



Peace Regional SDAB
P.O. Box 450, Berwyn, Alberta, T0H 0E0
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Notice of Decision

Peace Regional Subdivision Development Appeal Board

File No. 19PRSDAB001

November 6, 2019

Decision

IN THE MATTER OF THE *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

AND IN THE MATTER OF A STOP WORK ORDER APPEAL lodged by Gun-Shy Investments Inc. (Appellant).

Hearing held at: Town of Peace River Office
Council Chambers

Date of Hearing: October 22, 2019

Members Present: Rod Burr
Orren Ford (Chair)
George Leger (alternate)
Dave van Tamelen

Board Clerk: Greg Towne

Basis of Appeal: This is an appeal of a Stop Work Order for unauthorized development issued by the Town of Peace River on September 4, 2019.

The Appellant has cited the following points for the appeal:

1. No development is taking place.
2. The Town does not support initiatives to support homeless persons within the town.
3. The Town is targeting the property owner for allowing the current activities on the property in question.
4. The storage of their product (shelters) is not a violation of the Land-Use Bylaw.



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JURISDICTION OF THE BOARD

[1] This appeal is before the Peace Regional Subdivision Development Appeal Board ("Board" or "SDAB") because the Act and the Subdivision and Development Regulation Alta Reg 44/2002 (Regulation) direct that an appeal respecting lands within the municipality is to be heard and decided by the municipality's Subdivision and Development Appeal Board. The land that is the subject of the order is within the Town of Peace River.

[2] To determine whether or not the order has been properly issued, the Board must closely examine the relevant provisions and conditions of any approvals together with the requirements of the land use bylaw. Where the Board is satisfied that the order was properly issued, the Board's jurisdiction is generally limited to upholding the order, but in some circumstances it may vary the conditions or time for compliance.

PRELIMINARY MATTERS

[3] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the Board.

[4] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[5] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

EVIDENCE

[6] The following exhibits was presented during the hearing and forms part of the record:

- Exhibit A – Written statement prepared by PurpleRung Foundation (T. Plaizier)
- Exhibit B – Written statement prepared by J. Kayln
- Exhibit C – Written statement prepared by Peace River Broadcasting (C. Black)



ISSUE

[7] The appellant is appealing the Stop Order that directs that the unauthorized development of the subject property be stopped and the structures removed by September 23, 2019.

BACKGROUND

[8] The subject site is described as Lot 13-14, Block 2 of Plan 5255BD with a civic address of 10014-99 Street (Figure 1). The parcel is in downtown Peace River.

[9] The subject property was originally created as part of Plan 5255BD in 1915. The primary building currently on site was originally developed in the 1950s. The subject property is within a mixed commercial/residential/institutional neighbourhood.

SUMMARY OF TOWN'S POSITION

[10] Alisha Mody, planner for the Town of Peace River, presented the Town's position.

[11] On the subject property, there are two unauthorized structures, with approximately 16 square meter (172 square foot) footprints, which have been in place on the site for an extended time. These structures have not been placed pursuant to a development permit and are unauthorized.

[12] The town's land use bylaw, and the *Municipal Government Act* both define "development" as follows:

"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;

[13] Since 2011, no new development permit applications have been approved on the subject property. The last development permit expired, pursuant to section (6)(2)(a) of the land use bylaw, one year after it was issued with no work being completed.



[14] The structures on the site have been characterized and described by the appellant as "transitional shelters" or "homeless shelter prototypes". Within the Town's land use bylaw, the relevant Use Class under which this development type would fall is "emergency shelter". An "emergency shelter" is defined as follows:

"EMERGENCY SHELTER" means a development operated by a government or not-for-profit organization for the primary purpose of providing temporary, emergency accommodation for persons requiring immediate shelter and assistance. This use may include, but is not limited to, accessory office functions and the provision of related programs and services. Typical uses include a women's shelter and a youth emergency shelter.

[15] "Emergency Shelter" is listed as a discretionary use in the Community Development District only. It is not listed as a use in the Primary Commercial District. In order for the Development Authority to be able to consider an application for the development of these structures on the subject property, a land use bylaw amendment is required.

