



County of Stettler No. 6

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October 1, 2020

Earl Marshall Trucking Ltd.
PO Box 155
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Re: Appeal of Stop Order re: Sand, Gravel and Mineral Extraction on the SW 33-36-20- W4M

A Subdivision and Development Appeal Board hearing was held on September 22, 2020 regarding the above captioned appeal of a Stop Order pursuant to Section 645 of the *Municipal Government Act* R.S.A. 2000, c. M-26. The Stop Order was served by the County of Stettler No. 6 (the County) in accordance with provisions of the County' Land Use Bylaw to address matters of non-compliance with conditions in Development Permit No. 16026 that was issued on June 16, 2016 to Earl Marshall (the applicant) for lands owned by Crawford Gravel and Rock Ltd.

Since the appeal of the Stop Order was received by the County after the appeal period had expired, the purpose of this appeal hearing was to determine if the Subdivision and Development Appeal Board has jurisdiction to hear the appeal. As such the appeal hearing was not to hear the merits of the appeal at this time, recognizing that should the Subdivision and Development Appeal Board determine it does have jurisdiction, the hearing could be adjourned to a later date to hear the merits of the appeal.

In accordance with Section 687(2) of the *Municipal Government Act*, the Subdivision and Development Appeal Board must give its decision in writing, together with reasons for the decision within 15 days of concluding a hearing.

Decision of the Subdivision and Development Appeal Board

Pursuant to the provisions in the *Municipal Government Act*, upon consideration of the appeal the County of Stettler Subdivision and Development Appeal Board hereby serves the following notification.

The Subdivision and Development Appeal Board has no jurisdiction to hear the merits of the appeal.

Findings of Fact

1. The Stop Work order was served on June 26, 2020.
2. The appeal period for a Stop Order is 21 days (*Municipal Government Act* – Section 686(1)).
3. The last day to file an appeal was July 17, 2020.
4. The appeal was submitted to the County on August 19, 2020 by Debbie P. Bishop (Barrister and Solicitor) on behalf of Earl Marshall, the appellant.
5. The appeal was filed well beyond the appeal period.

6. The appellant signed a waiver which agreed the County could hold a hearing to address the matter of jurisdiction outside the 30-day appeal period.
7. Reasons for missing the appeal period provided by the appellant included a death in the family and the inability to meaningfully contact Alberta Environment and Parks because of Covid-19.
8. There is no provision in the *Municipal Government Act* for a Subdivision and Development Appeal Board to extend the 21-day appeal period.
9. Cases before the courts affirm that planning, subdivision and development tribunals established by a municipality do not have jurisdiction to extend an appeal period - *Stuart Olson Construction Ltd vs City of Edmonton, 1977 (5 AR 44)*; *Bass vs Calgary Planning Authority, 2019 ABCA 139*.
10. Section 605(2) of the *Municipal Government Act* provides that only the Minister may vary an appeal period.
11. There is no Ministerial Order in place, recognizing Covid-19, that modifies the appeal period for a subdivision and development appeal for the Stop Order appeal period.

Reason for Decision

1. There is no provision in the *Municipal Government Act* for a Subdivision and Development Appeal Board to extend the 21-day appeal period.

Decision Process

The Chairman of the Subdivision and Development Appeal Board:

1. In consultation with the County determined that the date of the Notice of Appeal application did not fall within the 21-day period to appeal the Stop Order, however the appellant wished to be heard.
2. Due to the various impacts of Covid-19, decided the appellant should be heard, at least initially on the matter of jurisdiction.

The Subdivision and Development Appeal Board:

3. Undertook the hearing in a manner consistent with the *Municipal Government Act* and the County of Stettler Land Use Bylaw.
4. Considered provisions in the *Municipal Government Act* and Stettler County Land Use Bylaw during the course of the hearing.
5. Limiting presentations to matter of jurisdiction, heard submissions by the County and the appellant and asked questions to both parties.
6. Considered the facts relevant to the appeal.

Appeals based on a question of law or jurisdiction

Please be notified that you do have an option to appeal this decision in accordance with the *Municipal Government Act*, as per the following:

688(1) Despite section 506, an appeal lies to the Court of Appeal on a question of law or jurisdiction with respect to:

(a) a decision of the subdivision and development appeal board, and

(b) the Municipal Government Board on a decision on an appeal under section 619, an intermunicipal dispute under Division II or a subdivision appeal under this Division.

(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.

However, the Subdivision and Development Appeal Board notes that due to case law cited during the hearing, the appellant has another option pursuant to Section 605(2) of the *Municipal Government Act*, it being to submit a request to the Minister to modify the dates of the Stop Order appeal period.

Respectfully,

A handwritten signature in black ink, appearing to read "Bill Shaw", enclosed in a light gray rectangular box.

Bill Shaw, RPP, FCIP
Chairman
Subdivision and Development Appeal Board