

**SUMMER VILLAGE OF BIRCHCLIFF
SUBDIVISION AND DEVELOPMENT APPEAL BOARD AGENDA
STOP ORDER ISSUED – UNAUTHORIZED DRIVEWAY DEVELOPMENT
FEBRUARY 7, 2020 @ 9:00 a.m.**

- | | | |
|-----|---|-----------------------|
| 1. | Call to Order | Chairman |
| 2. | Purpose of Hearing/Confirmation of Notice | Secretary |
| 3. | Polling for Objections to members | Secretary |
| 4. | Background of appeal | CAO |
| 5. | Duties & Jurisdiction | CAO |
| 6. | Hearing Procedures | Chairman |
| 7. | Background from Development Officer | Development Officer |
| 8. | Statement & Presentation**
a) Appellant | Larry & Terri Cameron |
| 9. | Questions from the board | |
| 10. | Written letters supporting improper
issuance of stop order | Secretary |
| 11. | Speakers supporting improper
issuance of stop order | |
| 12. | Questions from the board to speakers | |
| 13. | Written letters supporting proper
issuance of stop order | Secretary |
| 14. | Speakers supporting proper
issuance of stop order | |
| 15. | Questions from board to speakers | |
| 16. | Rebuttal Statement from Appellant
(a) Appellant | Larry & Terri Cameron |
| 17. | Development Officer Summary | Development Officer |
| 18. | Additional questions from Board to anyone | |
| 19. | Conclusion of Public Hearing | |

An appeal was received on November 15, from the owners of Lot 10, Block 1, Plan 7089MC, appealing a stop order issued by the Development Officer, on November 9, 2021, for unauthorized driveway development, in the Summer Village of Birchcliff.

Under the provisions of the *MGA* the Subdivision and Appeal Board may deny the appeal and uphold the stop order, or uphold the appeal and revoke or vary the stop order.

NOTICE BEING GIVEN by mail on January 24, 2022, to the appellant/applicant and owners of property located within 200' radius of the proposed development and published on the Municipal website.

Summer Village of Birchcliff – Municipal Planning Commission

Agenda Item

383 Birchcliff Road (Lot 10, Block 1, Plan 7089MC)

Development Permit Application

Background:

The homeowners of 383 Birchcliff Road (Lot 10, Block 1, Plan 7089MC) in the Summer Village of Birchcliff submitted an application for asphalt paving in front of their property on Municipal Land within the carriageway. This property is in the R1 District (Lakeshore Residential).

The driveway width shall be measured within the carriageway, the existing driveway is currently gravel and is a width of 19.2m (63ft.)

Discussion:

This application is before MPC for the following reason:

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

Recommendation:

In the case of a Land Use Bylaw,

- a. “shall” and “must” means mandatory compliance;
- b. “should” means compliance in principle, but is subject to the discretion of the Development Authority where compliance is impracticable or undesirable because of relevant planning principles or circumstances unique to a specific application; and
- c. “may” means discretionary compliance or a choice in applying regulation. The regulation can be applied, enforced or implemented if the Development Authority chooses to do so, depending on site specific circumstances.

The Land Use Bylaw is clear that the maximum width of a driveway “shall” be 10m (32.80ft.)

5.3.5. of the Municipal Development Plan states that the continuance of the country lane ambiance in Birchcliff is very important such that:

- Development be set back from Birchcliff Road and Birch Way to accommodate landscaping so the view along these roads is more of a natural setting than a row of residential buildings.

After reviewing the application and all relevant planning documents, it is the recommendation of administration to deny the width variance requested and for the paved driveway width to be reduced to 10m (32.80ft.), the Summer Village will then sod the extra gravel area within the carriageway.

Conditions:

If approved, Administration would recommend the following conditions:

- 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 be 10m (32.80ft.).

Authorities:

The MPC may:

- Grant a variance to reduce the requirements of any use of the LUB and that use will be deemed to comply with LUB.
- Approve application even though the proposed development does not comply or is a non-conforming building if:
 - It would not unduly interfere with the amenities of the neighborhood, or
 - Materially interfere with or affect the use, enjoyment, or value of neighboring parcels of land, And
 - It conforms with the use prescribed for that land or building in the bylaw.
- Consider a Variance only where warranted by the merits or the proposed development and in response to irregular lot lines, parcel shapes or site characteristics which create difficulties in siting structures within the required setback or in meeting the usual bylaw requirements, except there shall be no variance for Parcel Coverage or Building Height.

Decision:

In order to retain transparency of the Commission, Administration recommends one of the following:

1. Approve the application with or without conditions (*Section 642 of the MGA*), or
2. Deny the application stating reasons why (*Section 642(4) of the MGA*).

[REDACTED]
383 Birchcliff Road
Birchcliff Summer Village
Sylvan Lake, AB T4S R6

Kara Kashuba
Junior Development Officer
Birchcliff Summer Village
Bay 8, 14 Thevenaz Industrial Trail
Sylvan Lake, AB T4S 2J5
development@sylvansummervillages.ca

Dear Kara,

RE: Request for approval to pave the roadway in front of our property

I am formally writing to request approval to pave a small section of Birchcliff Summer Village roadway in front of our property. The section in question is at the side of the main road coming into the cul-de-sac in front of our parking pad in front of our garage. We have supplied a site plan with drawings of the area for your reference.

