

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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HEARING DATE: May 30, 2022
FILE NO.: Stop Order Appeal

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority of Parkland County (the "Development Authority") issued a stop order for a development without a development permit located at SE-21-53-02-W5M; 53310 Highway 43, Parkland County (the "Lands"). The recipients of the stop order were John Oshvalda and Monica Oshvalda.

[2] On May 6, 2022, Marilyn Burns, Agent for John Oshvalda and Monica Oshvalda filed an appeal of the stop order (the "Appellants").

[3] The Subdivision and Development Appeal Board (the "Board") heard the appeal on May 30, 2022 via video conference in accordance with the *Meeting Procedures (COVID-19 Suppression) Regulation*, AR 50/2020.

PRELIMINARY MATTERS

A. Board Members

[4] At the outset of the appeal the Chair requested confirmation from all parties in attendance that there was no opposition to the composition of the Board hearing the appeal. None of the persons in attendance had any objection to the members of the Board hearing the appeal.

B. Exhibits

[5] At the beginning of the hearing the Chair asked if everyone in attendance had the hearing package prepared for the hearing. Ms. Burns, the agent for the Appellant, advised that the hearing package sent by the Board Recording Secretary went to her spam account, and that she had not had the opportunity to review the materials. The Board asked if Ms. Burns wanted a 15 minute adjournment to review the package and Ms. Burns advised that the time was satisfactory. The Board granted the adjournment to permit Ms. Burns to review the agenda package. At the end of the adjournment, there were no objections to any of the exhibits which had been submitted in accordance with the Board's hearing submission dates and Ms. Burns

was prepared to continue the hearing. The Board marked those exhibits received prior to the hearing as set out at the end of this decision.

[6] In response to a Board question about whether any of the parties had any more information they wished to submit, Ms. Burns indicated that she would be making reference to various provisions of the *Municipal Government Act* ("MGA") and she asked if the Board had access to it. The Board confirmed that it did have access to the MGA.

[7] There was no request for an adjournment of the hearing.

C. Miscellaneous

[8] There were no objections to the proposed hearing process.

D. Scope of the Hearing

[9] On May 16, 2022, the Board wrote to the Appellants and to the Development Authority to obtain their consent to hold the hearing outside the 30 day limit (see page 11/15 of the Agenda package).

[10] In response to the Board's email, the Development Authority notified the Board that it did not consent to the hearing occurring outside of the 30 day limit. In addition, the Development Authority stated that in its opinion the SDAB did not have the jurisdiction to extend appeal timelines and that the appeal was filed out of time (see page 10/15 of the Agenda package).

[11] As a result of the disagreement of the parties on having the hearing outside of the 30 day legislated timeframe for a hearing (see s. s. 686(2) of the MGA). The Board convened this preliminary hearing to determine the following questions:

- a. Was the appeal filed in time and therefore does the Board have jurisdiction to hear the merits of the appeal?
- b. If the Board determines that it does have jurisdiction, when should the hearing be held and what are the disclosure deadlines?

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[12] The Board finds that the appeal was not filed in time. The Board has no jurisdiction to extend the statutory appeal deadlines found in section 686(1)(a)(ii).

SUMMARY OF HEARING

[13] The following is a brief summary of the oral and written evidence submitted to the Board. At the beginning of the hearing, the Board indicated that it had reviewed all the written submissions filed in advance of the hearing.

Development Authority

[14] The Lands are located at SE-21-53-02-W5M; 53310 Highway 43, Parkland County (the "Lands").

[15] The Development Authority stated that the Stop Order was personally delivered by two bylaw officers on April 6, 2021, the date of the Stop Order. In addition, the Stop Order was emailed on April 6, 2021 to the email address listed at the top of the Stop Order. The Development Authority submitted that the 21 days for appeal ended April 27, 2022. As the appeal was dated May 6, 2022, the appeal was filed beyond the 21 day appeal period and the Board has no jurisdiction to extend the appeal timelines.

[16] In response to Board questions about possible dates for an appeal hearing, should the Board find that the appeal was filed in time, the Development Authority indicated that it was available for June 27, 2022, the date suggested by the Appellants. The Development Authority was also available for dates in July 2022, except July 25, 2022.

Appellants John Oshvalda and Monica Oshvalda by Their Agent Marilyn Burns

[17] Ms. Burns, agent for the Appellants, John Oshvalda and Monica Oshvalda, made a presentation on behalf of the Appellants.

