

**SUMMER VILLAGE OF BIRCHCLIFF  
SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
FEBRUARY 7, 2022  
RECORD OF HEARING AND DECISION**

<b>PRESENT</b>	Chair:	Roger Dufresne
	Member-at-large:	Jim Freake via Zoom
	Member at Large:	Karen McCaffery
	CAO:	Tanner Evans
	Development Officer:	Kara Kashuba
	Recording Secretary:	Teri Musseau
	Appellant:	Larry Cameron
		Terri Cameron via Zoom

**CALL TO ORDER** Chair Dufresne called the hearing to order at 9:00 a.m.

**PURPOSE OF HEARING** The purpose of this hearing is to hear an appeal received on November 15, 2022, appealing the stop order issued by the Development Officer on November 9, 2021, for unauthorized driveway development for the property located at 383 Birchcliff Road, Lot 10, Block 1, Plan 7089MC, in the Summer Village of Birchcliff.

**APPEAL FILED AND NOTICE GIVEN** Pursuant to Section 686(1) of the Municipal Government Act, the appeal was filed within the 21-day appeal period following the November 9, 2021, issuance of the stop order.

Section 686(2) of the Municipal Government Act requires that the appeal hearing be convened within 30 days of the receipt of notice of appeal. The appeal was received on November 15, 2021. An extension was requested by the office and the extension agreed to by all parties.

**DEADLINE FOR DECISION** Pursuant to Section 687(2) of the Municipal Government Act, the Subdivision and Development Appeal Board must give its decision in writing together with reasons for the decision within 15 days of concluding the hearing.

**OBJECTIONS TO MEMBERS OF THE BOARD** The Members of the Subdivision and Development Appeal Board are appointed in accordance with the Subdivision and Development Appeal Board Bylaw #204-18.

Members of the Subdivision and Development Appeal Board were asked if they felt they should disqualify themselves from hearing the appeal before them and no one felt they needed to disqualify themselves.

Mr. & Mrs. Cameron were asked if they had an objection to any of the members of the Subdivision and Development Appeal Board present hearing the case. Neither had objections to any of the members hearing their case.

**DISCLOSURE OF EVIDENCE** The members of the Subdivision and Development Appeal Board were asked if they had sought, been given or reviewed any evidence prior to the hearing.

No members had any prior knowledge regarding the appeal prior to the hearing other than the provided agenda package.

**APPEAL  
LETTER READ**

Tanner Evans, CAO, read the appeal letter received from Mr. & Mrs. Cameron on February 15, 2021, into the record.

**JURISDICTION**

Tanner Evans, CAO, provided his report to the Board on duties and jurisdiction.

**RECESS FOR  
JURISDICTION**

Chair Dufresne called for a short recess while the board discussed jurisdiction at 9:14 a.m.

Chair Dufresne reconvened the hearing at 9:20 a.m.

**DECISION OF  
THE BOARD ON  
JURISDICTION**

The Subdivision and Development Appeal Board determined it had jurisdiction to hear the appeal as a stop order had been issued by the Development Officer.

**HEARING  
PROCEDURES**

Chair Dufresne reviewed the procedures to be followed for the hearing.

**BACKGROUND**

Kara Kashuba, Development Officer, provided the Subdivision and Development Appeal Board the background of the appeal.

In June 2021, a development permit was issued and approved by the Municipal Planning Commission for asphalt paving for the property located at 383 Birchcliff Road. The existing driveway on the property is concrete up to the property line and the application was to pave over the existing gravel carriageway.

*“Carriageway means that portion of the road right-of-way available for vehicular movement”.*

*“Driveway means a vehicle access route between the carriageway of a public road and a use on the parcel”.*

The application was presented to the Municipal Planning Commission for the following reason:

1. The maximum width of the driveway shall be 10m (32.80ft.), with the proposed 19.2m (63ft.) width, a variance of 9.2m (30ft.) is required, therefore the decision must come from the Municipal Planning Commission.

The Municipal Planning Commission reviewed the application and decided the following:

Approve the application for asphalt paving of the carriageway at 383 Birchcliff Road subject to the following conditions being met to the satisfaction of the Development Officer:

- Completions Deposit of \$500.00
- Driveways shall be constructed in such a manner not to interfere with the natural flow or absorption of water.
- The maximum width of a driveway shall not exceed 10m (32.80ft.).

In October, it was noted that the driveway paving appeared to be much wider than the 10m maximum approved within the carriageway.

A letter was sent to the homeowners advising that the development permit had not met the condition that the maximum width of the driveway shall not exceed 10m (32.80ft.). The driveway had been paved at a width of 19.2m (63ft.). The driveway was to be put into compliance no later than end of October.

A site visit was conducted with the homeowner to discuss the noncompliant asphalt paving. Administration informed the homeowner that the driveway was still required to be put into compliance by the end of October, and if that timeline could not be met, to provide a more reasonable timeline. No such timeline was received.

November 9, 2021, a Stop Order was issued as it was determined that the lands contravene the Land Use Bylaw in the following way:

- (1) The driveway exceeds the driveway maximum width requirements set out in section 3.1 (1)(a) of the Land Use Bylaw.

**APPLICANTS  
PRESENTATION**

Mr. & Mrs. Cameron were given an opportunity to present their case.