We would like it paved as this area is very hard to maintain with issues such as weed growth, snow removal problems, and unwanted gravel spreading on the road, our property and our neighbour's driveway, plus it's an eyesore to our property and the lots nearby.

We also want to replace a gravelled parking spot on our property at the end of this region with grass and landscaping to 'green it up' and improve the natural aesthetics of our lot. Leaving the small gravelled area in question just works against our intentions.

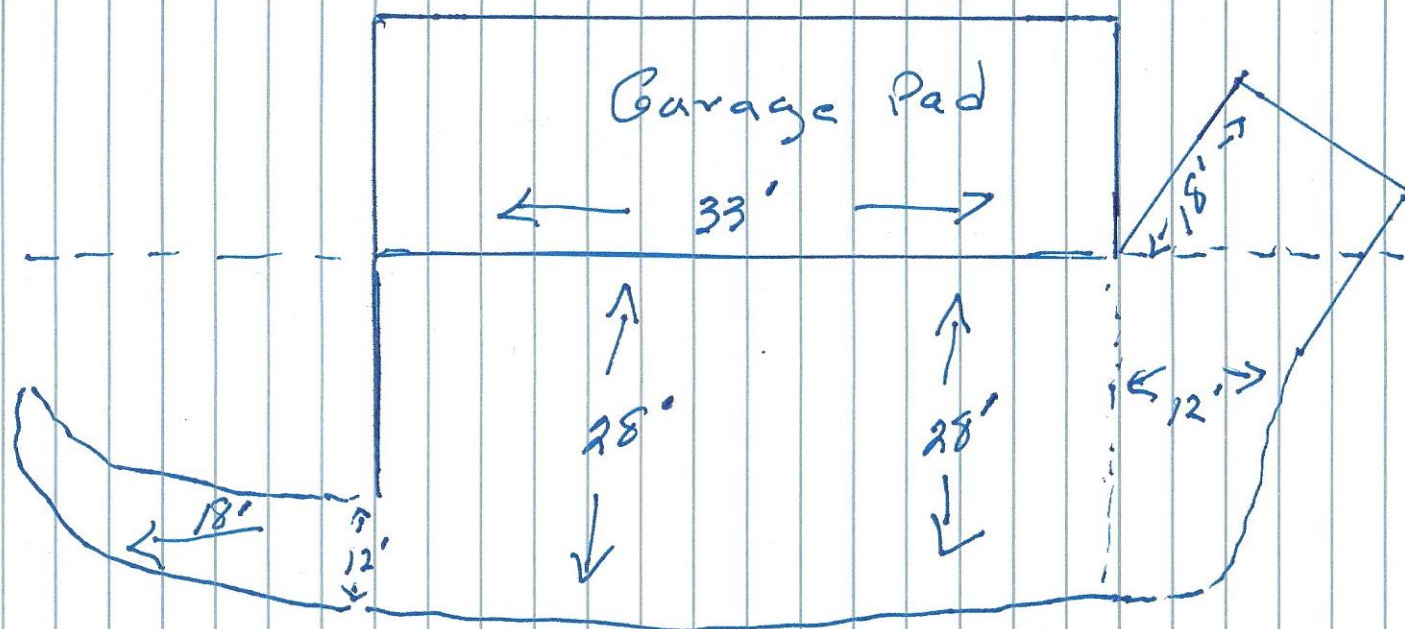
We have received quotes from a reputable contractor who has worked extensively in the area before and plan to have the job done in the next couple of months at our own expense. As the majority is on Birchcliff Summer Village property, we would appreciate receiving approval to go ahead.

Please contact me at [REDACTED] if you have any questions or concerns.

We look forward to a positive response.

[REDACTED]

383 Birch Cliff Rd



Lot(s) 10 Block M

#383 Birchcliff Road.

1. Leonard Olson, Alberta Land Surveyor, who includes the attached plan and any personal supervision of the practice of the Alberta Land Survey Act within those limits of the opinion that the plan illustrates the boundaries of the property and other rights of way, and other rights of title to the property.

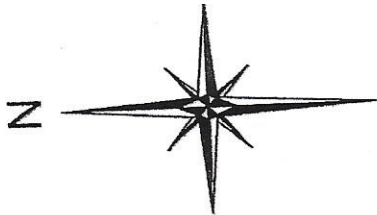
2. The improvements are shown as follows:
1. no visible encroachments or situated on an adjoining property;
2. no visible encroachments or other registered instruments.

Purpose: This Report has been prepared for the Client's purpose only and is not to be used for any other purpose. The Client is responsible for the accuracy of the information provided to the Surveyor. The Surveyor is not responsible for the accuracy of the information provided to the Client.

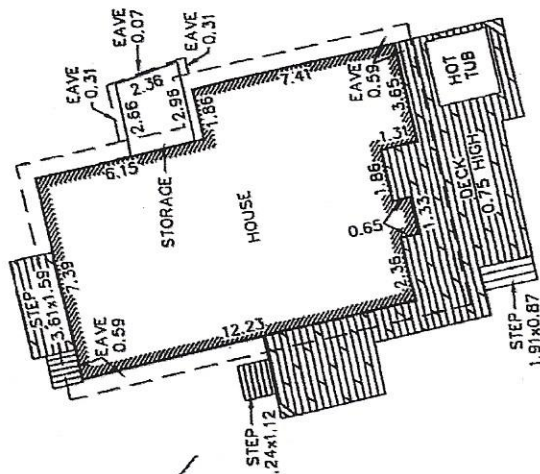
Dated at Lacombe, Alberta this 21st day of March 2011.
Leonard R. Olson, A.L.S.
(Copyright reserved)
This document is not valid unless signed by the Surveyor and an Olson Surveys Ltd.

