

DECISION REPORT

OF THE CITY OF MEDICINE HAT SUBDIVISION AND DEVELOPMENT APPEAL BOARD HEARING COMMENCED ON THURSDAY, AUGUST 3, 2023, AT 12:00 PM AND CONTINUED ON TUESDAY, AUGUST 29, 2023, AT 12:00 PM

APPEAL #2-2023 – APPEAL OF A STOP ORDER RE: DEVELOPMENT AT 675 INDUSTRIAL AVENUE SE ROBERT MIDDLETON (APPELLANT)

MEMBERS PRESENT: J. Taylor, Chair
A. Steinke, Vice-Chair
Councillor C. Hider (August 3, 2023)
C. Acton
W. Fischer

STAFF PRESENT: R. Korven, Legislative Services Specialist (Secretary to the Board)
A. Young, Director of Planning (August 3, 2023)
R. Sissons, Manager of Planning
M. Baruwa, Intermediate Planner (August 3, 2023)
B. Skakun, Community Peace Officer (August 3, 2023)

INTRODUCTION

August 3, 2023

- [1] At the commencement of the hearing, the Chair stated that the Board is an impartial body and that the members are not employees of the City of Medicine Hat. He noted that decisions of the Board are based strictly on the evidence presented at the hearing, taking into consideration the relevant legislation. The Chair advised that following the public hearing, the Board will review the issues, and a written decision will be rendered. The Chair further advised that all information provided is public information and was available to all interested parties prior to the public hearing, which was publicly advertised.
- [2] Prior to hearing submissions on the merits of the appeal, the Chair asked the Board members if, in their opinion, they may have a conflict of interest or bias that may prejudice their decision with regard to this appeal. There were no concerns expressed.
- [3] He then asked if anyone present believes or has a concern there may be a conflict of interest or bias shown by any member of the Subdivision and Development Appeal Board which may prejudice any decision with regard to Appeal #2-2023. The appellant expressed opposition, saying that the entire Board is biased based upon the Board being appointed by a City Council which he considers corrupt.
- [4] The Board adjourned to consider the question of bias in closed session.
- [5] The Board reconvened and the Chair advised the appellant of section 627(1) of the Municipal Government Act which states that “a council must by bylaw (a) establish a subdivision and development appeal board, or (b) authorize the municipality to enter into

an agreement with one or more municipalities to establish an intermunicipal subdivision and development appeal board, or both".

- [6] The Chair reiterated that the board members had no bias that may prejudice their decision and asked the Appellant if he wished to proceed with the appeal.
- [7] The Appellant stated his mistrust in the judicial system and the Alberta government and asked what would happen if he did not continue with the appeal.
- [8] The Appellant was reminded that he chose to bring an appeal and had the option to continue with the appeal and follow the established process.
- [9] The Appellant indicated that he did not believe he could get justice from the Board and further indicated that he believed that the Board was withholding information related to what would happen if he did not continue with the appeal. He refused to provide an answer to the question of whether he wished to proceed with the appeal.
- [10] The Chair indicated that if the Appellant did not wish to proceed with the appeal at this time, the Board would adjourn the hearing to a later date to assess legal options.
- [11] The Appellant agreed to adjourning the hearing to a later date.

August 29, 2023

- [12] The Board reconvened on August 29, 2023 to continue the hearing.
- [13] The Chair advised that the Appellant's claim of institutional bias, namely the Appellant's belief that City Council is corrupt and the Board is biased as a result, would be addressed in the written decision of the Board.
- [14] The Chair asked the Appellant if he wished to proceed with the appeal.
- [15] The Appellant asked what would happen if he did not proceed with the appeal.
- [16] The Chair advised the Appellant that if he did not proceed with the appeal, the appeal would be considered withdrawn and the Stop Order would remain in effect.
- [17] The Appellant asked what action would be taken against his property and was advised by the Chair that any action is at the discretion of enforcement officers and was not the purview of the Board.
- [18] The Appellant began discussing historical interactions with the City and alleged corruption. The Chair advised the Appellant that the information being provided by the Appellant was irrelevant to the appeal.
- [19] The Chair repeatedly reiterated the question of whether the Appellant wished to proceed with the appeal.
- [20] The Appellant ultimately indicated that he wished to proceed with the appeal.

BACKGROUND TO THE APPEAL

[21] On June 22, 2023 a Development Authority for the City of Medicine Hat issued a Stop Order pursuant to Section 645 of the *Municipal Government Act* and the City of Medicine Hat Land Use Bylaw #4168, for 675 Industrial Ave SE [Lot 4, Block 1, Plan 9011164] (the "Lands") which stated:

At present, the Lands do not comply with The City of Medicine Hat's Land Use Bylaw given:

1. There is a violation of section 2.1, as Development is occurring without a valid Development Permit for the specified land use.