[16] The appellant has argued that the structures are not development. This is not accurate, per the definition of development established by both the Town's land use bylaw and *Municipal Government Act*. These structures have clearly been built and have been placed on the subject site. The storage of these structures on the subject site is a use of land that has not been approved.

[17] Section 643 of the *Municipal Government Act* does not apply, as these structures were initially placed in 2016, temporarily removed and subsequently replaced in 2017 and have been and continue to be subject to the development permit process established by Land Use Bylaw No. 1891.

[18] The appellant has also provided significant background with respect to the history of the structures, the rationale for their development, and related and unrelated municipal enforcement processes. For the purposes of this appeal, these arguments are irrelevant considerations.

[19] The stop order was issued on September 4, 2019 to Gun-Shy Investments Inc., the registered landowner of the property.

[20] The stop order was made consistent with the requirements set out in the *Municipal Government Act*. Specifically, the stop order, addressed to the registered landowner of the property, was sent via mail on the day it was issued, and it specified the date that the compliance actions were required to be completed.

[21] The Board asked, regarding the stop order, what the relevance was for the accessory buildings and site triangles. Ms. Mody responded that the areas of the land use bylaw regarding accessory buildings and site triangles were included in the stop order unnecessarily. The main issue behind the stop order is that there is development on the site, and it has not been permitted. The accessory buildings and site triangle information could have been removed, but it does not negate the stop order itself.



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[22] The Board asked what areas of the Town are approved for emergency shelters. Ms. Mody responded that emergency shelters are currently restricted to the community development district, which is applied to a variety of lands throughout the Town, but not any in the downtown.

[23] The Board asked if the Town could amend the land use bylaw to allow emergency shelters at that location. Ms. Mody confirmed that it is within the Town of Peace River Council's authority to amend the land use bylaw.

[24] The Board asked whether the *Municipal Government Act* or the land use bylaw defines 'stockpile', as taken from the definition of 'development' in the Town's report. Ms. Mody was unsure of whether 'stockpile' was defined in the *Municipal Government Act*, but the land use bylaw does define 'storage', which makes it a defined use that has not been approved for use on the site in question.

SUMMARY OF APPELLANT'S POSITION

[25] Mr. Taylor represents Gun-Shy Investments Inc., who own the property and leases it to PurpleRung. PurpleRung own the components which are the subject of the hearing.

[26] Gun-Shy Investments Inc. has no issue as to what is stored behind the building by PurpleRung. Mr. Taylor states that they have held the building vacant and applied on four different occasions to the Town of Peace River Council to change the land use bylaw as there is no definition to accommodate this type of shelter. Mr. Taylor was told that he was breaking the law because there was no zoning that would allow the transitional shelters within the Town.

[27] PurpleRung has developed a comprehensive plan and has developed good relationships with other not for profit groups to come up with solutions. The subject of controversy is the components or sleep lockers surrounding a bathroom. These are stored on the site.

[28] In 2016, PurpleRung received a letter from the Town stating the structures were not in compliance and they should be taken down and removed. The structures were taken apart, under duress, and stored inside the building. After several weeks, the structures were impeding movement inside the building and were brought back out and reassembled. They were reassembled to protect them from the elements. PurpleRung does not consider the structures a development.

[29] PurpleRung believes that this hearing is not about the zoning of the structures. The site triangle is not applicable to where the structures sit on the property. Mr. Taylor does not believe that the structures are development. They are components being stored until PurpleRung finds somewhere else to place them with services.

[30] Mr. Taylor disputed that the information provided in his appeal was irrelevant. The clean up order and stop order don't speak to the real issue that PurpleRung is trying to solve with zoning applications. Mr. Taylor believes that the Town has a bias that extends beyond whether the structures should be allowed on the property.



[31] PurpleRung has support from all three surrounding municipalities but has yet to receive one from the Town. There is provincial and federal funding that can assist with them, but not without municipal support. Mr. Taylor advised that he is getting disheartened by the situation.

[32] The Board asked for clarification on the disassembling of the structures in 2016. Mr. Taylor explained that the structures weren't finished until about a year after their initial preview. The modules must be assembled to protect against the elements.

[33] The Board asked for clarification on how long the structures have been on site. Mr. Taylor agreed that the structures have been on site for approximately two years.

