



Wood Buffalo
TRIBUNALS

Subdivision and Development Appeal Board

NOTICE OF DECISION

FILE NO. **SDAB 2024-004**

STOP ORDER: **Unpermitted Stockpiling and Excavation; and
Encroachment into adjacent Environmental Reserve**

LAND USE DESIGNATION: **HR – Hamlet Residential District**

LEGAL DESCRIPTION: **Lot 1, Block 22, Plan 8022826**

CIVIC ADDRESS: **127 Donovan Drive, Anzac, Alberta**

IN THE MATTER OF AN APPEAL filed with the Regional Municipality of Wood Buffalo Subdivision and Development Appeal Board (“the Board”) pursuant to Sections 685 and 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (“the *Municipal Government Act*”), the Appeal Hearing was held on Thursday, October 10, 2024 in the Jubilee Centre, Council Chamber, 9909 Franklin Avenue, Fort McMurray, Alberta.

BETWEEN:

Donald McIver (“the Appellant”)

-and-

Development Authority, Regional Municipality of Wood Buffalo, represented by Represented by Legal Services

BEFORE:

D. Cleaver (Chair)
K. Carruthers
N. Mahgoub
T. Morris

Administration:

H. Fredeen, Clerk for the Subdivision and Development Appeal Board

- [1] This Appeal stems from the issuance of a Stop Order at 127 Donovan Drive, Anzac, Alberta, that being, Lot 1, Block 22, Plan 802 2826. The land use designation is zoned HR – Hamlet Residential District.

Procedural Matters

- [2] Following the introduction of the Board, the Chair confirmed with the parties in attendance that there were no objections to the constitution of the Board or the Board's process.
- [3] Board member N. Mahgoub declared for the record that he had a previous professional affiliation with Mr. Ed Tatum, Consun Contracting Ltd, but is unbiased, open and can be swayed by the evidence. No objections were raised by the parties regarding Board Member N. Mahgoub's participation in the hearing.
- [4] The appeal was filed in time, in accordance with section 686 of the *Municipal Government Act*.
- [5] The Board marked the exhibits as set out at the end of this decision.

Summary of Hearing*Submission of the Respondent*

- [6] Legal Counsel for the Municipality provided opening statements and indicated that the Stop Order was issued by the Development Authority pursuant to section 645 of the *Municipal Government Act*.
- [7] The Development Authority indicated that the Stop Order was issued to the Appellant on August 28, 2024, for unpermitted stockpiling and excavation as well as encroachment onto municipal lands designated as Environmental Reserve located at Lot 5ER, Block 21, Plan 8022826.
- [8] The Development Authority confirmed that the Subject Property is governed by Land Use Bylaw No. 99/059 ("the Land Use Bylaw") and the Anzac Area Structure Plan ("the ASP").
- [9] The Subject Property is identified in the ASP as Established Neighbourhood, in which the intent is to allow the existing residential lifestyle offered to continue while allowing for redevelopment or infill development to occur in a timely manner.
- [10] Principle No. 1 of the ASP is to "Preserve the Natural Environment". In addition, policy No. 1.2.2 of the ASP intends to implement the objective of promoting stewardship of the environment and reads:

"Work Closely with Alberta Environment and Sustainable Resource Development, Alberta Environment, the community and other stakeholders to protect lakes, streams, natural vegetation, fish and wildlife habitats."

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- [11] The Development Authority submitted, that the Subject Property is identified as HR – Hamlet Residential in the Land Use Bylaw in which the intent of the district is to provide a variety of residential uses in the hamlets of the Rural Service Area. The permitted and residential uses for the Hamlet Residential District are outlined in section 103 of the Land Use Bylaw and do not include stockpiling or excavation.
- [12] The Development Authority referred to section 4 of the Land Use Bylaw which states:
- “No person shall commence any development unless it is in accordance with the terms and conditions of this Bylaw”*
- [13] The Development Authority further referred to section 10 of the Land Use Bylaw which defines “Development” as:
- “(a) an excavation or stockpile and the creation of either of them”
- [14] The Development Authority provided the following chronology of events as follows:
- (a) A comprehensive site inspection was conducted on August 9, 2024 following reports of the Subject Property being used as an unpermitted laydown yard and of potential contamination.
 - (b) The inspection revealed the following unpermitted industrial development:
 - i. Excavations;
 - ii. Stockpiling
 - iii. Encroachment onto adjacent municipal lands designated as Environmental Reserve, resulting in changes to grading and drainage.
 - (c) A Stop Order was issued on August 28, 2024 and provided a deadline date of September 13, 2024 to bring the property to compliance by:
 - i. Removing all machinery, structures, and unauthorized construction materials from the lands
 - ii. Removing all unpermitted activities from the adjoining municipal lands; and
 - iii. Providing a remedial process to restore the adjoining municipal lands to the satisfaction of the Development Authority
 - (d) A Notice of Appeal was filed with the Subdivision and Development Appeal Board on September 10, 2024,