[22] On July 10, 2023 a Notice of Appeal of the Stop Order was filed, with the grounds for appeal being listed as "The city and its departments have anterior [sic] motives this is bullying".

[23] Public Notice of the August 3, 2023 hearing date was published in the Saturday, July 15, 2023 edition of the *Medicine Hat News*. Six notifications were sent out to adjacent/abutting and surrounding property owners, and no submissions were received.

[24] Further information was contained in the Background Information Report that was forwarded to the Board members, Planning & Development Services Department, and the Appellant on Tuesday, August 1, 2023 in advance of the August 3, 2023 commencement of the hearing, which included the following documents:

1. Notice of Appeal of a Stop Order
2. Stop Order – June 22, 2023
3. Area Map

[25] Following adjournment of the initial hearing, the Board requested that the presentation slides prepared by the development authority be provided to the Board and Appellant in advance of the continuation of the hearing.

[26] Public Notice of the August 29, 2023 hearing date was published in the Saturday, August 19, 2023 and Saturday, August 26, 2023 editions of the *Medicine Hat News*. Six notifications were sent out to adjacent/abutting and surrounding property owners.

[27] An amended Background Information Report was forwarded to the Board Members, Planning & Development Services Department, and the Appellant on Friday, August 25, 2023, which included the following documents:

1. Notice of Appeal of a Stop Order
2. Stop Order – June 22, 2023
3. Area Map
4. Development Authority Presentation Slides

SUMMARY OF APPEAL HEARING

[28] The following is a brief summary of the oral and written evidence submitted to the Board.

- [29] The Chair indicated that the Board had reviewed the written submissions provided, noting that the presentation of the Development Authority included historical information that the Board would not consider relevant to the appeal.
- [30] The representative of the Development Authority and the Appellant were asked to limit commentary and presentation to April 2023 onward.

Development Authority

Represented by Robert Sissons, Manager of Planning

- [31] The Lands subject to the Stop Order are located at 675 Industrial Avenue SE. Surrounding the Lands is a mix of greenhouses, commercial buildings, a museum and some residential development. Utility services are currently not active on the Property.
- [32] In April 2023, the Development Authority began to receive complaints of an encampment on the site and an Order to Remedy Unsightly Property was issued. Site visits were conducted on May 29, 2023 and June 22, 2023.
- [33] Drone images of the Lands taken during a site visit on June 22, 2023 were presented.
- [34] The Lands contain a significant amount of industrial and building supplies (concrete blocks and bricks), household fixtures and appliances, large piles of wood, other debris and waste.
- [35] Mr. Sissons pointed out an area where debris is extending beyond the site boundaries.
- [36] The Lands contain several small structures in various states of disrepair. One of the structures appears to have a non-approved heat source. An unauthorized structure has been erected that is being used for what appears to be dismantling bicycles and other machinery.
- [37] The Lands are unsightly and creating a disturbance and nuisance to adjacent properties. Medicine Hat Police Service has received calls for service related to encampments and activities occurring at night on the Lands.
- [38] There are several indications of fires occurring on the Lands. Containers of gasoline are also stored in various locations on the Lands which would be a serious concern should a larger-scale fire ever ignite. Mr. Sissons stated that the site is essentially becoming a waste dumping ground in areas which could present a severe fire risk in hot temperatures as recently experienced.
- [39] Section 645 of the Municipal Government Act (MGA) and Section 11.11.4 of the City of Medicine Hat Land Use Bylaw #4168 (LUB) authorize a Development Authority to issue a Stop Order where a development or use of land or building does not comply with the MGA, the LUB, a Development Permit, or a subdivision approval.
- [40] The Property is in a Mixed Use District under the Land Use Bylaw – Industrial Operations is not a listed Permitted or Discretionary Use in this District.

[41] Industrial Operations is defined in the LUB as:

- Industrial Operations means a Development whose Principal Use is: (i) processing raw materials; (ii) manufacturing or assembling goods or equipment; (iii) crushing, dismantling, processing or sorting recyclable or reusable waste products provided that these activities do not involve the use of chemicals or the application of heat; or, (iv) **storage or shipping of materials, goods or equipment**, and includes a distribution facility, equipment yard, factory, recycling facility, or warehouse, but does not include a Development that uses a process involving any hydrocarbon as feedstock, such as a fertilizer plant. This Use does not include Cannabis Production and Distribution Facility of Cannabis Retail Store.

[42] As shown in the images presented, materials, goods or equipment are stored on the Lands.

