

MINUTES of the **Subdivision & Development Appeal Board** held on **Thursday, December 1, 2011 at 4:00 p.m.** in Council Chambers with the following in attendance:

MEMBERS:	L. Cutforth	Chairman
	V. Chester	Member at Large
	A. Haesler	Member at Large
	T. Nicholson	Member at Large
	R. Stein	Member at Large
OTHERS:	P. Colling	Development Officer
	D. Sarsfield	Acting Secretary to the Board

T. Nicholson

THAT Lee Cutforth be appointed as the Chairman of the Subdivision and Development Appeal Board for the ensuing year.

-----**CARRIED**

T. Nicholson

THAT the Victoria Chester be appointed as the Vice Chairman of the Subdivision and Development Appeal Board for the ensuing year.

-----**CARRIED**

SDAB HEARING 2011-07

Appellants: Kris Bouchard and Kaylie Bouchard

To reduce the height of the accessory building located at 431 Sixmile Cove South to a maximum of 4.50m in accordance with previously approved plans by December 15, 2011

Stop Order
Land Use District: R-L (Low Density Residential)

There were no objections when the Chairman asked if anyone present had a lawful reason why any particular member(s) of the Board should not hear this appeal.

Development Officer's Presentation:

Pam Colling, Development Officer, stated that an application to construct an accessory building was received on March 24, 2011. The plans were reviewed by Development and determined that the building was in compliance with the requirements for accessory buildings as outlined in the Land Use Bylaw. The plans were approved by Development and Building Inspections. Construction of the accessory building commenced.

A City of Lethbridge Safety Codes Officer conducted a site inspection of the accessory building on August 10, 2011 as requested by the Applicant. At the time of inspection, the Safety Codes Officer noticed that the accessory building was taller than the maximum 4.50m (14'9") building height. A "Stop Work Order" was immediately issued by the Safety Codes Officer which prevented the Applicant from continuing construction until a waiver of the maximum building height was granted or the height of the accessory building was reduced to the approved 4.50m.

An application for a waiver of the maximum building height requirement was received on September 1, 2011. The Applicant was told at the time of application that the Development Officer would not be making a decision on this application and would be presenting it to the Municipal Planning Commission for their consideration.

The application was then taken to the Municipal Planning Commission on September 27, 2011 where it was refused. Reasons for Refusal were:

- The accessory building would not fit with the design, character and appearance of the neighbouring properties.
- The accessory building as proposed to be finished does not lend itself to residential use but rather commercial storage which is not allowed in the R-L Low Density Residential District.
- This application does not conform with the height requirements of Land Use Bylaw 5700

The Applicant was contacted by the Development Officer on September 28, 2011 to let him know of his right to appeal and that the deadline to appeal would be October 21, 2011. A registered letter was sent to the Applicant as well notifying him of his rights to appeal. No appeal of the Municipal Planning Commission decision was made.

The Development Officer conducted a site inspection on November 1, 2011 and noted that the accessory building had not yet been brought into compliance. The Development Officer subsequently hand-delivered a "Stop Order" to the Applicant's home on November 2, 2011 which was signed received by Mrs. Bouchard. The "Stop Order" gave the Applicant until December 15, 2011 to reduce the height of the accessory building to the previously approved 4.50m maximum.

The applicant has chosen to appeal this "Stop Order". No reasons for the appeal were stated in the appeal.

Appellants' Presentation:

Kris Bouchard, 431 Sixmile Cove South, advised that he owns the property containing the proposed development. He stated the following:

- Original application was filed on March 24, 2011
- Received approval and commenced building the garage
- Upon receiving the Stop Work Order of August 10, 2011, he filed a second set of drawings on September 1, 2011
- Sent an email to Pam Colling on September 2, 2011 stating that he did not think that the application should have to be approved by the Municipal Planning Commission
- Did not have knowledge that the application was likely to be refused when he attended the Municipal Planning Commission meeting of September 27, 2011
- No construction has taken place on the building for the past four months because of the constrictions of the Stop Work Order
- Have abided by the original Stop Work Order issued on August 10, 2011

- Sent e-mail to Aleta Neufeld, Board Secretary for the Subdivision and Development Appeal Board, on September 28, 2011
- Does not believe that correct procedures were followed on both sides
- Numerous garages throughout the City that are taller than his garage
- Does not believe that he is a commercial operation
- Does not want the building to be demolished
- No one in the subdivision has complained about the presence of the garage

Kaylie Bouchard, 431 Sixmile Cove South, stated the garage will not be used for commercial operation. It will be used to store personal belongings and is strictly for family use. Mrs. Bouchard advised the development process is now beginning to affect their family. As a result, she requested that a final decision be made today.

There were no further presentations.

Discussion:

The Board addressed the following issues during question period:

- Process for the issuance of the original building and development permits
- Process for the issuance of the original Stop Work Order of August 10, 2011
- Methods by which the Appellants were advised of the appeal process
- Rationale for not appealing the decision of the Municipal Planning Commission
- Time period for issuance of Stop Order of November 2, 2011
- Willingness of Appellants to comply with the Stop Order of November 2, 2011
- Rationale for adding a second storey to the garage
- Time required by the Appellants to comply with the Stop Order of November 2, 2011
- Ability of building application fees to be refunded

Rebuttal:

The Appellants were given the opportunity to provide a rebuttal.

The Bouchards advised they did not appeal the Municipal Planning Commission decision because of the frustration they had experienced by the refusal. Kris Bouchard had sent an email to Pam Colling on September 2, 2011 stating that he wanted to know if she supports the application, and if not, that he would withdraw the application. No response to the email was received. Mr. Bouchard is now frustrated with the fact that had to submit an application fee of \$600 with the second set of drawings. He requested the funds be returned.

Decision:

IN THE MATTER OF the Municipal Government Act

AND IN THE MATTER OF an Appeal made to the Subdivision and Development Appeal Board with respect to:

Appellant: Kris Bouchard and Kaylie Bouchard

To reduce the height of the accessory building located at 431 Sixmile Cove South to a maximum of 4.50m in accordance with previously approved plans by December 15, 2011.

AND UPON HEARING from the Development Officer, and other interested parties,

AND UPON CONSIDERING the relevant provisions of the Municipal Government Act, the Municipal Development Plan, the Land Use By-law, any applicable Statutory Plans, and the circumstances and merits of this case, the decision of the Subdivision and Development Appeal Board is as follows and for the following reasons:

V.CHESTER/L. CUTFORTH/A. HAESLER/T.NICHOLSON/R. STEIN

DECISION: The Appeal is **DENIED** and the decision of the Development Officer regarding the Order issued on November 2, 2011 to reduce the height of the accessory building located at 431 Sixmile Cove South to a maximum of 4.50m in accordance with previously approved plans by December 15, 2011 is hereby confirmed, subject to the amendment noted in our reasons.

REASONS FOR DECISION:

No evidence was submitted to question the validity of the Stop Order. However, the deadline in the Stop Order has been extended to February 15, 2012.

V. Chester

THAT this meeting of the Subdivision and Development Appeal Board be adjourned.

-----CARRIED

-----CARRIED

CHAIRMAN

D. Sanjivlal

ACTING SECRETARY TO THE BOARD