-Distances to buildings unless shown otherwise
-Date of Survey: March 21, 2011
-Date of Title Search: March 21, 2011
-Unless otherwise stated, the greatest extent of the property is shown
-Distances are in feet
-Fences are shown
-Statutory iron posts
-Unless shown otherwise, the property line of the property is shown
-Area referred to is subject to the Utility Right of Way

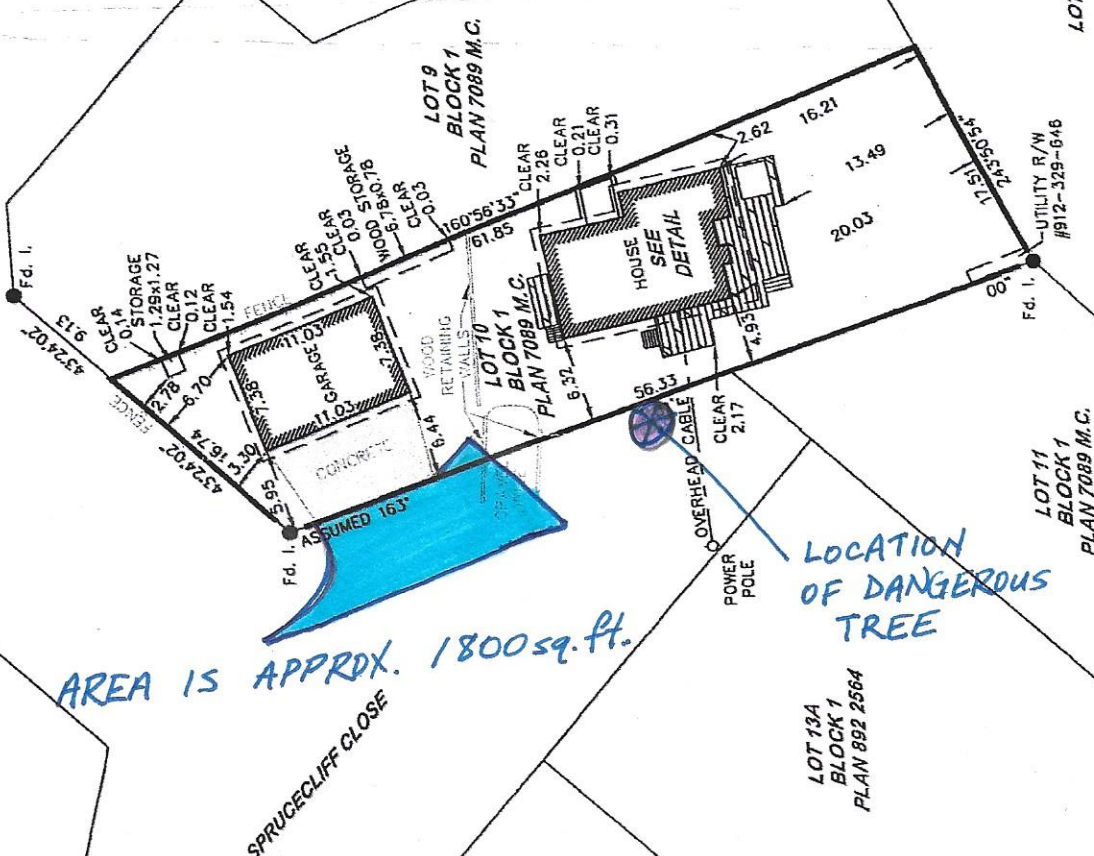
Drawn By: P. Olson
Date: March 21, 2011
Scale: 1" = 100'
File No.: RPR-3161



PARKLAND AVENUE



DETAIL
SCALE 1:250



LOT 9 RESERVE
BLOCK 1
PLAN 7089 M.C.

UTILITY R/W
#912-329-646

LOT 11
BLOCK 1
PLAN 7089 M.C.

LOCATION OF DANGEROUS TREE

LOT 13A
BLOCK 1
PLAN 892 2564



Google Maps Birchcliff, Alberta



Image capture: Jun 2014 © 2021 Google



Street View



Summer Village of Birchcliff
June 16, 2021
Municipal Planning Commission Minutes

Minutes of a Municipal Planning Commission Meeting of the Summer Village of Birchcliff, Province of Alberta, held May 3, 2021, at the Summer Village Administration Office in Sylvan Lake, Alberta.

PRESENT: Chair: Ann Zacharias via Zoom
Councillor: Frank Tirpak via Zoom
Member-at-Large: Michael Wells via Zoom
CAO: Tanner Evans via Zoom
Junior Development Officer: Kara Kashuba via Zoom
Applicant: Brian Engel via Zoom
Terry Cameron via Zoom
Jesse Bjornson

CALL TO ORDER: Chair Zacharias called the meeting to order at 2:30 p.m.

AGENDA:

MPC-21-017 Moved by Frank Tirpak that the agenda be approved as presented.
CARRIED

DEVELOPMENT APPLICATIONS

1. 83 Birchcliff Road – Escarpment Work and Boathouse Repairs

Application for escarpment work and boathouse repairs (Lot 4&5, Block 3, Plan 4486AX).

2. 383 Birchcliff Road – Asphalt Paving

Application for asphalt paving (Lot 10, Block 1, Plan 7089MC)).

