

**TOWN OF BLACKFALDS
SUBDIVISION & DEVELOPMENT APPEAL BOARD HEARING
Minutes July 29, 2019**

**BOARD ORDER
Issued**

An objection has been made to the Subdivision & Development Appeal Board on June 4, 2019 against the issuance of the conditional approval of Development Permit 75-19 for a Change in Use of the property requiring a Relaxation to Part 4, 12.3 (2) of the Planting Density & Minimum Landscaping Area issued by the Town of Blackfalds Municipal Planning Commission on May 14, 2019.

1. HEARD BEFORE the Town of Blackfalds Subdivision and Development Appeal Board on July 2, 2019 – Adjourned to July 29, 2019
2. HEARD BEFORE the Town of Blackfalds Subdivision and Development Appeal Board for a second time on July 29, 2019.

IN ATTENDANCE:

Robert Hogan, Board Chair, SDAB Member at Large
Tennielle Gilchrist, SDAB Member at Large
Jill Bried, SDAB Member at Large
Alejandro Garcia Miranda, SDAB Member at Large
John Cloke, SDAB Town Member at Large
Shelby Craig, SDAB Clerk

REGRETS:

Nadine St. Denis, SDAB Member at Large

ALSO PRESENT:

Alvin Melton, Appellant
Terry Topolnitsky, Town of Blackfalds Planning and Development Manager
Patty Urban, Town of Blackfalds Development Officer II
Billie Scott, Town of Blackfalds Planning and Development Officer I

Upon notice being given to the interested parties and the public, a hearing was held in Council Chambers at the Civic/Cultural Centre at 5018 Waghorn Street, in the Town of Blackfalds in the Province of Alberta on July 29, 2019 commencing at 6:00pm.

Subdivision and Development Appeal Hearing Call to Order

Chair Hogan called the hearing to order at 6:00pm.

Chairperson asked appellant if they have had sufficient time to review information

No objections.

Review of Agenda and Minutes from July 2, 2019 SDAB Adjournment

Chair Hogan asked the Board Members to review the minutes from the SDAB Adjournment of July 2, 2019.

Adjust the attendance record to read SDAB Member Robert Hogan as Chair, not John Cloke.

Motion to approve the July 2, 2019 Minutes:

SDAB Member Gilchrist moved to approve the July 2, 2019 minutes, as amended.
Carried Unanimously

Motion to adopt the July 29, 2019 Agenda:

SDAB Member Cloke moved to approve the July 29, 2019 agenda, as presented.
Carried Unanimously

Motion to approve the recording of the July 29, 2019 Meeting:

SDAB Member Gilchrist moved to approve recording of the July 29, 2019 meeting.
Carried Unanimously

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Confirmation of Public Notifications of the Hearing (SDAB Clerk)

The Clerk confirmed that Public Notifications appeared in the July 11, 2019 issue of the Lacombe Globe.

Objections by Appellants to any Member hearing the Appeal

None.

Outline of the purpose of the Hearing (SDAB Clerk)

An objection has been made to the Subdivision & Development Appeal Board on June 4, 2019 against the issuance of the conditional approval of Development Permit 75-19 for a Change in Use of the property requiring a Relaxation to Part 4, 12.3 (2) of the Planting Density & Minimum Landscaping Area issued by the Town of Blackfalds Municipal Planning Commission on May 14, 2019.

Determination of Validity of the Appeal

No objections.

Development Officer outline of the background of the Appeal

Development Officer Patty Urban presented to the SDAB.

The subject property, bound by East Railway Street and Broadway Avenue, is immediately surrounded by mixtures of commercial, light industrial and public facility land uses. Residential development is located to the west, however separated by railway right of way. The property is included within "Downtown Business Core" of the Town of Blackfalds, Downtown Revitalization Plan adopted by Council October 11, 2011.

Initial development of the 0.53-acre parcel occurred in 1998 with a 2,000²ft shop for the purposes of an "Automotive Repair Service Garage", which was reviewed under Land Use Bylaw 949/03 (Development Permit 104/98).

Municipal approval was granted for the temporary placement of a metal cargo container (sea-can) until such time as a building addition could be constructed. Development Permit 111-15 was granted for a two-year period, followed by a five-year time extension. The sea can is to be removed on or before March 14, 2022.