[18] She stated that the Appellants received the Stop Order on April 6, 2022, but they did not get information about the manner of the appeal and did not receive anything about the process for appealing. For instance, there was no appeal form; no reference of the fee amount, or to whom the fee should be payable. The way to appeal was not shown.

[19] She stated that s. 645 of the MGA does not indicate a fee amount or process, but there are other sections in the MGA that speak to the ability to alter dates and times, which she stated gave the Board jurisdiction to amend the time for filing the appeal so that the appeal would be filed in time. Ms. Burns referenced the following sections of the MGA:

- a. S. 605 provides that the Minister may by order specify another number of days for doing certain acts or taking proceedings;
- b. S. 684(2) provides that there can be an extension of time by agreement;
- c. S. 180 provides that Council may only act by resolution or bylaw;
- d. S. 5 provides that Council can impose a duty on itself by policy.

[20] Ms. Burns argued that those sections allow the Board to extend time.

[21] Ms. Burns stated that the Appellants were trying to understand the maze of orders laid in their path by the County since July 2021. The face of the stop order contained no instructions on how to appeal and that they made their best efforts and that is before the Board in this appeal.

[22] In response to Board questions, the Appellants stated:

- a. His son Clayton received the hand-delivered letter and the email address on the front page of the Stop Order is his wife's.
- b. He did not follow up with the County after receiving the Stop Order because he was confused as to what was going on and why.
- c. If the Board finds that it has jurisdiction, the Appellants are available on June 27, 2022 or any Monday in July 2022 for a merit hearing. There was a discussion that the disclosure deadlines for appeals are the Tuesday before a Monday hearing.

[23] When asked for comments about s. 686(1)(a)(ii) MGA, Ms. Burns stated that the section links back to s. 645 and is circular. Section 645 does not indicate a fee amount or a process for appeal, and there are sections of the MGA that speak to altering dates or times. She stated that in her view the whole section is unclear and the Minister should be reviewing the whole section. She stated that there was no clarity providing a black and white answer. In her submission, the Board has the discretion to extend the timeline to appeal based on the sections of the MGA she referenced. It is patently unreasonable to issue a Stop Order without clear instructions on how to appeal. Her understanding of the MGA is that it is not clear and she asked the Board to exercise its discretion to enter an agreement to extend the time for appeal to the date that the appeal was filed. Alternatively, she suggested that the Board could re-issue the stop order with clear instructions.

FINDINGS OF FACT

[24] In addition to the specific facts set out under the Board's reasons, the Board finds the following as facts.

[25] The Lands are located at SE-21-53-02-W5M; 53310 Highway 43, Parkland County.

[26] The Stop Order is dated April 6, 2022 and was served on the Appellants on April 6, 2022.

[27] The appeal was filed May 6, 2022.

[28] The appeal was filed 9 days outside of the 21 day appeal time limit found in s. 686(1)(a)(ii) of the MGA.

[29] The Appellants are affected persons.

REASONS

Affected Persons

[30] The Board must determine whether those appearing and speaking before the Board are affected persons. The Board notes that there was no objection made to those making submissions to the Board; however, the Board wishes to review this issue for completeness. The Appellant is the recipient of the Stop Order and is therefore affected.

Jurisdiction and Issues to be decided

[31] The Board is aware that in determining the merits of an appeal of a Stop Order, its jurisdiction is found in section 687(3) of the MGA. However, this hearing does not deal with the merits of the appeal. In light of the issues raised by the Development Authority, the Board must determine:

- a. Whether the appeal was filed in time (and therefore whether the Board has jurisdiction to hear the merits of the appeal); and
- b. If the Board determines that it does have jurisdiction, the schedule for the hearing and disclosure deadlines.

[32] In making this decision, the Board has examined the provisions of the MGA and has considered the oral and written submissions made by and on behalf of those who provided evidence: the Development Authority and the Appellants (both directly and by their agent Ms. Burns).

Was The Appeal Filed In Time?

[33] The position of the Development Authority was clear that the Stop Order was personally served on April 6, 2022 and the time for appeal expired on April 27, 2022. As a result of s. 686(1)(a)(ii) of the MGA, the appeal was out of time and the Board does not have the jurisdiction to extend the time for filing an appeal.