Kara Kashuba, Brian Engel, Jesse Bjornson, and Terry Cameron left the meeting at 3:00 p.m.

DECISIONS

1. 83 Birchcliff Close – Escarpment Work and Boathouse Repairs

MPC-20-018 Moved by Ann Zacharias to deny the application for Escarpment Work and Boathouse Repairs at 83 Birchcliff Road for the following reasons:

- The proposed boathouse renovations include structural alterations that are considered to be more than routine maintenance or repair and is considered a rebuild. The boathouse is a non-conforming building and according to the MGA section 643 (5) "a non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered to except: to make it a conforming building; if the development authority considers it necessary.

Initials

Summer Village of Birchcliff
June 16, 2021
Municipal Planning Commission Minutes

- As stated in the MDP 6.3.4, "...remedial actions may be necessary from time to time, the village strongly desires that the bank abutting the shoreline remain as natural as possible to retain natural ecosystems" and the LUB part 3 section 4(5) states that the land located below the top of bank of the lake remain in their natural state. As the geotechnical report states, the work proposed on the bank is not necessary for the retention of the bank as the slope is not in danger of failing.
CARRIED

2. 383 Birchcliff Road – Asphalt Paving

MPC-20-019

Moved by Ann Zacharias to 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 (2.80ft.).
CARRIED

ADJOURNMENT:

MPC-20-020

Moved by Chair Zacharias that the Municipal Planning Commission meeting be adjourned at 3:59 p.m.
CARRIED

ANN ZACHARIAS, CHAIR

TANNER EVANS, CAO

Initials



Summer Village of Birchcliff
Bay 8, 14 Thevenaz Industrial Trail
Sylvan Lake, AB T4S 2J5

DEVELOPMENT PERMIT

Permit Number: 211608

Municipal Address: 383 Birchcliff Road

Lot: 10 Block: 1 Plan: 7089MC

Applicant:



On Behalf Of: -

The Development Involving: *Asphalt Paving*

Has Been Approved Subject to the Following Conditions:

- 1) The payment of all outstanding property taxes or the making of arrangements, satisfactory to the Council, for the payment thereof, prior to the commencement of the development.
- 2) The development commences and continues in the manner applied for and that all development complies with the regulations and specifications of the Land Use By-Law under which this permit was issued.
- 3) The construction shall be completed within 12 months and the landscaping shall be completed within 2 years of the date of permit issuance.
- 4) The payment of a \$500.00 completions deposit to ensure all conditions of this development permit have been met, including the completion of building construction within a one-year period, landscaping completed with two years, and any or all road damage repaired.
- 5) All parcels shall be graded to ensure that storm water is directed to a drainage ditch without crossing adjacent land, except as permitted by the Development Authority. All maintenance and upkeep shall be the responsibility of the property owner. A lot grade certificate may be required at completion to ensure that proper drainage on the property exists.
- 6) Any damage to public roads due to the construction shall be repaired immediately at the expense of the permit holder.
- 7) Driveways shall be constructed in such a manner not to interfere with the natural flow or absorption of water.
- 8) The maximum width of a driveway shall not exceed 10m (32.80ft.).
- 9) Any development commenced prior to July 20, 2021 (21-day appeal period), is at the applicant's own risk.

You are hereby authorized to proceed with the development specified, provided that any stated conditions are complied with, that the development is in accordance with any approved plans and applications, and that construction conforms with any provincial and federal requirements relative to this development.

Date of Decision: June 16, 2021

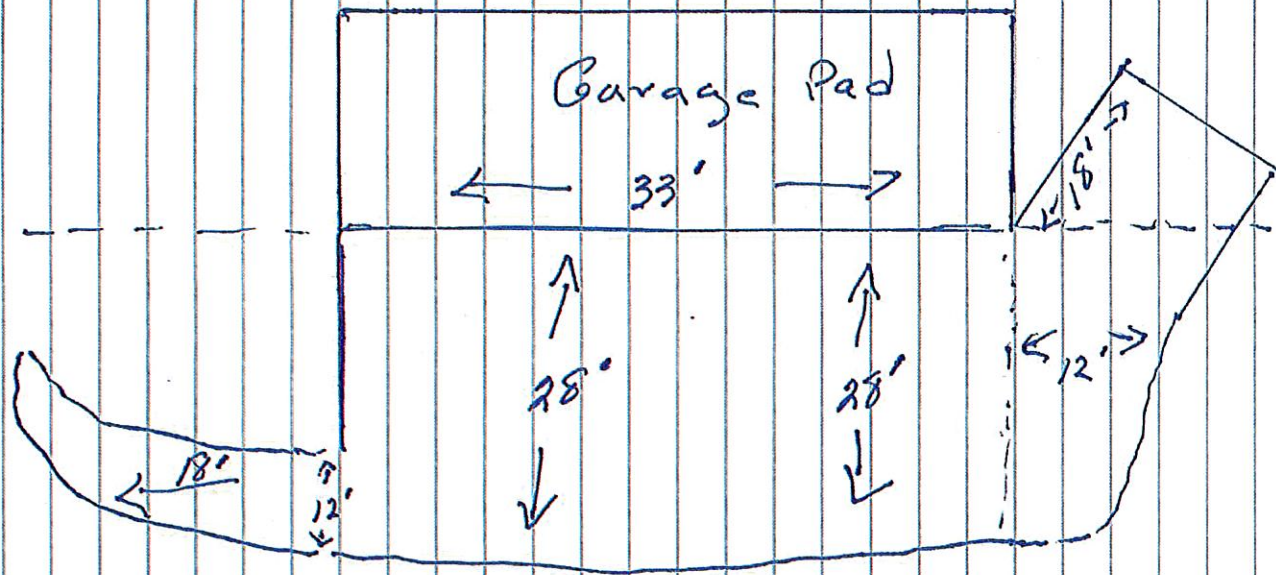
Date of Issuance of Development Permit: June 29, 2021