In November 2017, Administration was directed to investigate the placement of a recreational vehicle (RV) on the property, as it appeared to be occupied. The unit had all slides extended and was skirted. The Land Use Bylaw prohibits an RV to be occupied in the C-1 Commercial Central District. Consultation occurred with the business owner who confirmed the RV was utilized as interim "office and rest area" during less active business days. Administration underwent lengthy discussions with the business owner on the use of the RV, the limitations of the land use district, existing development permit approval, the land use bylaw provisions, and required the RV to be removed from the property. The Town was subsequently informed by the business owner, on April 27, 2018, that the RV had been sold and would remain on site as is, as it was to undergo repairs. A timeline for completion of the repairs was not provided. To date, the RV remains on site, as it was in November 2017, with slides extended, connected to power and propane, and is insulated and skirted.

In reviewing the existing parameters of the "Automotive Repair Service Garage" as approved in Development Permit 104/98, approval did not allow for the repairs of recreational vehicles.

A 'Change in Use Development Permit' was collected and conditionally approved by the Municipal Planning Commission for the "Change in Use" to allow the business owner more flexibility to repair recreational vehicles and other small motorized vehicles. (Development Permit 75-19).

Questions to the Board by the Development Officer

None.

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Statements by Appellant

The appellant has issues with sections 1.C, 1.D, 6, 7, 8, 13 of the terms and conditions of the Development Permit 75-19 Change in Use.

The following statement was provided by the Appellant during his presentation.

1.C) The application shall ensure a that: all unregistered vehicles, vehicle body parts, truck boxes, vehicle cabs and/or chassis are removed from the property within thirty (30) days.

The Development Authority is unaware that the business owner has been or continues to purchase, store, sell, dismantle or recycle vehicles or have the site service as a long term storage facility for unsold vehicles; nor, did the business owner disclose this at the time of application.”

This is simply untrue: Granden Auto does not purchase, store, sell or recycle vehicles. Administration is making up lies, bordering on slander, to support their story. In any repair facility, you need space to put parts while the vehicle is being repaired. The “box” and “cab” that Administration refers to is from a 1968 GMC that is being rebuilt from the ground up. This is an extensive repair that the owner has entrusted to us. Full disclosure, the engine and transmission are inside our shop, where they are being rebuilt and will be put back into the truck.

Furthermore, Administration contacted AMVIC to make a complaint against Granden Auto, stating to AMVIC that we were running an auto wrecking business. AMVIC contacted me to discuss the complaint, they are satisfied that we are not an auto wrecker.

And according to Administration’s own conclusion “the business owner has revealed that intact vehicles are purchased, being sold and/or dismantled, disassembled where selling of useable parts is also occurring on the lands.” This is slander and if this was a public hearing the Town would be facing a lawsuit for liable. Therefore, removing all parts is not an acceptable condition, various large part storage is part of doing business is a garage.

1.D) The existing recreational vehicle be removed from the property on or before August 31, 2019.

This is related to #8 below. Administration has no idea what it takes to repair vehicles, by their asinine comment that the RV is serviced with propane and power. To repair a car engine, you must have gas in the tank, to repair an RV furnace you need propane and power.

The RV is under repair as per the owner’s direction. It is not possible to determine a timeline for such repairs as there are too many variables involved.

6) On site storage of unregistered and unlicensed vehicles and/or equipment shall not be permitted.

As above in #1.C, as a Provincial Inspection Facility, vehicles that come to us are NOT registered. Being private property, there is no reason to have vehicles registered on my property and no other garage in Town, or property owner is required to have vehicles registered on their property.

Many vehicles come to us from farmers and oil companies that use vehicles on their own land and are not required to have their vehicles registered. Is the Town expecting my clients to insure and register vehicles just to bring them to our shop? If so, the Town is targeting our business, as other garages have no such limitations on their clients - including the Town’s own unregistered vehicles.

Also, as stated in my appeal, as a Provincial Inspection Facility, vehicles that come to us are NOT registered, including vehicles from the Town of Blackfalds Council members. Being private property, there is no reason to have vehicles registered on my property and no other garage in Town, or property owners, is required to have vehicles registered on their property.

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7) *The outdoor storage area shall only contain vehicles (cars and trucks), recreational vehicles or other small motorized vehicles undergoing repair and servicing.*

There are many things that businesses need to store other than directly related materials. I have fencing materials and equipment, extra shelving for the business, old tires that are being recycled, and old parts that are being recycled. The Girl Guides also have a storage facility within our compound that is used by them for their needs. The reason we have the sea-can is for storage of valuable equipment that needs protection from the elements. These are only a few reasons for storage, hence the same "storage area". By limiting a storage area to a few specific items limits the ability of Granden Auto to perform daily operations, hindering our business.

