

REGIONAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

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

August 30, 2024

NOTICE OF DECISION

RE: APPEAL OF A STOP ORDER FOR DEVELOPMENT WITHOUT A VALID DEVELOPMENT PERMIT AT LOT 52, BLOCK 1, PLAN 062 0721, IN THE COUNTY OF STETTLER NO. 6

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 County of Stettler No. 6 issued the stop order (the "**Order**") on July 5, 2024. The Order alleges that development has taken place on property within the County without the required development permits. The development consists of six Ancillary Buildings placed on the property, legally described as Lot 52, Block 1, Plan 062 0721 (the "**Lands**").

Jeffrey Chorel (the "**Appellant**") appealed the Order on the basis that there were factual errors in the Order, the intended outcome of the Order had already been initiated and some stipulations of the Order are illogical, punitive and provides no benefit towards resolving any issue(s) that appear to have instigated the Order.

Notice of the appeal was provided to interested parties and a hearing was conducted in-person and by electronic means (Zoom) on August 19, 2024.

Hearing Panel: Joe Henderson, Chair
Anita Gillard, SDAB Member
Cheri Neitz, SDAB Member

SDAB Clerk: Beth McLachlan

SUMMARY OF DEVELOPMENT AUTHORITY'S SUBMISSIONS

The Development Authority was represented by Rich Fitzgerald, Development Officer, of the County of Stettler No. 6. The Development Authority submitted the following:

- On March 19, 2024, the County received an unsightly complaint of the Lands. On March 21, 2024 an inspection from the road identified that the Lands contained unfinished buildings and refuse throughout.
- Subsequently a Notice of Inspection was sent via email, registered mail and posted on the property.
- On May 21, 2024 a site inspection was performed by County Planning staff and Protective Services staff. The following was observed:
 1. The Lands contain seven buildings on the property; several of which are not complete. Each building is labelled and its location is shown in Appendix A of the Order.
 2. Building A was originally approved as a 1,196 ft² detached ancillary building under DP 15049. The building, as constructed, has an approximate floor area of 1,785 ft² and the exterior finishing has not been completed. Building A contains rooms for overnight accommodations, washroom facilities and food preparation facilities which were not approved under DP 15049 (see Photo 1 and Photo 2 in Appendix B).
 3. Building B was originally approved as a 2,132 ft² detached dwelling under DP 15049. The constructed building is approximately 295 ft² and does not match the site construction drawings that were submitted for DP 15049. Building B does not contain a bedroom, washroom, or kitchen facility (see Photo 3, Photo 4), and therefore does not meet the definition of a detached dwelling. Without a detached dwelling the Lands do not contain a principal building.
 4. Building C is located on the east property line and a development permit has not been approved for this building (Photo 5). Although the building appears to be below the 192 ft² identified in the Land Use Bylaw as an ancillary building that would not require a permit, it is still required to meet the minimum 3 ft setback for an ancillary building.
 5. Building D is approximately 94 ft² and contains overnight accommodations (Photo 6). No development permit has been issued for this building.

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6. Building E is approximately 125 ft² and contains cooking tools, a refrigerator, and water. No development permit has been issued for this building (Photo 7).
 7. Building F is approximately 272 ft² and contains storage and a hot tub is placed beside it (Photo 8, 9). No development permit has been issued for this building.
 8. Building G is approximately 83 ft² and contains an unfinished shower and toilet (Photo 10, 11). No development permit has been issued for this structure.
- From the evidence observed, Planning Staff deemed that the Lands contain several developments (Ancillary Buildings) that have commenced without a development permit and the developments that were approved in DP 15049 were not developed as specified in the application. Although several of the structures are below the 192 ft² threshold for not requiring a development permit, for the structures to be compliant with the Land Use Bylaw, a principal structure is required to be present on the property.
 - The developments on the Land meets the definition of Ancillary Building in the Land Use Bylaw. This definition is:

"Ancillary Building or Ancillary Use including references to 'residential' and 'industrial or non-residential' Ancillary Buildings" means a building or use which:

- (a) is incidental and exclusively devoted to the principal building or principal use;
 - (b) is subordinate in purpose to the principal building or principal use served;
 - (c) contributes to the livelihood, comfort, convenience, safety or necessity of occupants of the principal building or principal use; and
 - (d) is located on the same site as the principal building or principal use.
- Therefore, a development permit for an Ancillary Building or Use cannot be issued prior to a development permit for the principal use having been issued or being issued simultaneously. Ancillary building or use does not include a farm building, an airport hangar or a shop. The distinction between 'residential' and 'industrial or non-residential' Ancillary Building applies in those land use districts where provision is made for an Ancillary Building that is associated with a principal use that is 'non-residential' (e.g. a Contractors Business – Home Based or Not Home Based in the Agricultural District or a Manufacturing, Processing or Assembly Facility in the Industrial District).

