



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. 20PRSDAB001

July 2, 2020

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 Brent Taylor & Directors, PurpleRung Foundation (Appellant).

Hearing held at: Town of Peace River Office
Council Chambers

Date of Hearing: June 18, 2020

Members Present: Rod Burr
Marvin Dueck
Orren Ford (Chair)
Owen Stanford (Alternate)

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 May 7, 2020.

The Appellant has cited the following points for the appeal:

1. There has been no activity or development on this site for many years. Once again a Stop Order does not make any sense, as there is nothing to stop.
2. The items are stored only, not a development and not occupied.
3. Moving the components would require them to be stored elsewhere at an additional cost.



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4. Does not "not comply" as storage.
5. This "Stop Order" is one of a series of bullying tactics as the town continues to drive costs to PurpleRung Foundation.
6. There is no activity to stop since 2017.

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 were presented during the hearing and form part of the record:

- Exhibit A – Written statement prepared by J. Kayln



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 June 4, 2020.

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.

[10] The Stop Order is similar to the one issued by the Town on September 4, 2019. Despite being the landowner on Certificate of Title, Gun-Shy Investments was struck from the corporate register in 2017 and does not exist as a legal entity. Therefore, there was a risk that that first Stop Order could not be enforced. The re-issued Stop Order dated May 7, 2020, identified the property owner, affected individuals and anyone with an interest against the property.

SUMMARY OF TOWN'S POSITION

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

[12] On the subject property, there are two unauthorized structures with approximately 16 square meter (172 square foot) footprints. One structure is a single storey building described as an "intake centre" by the PurpleRung Foundation and the second is a two storey building described as a "transitional shelter" by the PurpleRung Foundation. They 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.

[13] Prior to the hearing, the "intake centre" had been removed from the site.

[14] In September 2019 the Town issued the first formal Stop Order on the Property. This Stop Order was appealed by Gun-Shy Investments. That first appeal was denied by the Peace Regional Subdivision and Development Appeal Board in November 2019, however the date of compliance with the Order was adjusted to December 21, 2019. In January 2020, two Directors of the PurpleRung Foundation contacted the Town, indicating that the Unauthorized Structures would likewise be removed; this removal did not occur.

[15] The Municipal Government Act requires that all municipalities have a land use bylaw to regulate the use and development of land through a development permit process. The Town of Peace River's Land Use Bylaw No. 1891 establishes the requirement to obtain a development permit. All "development" within Town of Peace River must obtain a development permit unless specifically listed in Section (5)(2), Development Permits Not Required, of the land use bylaw.



[16] 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, 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, or
- (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.

[17] The Town's land use bylaw defines "building" as follows:

"BUILDING" includes any structure having a roof supported by columns or walls and intended for shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or material of any kind.

[18] Unauthorized Structures have been built and have been placed on the subject site in the rear yard which was previously empty. That placement has changed the use and the intensity of use of the rear yard of the property, consistent with the definition of development. The placement of the Unauthorized Structures on the Property constitutes an active use of the land that is development.

[19] Pursuant to the land use bylaw, all development requires a development permit, unless specifically exempted from this requirement in the land use bylaw. Section (5)(2) Development Permits Not Required specifies the types of development that do not require a development permit in the Town of Peace River. The development of these Unauthorized Structures does not fall within the developments identified in Section (5)(2) and do require a development permit.

[20] 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.

An "emergency shelter" is a defined and listed use within the land use bylaw that requires a development permit.



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[21] Outside storage associated with an approved use, and included on a development permit application may be allowed in the Primary Commercial (C-1) district. However, the storage of the transitional shelter prototypes is not reasonably associated within any listed use in the C-1 District. By the appellant's own description, the Transitional Shelters were manufactured on site and are now being stored there subsequent to that manufacturing process. The manufacturing of a product is part of either a "workshop" development (an undefined use in the land use bylaw listed in the industrial land use districts) or a "general industrial" development. Both of these use classes are listed in districts other than the Primary Commercial (C-1) district. The districts where a workshop could be considered were included in the letter sent to the appellant on November 24, 2017.