[34] The Appellants had two main arguments:

- a. The Stop Order was confusing and did not provide sufficient detail about how to appeal; and
- b. Due to a number of sections of the MGA, the Board has the discretion to extend the appeal time.

[35] The Board will address each of the Appellants' arguments in turn.

Date of the Stop Order, Date for filing the Appeal and Date Appeal filed

[36] Before addressing the argument raised by the Appellants, the Board is of the opinion that it should determine the date of the Stop Order and the date the Appellants received it. These conclusions will be used when the Board examines the Appellants' arguments.

[37] The evidence before the Board is that the Stop Order is dated April 6, 2022. The Appellants did not contest this evidence and the Board finds this as a fact.

[38] The next question is what day the Appellants received the Stop Order. The evidence of the Development Authority was that the Stop Order was delivered personally to the Appellants on April 6, 2022 and was also emailed to the Appellants on April 6, 2022. In her submissions, Ms. Burns confirmed that the Stop Order was received by the Appellants on April 6, 2022. The

Board questioned Mr. Oshvalda about this. He confirmed that his son was the person who received the Stop Order on April 6, 2022. Mr. Oshvalda did not provide the Board with any evidence that he did not receive the Stop Order on April 6, 2022. In response to Board questions, Mr. Oshvalda confirmed that the email address on the Stop Order was his wife's. He had no information about when she received the Stop Order.

[39] Based on the evidence before the Board, the only evidence about the date of receipt of the Stop Order is that the Stop Order was received by the Appellants on April 6, 2022. The Board finds this as a fact because of the submission of Ms. Burns and because there was no other information provided to the Board about the date of receipt except that of the Development Authority which confirmed it was April 6, 2022. In light of this evidence, the Board concludes that the Stop Order was received by the Appellants on April 6, 2022.

[40] In light of the Board's conclusion that the Stop Order was received by the Appellants on April 6, 2022, the Board has calculated the time for appeal under s. 686(1)(a)(ii) as April 27, 2022 – 21 days from the date the Stop Order was both made and served on the Appellants.

[41] The evidence before the Board (page 3/15 of the Agenda package) is that the appeal was filed May 6, 2022 and the Board finds this as a fact. Therefore, the appeal was filed 9 days after the appeal time limit of April 27, 2022.

The Stop Order was confusing and without sufficient detail to appeal

[42] The Appellants argued that the Stop Order did not contain sufficient detail about the appeal, for instance there was no appeal form, the appeal fees were not listed, nor was there any indication of to whom the fees were to be payable.

[43] In considering this merit of this aspect of the Appellants' argument, the Board notes that at page 7 of 15, in the second last paragraph of the page, the following is found:

You are hereby advised that you have the right to appeal this Stop Order to the Subdivision Development Appeal Board (SDAB). If you wish to exercise this right, written notice of an appeal together with the applicable appeal fee must be received by the Clerk of the SDAB within 21 days of your receipt of this letter. The address for filing an appeal is:

Parkland County
Subdivision and Development Appeal Board
Legislative Services
53109A Hwy 779 Parkland County, AB T7Z 1R1

The Board notes that at page 6 of 15, the Stop Order sets out the phone and fax numbers for Parkland County. The Board asked the Appellants whether the Appellants made any calls to the County or the Development Authority for clarification. Mr. Oshvalda stated that he did not call the County because he was confused.

[44] The Appellants' argument under this aspect of their submissions appears to be that the time limit to appeal should be subject to the Stop Order including more detail on the process to appeal. The Appellant did not provide any cases in support of her argument that the statutory appeal time can be varied or extended due to the contents of the Stop Order.

[45] The Board is not persuaded by the Appellants' argument that the appeal time limit is affected by the amount of detail contained within the Stop Order. The Board finds that the Stop Order clearly and correctly identifies the time for appeal as 21 days of receipt of the Stop Order. This is the time limit set out in s. 686, the relevant portions of which are set out below:

Appeals

686(1) A development appeal is commenced by filing a notice of the appeal, containing reasons, with the board hearing the appeal

(a) in the case of an appeal made by a person referred to in section 685(1)

....

(ii) with respect to an order under section 645, within 21 days after the date on which the order is made,

[46] The Board does agree that the Stop Order does not set out the amount of the appeal fees. However, the Board was given no authority to support an argument that the absence of appeal fees or a form attached to a Stop Order changes the statutory time limit for appeal. The Board does not have the authority to extend the time for appeal.