Development Authority

Note:

- 1) The issuance of a development permit in accordance with the notice of decision is subject to the condition that it does not become effective until 21 days after the date that the development permit is issued.
- 2) This permit is valid for a period of 12 months from the date of its issue, or the date of the decision of the Council confirming it. If at the expiry of this period, the development has not been commenced or carried out with reasonable diligence as determined by the development officer, this permit shall be null and void, unless an extension to this period, being no longer than an additional 12 months, has been previously granted.
- 3) Development Authority may carry out on-site inspections of the development at any time.

383 Birch Cliff Rd



DEVELOPMENT PERMIT

NO: 211608

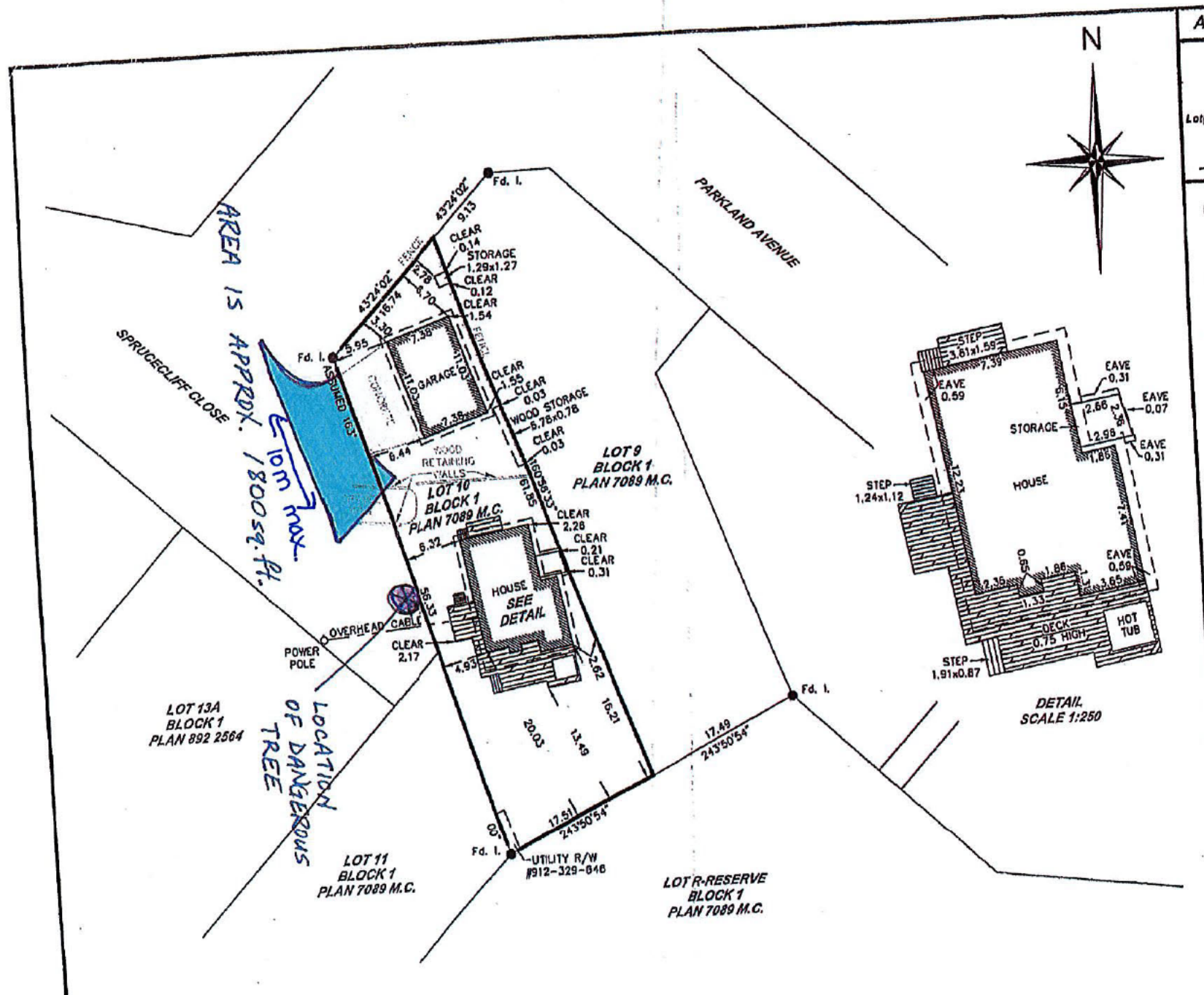
CONDITIONALLY APPROVED

ON: June 29, 2021

BY: Hemkesh
(Approving Authority & Signature)

(2 PAGES)

← Approved for a 10m max
driveway width. →





Summer Villages Administration Office

#2 Erickson Drive

Sylvan Lake, AB T4S 1P5

Ph: 887-2822

STOP ORDER

Municipal Government Act, Section 645

November 9, 2021

Teresa & Larry Cameron

☐ Registered Mail

Tracking Number: _____

☐ E-Mail: _____

Attention: Teresa & Larry Cameron

Dear Teresa & Larry:

**Re: Unauthorized Driveway Development
Plan 7089MC, Block 1, Lot 10**

In my capacity as the Development Authority for the Summer Village of Birchcliff (the "Municipality"), I am hereby issuing this Stop Order pursuant to section 645 of the *Municipal Government Act* with respect to the lands legally described as:

PLAN 7089MC

BLOCK ONE (1)

LOT TEN (10)

EXCEPTING THEREOUT ALL MINES AND MINERALS.