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- [15] The Development Authority referred to the aerial imaging dated June 14, 2024 (Exhibit 2, page 25) which indicates that the development activity has been on site from at least June 14, 2024 and that the activity is a continued use. The imagery further illustrates stockpiling, heavy equipment and encroachment onto municipal lands.
- [16] The Development Authority referred to photographs (Exhibit 2, pages 26-43) which illustrates heavy equipment, commercial vehicles, stockpiling, grading alterations, storage, and contaminant discharge, on the Subject Property.
- [17] The Regulatory Advisor for the Municipality submitted that site visits were conducted on August 9, 2024, August 15, 2024 and October 9, 2024 at the Subject Property where it was observed that hydrovac waste material disposal was taking place within the vegetative area of municipal property designated as Environmental Reserve. The Regulatory Advisor further submitted that the materials could eventually enter the overland storm water system which drains into Gregoire Lake.
- [18] The Regulatory Advisor indicated that during the site visits, the Appellant was noted to be in non-compliance with section 88 of the *Environmental Protection and Enhancement Act* which is an offence under section 227(j); operating a storage site without providing notice to Alberta Environment and Protected Areas. In addition, the Appellant was also noted to be in non-compliance with section 23(1) of the *Waste Control Regulation*, which is an offence under section 42; "*that no person shall deposit waste in any location other than a waste management facility*". The violations resulted in the Appellant and the contractor being served notices of non-compliance by Alberta Environment and Protected Areas.
- [19] During a site inspection on October 9, 2024, the Regulatory Advisor noted that hydrovac materials were removed from the site; however, it is suggested that a monitored period of at least two growing seasons will be required to have a better understanding of vegetative reestablishment to restore the area. Furthermore, there is the possibility of noxious weeds being established within the disturbed area.
- [20] Through questioning of the Board, the Development Authority indicated that although "stockpiling" is not defined in the Land Use Bylaw, it is an understood definition. The Land Use Bylaw notes in section 10 that "development" is defined as anything including excavation or stockpiling. The Development Authority clarified that even though you are not building anything on site, if you use the site for excavating or stockpiling, it falls under the definition of development.
- [21] When asked if the storage of equipment and vehicles on the site requires a development permit, the Development Authority referred to section 76.1 of the Land Use Bylaw which details what objects are prohibited or restricted in yards:

“No person shall keep or permit in any yard in any district any object or chattel which, in the opinion of the Development Authority is unsafe, unsightly or adversely affects the amenities of the district. This includes, but shall not be limited to, dismantled or wrecked motor vehicles, any excavation, stockpiling or storage of materials, explosives, flammable liquids and diesel fuel and gasoline products.”

[22] The Development Authority also referenced section 76.2 as follows:

Except as otherwise permitted under Section 76 of this Bylaw, no motor vehicle other than a passenger vehicle, recreational vehicle and/or one (1) commercial vehicle having a gross vehicle weight (G.V.W.) of more than 3,000 kg G.V.W. but less than 7,000 kg, G.V.W. shall be parked on a site in a residential district for longer than is necessary for loading or unloading.

[23] The Development Authority confirmed through questioning that a development permit application had not been submitted nor approved for the development activities taking place on the Subject Property.

[24] The Development Authority further confirmed that the Stop Order was issued correctly pursuant to section 645 of the *Municipal Government Act*.

Submission of the Appellant

[25] The Appellant indicated that he is a member of First Nations, Treaty Number No. 4700021401.

[26] The Appellant referred to the Board's Land Acknowledgement as follows:

I humbly acknowledge that the land on which we live, learn, work and play is Treaty 8 Territory, the traditional lands of the Cree, Dene, and the unceded territory of the Métis.

[27] The Appellant asked the Board if it was familiar with the Doctrine of Recovery, Action 47, Truth and Reconciliation, or familiar with the policy called the Indigenous Land Owner Policy which deals with indigenous peoples of Treaty 8 rights.

[28] The Appellant indicated that the Subject Property is his and he should be allowed to do what he wants with the Property.

[29] When asked by the Development Authority if the Appellant applied for a development permit for the activities on the Subject Property, the Appellant indicated that First Nations do not apply for development permits.