Mr. Cameron noted his written appeal letter states his position. He believes the carriageway interpretation was their mistake as it was not interpreted the same way as the development authority. He believes he met the conditions of the development permit. He explained why he feels it is common sense to pave the carriageway to control water flow.

Mrs. Cameron noted the development permit was for asphalt paving as stated on the development permit, and not a driveway.

**IN SUPPORT OF  
STOP ORDER  
BEING  
IMPROPERLY  
ISSUED**

Written submissions were received from Horseshoe Paving Ltd. and Thom Jewell. Both letters were in support of the development but did not speak to reasons the stop order was improperly issued.

No one was present to speak to reasons the stop order was improperly issued.

**IN SUPPORT OF  
STOP ORDER  
BEING  
PROPERLY  
ISSUED**

No written submissions were received supporting the stop order being properly issued.

No one was present to speak to reasons the stop order was properly issued.

**SUMMARY  
FROM THE  
APPELLANTS**

Mr. Cameron believes water flow trumps the conditions of the permit. He maintains that the conditions of the development permit were met and suggests that due to Covid, communication with the Summer Village Administration was difficult.

Mrs. Cameron stated they are being boxed into the definition of a driveway.

**DEVELOPMENT  
OFFICER  
SUMMARY**

Kara Kashuba summarized her case stating the facts.

The Municipality's Land Use Bylaw No 170/13 (the "Land Use Bylaw") provides the following:

2.10(1)(a) Where the Development Officer finds that a development or use of land or building is not in accordance with Part 17 of the Municipal Government Act, the Land Use Bylaw, the Subdivision and Development Regulation, a Development Permit or subdivision approval, the Development Officer may, by notice in writing, order the registered owner, person in possession of the land or buildings, or the person responsible for the contravention or all of any of them to:

(ii) Demolish, remove, or replace the development...

3.1 (1)(a) The maximum width of a driveway shall be 10m (32.8ft.). Driveway width shall be measured with the carriageway.

Since the driveway was constructed wider than allowable in the Land Use Bylaw, and a variance was not granted by the Municipal Planning Commission who approved the paving of the driveway with the explicit condition that it be no wider than 10 meters, a stop order was issued, requesting the development be brought into compliance.

The Municipal Government Act provides the following:

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.

The approved development permit conditions and supporting documents for the asphalt paving were clear that the Municipal Planning Commission had approved the paving for a maximum width of 10m only. This development permit application was

approved and the timeframe to appeal any conditions on the permit expired on July 20, 2021. The appeal today is only against the issuance of a stop order, which, as noted above, is validated by Birchcliff's Land Use Bylaw and the Municipal Government Act.

**OPPORTUNITY FOR A FAIR HEARING**

Chair Dufresne asked the appellants if they felt he had an opportunity to state their case. The appellants acknowledged they had.

**HEARING CLOSED**

Chair Dufresne thanked everyone for their attendance and presentations. A written decision of the Board will be made within 15 days. The hearing was declared closed at 9:44 a.m. No further submissions will be entertained by the board.

**FINDINGS OF THE BOARD**

Upon hearing and considering the representations and the evidence of the parties concerned, the Commission finds the facts in the matter to be as follows:

1. The development was presented to the Municipal Planning Commission on June 16, 2021, requesting a variance to allow for asphalt paving to a width of 19.2m.
2. The Land Use Bylaw #170-13 states the maximum width of a driveway "shall" be 10m.
3. The June 16, 2021, minutes from the Municipal Planning Commission meeting clearly state, as per the Land Use Bylaw #170-13, "*the maximum width of a driveway shall not exceed 10m.*"
4. Condition 8 of the development permit #211608, issued June 29, 2021, by the Development Officer, states "*the maximum width of the driveway shall not exceed 10m*".
5. The Land Use Bylaw #170-13 states:
  - 2.10(1)(a) Where the Development Officer finds that a development or use of land or building is not in accordance with Part 17 of the Municipal Government Act, the Land Use Bylaw, the Subdivision and Development Regulation, a Development Permit or subdivision approval, the Development Officer may, by notice in writing, order the registered owner, person in possession of the land of buildings, or the person responsible for the contravention or all of any of them to:
    - (ii) Demolish, remove, or replace the development...
6. The Municipal Government Act, Section 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.

**SDAB DECISION** MOVED by Chair Dufresne that after reviewing the statutory documents and all documents submitted by both the Appellant and the Development Officer, the Subdivision and Development Appeal Board has decided to uphold the stop order, and deny the appeal, as the Subdivision and Development Appeal Board is satisfied of the following:

1. That the stop order was properly issued.
2. That the stop order properly reflects the motion provided by the Municipal Planning Commission stating the maximum width of a driveway shall not exceed 10m.
3. That the stop order properly reflects the requirements set out by the development permit stating the maximum width of the driveway shall not exceed 10m.
4. That both the Municipal Planning Commission's decision and development permit are supported by the Land Use Bylaw; specifically, that the maximum width of the driveway "shall" be 10m and that "shall" mean mandatory compliance.

CARRIED

**Dated at the Town of Sylvan Lake this 7th day of February 2022.**

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**Roger Dufresne**  
Chairman  
Subdivision and Development Appeal Board