Due to sections of the MGA, the Board has the authority to extend the time for filing an appeal

[47] The Appellants' second argument was that the Board has the authority to extend the time for filing an appeal due to the sections of the MGA listed by the Appellants.

[48] The Board first notes that the argument about an extension includes an inference that the specified appeal time was not met. If the appeal time was met, there would be no need for an extension. Thus, the Board infers that the Appellants' argument acknowledges, at least tacitly, that they did not meet the required appeal time limit, which the Board has expressly found to be April 27, 2022.

[49] In examining this argument, the Board has reviewed the sections of the MGA referenced by the Appellants. Section 605 does authorize the Minister to change certain deadlines. However, the Board was provided with no evidence that the Minister has changed the deadlines in this case, nor with any cases which indicate that the Minister's authority to change deadlines applies to the Board.

[50] S. 684(2) provides that there can be an extension of time by agreement, but this section applies to the time within which the Development Authority must make a decision on a development permit application. The Board was provided with no authority which indicates that this section applies to a Stop Order. The Board notes that s. 684(2) contains no wording

referencing Stop Orders and the Board concludes that this section does not authorize the Board to impose an extension of the time for appeal of a Stop Order.

[51] S. 180 provides that Council may only act by resolution or bylaw. However, the Board is not the Council for Parkland County. The Board is established by a bylaw, and can act only in accordance with the Bylaw and the Act. The Board does not interpret s. 180 as providing any authority to extend the statutory time limit in s. 686(1)(a)(ii).

[52] S. 5 says that Council can impose a duty on itself by policy. The Board accepts this is what s. 5 says, but as set out in paragraph [51], the Board is not Council and the Board finds that this section does not authorize the Board to extend a statutory time limit.

[53] The Board was not persuaded by the Appellants' arguments in reference to the sections of the MGA. None of these sections expressly authorize the Board to extend a statutory time limit and the Board was not provided with any authority that indicates that the Board, as a creature of statute, is empowered to extend a statutory time limit. The Board is aware that s. 686(1)(a)(ii) provides for a statutory time limit for appeal. In light of the Board's findings of fact about the date the Appellants received the Stop Order (April 6, 2022), and the date the appeal was filed (May 6, 2022), the Board finds that the appeal was filed out of time and these sections of the MGA do not empower the Board to extend time.

[54] The Board notes that the Appellants also argued that the Board could re-issue the Stop Order so that an appeal could be filed in time. The Board cannot accept this argument. The Development Authority issues the Stop Order, not the Board. The Board cannot re-issue a Stop Order, nor can the Board direct the Development Authority to do so.

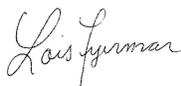
If The Appeal Was Filed In Time, What Is the Schedule For The Hearing And Disclosure Deadlines?

[55] Since the Board has found that the appeal was filed outside of the statutory time for appeal under the MGA, the Board has no jurisdiction to hear the appeal on the merits. As a result, there is no need to address a schedule for the merit hearing as the Board cannot hear the appeal on the merit.

Conclusion

[56] For the above reasons, the Board finds that the appeal was filed outside of the time limit found in s. 686(1)(a)(ii) and the Board has no jurisdiction to hear this appeal.

[57] Issued this 10th day of June, 2022 for the Parkland County Subdivision and Development Appeal Board.



L. Tyerman, Clerk of the SDAB, on behalf of B. Bundt, Chair
SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This decision may be appealed to the Court of Appeal of Alberta on a question of law or jurisdiction, pursuant to Section 688 of the Municipal Government Act, RSA 2000, c M-26.

APPENDIX "A"
REPRESENTATIONS

PERSON APPEARING

1. Karen Kormos, Manager, Development Planning & Safety Codes, Parkland County
2. Rachelle Trovato, Development Authority, Parkland County
3. Marilyn Burns, Agent for the Appellants
4. John Oshvalda

APPENDIX "B"
DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:

May 30, 2022 Agenda Package			
Exhibit	Description	Date	Pages
1.	Agenda Coversheet	May 26, 2022	1
2.	Table of Contents	May 26, 2022	2
3.	Notice of Appeal – John and Monica Oshvalda	May 6, 2022	3-5
4.	Stop Order	April 6, 2022	6-8
5.	Correspondence RE: Scheduling/Timelines	May 26, 2022	9-15