- Although the buildings are considered Ancillary Buildings, The Development Authority stated that the property in its entirety is in violation due to the fact that the Land does not contain a Principal Building.

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- DP 15049 was issued on April 5, 2017 and subsequently revised on May 12, 2017, for a Detached Dwelling and Detached Ancillary Building. The permit expired on May 12, 2019, no extension was submitted and no permits are in place for completion of the structures approved on DP 15049.
- The Development Authority advised the Board that the noted measurements of the buildings may not be exact due to constraints on the property limiting the ability to complete exact measurements. These limitations included topography, vegetation, and building scaffolding.
- The development authority found that the development on Lot 52, Block 1, Plan 062 0721 is in violation of the County of Stettler Land Use Bylaw and issued the Order on July 5, 2024.

SUMMARY OF APPELLANT'S SUBMISSIONS

The Appellant was represented by Jeffrey Chorel. He submitted the following:

- The Appellant acknowledged that he understands the Land Use Bylaw as he is an Engineer and has constructed other buildings on other properties in the area. He was also part of the review committee when the Land Use Bylaw was updated in 2010.
- The Appellant stated that in his opinion there were a number of errors on the Order including incorrect dates, building sizes, and the statement that no permits were obtained for certain structures.
- The Appellant began placing buildings on the property in 2008, at which time Land Use Bylaw 704 was in place. Building D is a 144 ft² skid shed which did not require a permit and was considered the Principal Building at the time as it was the only one on the Land.
- In 2010, Building F was placed on the Land under DP 10082 as a 288 ft² Ancillary Building.
- The Appellant stated that Building E as noted in the Order does not exist and the photo labelled as Building E in the Order is Building F. There are only six (6) buildings on the Land, not seven (7) as stated in the Order.
- Building G is a 48 ft² skid shed with an incomplete shower and toilet.
- When the Land Use Bylaw was updated in 2011, the two skid shed structures were deemed approved under Section 16.1:

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16.1 A development permit is not required if the development or use is restricted exclusively to the following, provided that the development shall otherwise comply with all applicable provisions and regulations of this Bylaw:

(o) the construction or placement of an Ancillary Building that does not exceed 17.85 m² (192 ft²) in area and is not permanently attached to the ground (i.e. it is built on skids) provided that no portion of the building is located within the required yard setbacks;

- In the fall of 2011, Building C was placed on the Land and is a 96 ft² skid shed used for tool storage. It was moved from another lot in the area and placed on the land that was uninhibited by vegetation. The adjacent landowner did not have any concerns with placement on the property line. The Appellant was not able to provide evidence of this consent.
- In 2015 a development permit was issued for a garage and lakehouse. Construction of these structures did not commence. Building B was placed on the Land and is a 189 ft² skid shed and was needed for additional storage space.
- In 2017 development permit DP 15049 was issued. Building A was constructed on the Land and is a 1316 ft² garage/shop.
- The Appellant advised that he applied for an extension at the end of 2019 to complete the structures, but was advised by the Development Authority at the time that the buildings were deemed complete and no extension was required.
- On September 6, 2022, a Stop Order was issued by the County of Stettler Protective Services for incomplete structures.
- The Appellant stated that he tried to submit a development permit on September 15, 2022, but the Development Authority at the time said a development permit was not required to continue progressing on the Land. As a development permit was not issued, the Appellant assumed the Land was considered compliant.
- Prior to the 2024 Order being issued, the Appellant had been in contact with the Development Authority, Rich Fitzgerald, to change the use of the garage (Building A) to become the Principal Building as it's unlikely a Detached Dwelling (lakehouse) will be constructed on the Land.