[30] The Appellant indicated through questioning that he became aware that the activities required a development permit when the Stop Order was received on August 28, 2024.

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- [31] The Appellant questioned the Address, 195 MacDonald Crescent, which was referenced in the first page of Exhibit 3, as the Appellant indicated that he was not familiar with this property and does not own property at this location. The Municipality indicated that this address was a typo, and the address should be referenced as 127 Donovan Drive, Anzac, Alberta.
- [32] The Appellant confirmed that the current development activities have continued on the Subject Property since the Stop Order was received.
- [33] The Appellant submitted through questioning that he will apply for a Development Permit for the activities taking place on the Subject Property.

Submissions of Affected Persons in Favor of the Appeal

- [34] The Board heard from Mr. Ed Tatum, Consun Contracting Ltd., who is leasing the Subject Property to use as a laydown yard for contract work on the Regional Municipality of Wood Buffalo's ("the RMWB") Rural Water and Sewer Servicing (RWSS) Program.
- [35] Mr. Tatum submitted that he requested an area for a laydown yard in a commercial area of Anzac from the RMWB; however, was told that there is not a laydown area available in Anzac. Mr. Tatum submitted that he was told by Municipal staff to find a homeowner or someone who has an empty lot who is willing to lease their land to use as a laydown yard,
- [36] Mr. Tatum indicated that it is difficult to complete work on the RWSS program without having a laydown yard as you need gravel, and you will have waste material consisting of the dirt that comes out of the trenches. The laydown yard will receive one or two loads of dirt per house. Mr. Tatum indicated that the Appellant wanted his lot filled in order to level it off, so it was a win-win situation.
- [37] Mr. Tatum explained that if he didn't have the laydown yard on the Subject Property, he would need to charge the RMWB more as the trucks would have to travel back and forth from Fort McMurray.
- [38] Upon questioning from the Development Authority, Mr. Tatum indicated that the hook-ups for the RWSS program are paid for by the Municipality; however, the agreement is between the homeowner and the contractor.
- [39] Mr. Tatum indicated through questioning that he has not applied for a Development Permit for a laydown area previously and submitted that usually when you do contract work for the RMWB they will provide a laydown yard for you.
- [40] Mr. Tatum noted that using a laydown yard in Fort McMurray for RWSS work done in Anzac, would be extremely costly and the extra costs would ultimately be downloaded onto the RMWB.

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- [41] Upon questioning from the Board, Mr. Tatum indicated that the RWSS program still has two years left in the program.
- [42] Mr. Tatum indicated that there were two other contractors working on the RWSS Project in Anzac but are not doing a large volume of work.
- [43] Mr. Tatum submitted that Camp Yogi was being used as a laydown yard by a contractor working on the RWSS Project in Anzac.
- [44] There were no written submissions received in support of the Appeal.

Submissions of Affected Persons in Opposition to the Appeal

- [45] There were no written or verbal submissions received in opposition to the Appeal.

Questions of the Board

- [46] Upon questioning by the Board, the Development Authority confirmed that should a development permit application be submitted, a Development Permit would not be entertained for stockpiling and extraction, or Contractor General, on the Subject Property.
- [47] Legal Counsel for the Municipality was unable to comment on the question from the Board whether it was common practice for the RMWB to tell contractors to search out home owners to ask if they can use their properties as lay down yards.
- [48] With regards to the RWSS program, Legal Counsel for the Municipality, indicated that it is clear in the application papers that RMWB contractors and property owners are responsible for complying with all applicable bylaws including the Land Use Bylaw (Exhibit 2, page 10) and that any added costs associated with work on the project, should be incorporated into the quotes.
- [49] It was further submitted that the contractors for the RWSS program are separate from the Municipality in a sense that they don't work for the Municipality, they are hired by the property owners who apply on grant funding form the RMWB to assist with costs for construction.

Closing Comments from the Development Authority

- [50] It was reiterated by Legal Counsel for the Municipality that there is not an existing Development Permit for the development activities on the Subject Property.
- [51] It was further submitted that the stockpiling and excavation on the Subject Property meets the definition of Development, and therefore requires a Development Permit.