(hereinafter referred to as the "Lands").

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 of ***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*.

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.

(2.1) A notice referred to in subsection (2) must specify the date on which the order was made, must contain any other information required by the regulations and must be given or sent to the person or persons referred to in subsection (2) on the same day the decision is made.

(3) A person who receives a notice referred to in subsection (2) may appeal to the subdivision and development appeal board in accordance with section 685.

646(1) If a person fails or refuses to comply with an order directed to the person under section 645 or an order of a subdivision and development appeal board under section 687, the municipality may, in accordance with section 542, enter on the land or building and take any action necessary to carry out the order.

(2) A municipality may register a caveat under the *Land Titles Act* in respect of an order referred to in subsection (1) against the certificate of title for the land that is the subject of the order.

(3) If a municipality registers a caveat under subsection (2), the municipality must discharge the caveat when the order has been complied with.



Summer Villages Administration Office

#2 Erickson Drive
Sylvan Lake, AB T4S 1P5
Ph: 887-2822

On October 20, 2021, the Municipality sent you a letter advising that your development permit DP#211608 has 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 (62.99ft.). The driveway was to be put into compliance no later than October 31, 2021.

On October 27, 2021, the Municipality conducted a site visit to review the driveway width with you.

On October 28, 2021, the Municipality emailed you stating that the driveway was still to be put into compliance by October 31, 2021 and if that timeline could not be met to provide us with a timeline as to when it will be. No timeline was received.

Upon reviewing the Land Use Bylaw and the information outlined above, I have determined that the Lands contravene the Land Use Bylaw in the following ways:

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

Accordingly, you are hereby ordered bring the Driveway into compliance with the 10 metres maximum width requirement. **This work must all be completed by no later than 4:30pm on May 20, 2022.**

You are hereby advised that you have the right to appeal this Order to the Subdivision and Development Appeal Board. If you wish to exercise this right, written notice of an appeal along with the appeal fee must be received by the Clerk of the Subdivision and Development Appeal Board within 21 days of receipt of this letter. The address for filing an appeal is:

**Clerk, Subdivision and Development Appeal Board
Summer Village Administration Office
#2 Erickson Drive,
Sylvan Lake, AB T4S 1P5**

Please be advised that the Municipality has the authority to enter onto the lands in accordance with Sections 542 and 646 of the *Municipal Government Act*, in the event that this Stop Order is not complied with within the time limit provided, to enter onto the Lands in accordance with Section 542 of the *Municipal Government Act* to take whatsoever actions are determined by the Municipality to bring the Lands into compliance, and may bring an Application in the Court of Queen's Bench of Alberta pursuant to Section 554 of the *Municipal Government Act* seeking a Permanent Injunction or other Orders necessary to authorize the proposed actions of the Municipality to rectify the contravention and to prohibit its reoccurrence.



Summer Villages Administration Office

#2 Erickson Drive
Sylvan Lake, AB T4S 1P5
Ph: 887-2822

Further, the Municipality has the authority to add the costs and expenses for carrying out this Stop Order to the tax roll for the Lands pursuant to Section 553(1)(h.1) of the *Municipal Government Act*.

Sincerely,

SUMMER VILLAGE OF BIRCHCLIFF

Kara Kashuba
Development Officer

Terri & Larry Cameron

November 15, 2021

Clerk, Subdivision & Development Appeal Board
Summer Village Administrative Office
2 Erickson Drive
Sylvan Lake, AB T4S 1P5

To Whom it May Concern:

Re: Stop Order on Development Permit DP#211608 on Plan 7089MC, Block 1, Lot 10

We are submitting this letter to appeal the Stop Order we received in regard to our development permit as above stating the driveway “exceeds the driveway maximum width requirements set out in section 3.1 (1)(a) of the Land Use Bylaw”.

We firmly believe our development did meet the requirements of our permit as communicated to and understood by us and we feel it’s a totally unreasonable request to now demand that we remove the paved area in excess of the 10-meter stipulation. Our position is as follows:

1. We had valid and necessary reasons for the development

We think it’s important to understand that our original request for a development permit was “To pave the Summer Village road in front of our parking pad” to solve the following issues:

- Enhance our landscaping and tie it in to the challenging sloped terrain between our lot, our parking pad, the cul de sac road and our neighbour’s driveway;
- Accommodate and enhance the drainage channel that was installed by the Village to prevent flooding into our neighbour’s property;
- Stop the long-standing issue of gravel draining onto our neighbour’s driveway/lot;
- Stop the weeds and vegetation growth that were increasing on the gravelled area and not being maintained or removed by the Summer Village;
- Properly complete and tie in the road that flanks our lot to match the other lots on the cul de sac. Ours was the only approach that remained unfinished;
- Match and complement the asphalt driveway/road tie in on the lot directly across from ours. We note it exceeds the 10-metre rule and a precedent exists on our cul de sac.
- Facilitate easier snow removal which was hindered by the gravel base.
- Eliminate a sharp corner by properly flaring and tying in the west corner of the driveway to the carriageway to accommodate traffic and large vehicles turning into the cul de sac.
- Prevent small undesirable gravel patches protruding into the roadway which the Summer Village has to deal with and maintain and we have to put up with.