[22] There is no approved use on the Property which the storage of the unapproved buildings may be considered associated with. In all cases, a land use bylaw amendment is required before the development authority can consider a development permit application on the Property.

[23] 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.

[24] "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 (C-1) District. "Workshop" and "general industrial", uses that could allow the manufacture and storage of the transitional shelter, are likewise not listed as a use in the Primary Commercial (C-1) District. "Outdoor storage", a use that could allow the storage of the transitional shelter is not listed as a use in the Primary Commercial (C-1) District.

[25] 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. As such, there is no valid development permit that allows the development. The development remains unauthorized and a Stop Order is appropriate and was properly issued.

[26] The appellant stated that there has been no activity since the units were manufactured in 2017. As the Town indicated to the appellant in 2017, a shop where the units are manufactured falls within the "Workshop" or "General Industrial" use of the land use bylaw. Both these uses are enabled in the industrial districts of the land use bylaw only. Placing and storing these Structures on the site could only be accessory to one of those uses, neither of which are enabled in the Primary Commercial (C-1) District. Therefore, the storage of the Structures on the property is likewise not allowed.

[27] The Town has consistently, from the first warning letter issued to the PurpleRung Foundation in August of 2016, stated that the development of the transitional shelters is in violation of the land use bylaw. The use or occupancy of the structures by homeless persons is not the threshold test for development. The placement of the structures on the Property constitutes an active use of the Property and is the relevant threshold for development.



[28] Ms. Mody also addressed other items within the Appellants complaint that were not specifically associated to the Stop Order, including a fire at a separate property, other properties within the Town, the current cleanliness of the subject property and municipal taxation on the subject property.

[29] The *Municipal Government Act* establishes the authority for the municipality to issue a stop order, and the stop order was made consistent with the requirements set out in the *Municipal Government Act*.

[30] The Board asked for further explanation on what occurred in 2011. Ms. Mody answered that an eleven (11) unit building was proposed on the subject property. A permit was issued, however no development occurred within a year, so the permit expired.

[31] The Board asked what the difference was between a complete and incomplete application for a land use bylaw amendment. Ms. Mody explained that the fees were not provided with Mr. Taylor's application. Fees are considered part of the application and if they are not paid, the application is considered incomplete.

[32] The Board asked for additional information on the issues that the Peace officers were involved in. Ms. Mody advised that the Town has had nine (9) documented complaints regarding the property, five (5) peace officer investigations associated with homeless persons activities on site, and RCMP went on thirty-one (31) calls to the property. The RCMP calls were related to the people occupying the site.

[33] The Board asked why the structures were not related to the use of the land. Ms. Mody advised that the rear yard was previously an empty site. There are now two structures occupying the site, which is a change from what it previously was.

[34] The Board asked why a Stop Order was issued instead of approaching the situation differently. Ms. Mody advised that there were many attempts to communicate and discuss with Purplerung, but this was ultimately the only option left available.

[35] The Board asked what the concerns were with the designs of the building and what is the real issue. Ms. Mody advised that the stop order and the removal of the structures is the issue. The Town recognizes that there is a need for housing, however there are key issues with the design. The buildings are not tall enough to stand in, there is no accommodation for cooking, there were issues with hygiene. The underlying structures are still non-compliant with Alberta codes.

[36] The Board asked for clarification on the primary building. Ms. Mody explained that there is no primary use between the building and the structures. To be classified as an accessory building, there must be a primary use between the main building and the secondary building. Storage would generally be issued in an industrial area.



SUMMARY OF APPELLANT'S POSITION

[17] Mr. Brent Taylor submitted the appeal as Brent Taylor & Directors of PurpleRung Foundation, who leases the land from Gun-Shy Investments Inc.

[38] Ms. Trudy Plaizier – Director with PurpleRung Foundation – read the appellants response to the Board.

[39] The appellant states there has been no activity or development on this site for many years. Once again a Stop Order does not make sense, as there is nothing left to stop.

