



## SUBDIVISION AND DEVELOPMENT APPEAL BOARD

**REGIONAL MUNICIPALITY OF WOOD BUFFALO  
SUBDIVISION AND DEVELOPMENT APPEAL BOARD ORDER 2011-012**

**IN THE MATTER OF AN APPEAL** filed with the Regional Municipality of Wood Buffalo Subdivision and Development Appeal Board pursuant to Sections 685 and 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (Act).

**BEFORE:**

R. Jacobs, Chair  
J. Palmer, Co-Chair  
C. Shufelt  
C. Yonga

**PRESENT:**

For the Appellant:

T. Cooper, Q.C. Counsel for the Appellant  
B. Friesen, Appellant, Property Owner

For the Respondent:

J. Doyle, Supervisor, Development Control  
E. O'Neill, Supervisor, Development Control  
D. King, Brownlee Law, Legal Counsel  
R. Stuckenburg, Acting Manager, Community Development Planning

**BACKGROUND:**

The appeal was received on June 22, 2011, regarding the Stop Order issued by the Regional Municipality of Wood Buffalo, dated June 9, 2011, for Lot 6, Plan 992 0950, Dunvegan Gardens (Alberta) Ltd.

**SUMMARY OF HEARING:**

The Hearing was held on August 18, 2011, in the Council Chamber, Jubilee Centre, located at 9909 Franklin Avenue, Fort McMurray, Alberta. After the introduction of the Board, the Chair raised the question as to whether any party had an objection to the composition of the Board. No objections were raised and the Board continued as convened.

The Municipality read out the Stop Order in its entirety.

The Board heard from T. Cooper, Q.C., Counsel for the Appellant, who presented his report and rationale for the appeal of the Stop Order.

Next the Board heard from B. Bailey, N. Bowles, A. Gianis and B. Mack, who all spoke in support of the Appeal.

The Board then heard from residents in support of the Stop Order, including A. Thorne, J. Thorne and J. Archer.

D. King, Brownlee Law, Counsel for the Municipality, made submissions on behalf of the Municipality, and rebuttal submissions were then made by T. Cooper, Q.C.

Copies of written submissions summarizing the evidence and position of the presenters are on the Board's file.

After all the evidence was presented, the Chair asked the parties present if the hearing was conducted in a fair manner. No issues were brought to the Board's attention.

### **DECISION:**

It is the decision of the Subdivision and Development Appeal Board that the Appeal of the Stop Order is dismissed and the Stop Order is upheld but varied so as to apply to the entire Site owned by the Appellant, consisting of:

Lot 13, Block 1, Plan 062 6798 (116 Garden Lane)

Lot 14, Block 1, Plan 062 6798 (116 Garden Lane)

Lot 6, Plan 992 0950 (128 Garden Lane)

Lot 5, Plan 992 0950

The Appellant is ordered to cease all activity related to the commercial landscaping business and to remove all commercial equipment (including, but not limited to, commercial vehicles, landscaping equipment, fuel tanks) and materials (including, but not limited to fill, landscaping supplies and materials) from the Site by 4 p.m. on September 15, 2011, provided that equipment and material used for the market garden business as determined and confirmed in writing by the Municipality may remain on the Site.

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 Act.

(2) An application for leave to appeal must be filed and served within 30 days after the issue of the decision sought to be appealed, and notice of the application for leave to appeal must be given to:

- (a) the Municipal Government Board or the subdivision and development appeal board, as the case may be, and
- (b) any other persons that the judge directs.

**RATIONALE FOR THE DECISION:**

In determining this Appeal, the Board considered all relevant evidence presented at the hearing (both oral and written), the arguments made and the circumstances surrounding the appeal of the Stop Order. The Board further considered the following legislation:

***Municipal Government Act, R.S.A. 2000, Chapter M-26, As Amended***

## Section 645

(1) Despite section 545, if a development authority finds that a development, land use or use of a building is not in accordance with

- (a) this Part or a land use bylaw or regulations under this Part, or
- (b) a development permit or subdivision approval, the development authority may act under subsection (2).

(2) If subsection (1) applies, the development authority may, by written notice, order the owner, the person in possession of the land or building or the person responsible for the contravention, or any or all of them, to

- (a) stop the development or use of the land or building in whole or in part as directed by the notice,
- (b) demolish, remove or replace the development, or
- (c) carry out any other actions required by the notice so that the development or use of the land or building complies with this Part, the land use bylaw or regulations under this Part, a development permit or a subdivision approval, within the time set out in the notice.

