

REGIONAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

UNIT B 4730 ROSS STREET
RED DEER AB T4N 1X2
403-343-3394

March 27, 2024

NOTICE OF DECISION

RE: Appeal of stop order issued in respect of #1 Diamond Valley Close, Carbon, Alberta, legally described as Plan 1011734, Block 15, Lot 1

SUMMARY OF APPEAL

This is an appeal against a stop order issued pursuant to section 645 of the *Municipal Government Act*, RSA 2000 c. M-26 (the “**MGA**”).

The Village of Carbon issued the stop order (the “**Order**”) on February 21, 2024. The Order alleges that development has taken place on property within the Village without the required development permit. The development consists of a Dwelling-Moved On, which has been placed partially on the property at #1 Diamond Valley Close, Carbon, Alberta, legally described as Plan 1011734, Block 15, Lot 1 (the “**Lands**”) and which encroaches onto adjacent property owned by the Village.

The Appellant, Maison 164th Street Inc. and Chris Maison Renovations (the “**Appellant**”) appealed the stop order on the basis of having attempted to go through the appropriate approval process, delays in that process, failure to respond to inquiries and the perceived benefits of the development.

Notice of the appeal was provided to interested parties and a hearing was conducted by video conference on March 21, 2024.

Hearing Panel: Joe Henderson, Chair
Sydney Ducharme, SDAB Member
Earl Graham, SDAB Member

SDAB Clerk: Jamie Collins

SUMMARY OF DEVELOPMENT AUTHORITY’S SUBMISSIONS

The Development Authority was represented by Devin Diano of Palliser Regional Municipal Services, Tara Little of the Village of Carbon, and Brendan Dzioba, legal counsel. The Development Authority submitted the following:

- On February 15, 2024, the Village received complaints about a house being transported onto the Lands. An investigation found that a house was placed partially on the Lands and partially on adjacent municipal property, close to a municipal fire hydrant.
- The Development Authority issued the Order against the owner of the Lands (Maison 164th Street Inc. operating as Chris Maison Renovations) and against McCann's Building Movers Ltd. as the person responsible for the contravention.
- The development meets the definition of a "Dwelling – Moved On" in the Land Use Bylaw. This definition is:
 - a single detached dwelling that has previously been lived in, used as a residence or for other purpose in a previous location and is proposed to be relocated to a new parcel for use as a dwelling.
- The Land Use Bylaw requires a development permit for this type of development. No development permit has been issued for the Lands for a Dwelling – Moved On. To the extent that other development permits have been issued, they do not authorize this type of development.
- This type of development is treated differently from other types of dwelling unit construction because the Development Authority needs to ensure that the building being moved onto the property is suitable, in good condition and is similar to other dwelling units in the neighbourhood with respect to its design, finishing and appearance.
- The Fire Chief of Carbon was not contacted in advance of the building being moved onto the Lands. The Fire Chief has advised that the building is in the way of the hydrant but that they can get around it for the moment.
- The SDAB has the authority to confirm, revoke or vary the order or any condition, or to substitute an order of its own. The SDAB does not have the jurisdiction to permit unauthorized development to remain or to direct that a development permit be issued.
- Even if a development permit could be obtained in the future, it would be unreasonable to allow the building to remain in the hopes that a permit may be issued later.

SUMMARY OF APPELLANT'S SUBMISSIONS

The Appellant was represented by Chrispin Sibana and Bibi Kersten. They submitted the following:

- The Appellant has been attempting to get the required approvals since September of 2023. The Appellant prepared drawings showing how the moved-on home would be incorporated into the existing development on the Lands.
- The Appellant has attempted to bring the matter before Council but has not been able to do so. The Appellant has also attempted to work with the Village and Palliser Regional Municipal Services but to no avail. The Appellant provided copies of correspondence with the Village and with Palliser Regional Municipal Services, materials relating to challenges concerning previous development on the Lands, media posts discussing concerns about Village operations, and the Appellant's communications with Municipal Affairs.
- The concerns about the appearance of the property are acknowledged, but this is not the finished product. The Appellant's representatives are licensed architects and can provide stamped engineering drawings showing the final plan.
- The Appellant is aware of the potential for asbestos in the structure and is fully prepared to take that on.
- The Appellant has noted people driving past the property slowly and observing them and does not feel comfortable on the property. They also found that every time they did something on the property complaints immediately followed.
- The Appellant applied for an amendment to their existing development permit to allow for the moved-on structure but did not get a decision. This was in accordance with the instructions from the Village. The Appellant states that it was unethical for the Village to wait out the 40 day timeline to process the application and then issue the Order.
- The Appellant eventually ran out of time and had to take the house or lose the opportunity.
- The purpose of this project is for Mr. Sibana to build a home.