[40] The appellant questions the reference of “illegal development” as identified in the Stop Order.

- 1 There is no activity nor has there been since 2017 when they manufactured the relocatable prototype components. What is it that they should stop exactly?
- 2 The items are relocatable components manufactured for installation on compliant lands once dispatched. They have proposed to make this lot compliant to receive such installation and occupancy but have been denied, therefore they are stored for use at a yet to be determined destination. They have not defied any order by using them or attaching them to foundations or services.
- 3 The statement that “...the storage of these structures on the subject site are a use of the land has not been approved...” is inconsistent with the land use bylaw that makes reference to outside storage:
Section 29 PRIMARY COMMERCIAL DISTRICT (C-1)
(4) ADDITIONAL REQUIREMENTS
(a) Screening and Fencing
(iii) **Outside storage areas** shall be careened from adjacent sites and public thoroughfares to the satisfaction of the Development Officer or the Municipal Planning Commission.
- 4 The components may have many diverse use cases such as a shed for sale at Home Hardware parking lot, to use an unanswered example from our last defence. If rejected for use as shelters there are other avenues or use cases that PurpleRung could pursue to recover our investment in the units or even apply to install them in place as additional storage or warehousing of product where the existing (C-1) zone does allow on the site:
(b) discretionary Uses
 - accessory building or structure
 - moved in building
 - warehouse and distribution sales.

[41] The appellant recognizes the gathering of homeless types who were staying on the site were distressing to some of the neighbouring properties, and how that was projected as all due to our components on the site, however, we all know the components had nothing to do with transients camping there and were never used, and anyway, the situation has since stopped.



[42] The assembled components remaining on site are not now, or have ever, been occupied by those people, or by anyone.

[43] PurpleRung has spent much time, effort and funds presenting plans to council to refurbish our leased building to correspond with our mission to aid and enable less fortunate with shelter and affordable options. Peace River clearly has defied these development applications and does not want these type of transitional shelter product in the town.

[44] The town interprets them to be occupied as homeless shelters; however, these units are not part of a current development and sit on blocks as storage until committed for installation elsewhere, completed, and installed on screw-piles or pin-piles with utility hook-ups on a future site.

[45] Currently there is a rezoning proposition for an adjacent landowner across the alley for the Women's Shelter to rezone the property to ([a "Community Development District" or] COM) where emergency shelter is enabled as a discretionary use (Bylaw # 2072.) The Town added this discretionary use to the (COM) zoning specifically for the Women's Shelter's existing facility after communicating to PurpleRung that there was no zone in town where we would be compliant. While refusing our application to similarly amend the Bylaw this use definition was added to the (COM) designation in order to make the existing shelter compliant.

[46] Proposed a solution to host these units on the Women's Shelters new property and have reached out to that organization.

[47] The leased site is now clear of any evidence of clutter or homeless paraphernalia, and the units are safely stored and locked within the leased property lands.

[48] PurpleRung has attended council to request support for their efforts and programs to help the homeless population. The town only offered to review specific completed grant applications with the impossible conditions of us attending council to review.

[49] The same ask was made to the 3 surrounding counties with support letters received from each.

[50] The appellant addressed property tax relief under the Community Organization Property Tax Exemption Regulation and requested the town consider their application retroactive to 2016.

[51] The appellant proposed a compromise for consideration on the cleaned-up site:

- We erect a perimeter fence behind the building to screen yard storage and permanently keep out intruders.
- We continue to store subject building components on our screened site until units are dispatched to a host property or sold for other purposes.
- We do not allow homeless or transient persons to loiter without appropriate zoning.
- We mount our subject mobile intake office on the trailer it was designed and built over, fold down the retractable roof and park it farther back in the yard with our other trailers and equipment, as allowable storage.
- The Town recognition of our not-for-profit status to adjust taxes and penalties from June 2016.



[52] During their presentation, Mr. Taylor stated he did not receive the complete report and agenda via email.