2. The development is on a carriageway, on Summer Village property, and not on our lot

It is also important to note that 99% of the paved area in question is on what can be defined as the ‘carriageway’, an unpaved lane of the road that flanks our lot and our parking pad, and all on Summer Village property.

The area runs from the edge of our garage pad which is at the edge of our property line and extends 28' to the paved portion of the road. For whatever reason, this area was never finished or paved like the rest of the cul de sac and because of this, it caused many issues as mentioned above, particularly drainage problems.

3. The development is not just a 'driveway' and is being incorrectly categorized as such

While it's clear that the Development Officer and the Stop Order is defining the project as a 'driveway', we note that the Development Permit and our original submission never defined it as such. The Development Permit clearly states the development as "Asphalt Paving".

The Development Officer therefore knew our project was more than a driveway but we believe she chose to define, stipulate, judge and rule it as such as an easy out. We also feel she did not provide proper direction and clarification as to how we were going to accomplish all the conditions and work that was needed within that confined term.

The Development Permit also clearly stated the development cannot "interfere with the natural flow or absorption of water" and that "all parcels shall be graded to ensure storm water is directed to a drainage ditch...". We all saw the significant effort and investment that the Summer Village incurred for work along Birchcliff Road to solve drainage problems into other lots. They had to do what they had to do whether it met optimum land use development ideals or not.

In our case, the paving we did was absolutely needed to satisfy the drainage issue, and all of the other issues noted above. We couldn't have just paved a 10-meter-wide driveway as is now being restricted by the Development Officer and left the perimetres and awkward juts outs that would remain in gravel to wreak havoc on the road, drainage, snow removal efforts and our neighbour's driveway.

So, while the Stop Order continues to categorize the development as a driveway and suggests the width of the driveway trumps all of the other conditions, we considered proper drainage a major condition, particularly in our cul de sac, and one that substantiated the paving that we did. We therefore think it's totally unfair for the Stop Order to disqualify the paved area now and simply state the 'driveway' did not meet the 10-meter stipulation. Besides, the development was never just a driveway but asphalt paving of a carriageway in need of it.

4. What can be defined as our 'driveway' does meet the 10-meter stipulation at our property line

While our original plan included paving an area that spanned 33' at the edge of our parking pad (we'll call that point our 'actual driveway') and extended into a small 12' wedge onto our lot to the east, we stress that we did reduce this distance specifically to comply with the 10-meter stipulation written on our Development Permit.

We were acting on our understanding that the 10-meters applied at our property line, where our 'actual driveway' could be defined, and where we had ownership and control of the property. We never considered the majority of the Summer Village carriageway that needed to be paved to be our driveway so we did our best to interpret, rationalize and amend our plan to appease this difficult and confusing restriction imposed on us.

All we received was a handwritten arrowed line and note on our drawings by the Development Officer saying, "Approved for a 10 m max driveway width", and we argue that this addition was vague and incomplete. To us, the arrowed line looked like it pertained to the distance at our property line which we had already adjusted to comply. It did not specifically say or point to the areas on the plan that were supposed to be eliminated from paving or did not suggest how the drainage and other conditions should be addressed.

We argue that this lack of specificity on the plan and the permit itself left the issue open for interpretation and in our case, open for the common-sense decisions we made to complete the development as we did. We were so convinced our interpretation was correct, we did not feel the need to appeal the Development Permit which in hindsight was a big mistake.

We now object to being told our interpretation was incorrect and that the entire paved area, which is now conveniently being confined as a 'driveway' on the Stop Order, cannot exceed 10 meters "with the carriageway". We argue that the Development Officer and the Development Permit did not clearly communicate this significant difference, and that almost the entire development is the carriageway or on the carriageway. Besides, the mention of a carriageway was never included on the permit, and 'with', 'within' (as the Land Use Bylaw states), 'is' or 'on' the carriageway are difficult distinctions to interpret in any case.

So, while there is no room to appeal the permit now, we feel the Stop Order is unfairly judging the work against a permit that was poorly handled and issued in the first place, incorrectly categorized and set up to fail. We believe it cannot be legally enforced as such.

5. A job well done and at our complete expense

We also firmly believe that our choice to install the paved area and enhance the cul de sac road as we did was a job well done. It met all the conditions and solved all of the issues we mentioned. Our paving contractor, Horseshoe Paving, and our neighbours were in full agreement that the way we completed the work was the only and most efficient way to accomplish all of the requirements.

We also note the significant expense we incurred to do the job, all on behalf of the Summer Village on their land. We could easily argue that it was work the Summer Village should have rightly done long ago and paid for.

We believe it's now a travesty to conveniently repackage this development as a driveway, demand we remove the paving in excess of 10 meters, incur more of our own money to do so and regress to the previous problems we just eliminated. It's clear the entire paved area was absolutely needed to satisfy all conditions and the driveway bylaw rules don't apply.

