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

DECISION

Hearing held at: Mountain View County Office
Council Chambers

Date of Hearing: April 10th, 2018

Members Present: Gil Hegel
Greg Harris
Laural Pedersen
Mark Olson

Basis of Appeal: This is an appeal from a Stop Order for unauthorized use/development of Aggregate Extraction/Processing on NE 35-31-5-5 (The "**Lands**") issued by Mountain View County on February 23rd, 2018. The Appellant stated the following as the Reason for Appeal:

- County has no basis for Stop Order. We have a lawful right to extract gravel from this site.

Appellant: Tom Guzmanuk
Landowner: Gladys Guzmanuk

Description of Application

On April 10th 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 Aggregate Extraction/Processing on NE 35-31-5-5 (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 February 23rd 2018 (the "**Stop Order**").

The Notice of Stop Order Appeal was filed by the Appellant with the Board on March 15th 2018. (the "**Notice of Appeal**").

Findings of Fact:

1. The Lands are located at NE 35-31-5-5 and are a 158.97 acre parcel with split zoning; 115.42 acres of the Lands being zoned A – Agricultural District with the remaining 43.55 acres of the Lands currently zoned AEP – Aggregate Extraction and Processing District after a re-designation approval on July 4th 2017.
2. The Stop Order was made by Mountain View County (the "**County**") Designated Officer, K. Phillips, on February 23rd 2018 pursuant to Section 645 of the ***Municipal Government Act***.
3. The Stop Order was hand delivered to the Appellant on February 23rd 2018 by Officer K. Phillips.

4. In addition to hand delivering the Stop Order to the Appellant on February 23rd, 2018, the County also sent the Stop Order to the Appellant via Registered Mail on February 23rd 2018.
5. After issuing the Stop Order, the County allowed for the Appellant to continue to operate on a limited basis under conditions and regulations as laid out by the County until this temporary approval was also cancelled.
6. The Appellant filed the Notice of Appeal with the Board on March 15th 2018.
7. Mountain View County Land Use Bylaw 55/95 was adopted on August 16th 1995 and rescinded on June 30th 2010.
8. The development on the Lands began after September 2nd 2007 and prior to August 2008 and as such began operations under the legislation of Mountain View County Land Use Bylaw 55/95.
9. No development permit has been issued by Mountain View County for Aggregate Extraction / Processing on the Lands.
10. The Board accepts the determination of the size of the development as presented by the County's Planning and Development Department as over 5.00 acres.

Decision:

The Board has determined that the Aggregate Extraction/Processing development on NE 35-31-5-5 does not meet the requirements of a legal non-conforming use and is therefore required to obtain and maintain a Mountain View County Development Permit. As such, **the appeal is denied and the Stop Order is upheld.**

Reasons for Decision:

1. The Stop Order was issued correctly in accordance with the *Municipal Government Act*.
2. The determination of the size of the development must include all lands that are used for the removal, extraction, processing and transmission of the aggregate in accordance with Mountain View County Land Use Bylaw 55/95 and Mountain View County Land Use Bylaw 15/15.
3. The Board has determined that the Aggregate Extraction / Processing development on the Lands is over 5.00 acres.
4. Mountain View County Land Use Bylaw Amendment 30/05 which amended Mountain View County Land Use Bylaw 55/95 to add Part IV, Clause 14(9) does not grant permission for existing natural resource extraction uses and related facilities **over five (5) acres in size** to operate without a valid Mountain View County Development Permit.
5. The Board has determined that the development is contained under an Aggregate Extraction/Processing use as outlined in Mountain View County Land Use Bylaw 15/15 which is a discretionary use in the AEP-Aggregate Extraction/Processing District.
6. The development is required to obtain a Mountain View County Development Permit in accordance with Section 683 of the *Municipal Government Act* and Section 4.1(1) of Schedule A to Mountain View County Land Use Bylaw 15/15.
7. The County's willingness to allow the Appellant to continue to operate on a limited basis under conditions and regulations did not discharge the Stop Order nor the obligations contained within the Stop Order and as such the Stop Order has remained in effect since its delivery in accordance with Section 645 of the *Municipal Government Act*.

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 Appellant;

3. Verbal presentations to the Subdivision and Development Appeal Board in support of the Appellant;
4. 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;
5. **Municipal Government Act**, R.S.A. 2000, Chapter M-26;
6. Mountain View County Municipal Development Plan 09/12;
7. Mountain View County Land Use Bylaw 15/15;
8. Mountain View County Land Use Bylaw Amendment 30/08; and
9. Mountain View County Land Use Bylaw 55/95.

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.

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

Per:



Chair

Date Signed:

April 16, 2018