8) *All vehicles or recreation vehicles undergoing servicing or repairs on the lands shall not exceed a reasonable storage time period not exceeding 90 days.*

"The purpose of this condition is to have RV's or vehicles not exceed a 90-day window for repairs, as this is generous and was deemed a normal and reasonable time frame for most repairs."

This is a ridiculous statement; Administration personnel are not mechanics and have no knowledge of automotive repair or background documentation to support this statement. Even the statement itself states "for most repairs" but not all repairs. Does Administration think that we will turn away business if we think the repair can't be completed in a certain time frame?

We work on a wide variety of vehicles and many vehicles have issues that need time and resources to make the repairs. Sourcing parts for vehicles takes time and, in some cases, need to be fabricated.

Putting a timeline on repairs is not practical and is not reasonable for any garage to agree to such a limitation.

Do the other garages have this same stipulation in their Development Permit?

13) *This permit is valid until December 31, 2022. It shall be the responsibility of the application to apply a minimum of thirty (30) days prior to its expiration.*

Administration would have you believe that a timeline on Development Permits are common. This may be true on temporary structures and uses, such as the sea-can but NOT on land use.

Municipalities create a Land Use Bylaw to determine what type of development they want in a certain area; this is a long-term plan that can support development into the future. If they limit the time of a development permit for land use, nothing would ever be built.

Administration can say that it happens all the time, but they are either trying to mislead this board or are woefully ignorant of municipal planning practices.

The facts are simple: Granden Auto has completed a Development Permit, we should be held to the same standard as other businesses in terms of times and Provincial laws. We should not be put under conditions that are only put in place to hurt our business; no other garage has the same conditions, and neither should we.

Questions by the Board to the Appellants

Member Bried: Through all the vehicles on the lot, what percentage of them are owned by either yourself personally or Granden Auto?

Appellant: There are three vehicles; we have two trucks and a car.

Member Bried: Moving forward, what are your expectations about how many RV repairs your planning on doing and how many do you have other than the one in question?

Appellant: There's two other RV's on the lot – one is a short-term project and the other one is long term.

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Additional comments from the Development Officer

Development Officer: If I may, through the Chair, in going through the reasons for appeal expressed by the appellant, it's indicated that the Change in Use depends on body parts and it's been stated such that it's of the auto body intent. Through that, we were unaware that it was occurring on site through the review process and all vehicles or recreational vehicles undergoing servicing and repairs – we're still not sure of the purpose that's it's being lived in or continually under repair. It's acknowledged that rebuilding takes time through that process.

With the reference to the provincial inspection facility, the Town under no circumstances filed a complaint – that's an invalid statement. We phoned AMVIC, which was through the mission in the report which outlines internet searches and a quick phone call. It was by no means a complaint; we do not advise them that way.

Having a valid date to December 31 of 2022, through planning rational, was granted to allow us to have the completion, re-write and have the Use worked in through conform. It is not an unreasonable thing. We issue temporary permits for different things.

Planning and Development Manager: If I may add to that, with respect to setting a date, by setting that to the 2022, our Land Use Bylaw will be completed by then and we've already looked at some of the aspects in respect to what is going on in there to look at changing in order to add certain things that are better suited to assist the operation.

That way, by setting a review date, by then some of those things may be listed as permitted and some may be listed as discretionary and would have to go back to the Municipal Planning Commission for approval.

Rebuttal statement from the Appellants

None

Additional questions from the Board to any of the above

To Administration from Member Bried: Is there any merit in waiting until the Land Use Bylaw is reviewed and the new one is put into place before making a decision on this?

Administration: No, if an appeal is made, we cannot defer it until the new Land Use Bylaw comes in because we're not sure when it is. We haven't completed our review, we're not even halfway through the bylaw and we haven't looked at the permitted and discretionary uses of the designated areas. When we do get to that point, we will be looking at including more of that strip as downtown commercial or not. Those are the things that we will be looking at.

Conclusion of the Hearing

Motion to adjourn:

SDAB Member Bried moved to adjourn at 6:36pm.

Carried Unanimously

DECISION

In consideration of the above, the Board makes the following decision based on the reasons set out below:

That, in the matter of the appeal by Alvin Melton of Granden Auto objecting the issuance of the conditional approval of Development Permit 75-19 for a Change in Use of the property requiring a Relaxation to Part 4, 12.3 (2) of the Planting Density & Minimum Landscaping Area issued by the Town of Blackfalds Municipal Planning Commission on May 14, 2019.