[34] The Board asked how Mr. Taylor would describe the present use of the primary building. Mr. Taylor explained that the primary building is mostly vacant. There is electricity, but no heat or water to it. The building is mostly storage. With the future plans, the building will be torn down and turned into the plans provided in the appeal (a mixed residential/commercial development.) The Board asked for clarification that the building is characterized as a storage building. Mr. Taylor agreed.

[35] The Board asked for clarification that when Mr. Taylor put the structures in the shop, that he was placing them inside the main building. Mr. Taylor agreed.

[36] The Board asked what percentage of the property is allowed to be used by PurpleRung. Mr. Taylor advised that PurpleRung utilizes the entire property. Gun-Shy Investments Inc. has not been operating since the creation of PurpleRung.

SUMMARY OF OTHER AFFECTED PERSONS' POSITION

[37] Trudy Plaizier spoke to support the Appellant's appeal.

[38] Ms. Plaizier represents the PurpleRung Foundation which owns the shelter components stored on the property. A copy of Ms. Plaizier's statement has been taken and listed as exhibit 'A'. PurpleRung believes that the stop order was not properly issued. There were inaccuracies in the bylaws that were provided by (Community Peace Officer) Darcy DeVos and (Chief Administrative Officer) Christopher Parker on the stop order. There were misapplied sections of the *Municipal Government Act* and land use bylaw as detailed in Mr. Taylor's appeal. The original stop order did not specify a date that appeal must have been received by, which is supported by the additional correspondence between Mr. Taylor and Mr. DeVos.

[39] Ms. Plaizier would like to know if the SDAB can direct PurpleRung to obtain a permit for the storage so they would be legal. The modular building components are sitting on tree stumps to keep them off the ground and are assembled to keep the interior protected from the elements. All the openings are screwed shut. PurpleRung understands that they are not permitted as shelters and they have not allowed people to use them as such. A smaller structure was built on a trailer and designed to be mobile. It was placed on the ground so that the trailer could be used for other needs.



[40] PurpleRung is willing to work with the Town authority to go through the planning process to get a land use amendment. Ms. Plaizier requests that the SDAB uphold the appeal and direct PurpleRung to work with the Town of Peace River toward changes to the land use bylaw. Ms. Plaizier also requested that the SDAB include direction for the Town to work positively with PurpleRung. Ms. Plaizier also requested that the SDAB ask the Town to refrain from issuing a new stop order.

[41] The Board inquired what a reasonable extension would be if the Board extended the deadline of the stop order. Ms. Plaizier explained that they would not be able to take any action until next spring, as winter is fast approaching. Mr. Taylor responded from the gallery that it will take some time as equipment is needed to move the structures. They will also be duplicating work to move the structures to a new storage location and then move them again to where they will be put in use. The structures are also not being used where they reside currently. Mr. Taylor doesn't believe moving the shelters will serve any purpose, as it will not make the problems surrounding the property worse or better.

[42] The Board asked if there was a homeless presence on the property prior to the structures being placed on site. Ms. Plaizier is unsure when people started staying on the property, but she knows that when they started building the structures, people started moving in. There was obviously a need for a place for people to stay, and the structures did draw people in.

[43] The Board asked if the removal of the structures would have an impact on the people staying on the property. Ms. Plaizier believes that the people will remain on the property with or without the structures.

[44] Ted Sisson spoke against the Appellant's appeal.

[45] Ted Sisson is a resident of Peace River and his residence is located less than half a block away from the subject property. Mr. Sisson is not necessarily opposed to what PurpleRung is trying to accomplish, but there are certain aspects that he is against.

[46] Mr. Sisson disclosed that he has called the Royal Canadian Mounted Police (R.C.M.P.) on numerous occasions due to the behaviour of the people staying on the property. Mr. Sisson also explained that there have been occasions where he did not feel safe. Mr. Sisson feels that the implementation of the plan is lacking. The people staying there have no supervision and no sanitation services.

[47] The Board asked if Mr. Sisson believes that the structures are attracting more people to the property. Mr. Sisson thinks that the structures are an invitation, even though they are not accessible to people, it gives the suggestion that they should be living there.

[48] Michael Ho spoke against the Appellant's appeal.