We respectfully ask that the Stop Order be rescinded for all these reasons. We invite all decision makers involved to personally view the area in question and see firsthand why it makes no sense to now force us to rip apart a perfectly good job. Please contact us at [REDACTED] or [REDACTED] if you should have any questions. We look forward to a positive reply.

Sincerely,

Larry and Terri Cameron
[REDACTED]

Development Appeal

On the preliminary question of establishing jurisdiction:

The Municipal Government Act states in section 685 that

- 1) Any person affected by an order, decision, or development permit made or issued by a development authority may appeal to the Subdivision and Development Appeal board
- 2) No appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied, or misinterpreted.

The appeal before the board today is against the stop order which was issued to the homeowners of 383 Birchcliff Road. The stop order was issued on November 9th after the Development Officer noticed that the paving of the driveway within the carriageway was wider than originally approved by the Municipal Planning Commission. The appeal against the stop order was submitted within the allowable timeframe. However, due to the Christmas holidays, scheduling an SDAB hearing became problematic. On December 9th administration contacted the appellants to ask if they would be agreeable to delaying the SDAB until the new year, to which they agreed.

An SDAB must act within its jurisdiction when it makes a decision. Without jurisdiction, the SDAB does not have the authority to make a decision. In order to maintain jurisdiction, the SDAB must:

- Adhere to the statutory requirements prescribed for SDABs in the MGA;
- Comply with the principles of natural justice; and
- Must only make decisions on matters which are properly before the Board.

The SDAB's discretion for stop order appeals is confined to deciding whether the order was properly issued, or a breach of the Land Use Bylaw or development permit occurred. The SDAB can only revoke a stop order if it was not properly issued, or a breach has not occurred. In other words, the SDAB has no jurisdiction to vary the underlying Land Use Bylaw provisions or development permit to overturn a stop order.

The Courts have clarified the SDAB's power to vary or set aside stop orders is limited to determining whether the stop order was properly issued in the first instance. Where the SDAB is satisfied that the stop order was properly issued, the SDAB's jurisdiction is limited to upholding the stop order. The SDAB cannot vary or waive the conditions of the original development permit on a stop order appeal, though it may allow more time for compliance.

Prior to proceeding with the appeal, Administration respectfully requests the board to determine if jurisdiction in the matter resides with the Subdivision and Development Appeal Board.

SUBDIVISION & DEVELOPMENT APPEAL BOARD HEARING

February 7, 2022 @ 9:00 A.M.

MPC Decision Appeal

383 Birchcliff Road

Appellant – Terri & Larry Cameron

Development Officers Report:

In June 2021, a development permit was issued and approved by the Municipal Planning Commission for asphalt paving for the property of 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 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.) a variance of 9.2m (30ft.) is required, therefore the decision must come from the Municipal Planning Commission.

The 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 came to my attention 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 non compliant asphalt paving. Administration informed the homeowner that the driveway was still required to be in compliance by the end of October, and if that timeline could not be met, to provide us with a more reasonable timeline. No such timeline was received.

November 9, 2021 a Stop Order was issued as I had 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.

Summary:

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.

Due to the fact that 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.

Prepared By:

Kara Kashuba

Development Officer

Re: Opinion letter for paving job for Larry Cameron

1 message

Wed, Jan 26, 2022 at 5:54 AM

To Whom it May Concern:

Re: Paving job completed at 383 Birchcliff Rd, Summer Village of Birchcliff for Larry Cameron

My company was hired to install asphalt paving in a graveled area in front of the garage parking pad at the address shown above. The paving was to start at the edge of their garage pad and extend approximately 18 feet outwards and tie in correctly to the existing road of the cul de sac.

The job also required us to ensure that the terrain and grading of the paved area did not disturb the existing drainage channel that had been created to facilitate the proper flow of water down the cul de sac road and mitigate flooding in an adjacent property.

In my opinion, the manner in which we paved the area including the flaring that was done at each side met all the requirements of the project and was absolutely the only way proper drainage would be ensured.

To now remove and reduce the paved area to only 32.8 feet wide would be a mistake and create future drainage hazards.

Sincerely,
Bob Van Eaton
Horseshoe Paving Ltd.

Sent from my iPhone

Summer Village of Birchcliff
SDAB Hearing
February 7th, 2022
Develop Permit DP#211608

SDAB Board Members

As the immediate and downstream neighbor to the development in question, have a vested interest in the outcome of this deliberation.

The driveway apron extension across the road allowance appears to be within the permitted use. The issue appears to be with the "wings" that were added to the apron to manage the control of overland water runoff.

A little history is in order. As we are aware, the village evolved without the benefit of planning to control stormwater runoff. Individual properties dammed the water flow to push it downslope so as not to cross their property on its way to the lake. In addition, the roadways were built with a reverse crown directing water down the center of the road as opposed to into the adjacent ditches.

The attached image shows the catchment area and resulting water runoff flow. Storm and melt water literally runs down Birchcliff road, around the corner into the cul de sac across the driveway in question and down into my property.

After years of flooded basements at # 385 a simple solution was designed and built to re-slope the roadway at the east end of the cul-de-sac to direct the water into a channel that runs across the back of my property and into the reserve where it is dispersed.

The continued effectiveness of this solution is dependent on keeping the runoff on the paved surface to stop erosion and subsequent silting of the channel.

Having looked at the extensions in question, I believe they will be effective in directing the waterflow into the channel and out of my basement.

Best regards




Thom Jewell
385 Birchcliff Rd

Untitled Map

Write a description for your map.

Legend

 Feature 1

