



# Municipal District of Bighorn No. 8

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## DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Hearing: Thursday, November 5, 2020

Stop Order, Rick Sirman (Appellant)

### I. Decision

The appeal before the Subdivision and Development Appeal Board (the “Board”) was brought by Rick Sirman (the “Appellant”).

A stop order (the “Stop Order”) was issued by the Development Authority on September 25, 2020 on the subject property described as Lot 19, Block 6, Plan 3338G.O. in the Hamlet of Exshaw for contravention of Land Use Bylaw 09-Z/18 for commencing development activity prior to the issuance of a development permit.

The Stop Order required the Appellant to cease all construction activity and unapproved modified use in the attached garage portion of the existing dwelling on the subject property and submit a completed development permit application for the modified work and change in use for a portion of the attached garage as required through Land Use Bylaw No. 09-Z/18 on or before 4:30 pm, October 13, 2020, alternatively, the unapproved construction may be removed entirely by October 13, 2020.

The Appellant is the owner of the subject property and filed an appeal against the Stop Order with the Board on October 16, 2020.

The videoconference hearing commenced and concluded on November 5, 2020.

The Board is satisfied that notice of the hearing was provided in accordance with the *Municipal Government Act*, R.S.A. 2000, Chapter M-26 (the “Act”); upon having read the materials provided; upon having heard the presentations from the Appellant and the Development Authority with respect to the appeal filed by the Appellant against the Stop Order for construction activity and unauthorized modified use in the attached garage portion of the existing dwelling on the subject property, the Board has decided to dismiss the appeal and uphold the Stop Order issued by the Development Authority on September 25, 2020, but varies the date of compliance of all matters therein to December 18, 2020.

The Board determined the development activity set out in the Stop Order, contravenes Land Use Bylaw 09-Z/18, as amended (the “Land Use Bylaw”) and requires an authorizing development permit for the development activity, and there is no authorizing permit. Accordingly, the Appellant is hereby ordered to stop the unauthorized development activity and use of the subject property and comply with the Land Use Bylaw by:

1. Submitting a completed development permit application for the modified work and change in use for a portion of the attached garage as required through Land Use Bylaw No. 09-Z/18 on or before 4:30pm, December 18, 2020; or alternatively,

2. Remove the unapproved construction entirely by December 18, 2020 to the premodification state, as approved by Development Permit 47/15, to the satisfaction of the Development Officer.

The reasons for the Board's decision are outlined below.

## **II. Background**

The Board heard an appeal from Rick Sirman (Appellant) against the Stop Order issued by the Development Authority for the contravention of the Land Use Bylaw, Section 42.1 and 42.2. for commencing development activity prior to the issuance of a development permit on the subject property. The property is located within the Hamlet Serviced Residential District (R1-S), as described in Section 14 of the Land Use Bylaw.

A site inspection of the single detached dwelling occurred on February 26, 2019, as a result of an unrelated complaint that an illegal residential suite was developed in the attached garage on the subject property. It was noted during the inspection that while there was no basis for the complaint, the development officer noticed a portion of the garage contained unauthorized development of a small kitchenet, cabinets, gas fireplace, games room and washroom. Upon review of the Development Permit 47/15, issued on July 21, 2015 for the development of a single detached dwelling on the subject property, the filed plans showed that the attached garage contained only a mechanical room and vehicle parking area. The Appellant was made aware the unauthorized construction contravened the Land Use Bylaw, as it created a residential use in a parking garage. The Appellant was requested to apply for a development permit for the modifications to the garage and a change in use.

Discussions between the Development Authority and the Appellant were ongoing until communications broke down. The Appellant believed that the engineered blueprints for the single detached dwelling, submitted for Building Permit 47/15, showed the modifications to the garage and the Safety Codes Officer approved the construction based on those engineered drawings. The Development Authority could not find a copy of the drawings in the building permit file. The Appellant was asked for a copy but he did not produce the engineered drawings.

A letter was sent to the Appellant on December 19, 2019 requesting that a development permit application be submitted to address the modifications to the garage and a change in use. On-going discussions with the Appellant did not resolve the contravention of the Land use Bylaw and no development permit application was made by the Appellant.

On September 25, 2020, the Approving Authority issued a Stop Order, sent by registered mail, to the Appellant and the Stop Order was placed on the subject property. The Stop Order was issued in accordance with Section 645 of the Act that required the Appellant to cease all construction activity and unapproved modified use in the attached garage portion of the existing dwelling on the subject property and submit a completed development permit application for the modified work and change in use for a portion of the attached garage as required through the Land Use Bylaw on or before 4:30 pm, October 13, 2020, alternatively, the unapproved construction must be removed entirely by October 13, 2020.