[49] Michael Ho is the owner of Peace Valley Dental. He asked the board if PurpleRung is given permission to have the structures on the property, would they be able to use them. Mr. Chairman answered that he believes they would not be allowed to use it at this time. Mr. Ho was curious what the point of the structures were if no one is allowed inside them. They are drawing people to the property and affecting his clinic.



[50] Mr. Ho stated that he would not repeat what was previously said by Mr. Sisson, but he did have additional comments. He has also called the R.C.M.P. multiple times due to the behaviour. There have also been ambulances coming to stop in front of his building that promotes a bad image, as though something is wrong, or someone died in his clinic. Mr. Ho also advised that the people are stealing electricity from his building.

[51] The Board asked if Mr. Ho believed that the presence of the structures was attracting more people to the property. Mr. Ho indicated that they were.

[52] Jill Plaizier spoke against the Appellant's appeal.

[53] Jill Plaizier is the owner of Peace River Centre, which is an apartment building and commercial space across the street from the subject property. Her and her husband have owned the Peace River Centre since 1995.

[54] Ms. J. Plaizier stated that any development that they have done in or around the building has always had the proper approvals in place from the Town of Peace River. Ms. J. Plaizier stated that Gun-Shy Investments Inc. and Mr. Taylor do not feel like they need to get the proper permits to do development in the downtown core. As a business owner and taxpayer, she takes issue with that. There are regulations for a reason.

[55] Ms. J. Plaizier states that since 1995, there has never been people living behind the property until PurpleRung started. Mr. Taylor and Ms. T. Plaizier allow the people to remain on the property and do not discourage the people from staying. Ms. J. Plaizier also has the same problems Mr. Ho has with operating a business in an area that has constant R.C.M.P. and E.M.S. visits.

[56] Ms. J. Plaizier also has tenants in the building who pay rent and must deal with the activity going on. She believes that if you allow people to live on your property, you become responsible for them, and she does not see that Mr. Taylor has taken on that responsibility with regard to his property.

[57] The Board asked if the buildings were gone, would that improve the situation. Ms. J. Plaizier stated that she thinks it would help, but that the bigger issue was the permission. She does point out that although the main structures have not been occupied, the PurpleRung office structure was broken into and the people were taking over the structure.

[58] The Clerk advised that there were two additional items to read into the record. The items were distributed to the board members and the appellant.

[59] The first item is a letter submitted by Jeanne Kalyn dated October 21, 2019, and listed as exhibit 'B'. The writer is in agreement with the Town of Peace River requesting the removal of the unauthorized structures on the subject property. The writer agrees that the buildings invite people to live on the property and create an unsightly area, which decreases the property value of the entire area. The writer also mentions the health concerns regarding the lack of sanitary services available and that it is not the responsibility of the Town or the neighbouring businesses to provide such services to the people. Additionally, there is an extension cord that crosses a busy alleyway from the medical building to the property.



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[60] The next items are a collection of e-mails from Chris Black, the general manager at Peace River Broadcasting, and includes a letter from Terry Babiy, the owner and CEO, and listed as exhibit 'C'. Peace River Broadcasting owns two properties semi adjacent to the subject property. The unauthorized development has had the following ramifications to their business: water was being accessed from outdoor water taps, in one incident unattended and running which could have led to water damage and excessive water bills; the residents of the property have entered the building with staff unaware and have taken items; staff have reported seeing vehicle handles checked and one incident of a person entering an unlocked vehicle; the R.C.M.P. have been called due to fighting and partying in the middle of the night; staff have reported being harassed; the cleaning contractor no longer feels safe exiting their vehicles as a result of being harassed; and the R.C.M.P. had to extinguish a fire barrel that was noted on multiple evenings. The writer states that the property is uncontrolled and unregulated and should be deemed unacceptable to maintain the quality of life for downtown residents and the professional nature of surrounding businesses. A follow up e-mail explained there was also an extension cord hooked up to their staff house.

SUMMARY OF THE TOWN'S POSITION

[61] Ms. Mody clarified that although a date was not listed on the original order stating the deadline for an appeal, the follow up correspondence between Mr. Taylor and the Town did identify the deadline, and Mr. Taylor was able to submit his appeal within the timeframe. Therefore, there was no negative effect of the date missing from the original order.