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- The Appellant was given a status letter from the Development Authority to complete the change of use development permit and documents were required to be submitted by October.
- The Appellant received the Order three (3) weeks after his discussion with the Development Authority and it gave a shorter timeline to submit the documents required in the status letter.
- The Appellant stated the appeal should be allowed for the following reasons:
 - There are too many factual errors and misrepresentations in the Order.
 - He has initiated a development permit to change the use of the garage (Building A) and it was in-progress prior to the Order being issued. If this development permit is approved, then the Order is invalid.
 - 50% of the properties in the recreational development area violate the bylaw.

DECISION

The Order is upheld but the deadline for compliance is varied from no later than 30 days from the date of the Order to September 17, 2024 at 4:30 p.m.

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 Land which meets the definition of “Ancillary Building” as set out in the Land Use Bylaw.
- An Ancillary Building must be incidental and exclusively devoted to the principal building or principal use. There is no principal building existing on the Land.
- While four (4) of the six (6) Ancillary Buildings on the Land did not require a development permit due to their size, a Principal Building is still required on the Land in order for the structures to be considered “ancillary”.
- None of the Ancillary Buildings should be used as a dwelling unit, unless there is a Detached Dwelling on the same parcel and the Ancillary Building has been approved as a guest unit. There is no Detached Dwelling on the Land, therefore, no dwelling units should exist within any of the Ancillary Buildings.

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- DP 15049 was issued for the development of a Detached Dwelling (the principal use) and a Detached Ancillary Building (the ancillary use), which expired on May 12, 2019. The development is incomplete.

On the basis of the above findings of fact, the SDAB finds that the Appellant failed to obtain the required development permit and construct a Detached Dwelling (principal building) on the Land. This was a breach of the Land Use Bylaw. The Order was therefore properly issued.

The SDAB acknowledges the Appellant's statement that he understood that he only had to have applied for and have an issued development permit for a Principal Building in order to proceed with construction of the Ancillary Building(s). The SDAB finds that no valid development permit exists at this time, therefore, the Ancillary Buildings have been constructed without a Principal Building on the site.

The SDAB acknowledges the Appellant's statements that a previous Development Authority advised him that a development permit was not required for completion of the Ancillary Buildings and allowed him to proceed with work on the property, however, without written evidence the SDAB makes no findings in this regard.

The SDAB acknowledges that the measurements contained within the Order vary from the measurements provided by the Appellant. The SDAB acknowledges the discrepancies, however, the size of the Ancillary Buildings was not a factor in the decision.

The SDAB acknowledges each Ancillary Building as follows:

Building A is a Detached Ancillary Building (garage) with living space on the second floor. DP 15049 was obtained for construction of the building, however, the use of the building does not comply as an Ancillary Building. Further, DP 15049 is expired, therefore, without a principal building on the site, the Ancillary Building is non-compliant.

Building B is an Ancillary Building (storage shed) and under the size requirement for needing a development permit. However, without a principal building on the site, the Ancillary Building is non-compliant.

Building C is an Ancillary Building (skid/tool shed) and under the size requirement for needing a development permit. However, without a principal building on the site, the Ancillary Building is non-compliant.

Building D is an Ancillary Building (storage shed) and under the size requirement for needing a development permit. However, without a principal building on the site, the Ancillary Building is non-compliant.

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Building E as noted in the Order may not exist as confirmed by the Development Authority and the Appellant confirmed it does not exist. The photos in the Order noted as Building E is actually Building F.

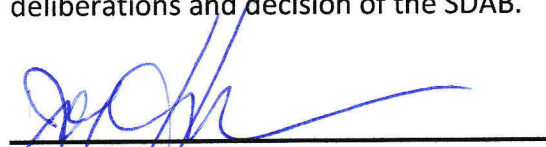
Building F was constructed under DP 10082 as an Ancillary Building (studio). While a permit was obtained, without a principal building on the site, the Ancillary Building is non-compliant.

Building G is an Ancillary Building (toilet/shower shed) and under the size requirement for needing a development permit. However, without a principal building on the site, the Ancillary Building is non-compliant.

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 for an 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 30th day of August, 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.



SDAB Chair
Joe Henderson

August 30, 2024

Date