[43] On June 22, 2023, the Stop Order was delivered on the Lands to someone in care of the Lands, was sent by registered mail, and was emailed to Robert M. Middleton. Confirmation of receipt of the Stop Order was provided by Mr. Middleton on June 23, 2023.

[44] At present, the Lands do not comply with the City of Medicine Hat's LUB given there is a violation of section 2.1, as Development is occurring without a valid Development Permit for the specified land use.

[45] The Stop Order required Mr. Middleton to stop violations by:

1. Discontinuing the current use of land as Industrial Operations, including but not limited to the storage of industrial or building materials, as Industrial Operations is not a listed land use in the Mixed Use District and there is no valid Development Permit for Industrial Operations.
2. Removing all industrial or building materials related to an Industrial Operations including but not limited to storage sheds or structures; wood piles; concrete blocks, bricks, or masonry equipment; household furniture, fixtures, or appliances; and other equipment related to an industrial occupation.

with compliance required within seven (7) days of the order.

[46] As part of the Stop Order the following information was provided:

- Advisory of the right to appeal and the appeal process.
- Advisory of further action if the Stop Order is not complied with including the authority to enter onto the lands in accordance with MGA s.542 and the right to seek an injunction under MGA s.554.
- Advisory of the authority to add the costs and expenses for carrying out this Stop Order to the tax roll pursuant to MGA s.553.

[47] In response to Board questions, the Development Authority:

- confirmed that reference to an encampment meant that people are living on the Lands.
- provided details about the non-approved heat source – a visible pipe coming out of a roof on the Lands even though there are no services to the Lands.

- advised that there have been reports of electrical power being taken from other sites through extension cords.
- confirmed that there have been no development permit applications since a house previously on the site was demolished in 1998.

Robert Middleton, Appellant

[48] Mr. Middleton expressed frustration that he was not allowed to talk about the past but a member of the Board asked a question of Mr. Sissons related to development permit history.

[49] Mr. Middleton said that the Chief of Police is directing the efforts related to the Stop Order because of Mr. Middleton's complaints about Canadian Fertilizers.

[50] In response to a Board question about the basis of his appeal, Mr. Middleton claimed that the Lands had always been an industrial type of site and that there was once a greenhouse on the Lands.

[51] He indicated he has every intention of using all the materials on the site and said he plans on doing clean up and hauling some of the garbage to the dump. As he lives out of town, it is a slower process for him.

[52] With regard to the bicycles, Mr. Middleton indicated that it is recycling and reusing materials.

[53] Mr. Middleton reiterated his belief that the Stop Order was pushed ahead by a corrupt police service.

[54] The Chair asked Mr. Middleton to confine his comments to the circumstances surrounding the Stop Order.

Robert Whitten, Business Owner – Opposes the Appeal

[55] Mr. Whitten indicated he is the owner of 671 and 673 Industrial Avenue.

[56] Mr. Whitten expressed concerns for the safety of staff related to the type of people who live in the encampment, indicating that he has seen some individuals who appear to be visibly intoxicated heading towards the site.

[57] Mr. Whitten reported that power was being illegally accessed from his property to the Lands.

[58] Mr. Whitten alleges that fences have been cut to his property and copper lines, batteries and wires have been stolen from his property, although he conceded that he has not filed police reports and has no proof.

[59] In Mr. Whitten's opinion, the property has been allowed to be run-down and he would like to see the property cleaned up.

Robert Middleton – rebuttal

- [60] Mr. Middleton advised that he was unaware of power being accessed from Mr. Whitten's property.
- [61] Mr. Middleton advised that he is also concerned about the "strung-out" nature of some of the people in the area and advised that the police should be involved but there is not enough drug enforcement in his opinion.
- [62] With regard to Mr. Whitten's allegation of theft, Mr. Middleton indicated that he believes that no one on the Lands would have stolen anything.
- [63] Mr. Middleton reiterated his accusations of corruption and does not want anyone coming on the Lands taking his things.
- [64] Mr. Middleton expressed his opinion that the police should contact him about happenings on the Lands and that they are keeping information from him.
- [65] The Chair asked Mr. Middleton to confine his comments to the circumstances surrounding the Stop Order.

Development Authority

- [66] No further comments

Robert Middleton – closing comments

- [67] Mr. Middleton requested mercy from the Board, asking for a longer amount of time to decide what he will do with the materials on the Lands.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

- [68] The Board denies the appeal and upholds the Stop Order, with an extension of time for compliance to **October 16, 2023**.

FINDINGS OF FACT

- [69] The Lands are legally described as Plan 901 1164, Block 1, Lot 4 with a municipal address of 675 Industrial Avenue SE.
- [70] The Lands are in a Mixed Use District.
- [71] On June 22, 2023, a Stop Order was issued.
- [72] The Appellant is using the site in a manner for which he does not have a development permit.
- [73] The Appellant who is subject to the Stop Order is an affected person.
- [74] The owner of adjacent property who spoke against the appeal is an affected person.

