REVOKES the decision of the Development Authority issued May 20, 2022 to cancel Development Permit 305305-20-D0183.**

REASONS FOR THE DECISION WITH RESPECT TO THE PERMIT CANCELLATION

- [45] The Development Authority relied on section 2.12.1(a) and (d) of the Land Use Bylaw in cancelling the development permit, and the permit was cancelled due to alleged misrepresentation of the business as a carpentry business and because the development deviated from the approved drawings regarding exterior storage.
- [46] Based on the evidence provided, the Board finds that the Appellant did not misrepresent the business as a carpentry business. "Carpentry" is not defined in the Land Use Bylaw. The Southern Alberta Institute of Technology (SAIT) Carpenter Program Information submitted to the Board establishes that carpentry is not limited to woodworking but includes "the construction, erection, and repair of wood, wood substitutes, steel, and other materials." It is apparent to the Board that there is not a single definition of "carpentry" that can be relied upon to conclude that the Appellant misrepresented the nature of their business at the time of application. The Development Authority could have requested additional details to clarify the business activities and to ensure appropriate development permit conditions were imposed.
- [47] The Appellant submitted that the Development Authority does not have authority to cancel a development permit. The Appellant argued that the authority to do so is granted by Sturgeon County's Land Use Bylaw but is not expressly authorized by the Municipal Government Act or other legislation, and the Development Authority has misinterpreted section 640(2)(c)(iii) of the Municipal Government Act, which provides that the Land Use Bylaw must establish a method of making decisions on applications for development permits and issuing development permits for any development, including provisions for processing an application for or issuing, cancelling, suspending or refusing to issue a development permit. The Appellant argued that the "cancellation" of a permit

in this context is at the time of application, not after a development permit has been issued, with the mechanism to address concerns of non-compliance with an approved development permit being section 645 and the issuance of a stop order, not cancellation of an approved permit.

- [48] The Board received submissions that the property operates an extensive agricultural operation in addition to the carpentry business. The Board heard from the Development Authority that it is the County's practice to require farm building confirmation attestations in such situations to determine which buildings are related to extensive agricultural operations and which are accessory to another development.
- [49] Prior to issuing the Stop Order, the Board finds that the proper processes were not followed to confirm the use of the buildings. The Board is persuaded by the Appellant that they she was never advised of the requirement for farm building confirmation attestations for the extensive agricultural operation. The Development Authority did not undertake a formal inspection process pursuant to the Municipal Government Act and therefore the Board cannot conclude that these structures are accessory to the home based business. For these reasons, the Board cannot conclude that the development deviated from the approved drawings regarding exterior storage.
- [50] The Board heard from the Development Authority of complaints received regarding number of employees, number of employee vehicles, and number of commercial properties. However, neither the Development Authority nor submissions from adjacent landowners provided persuasive evidence that the Appellant was operating outside of these development permit conditions except with respect to the number of sea cans without a development permit.
- [51] The Board finds that, on the specific facts of this case, cancellation of the Development Permit was not warranted. Therefore, the Board grants the appeal of the cancellation of the Development Permit.
- [52] The Board seeks to make clear that its decision is to vary the conditions of the Stop Order, and that the Development Permit conditions continue to apply.

Dated at the Town of Morinville, in the Province of Alberta, this 19th day of July, 2022.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD
Sturgeon County



Julius Buski, Chair

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"

STOP ORDER

AS AMENDED BY THE STURGEON COUNTY SUBDIVISION AND DEVELOPMENT APPEAL BOARD
Pursuant to Section 645
Municipal Government Act
R.S.A. 2000, Chapter M-26, As Amended

F20/1348

July 19, 2022

Broda, Norman and Marley
27414 Twp Rd 544
Sturgeon County, AB T0G 0J0

Email: marley.broda@hotmail.ca

**RE: CONTRAVENTION OF Land Use Bylaw 1385/17
 Lot 1, Block 1, Plan 0621672; Pt SE 29-54-27-W4
 Sturgeon County**

This **STOP ORDER** is issued pursuant to Section 645 of the Municipal Government Act with respect to the aforementioned lands.

Part 17 of the Municipal Government Act and Part 4, Section 4.4 of Sturgeon County Land Use Bylaw 1385/17 allows a Development Authority to issue a Stop Order where a development, land use or use of a buildings is not in accordance with the Municipal Government Act; the Land Use Bylaw; Subdivision and Development Regulation; development permit; development agreement; or subdivision approval.

**THIS STOP ORDER IS ISSUED UNDER THE AUTHORITY OF MUNICIPAL GOVERNMENT ACT, R.S.A. 2000,
Chapter M-26, AS AMENDED.**

At present, development on the Lands does not comply with the Land Use Bylaw 1385/17 given:

- 1. The applicant failed to comply with the conditions of the Stop Order dated April 11, 2022.**
- 2. The number of shipping containers on the property exceeds the maximum of 5 permitted for AG Major parcels without a development permit.**

Accordingly, you are hereby ordered to stop the unauthorized development and use of aforementioned lands and comply with the Land Use Bylaw 1385/17 by:

- 1. Removing the shipping containers from the parcel to a maximum of five (5) for storage purposes only or applying for a development permit for more than five (5) for storage purposes only.**

All by January 20, 2023.

Please be advised that the Municipality has the authority to put the costs and expenses for carrying out this Stop Order on the tax roll for the Lands pursuant to Section 553(1)(h.1) of the Municipal Government Act.

If you do not comply with this Stop Order, Sturgeon County may, under the provisions of Sections 646(1) and 542 of the Municipal Government Act, R.S.A., 2000, Chapter M-26, as amended:

- Enter onto the land and take such action necessary to carry out the order under the provisions of Sections 646(1) and 542 of the Municipal Government Act, and/or
- Obtaining a permanent and mandatory injunction from the Court of Queen's Bench pursuant to section 554 of the Municipal Government Act; and/or
- Issue a provincial violation ticket with a minimum fine of \$1,000 and an additional fine for every calendar day the offence continues, under the provisions of Section 4.5 of Land Use Bylaw 1385/17, as amended

Yours truly,

STURGEON COUNTY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

APPENDIX "B"
List of Submissions

- The Notice of Appeal;
- A copy of the Stop Order;
- Planning and Development Services Report;
- The Appellant's submissions; and
- The Adjacent Landowners' submissions