[53] Mr. Taylor stated that labelling an application as incomplete because it was missing the cheque is a cop-out.

[54] One of the buildings has now been repurposed elsewhere. PurpleRung is currently looking for alternate locations for the second building. Mr. Taylor stated that the buildings are no different than sheds at Home Hardware. They are not being used by anyone and are simply being stored at the site. If the buildings are not assembled, they will be exposed to the elements and damaged. Mr. Taylor advised that moving the building will be a large financial burden.

[55] Mr. Taylor agrees that there are compliancy issues, but they would be homes for people who do not have any other options. Mr. Taylor reiterated that they hope to keep the building as is as they are just being stored.

[56] The Board asked asked if a cheque was ever submitted for the land use bylaw amendment. Ms. Plaizier stated that she had no recollection of being told that their application was incomplete. Mr. Taylor stated that they attended a hearing and then were told the application was incomplete.

[57] The Board asked for clarification on how many permits PurpleRung has applied for. Mr. Taylor advised that they applied for a permit to build a new structure with housing in the basement. Then they attempted a different approach in which they were denied.

[58] The Board asked why Mr. Taylor did not reapply for another land use bylaw amendment. Mr. Taylor advised that they had financial reasons for not reapplying. Mr. Taylor argued that the buildings are not development.

[59] The Board asked if Mr. Taylor had inquired about ways to have the buildings to meet code. Mr. Taylor advised that that the buildings are no different than an RV. Mr. Taylor advised that they are marketing the buildings to be moved. They have no intention of having the buildings occupied on the site.

SUMMARY OF OTHER AFFECTED PERSONS' POSITION

[60] Jeanne Kalyn submitted a letter dated June 18, 2020, labelled "Exhibit A". In it she identifies that the property is clean of debris and appears not to have homeless people living there. Her concern was the remaining building and if that would invite homeless activity again.

SUMMARY OF THE TOWN'S POSITION

[61] The Board asked what the fee was for a land use bylaw amendment. Ms. Mody advised that the fee is \$750 and is meant to cover the cost of advertising.



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[62] Ms. Mody advised that in 2017 a letter was sent to PurpleRung which noted why the permit would not be approved and the recommendation for them to apply for a land use bylaw amendment. She also advised of an email dated December 11, 2017 addressed to Mr. Taylor that acknowledged the application for the land use bylaw amendment. This email stated that the application was incomplete due to the lack of fee payment.

[63] Ms. Mody also acknowledged that many of the concerns expressed by adjacent landowners were to do with the homeless population, however the issues brought up by the development authority were focused on the development. She wanted to reiterate that the buildings fall into development according to the land use bylaw and the *Municipal Government Act*. It is unauthorized and they need to be removed or taken down.

[64] The Board asked for clarification that, as a homeowner, he would require a permit to build a garage. Ms. Mody confirmed.

[65] The Board inquired about a compromise to unstack and cover the buildings until they can be moved. Mr. Chairman advised that was something to discuss after the public side of the meeting. Ms. Mody advised that at this point, it is late to offer a compromise. It would be inconsistent and a hardship to the neighbouring landowners.

SUMMARY OF THE APPEALANT'S POSITION

[66] Mr. Taylor advised that the letter sent out advising of the incomplete application was received after the hearing.

SUMMARY OF OTHER AFFECTED PARTIES

[67] Henry Plaizier is a neighbouring property owner across the street. He states that he does not have any issues with the current state of the property. He believes that forcing the appellant to remove the building is not relevant anymore.



FINDINGS

[68] 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.

[69] 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

- (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.

[70] 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.

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

[72] 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.

DECISION

[73] The Board **DENIES** the appeal of the Stop Work Order issued to the affected parties – PurpleRung Foundation, Mr. Taylor, Ms. Plaizier, Mr. Sheets, and Gun-Shy Investments – on May 7, 2020.

[74] 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 August 14, 2020.



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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
 Trudy Plaizier

For the Town: Alisha Mody

Other Parties: Henry Plaizier