REASONS FOR THE DECISION

[75] The Board reviewed all the evidence and arguments, written and oral, submitted by the parties and focused on key evidence and arguments.

Jurisdiction

[76] The Board's jurisdiction is found in section 687(3) of the MGA. The Board has the authority to confirm, vary or revoke the Stop Order or any condition attached to it.

687(3) In determining an appeal, the subdivision and development appeal board

[....]

(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 permit of its own

[77] In making this decision, the Board considered the MGA, the Land Use Bylaw, and the oral and written submissions provided by the Development Authority, the Appellant, and the affected person.

Question of Bias

[78] The Board considered the Appellant's accusation that the entire Board is biased based upon the Board being appointed by Council, constituting institutional bias.

[79] The Board determined that the Board was properly established pursuant to legislation, namely section 627(1) of the Municipal Government Act which states that "a council must by bylaw (a) establish a subdivision and development appeal board, or (b) authorize the municipality to enter into an agreement with one or more municipalities to establish an intermunicipal subdivision and development appeal board, or both".

[80] No evidence was presented and no specific allegations of actual or perceived bias were made against individual members of the Board.

[81] The Board determined that it would be able to hear the appeal with open minds and without external influence.

Valid Issuance of the Stop Order

[82] The onus is on the Development Authority to establish that the Stop Order was valid.

[83] The Board first considered whether the Stop Order met the technical requirements set out in Section 645 of the MGA and section 11.11.4 of City of Medicine Hat Land Use Bylaw 4168. The Board notes that the Appellant did not argue that there was a breach of the requirements in the MGA or the Land Use Bylaw; however, the Board must still be satisfied that the requirements for the Stop Order were met.

[84] A copy of the Stop Order was in evidence before the Board. The Stop Order includes an issue date of June 22, 2023, states what must be done by the Appellant, and indicates that the action that must be taken within 7 days of issuance. The Board further notes that the Stop Order was issued by Munir Baruwa, Intermediate Planner.

[85] Based on this evidence and noting that there was no argument or evidence to the contrary, the Board is satisfied that the Stop Order meets the requirements of the MGA and City of Medicine Hat Land Use Bylaw 4168.

Authorized Use of the Lands

[86] The Development Authority argued that the Appellant is using the Lands for Industrial Operations, defined within City of Medicine Hat Land Use Bylaw 4168 as:

- Industrial Operations means a Development whose Principal Use is: (i) processing raw materials; (ii) manufacturing or assembling goods or equipment; (iii) crushing, dismantling, processing or sorting recyclable or reusable waste products provided that these activities do not involve the use of chemicals or the application of heat; or, (iv) storage or shipping of materials, goods or equipment, and includes a distribution facility, equipment yard, factory, recycling facility, or warehouse, but does not include a Development that uses a process involving any hydrocarbon as feedstock, such as a fertilizer plant. This Use does not include Cannabis Production and Distribution Facility of Cannabis Retail Store.

specifically storage of materials, goods or equipment, which is not a permitted use within a Mixed Use District.

[87] The Appellant did not dispute that there are materials stored on the Lands.

[88] Based upon the evidence before the Board, including the aerial drone images presented by the Development Authority within its presentation, the Board is satisfied that the Lands are being used for Industrial Operations which is not an authorized use of the Lands.

Other Justifications

[89] The Board placed little weight on the evidence provided by the Development Authority and Mr. Whitten related to the purported encampment and intoxicated individuals on the Lands, as the sole basis of the Stop Order was unauthorized use of the Lands for Industrial Operations.

Remedy

[90] The Board has found that the Lands are being used for Industrial Operations and that there is no development permit for that purpose. The Stop Order was issued for the unauthorized use. Based upon these conclusions and the reasons set out above, the Board finds that the Stop Order was validly issued and upholds the Stop Order.

[91] Having upheld the Stop Order, the Board assessed whether it will extend the time for compliance and, if so, by how much.

[92] The Board notes that the Appellant, who lives in _____, indicated that he intends to take some action to clean up the Lands and asked for an extension of time to continue to use the Lands for the unauthorized use until he decides what to do.

[93] Upon consideration of the Appellant's described circumstances, the Board grants an extension of the time for compliance with the Stop Order to **October 16, 2023**.

Dated this 12th day of September, 2023



Rondi Korven, SDAB Clerk, on behalf of
Jim Taylor, Chair
SUBDIVISION AND DEVELOPMENT APPEAL BOARD

cc. Robert Middleton (Appellant)
Amanda Young, City Planner and Director of Development Services