SUMMARY OF THE APPEALANT'S POSITION

[62] Trudy Plaizier spoke on behalf of Mr. Taylor, with his verbal permission to the board. Ms. Plaizier spoke of two incidents where woman living on the property have been attacked. The R.C.M.P. and the woman's shelter were involved, but the woman do not meet the criteria for the shelter and have ended up back on the street. Ms. Plaizier believes that incidents like these could be avoided if shelter was provided. Ms. Plaizier asked the Board to dismiss the stop order based on the technical mistakes provided in it.



FINDINGS

[63] The Board agrees that the issue of homelessness is a societal issue of importance. While this issue contributes to some matters or facts that comprise the conditions at the subject site, the Board's focus is if the order is consistent with the requirements set out within the *Municipal Government Act*.

[64] The *Municipal Government Act* gives the Town authority to enforce bylaws and correct bylaw contraventions.

Order to remedy contraventions

545(1) If a designated officer finds that a person is contravening this or any other enactment that the municipality is authorized to enforce or a bylaw, the designated officer may, by written order, require the person responsible for the contravention to remedy it if the circumstances so require.

(2) The order may

- (a) direct a person to stop doing something, or to change the way in which the person is doing it;
- (b) direct a person to take any action or measures necessary to remedy the contravention of the enactment or bylaw, including the removal or demolition of a structure that has been erected or placed in contravention of a bylaw, and, if necessary, to prevent a re-occurrence of the contravention;
- (c) state a time within which the person must comply with the directions;
- (d) state that if the person does not comply with the directions within a specified time, the municipality will take the action or measure at the expense of the person.

[65] The *Municipal Government Act* establishes the authority for the municipality to issue a stop order.

Stop order

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



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- (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.

(2.1) A notice referred to in subsection (2) must specify the date on which the order was made, must contain any other information required by the regulations and must be given or sent to the person or persons referred to in subsection (2) on the same day the decision is made.

[66] The Board finds that the assembly of the structures on the subject property is development as defined within the Town's land use bylaw and the *Municipal Government Act*.

"DEVELOPMENT" means:

- (i) an excavation or stockpile and the creation of either of them, or
- (ii) a building or an addition to, or replacement or repair of a building and the construction or placing in, on, over or under land of any of them,
- (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.

[67] The Board finds that the property owner did not obtain the proper permits to allow for this development on the subject property.

[68] The Board finds that the Town acted within its authority when it issued the Stop Work Order, based on the placement of the unpermitted structures.

[69] The Board finds that any deficiencies within the issuance of the Stop Work Order are immaterial to the order, and that the Town took reasonable steps to rectify and correct these deficiencies.

[70] The Board finds that the issuance of the Stop Work Order was reasonably executed. When the appeal date was missed from the original order, the Town provided clarification on the appeal date and extended the appeal date to allow the property owner sufficient time to submit an appeal.



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DECISION

[71] The Board **DENIES** the appeal of the Stop Work Order issued to Gun-Shy Investments Inc. on September 4, 2019.

[72] The Board places the following conditions on the Stop Work Order:

- a. That the time limit to allow the owner to comply with the Stop Work Order be extended to December 21, 2019.



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APPEALS

If you wish to appeal this decision, you must follow the procedure prescribed in Section 688 of the Municipal Government Act as follows:

Section 688(1)

The appeal must be to the Court of Appeal of the Province on a question of law or jurisdiction with respect to a decision of the Subdivision and Development Appeal Board.

Section 688(2)

An application for leave to appeal pursuant to subsection (1) must be made to a judge of the Court of Appeal within 30 days after the issue of the decision sought to be appealed, and notice of the application must be given to:

- (a) the Subdivision and Development Appeal Board; and
- (b) any other persons that the judge directs.

Section 688(3)

On hearing the application and the representations of those persons who are, in the opinion of the judge, affected by the application, the judge may grant leave to appeal if the judge is of the opinion that the appeal involves a question of law of sufficient importance to merit a further appeal and has a reasonable chance of success.

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
 OF THE TOWN OF PEACE RIVER**

Per: 
 Chair

Appearances:

For the Appellant: Brent Taylor

For the Town: Alisha Mody

Other Parties: Trudy Plaizier
 Ted Sisson
 Michael Ho
 Jill Plaizier