SUMMARY OF SUBMISSIONS OF OTHER PARTIES

Vivian Sam is a realtor. She expressed concerns about the impact that the condition of the Lands is having on the other properties in the area. She also expressed concerns about asbestos in the building. She confirmed that having architects' drawings of the final product would help alleviate her concerns.

Bryce Brodie owns nearby property and is concerned that if the Appellant demolishes the house at its current location the surrounding area will be contaminated with asbestos and is concerned about the impact that impaired hydrant access could cause.

The SDAB also acknowledges the written submissions which were included in the package that was considered at the hearing. These included people who were opposed to the project happening on the Lands and raising concerns about the failure to meet minimum standards, failure to complete existing work on the property, concerns about the business practices of the Appellant, and the impact on the neighbourhood.

DECISION

The Order is upheld but the deadline for compliance is varied from 4pm on March 1, 2024 to 4pm on April 1, 2024.

REASONS

In determining this Appeal, the SDAB considered the Land Use Bylaw, the *MGA*, and the submissions and evidence of the parties.

In sum, the SDAB upholds the Order (subject to amending the date for compliance) and finds that the Development Authority properly issued the Order pursuant to section 645 of the *MGA*.

In making its decision, the SDAB made the following findings of fact:

- Development has occurred on the Lands which meets the definition of a "Dwelling – Moved On" as set out in the Land Use Bylaw.
- Section 27(3) of the Land Use Bylaw states that a Dwelling – Moved On is a discretionary use for the R-1 Single-Detached Residential District, in which the Lands are located.
- Section 9(1) of the Land Use Bylaw states that no development shall be undertaken unless an application has been approved and a development permit has been issued.

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- Section 10 of the Land Use Bylaw lists the types of development which are exempt from the requirement to obtain a development permit. A Dwelling – Moved On does not appear on this list of exemptions.
- The development permit issued previously for the Lands did not allow a Dwelling – Moved On. This is a different type of development which would require specific approval.

On the basis of the above findings of fact, the SDAB finds that the Appellant failed to obtain the required development permit for the Dwelling – Moved On. This was a breach of the Land Use Bylaw. The Order was therefore properly issued.

The SDAB acknowledges the Appellant's submissions regarding the challenges with the Village and the development permit application process, and that the Appellant was out of time as the building was only available for a certain period. However, this does not exempt the Appellant from the requirements of the Land Use Bylaw.

The SDAB notes that the Village's Fire Chief indicated that while the fire department can access the hydrant despite the proximity of the structure, this is still creating an issue. The SDAB is satisfied that it is reasonable to amend the date for compliance until after the issuance of this decision but has determined that this situation needs to be corrected promptly. As such, the deadline for compliance with the Order is amended from 4pm on March 1, 2024 to 4pm on April 1, 2024.

The SDAB acknowledges the Appellant's submissions regarding concerns about the Village's operations, Palliser Regional Municipal Services and the community, however these issues are outside of the SDAB's scope in this appeal and as such the SDAB makes no findings in this regard.

Finally, the SDAB acknowledges the concerns about demolition of the structure on-site and the potential for asbestos to be released into the environment. However, the SDAB is satisfied that there are appropriate safety standards in place for the demolition as there would be for any building containing asbestos.

CLOSING

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction following the procedure found in section 688 of the *MGA* which requires an application for permission to

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appeal to be filed and served within 30 days after the issue of this decision. Any party intending to appeal this decision is encouraged to seek their own legal advice.

Dated at Ponoka County this 27th day of March, 2024 and signed by the Chair on behalf of all three panel members who agree that the content of this decision adequately reflects the hearing, deliberations, and decision of the SDAB.



Joe Henderson, Chair

March 27, 2024
Date