
**SUBDIVISION AND DEVELOPMENT APPEAL BOARD OF
MOUNTAIN VIEW COUNTY**

DECISION

Hearing held at: Mountain View County Office
Council Chambers

Date of Hearing: March 16th, 2018

Members Present: Alana Gibson
Bruce Beattie
Laural Pedersen
Lori Conkin
Mark Olson

Basis of Appeal: This is an appeal from a Stop Order for unauthorized use/development of Horticultural Use, Medicinal on SW 20-30-3-5 Plan 1113356 Block 3 Lot 1 (the "**Lands**") issued by Mountain View County on January 31, 2018. The Appellant stated the following as the Reason for Appeal:

- Medical Purpose

Appellant: Cuong The Tran
Landowner: 1774927 Alberta Ltd., represented by Cuong Tran

Description of Application

On March 16, 2018, the Subdivision and Development Appeal Board (the "**Board**") opened the appeal hearing to hear the appeal filed by the Appellant in regard to a Stop Order issued with respect to an unauthorized use/development of Horticultural Use, Medicinal on SW 20-30-3-5 Plan 1113356 Block 3 Lot 1 (the "**Lands**") pursuant to Section 645 of the *Municipal Government Act*, R.S.A. 2000 Chapter M-26, as amended. The Stop Order was dated and hand delivered to the Appellant on January 31, 2018. (the "**Stop Order**")

The Notice of Stop Order Appeal was filed by the Appellant with the Board on February 22, 2018. (the "**Notice of Appeal**")

Preliminary Issue

A preliminary issue was raised at the outset of the hearing with respect to whether or not the Notice of Appeal was filed within the time limits prescribed by Section 686(1)(a)(ii) of the *Municipal Government Act* which provides that an appeal from a Stop Order is required to be filed within the following time limits:

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of appeal, containing reasons, with the board:

- (a) In the case of an appeal made by a person referred to in Section 685(1)

- (ii) with respect to an order under section 645, within 21 days after the date on which the order is made.

Findings of Fact:

1. The Stop Order was made by Mountain View County Designated Officer, K. Phillips, on January 31st 2018 pursuant to Section 645 of the *Municipal Government Act*.
2. The Stop Order was hand delivered to the Appellant on January 31st 2018 by Officer Phillips.
3. Chad Fournier, Staff Sergeant, Didsbury Detachment Commander provided a letter dated March 5th 2018 confirming that he: "witnessed Officer Kelly Phillips personally serve Cuong Tran a stop order on January 31st 2018."
4. In addition to hand delivering the Stop Order to the Appellant on January 31st, 2018, Mountain View County also sent the Stop Order to the Appellant via Registered Mail on January 31st, 2018.
5. The Appellant filed the Notice of Appeal with the Board on February 22nd 2018.

Decision on Preliminary Issue:

The Board has determined that the Notice of Appeal was filed outside of the 21 day time limit prescribed by Section 686(1)(a)(ii) of the *Municipal Government Act* and, on that basis, the Notice of Appeal is not valid and the Board does not have jurisdiction to hear the merits of the appeal. The appeal is denied and the Stop Order is upheld.

Reasons for Decision:

1. Section 22(7) of the *Interpretation Act* R.S.A. 2000 Chapter I-18 states that: "If an enactment provides that anything is to be done within a time after, from, of or before a specified day, the time does not include that day."
2. The Board accepts the County's evidence that the Stop Order was made on January 31st, 2018 and the Appellant was personally served with the Stop Order on January 31st, 2018.
3. While the Board accepts that the Appellant was served with the Stop Order by both personal service and registered mail, the Board has determined that calculation of the appeal period commences from the time that Stop Order was made in accordance with Section 686(1)(a)(ii) of the *Municipal Government Act*. January 31, 2018.
4. In accordance with Section 22(7) of the *Interpretation Act*, the 21 day time limit prescribed by Section 686(1)(a)(ii) of the *Municipal Government Act* commenced on February 1, 2018 and expired on February 21, 2018.
5. The Notice of Appeal was filed with the Board on February 22, 2018, outside of the statutory limitation period.
6. The Board has no jurisdiction to extend the 21 day time limitation to file a notice of appeal prescribed by the *Municipal Government Act*.
7. Neither the Secretary of the Board nor Mountain View County Administration has the discretion to determine the validity of a Notice of Appeal: that decision ultimately lies with the Board and a hearing is required to determine that issue.
8. As the appeal was filed outside of the 21 day time period prescribed by Section 686(1)(a)(ii) of the *Municipal Government Act*, the Board does not have the jurisdiction required to proceed further with hearing the merits of the appeal.

Evidence:

The Board considered the following evidence in making its decision:

1. The Agenda and Notice of Appeal;

2. Report and verbal presentations to the Subdivision and Development Appeal Board including all attachments presented to the Board by the County's Planning and Development Department;
3. Verbal presentation to the Subdivision and Development Appeal Board by the Appellant;
4. ***Municipal Government Act***, R.S.A. 2000, Chapter M-26; and
5. ***Interpretation Act***, R.S.A. 2000, Chapter I-8.

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)

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.

Section 688(2)

An application for permission 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 permission 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.

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 permission 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.

Section 688(4)

If a judge grants permission to appeal, the judge may:

- (a) direct which persons or other bodies must be named as respondents to the appeal,
- (b) specify the questions of law or the questions of jurisdiction to be appealed, and
- (c) make any order as to the costs of the application that the judge considers appropriate.

Section 688(5)

If an appeal is from a decision of a subdivision and development appeal board, the municipality must be given notice of the application for permission to appeal and the board and the municipality

- (a) Are respondents in the application and, if permission to appeal is granted, in the appeal, and
- (b) Are entitled to be represented by counsel at the application and, if permission to appeal is granted, at the appeal.

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BOARD OF MOUNTAIN VIEW COUNTY**

Per: 
Chair

Date Signed: March 23, 2018