The Board, having considered the written and verbal evidence submitted, the Board rendered its decision as follows:

1. The applicant shall ensure:
 - a. That all non-compliant signage is removed from the property within seven (7) days from the date of approval;

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- b. That all parking and loading stalls are clearly delineated as per the site plan approved in Development Permit 104/98 (Schedule A), satisfying the minimum size requirements outlined in Part 4 Section 6.1 within fourteen (14) days;
 - c. That all vehicle body parts, truck boxes, vehicle cabs and/or chassis are removed from the property within thirty (30) days, any unregistered vehicles remaining on the property must have an active work order and meet all other conditions below.
 - d. That the recreational vehicle that has been on the property since November 2017 is to be removed from property on or before Sept 30, 2019.
2. The applicant shall ensure that the property is always maintained to the satisfaction of the Development Authority and kept free and clear of weeds and any other debris.
 3. The property shall not be used as an auto wrecker, auto body repair shop, car, truck or recreational vehicle wash at any time.
 4. All hazardous materials, fluids or recyclable waste shall be stored in regulated facilities and disposed of in accordance with Provincial regulations.
 5. Any recreational vehicle on site shall not be used as an accessory use or for short- or long-term occupancy at any time.
 6. On site storage of vehicle body parts, truck boxes, vehicle cabs, chassis and/or other equipment shall not be permitted.
 7. The outdoor storage area shall only contain vehicles (cars and trucks) recreational vehicles or other small motorized vehicles undergoing repair and servicing.
 8. All vehicles or recreational vehicles undergoing servicing or repairs on the lands shall not be on the premises for a time period exceeding 120 days.
 9. A work order that states the date servicing or repairs commenced is to be made available to Town or Municipal Enforcement Officers upon request.
 10. The applicant shall ensure that there is no contamination of surface or groundwater from this use.
 11. Any changes or intensification of Change in Uses shall require a separate permit application.
 12. Any signage required for the Change in Use shall require a separate permit application.
 13. Nothing in this Development Permit or the Land Use Bylaw exempts a person to obtain a development permit as required by the Land Use Bylaw or to obtain any other permit, license or other authorization required by the Land Use Bylaw or any other Bylaw.
 14. This Development Permit is valid until December 31, 2022. It shall be the responsibility of the applicant to apply for another permit within a minimum of thirty (30) days prior to its expiration.

Rational:

- As the property is a Provincial Inspection Facility, it was deemed inevitable that there will be unregistered vehicles on the property.
- The occupancy of a recreational vehicle is not permitted in a C-1 district under the Land Use Bylaw.
- Auto wreckers and autobody shops are not permitted uses in a C-1 district under the Land Use Bylaw.
- The outdoor storage of tires, vehicle parts, and other related items has had a negative visual impact in the downtown area.
- The recommendation for an incremental time frame for compliance to remedy the contraventions and improve the overall site appearance was more than reasonable.
- The board reiterated the importance of Administration to follow up on all conditions to ensure compliance.
- The time a vehicle can remain on the property was increased to 120 days to allow for rare part delivery, complex repairs and/or customer payment issues. To allow for easier enforcement of this, Work Orders are to be made available.
- The deadline for the removal of the recreational vehicle was extended by one month in consideration of the appeal and the time allotted for a decision and response.
- An expiry date of December 31, 2022 was deemed an appropriate timeline for Development Permit 75-19.

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Motion:

SDAB Member Garcia Miranda moved that the SDAB Board approve of all additions, subtractions and edits of the conditional approval of Development Permit 75-19 Change in Use and move forward with the SDAB Clerk notifying Administration and the appellant of the SDAB Board's decision.

Carried Unanimously

RPHogan

**Robert Hogan, Chair
Subdivision and Development Appeal Board**

Note: Pursuant to the Municipal Government Act S.A. 2000 c.M-26, s. 688, this decision can be appealed to the Alberta Court of Appeal on a question of law or jurisdiction with respect to a decision of the Subdivision and Development Appeal Board. An application for leave to appeal must be made to a judge of the Court of Appeal within thirty (30) days after the issue of the decision sought to be appealed, and notice of the application must be given to the Subdivision and Development Appeal Board and any other persons that the judge directs.

Signature: *RPHogan*
RPHogan (digitally signed via email Aug 7, 2019)