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- [52] Legal Counsel for the Municipality re-stated that the unpermitted development activities have encroached onto municipal lands designated as Environmental Reserve which resulted in the Appellant and Consun Contracting Ltd., receiving Orders of Non-Compliance from the Provincial Environmental body. Although optimistic that the concerns have been remediated, ongoing monitoring will be required for at least two years to ensure remediation efforts produce the desired results.
- [53] Legal Counsel for the Municipality further reiterated that the equipment storage on the Subject Property is in contravention of section 76.2 of the Land Use Bylaw as equipment storage is not permitted in a residential area.
- [54] Legal Counsel for the Municipality spoke to the temporary nature of the development activities and indicated that had the Appellant applied for a development permit prior to engaging in the development activities, he would have been told that these types of developments are incompatible with the Land Use Bylaw and the Anzac Area Structure Plan which have been implemented to allow for the existing residential lifestyle enjoyed by the Appellant's neighbours and to preserve the natural environment while ensuring compliance with provincial legislation.
- [55] Legal Counsel for the Development Authority argued against the Appellant's assertion that the RMWB is benefiting from the development activities on the Subject Property. Costs for RWSS services may be more expensive without the laydown yard being located in Anzac and contractors and property owners still have an obligation to abide by the Land Use Bylaw.
- [56] Legal Counsel for the Development Authority indicated that development still continues on the Subject Property as per photographs taken on October 9, 2024 included in Exhibit 3.

Closing Comments from the Appellant

- [57] The Appellant urged the Board to follow up on the submission that a lay down yard exists at Camp Yogi as well as other uses that are taking place on municipal lands.
- [58] The Appellant restated the Board's land acknowledgement.
- [59] Upon conclusion, the Chair asked the parties present, if they felt that the hearing was conducted in a fair manner.

[60] Legal Counsel for the Municipality requested a final submission in response to the Appellant's submission regarding being an indigenous land owner and stated that if the Appellant's argument is that the Land Use Bylaw doesn't comply with his Charter Rights, the Subdivision and Development Appeal Board hearing is not the correct forum to do so. The Subdivision and Development Appeal Board is not a constitutional decision maker. Furthermore, if there is an issue with the Land Use Bylaw itself, there is a process, which is laid out in section 536 of the *Municipal Government Act*. The issue before the Board is whether the Stop Order was correctly issued.

[61] No further issues were brought to the Board's attention.

Findings Of Fact

[62] The Board makes the following findings of fact:

- a. The Subject Property is located in the HR – Hamlet Residential District.
- b. The Subject property is identified as Established Neighbourhood in the Anzac Area Structure Plan
- c. There are no Development Permits for the development activity occurring on the subject property.
- d. The Stop Order was issued correctly pursuant to section 645 of the *Municipal Government Act* for unpermitted stockpiling and excavation, and encroachment into adjacent Environmental Reserve.

Decision

[63] **It is the decision of the Subdivision and Development Appeal Board to DENY the Appeal and uphold the Stop Order with the following variance:**

- a. **The Appellant must comply with this Order by Friday, November 29, 2024.**

Reasons for The Decision

[64] After weighing the relevant legislation, the Board is upholding the Stop Order. The Board determined that procedurally, the Stop Order was issued in the appropriate manner by a designated officer in accordance with Section 645 of the *Municipal Government Act*.

[65] There was no dispute from either party that unpermitted development activity and encroachment onto municipal lands designated as Environmental Reserve, is occurring on the Subject Property.

- [66] The Board acknowledges the submission of the Appellant regarding his Indigenous land rights; however, the jurisdiction of the Subdivision and Development Appeal Board is to hear appeals derived from Land Use Bylaw No. 99/059, pursuant to the *Municipal Government Act*, R.S.A 2000, c. M-26.
- [67] The Board has varied the date for compliance with the Stop Order to Friday, November 29, 2024, to provide the Appellant sufficient time to comply with the Stop Order per Section 687(3)(c) of the *Municipal Government Act*.
- [68] The decision of the Subdivision and Development Appeal Board is final and binding on all parties, subject only to appeal to the Court of Appeal under Section 688 of the *Municipal Government Act*, R.S.A 2000, c. M-26

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 23 day of October 2024.

CHAIR

FOIP section 17(1)

Dean Cleaver

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:

Exhibit #	Description	Filing Date
1.	Subject Area Map	2024-09-12
2.	Notice of Appeal (5 pages pages)	2024-09-10
3.	Municipality Evidence Disclosure (52 pages)	2024-10-03
4.	October 9, 2024, Site Visit Email and Illustrations (9 pages)	2024-10-10

APPENDIX "B"

REPRESENTATIONS

Person Appearing	Capacity
Don McIver	Appellant
Tiffany Primmer	Legal Counsel, Regional Municipality of Wood Buffalo
Warren Rourke	Development Authority, Regional Municipality of Wood Buffalo
Andrea Dar	Regulatory Advisor, Regional Municipality of Wood Buffalo
Ed Tatum	Owner, Consun Contracting Ltd.