(3) A person who receives a notice referred to in subsection (2) may appeal to the Subdivision and Development Appeal Board in accordance with Section 685.

## Section 683

Except as otherwise provided in a land use bylaw, a person may not commence any development unless the person has been issued a development permit in respect of it pursuant to the land use bylaw.

## Section 616

In this Part,

- (b) “development” means
- (i) an excavation or stockpile and the creation of either of them,

- (ii) a building or an addition to or replacement or repair of a building and the construction or placing of any of them on, in, over or under land,
- (iii) a change of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building, or
- (iv) a change in the intensity of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the intensity of use of the land or building.

**Regional Municipality of Wood Buffalo Land Use Bylaw 99/059, as amended**

Section 37.4

(a) finding that a development, land use or use of a building is not in accordance with the Municipal Government Act or the regulations under the Act, this Bylaw, a development permit or subdivision approval or the cognitions of either of them, a Development Officer may, by written notice, order the owner, the person in possession of the land or building, or the person responsible for the contravention, or any of all of them to:

- (i) stop the development or use of the land or building in whole or in part as directed by the notice;
- (ii) demolish, remove or replace the development; or
- (iii) carry out any other actions required by the notice so that the development, use of the land or building complies with the Act or regulations under the Act, this Bylaw, a development permits or subdivision approval, within the time set out in the notice.

Section 9.1

Except as otherwise provided in this Bylaw, no person shall undertake any development in the Municipality unless a development permit has first been issued pursuant to this Bylaw, and the development is in accordance with the terms and conditions of a development permit issued pursuant to this Bylaw.

Section 10.1

DEVELOPMENT means:

An excavation or stockpile and the creation of either of them;  
 A building or in addition to or replacement or repair of a building and the construction or placing of any of them on, in, order, or under land;  
 Change of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the use of land or building; or  
 A change in intensity of use of land or a building that results in or is likely to result in a change of the intensity of use of the land or building.



MARKET GARDEN means the growing of vegetables or fruit for commercial purposes.

SITE means an area of land consisting of one or more abutting lots in one ownership.

The sole issue before the Board is whether the Stop Order was validly issued. Both the Municipal Government Act (MGA) and the Land Use Bylaw (LUB) provide for the issuance of a Stop Order where a development, land use or use of a building is not in accordance with the MGA or LUB. Both the MGA and LUB provide that a person may not commence any development unless the person has been issued a development permit in respect of it. Both the MGA and LUB define “development” broadly and include a change in use of land.

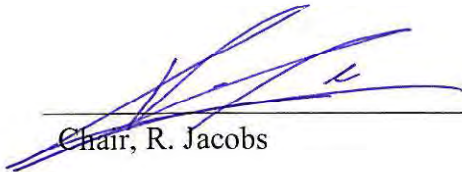
The Board finds that the operation of a commercial landscaping business and storage of landscaping equipment and materials a change in use of the land, for which a development permit has not been issued. In particular, the operation of a commercial landscaping business and storage of landscaping equipment and materials is not within the existing development permit for a market garden – these uses are not covered under the definition of “market garden” under the LUB and there is nothing in the development permit that extends it to these uses. The Board therefore finds that the Appellant is in contravention of the MGA and LUB and the Stop Order is upheld.

The Appellant was unable to advise the Board as to what equipment and materials on Site specifically related to the commercial landscaping business. Based on the evidence, the Board is of the view that all of the commercial equipment and materials on the Site relate to the commercial landscaping business that does not have a development permit and therefore must be removed. In this respect, the Board notes that the development permit for the market garden business that is located on the Site does not specifically allow for any commercial equipment or material to be stored on the Site. The Board is, however, prepared to allow an exception for commercial equipment and materials to remain on Site that the Municipality confirms in writing is for use in the market garden business for which a development permit has been issued.

The Board is varying the Stop Order to extend it to the adjoining lots owned by the Appellant. The Board is of the view that these lots together constitute a Site, which is used for the Appellant’s business. No development permits have been issued for the operation of a commercial landscaping business or storage of landscaping equipment and materials on any part of the Site and therefore the Stop Order should apply to the Site, not just a single lot that comprises part of the Site.

Lastly, the Board heard considerable argument as to whether the Small Holdings District is a Residential District to which parking restrictions apply. In light of the findings set out above, the Board is of the view that this issue need not be decided at this time.

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta this 2nd day of September, 2011.



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Chair, R. Jacobs