The Appellant's appeal of the Stop Order was received by the Board on October 16, 2020. Section 685(1) of the Act provides that a person affected by an Order under Section 645 may appeal to the SDAB. Section 686(1) goes on to provide that a person making an appeal under Section 685(1) must commence the appeal within 21 days after the date the person was notified by the Order. The Appellant's appeal complies with Section 686(1) of the Act.

The appeal hearing by the Board was held by video conference on November 5, 2020. The Appellant attended the hearing. The Board heard from the Appellant and the Development Authority (Development Officer Janice Thompson) on the appeal of the Stop Order. Several documents were submitted to the Board, as follows:

- Copy of Stop Order dated September 25, 2020;
- Copy of Stop Order letter sent to Appellant on September 25, 2020;
- Copy of Letter from the Appellant, received on October 16, 2020;
- Map showing the location of the Subject Property;
- Site Inspection Photographs of the interior of the attached garage, showing development modifications;
- Copies of correspondence between the Development Officer and Appellant,
- Copy of Development Permit 47/15 and approved development drawings for the subject property;
- Copies of Building Permit 47/15, Renewal of Building Permit 47/15 – Ext #1, and Occupancy Permit dated July 20, 2018; and
- Excerpts from Land Use Bylaw 09-Z/18 (Sections 42.1., 42.2. and 14).

### **Issues Raised**

The Board and Appellant discussed the following reasons for the appeal:

- The Appellant argued that he built his house according to the approved engineered blueprints and the Building Inspector approved the work in the house and garage and he received an occupancy permit.
- The Appellant said if the Board could see everything on his engineered blueprints, that he got an engineer to draw up, everything is on there.
- The Appellant insisted that the Planning Department lost the engineering drawings for his house.
- Board member Butters asked the Appellant if he made any effort to contact the company who prepared the blueprints to provide a copy. The Appellant responded that the engineer had passed away and was not sure what happened to the business.
- Board member L. Hogarth asked if the Appellant would look in his records and provide any information to the Development Officer. The Appellant said it would take a couple of days to find the information. (As of the date of the Board's Decision, the Appellant has not

provided any further information regarding the engineered blueprints).

- L. Hogarth asked the Appellant if he installed the partition wall, washroom and fireplace after he received the Occupancy Permit. The Appellant said when the Safety Codes Officer came to do the final inspection, the washroom, the wall and the fireplace were all there.

### **III Reasons for Decision / Findings of Fact**

The reasons for the Board's decision to refuse the appeal:

- The Board's jurisdiction in a stop order appeal hearing is prescribed by Section 687(3)(c) of the *Municipal Government Act*, R.S.A. 2000 Chapter M-26. In determining an appeal, the Board defers to Section 687(3)(a.3) to comply with applicable land use bylaw, and subject to clause (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order decision or permits of its own.
- Section 42.1.1. of the Land Use Bylaw states: "no person shall commence and undertake any development unless: a Development Permit has first been issued pursuant to this Bylaw". The Board determined the modifications to the garage do not comply with Land Use Bylaw 09-Z/18, which would require a development permit to authorize the scope of the modifications noted in the Stop Order, and there is no authorizing permit.
- Section 42.2.1. of the Land Use Bylaw states: "A Development Permit is not required for the following developments provided that the proposed development complies with all applicable regulations (such as height, setbacks, density) of this Bylaw". The Board could find no instance of the unauthorized development complying with any part of Section 42.2.1a) to z).
- The Board determined the Stop Order was properly issued under Section 645 of the *Municipal Government Act* to stop development that does not comply with the Land Use Bylaw.
- The Board is dismissing the appeal and upholding the Stop Order for commencing development activity prior to the issuance of a development permit and change in use in the attached garage on the subject property, with a variance to the Stop Order changing the compliance date for the order to December 18, 2020.

November 16, 2020

DATE

  
CHAIRMAN,  
SUBDIVISION/DEVELOPMENT APPEAL BOARD

A decision of the Subdivision/Development Appeal Board is final and binding on all parties and persons subject only to an appeal upon, or questions of jurisdiction or law pursuant to, Section 688 of The Municipal Government Act, RSA 2000 c. M-26, as amended. An application for leave to appeal to the Court of Appeal of Alberta shall be made within THIRTY (30) days after the issue of the order, decision, permit or approval sought to be appealed.