

**SUMMER VILLAGE OF NORGLLENWOLD
SUBDIVISION AND DEVELOPMENT APPEAL BOARD
JULY 19, 2024
RECORD OF HEARING AND DECISION**

PRESENT	Chair:	Cyril Gurevitch
	Member-at-Large:	Patricia Matthews
	Member-at-Large:	Cyndi Teulon
	Development Officer	Kara Hubbard
	CAO	Tanner Evans
	Recording Secretary	Teri Musseau
	SV Counsel:	Alifeyah Gulamhusein
	Appellant(s)	Reg Radford Ashley Brant
	Legal Counsel:	Kim Wakefield, K.C.

CALL TO ORDER Chair Gurevitch called the hearing to order at 10:01 a.m.

INTRODUCTIONS Board member introductions were made to the appellants.

Chair Gurevitch stated an objection had been received on July 18, 2024, by email from Mr. Wakefield, on behalf of the appellants, objecting to him hearing the appeal based on bias, and noting he would be addressing this later in the hearing.

APPEAL The appeal was introduced by the secretary.

Case #SDAB-24-001, File # DP-211592, filled by the appellants, Reg & Lauralyn Radford, for the property located at 205 Grand Avenue, appealing a stop order which was placed on the property May 31, 2024.

INTRODUCTION OF PARTIES The appellants, legal counsel for the summer village, and remaining staff present were introduced.

PRELIMINARY ISSUES Chair Gurevitch addressed the issue of bias.

Mr. Wakefield advised that his clients, Reg and Lyn Radford, object to Mayor Cyril Gurevitch participating as a member of the SDAB at the hearing scheduled for July 19, 2024.

The ground for the application that Mayor Gurevitch recuse himself is found at pages 467 of 649 showing that Mayor Gurevitch was copied on email communications between the parties and at page 472 Mr. Radford relates negative comments from, inter alia, the Mayor. Further there was an in camera briefing of the Mayor by the CAO in respect of the proposed Stop Order proceedings on April 26, 2024. The bottom line is that there is a reasonable apprehension of bias and likely actual bias.

Ms. Gulamhusein acknowledged she had received the email from Mr. Wakefield and was aware that Mr. Wakefield had tried to contact

her, but she was unable to speak with him. She is aware there is concern about a closed session briefing of Council and is unsure how that information was obtained. She took no position on the application for recusal.

Mr. Wakefield stated he was aware this closed session discussion occurred as the CAO had told Council in an open meeting that they would be briefed on the property in question during a closed session later in that meeting.

Chair Gurevitch advised the panel would retire to discuss the submission and return with their decision at 10:10 a.m.

The meeting reconvened at 10:16 a.m.

Chair Gurevitch made the following statement.

Chair Gurevitch advised the Radfords he did not have any actual bias, and his mind was still open to argument one way or the other. He did get cc'd on emails, but it was only for information, and he never participated in any response. Any material that came before Council is contained in the submissions book prepared by the secretary which he did not review until Monday or Tuesday prior to the hearing.

With respect to the allegation of a closed session discussion, he cannot comment on any matter that is discussed in a closed session; whether it be this matter or any other, any more than Counsel can, if asked, respond to whether they have a particular client or matter on retainer. Based on that, he can not and will not admit or deny anything that may or may not have come to a Council in a closed session.

Having said that, the principles of natural justice may be more ethereal than real. Old adage, justice must not only be done but must be seen to be done. If this is an apprehension by the Appellants, whether he does or not is irrelevant.

Chair Gurevitch recognized that this issue of bias is likely a matter that can go to law or jurisdiction on an appeal and there are enough issues here already. He would not want either party to feel the need to appeal on this ground. Chair Gurevitch decided he would recuse himself.

The Board has decided not to proceed with only 2 panel members and will adjourn to give time to appoint a third member, particularly important given the other preliminary objection to the jurisdiction of the Subdivision and Development Appeal Board to ever hear this matter.

Chair Gurevitch left the panel and premises at 10:18 a.m.

Patricia Matthews assumed the role of Chair.

NEXT MEETING

Chair Matthews stated the Board would adjourn the meeting and asked Counsels to check their calendars to see what date they would be available to proceed.

Mr. Wakefield was opposed to adjourning the hearing as he wanted

to proceed with the second preliminary issue of jurisdiction for the Subdivision and Development Appeal Board to hear the appeal. Section 6.1 for the SDAB Bylaw allows the Board to proceed with quorum of 2 members. Ms. Gulamhusein had sent information via email on July 18th, 2024, suggesting the matter should be heard by the Land and Property Rights Tribunal and not the Subdivision and Development Appeal Board.

Chair Matthews decided to proceed with the adjournment and took a 5 minute recess at 10:24 a.m. to allow Counsel to check their availability.

The hearing continued at 10:30 a.m.

Mr. Wakefield asked the record to reflect this is being done under protest.

The hearing was adjourned at 10:34 a.m. until September 4th, 2024, at 10:00 a.m.

DATED AT THE TOWN OF SYLVAN LAKE THIS 19TH DAY OF JULY 2024.

**THE SUMMER VILLAGE OF
NORGLNWOLD SUBDIVISION AND
DEVELOPMENT APPEAL BOARD**

**Cyril Gurevitch
SDAB Chair**

**SUMMER VILLAGE OF NORGLLENWOLD
SUBDIVISION AND DEVELOPMENT APPEAL BOARD
AUGUST 12, 2024
RECORD OF HEARING AND DECISION**

PRESENT

Chair:	Roger Dufresne
Member-at-Large:	Allan MacPherson
Member-at-Large:	Cyndi Teulon
Recording Secretary	Teri Musseau
SDAB Counsel:	Janice Agrios via Zoom Bryan Marback via Zoom

CALL TO ORDER

Chair Dufresne called the hearing to order at 1:00 p.m.

APPEAL

Case #SDAB-24-001, File # DP-211592, filed by the appellants, Reg & Lauralyn Radford, for the property located at 205 Grand Avenue, appealing a stop order which was placed on the property May 31, 2024.

**PRELIMINARY
ISSUES**

Chair Dufresne addressed the issue of jurisdiction brought forward by the Summer Village of Norglenwold Legal Counsel. After review of the legislation, the Summer Village Legal Counsel is suggesting the matter be heard by the Land and Property Rights Tribunal and not the Subdivision and Development Appeal Board based on the following:

Sections 685(2.1)(a)(i)(D) and (ii) provide appeals may be made to the LPRT "where the land that is the subject of the application" is the subject of a license, permit, approval, or other authorization granted by the Minister of Environment and Protected Areas ("EPEA") or in any other circumstances described in the regulations under of the *MGA*.

The *Matters Related to Subdivision and Development Regulation* (the "Regulation") provides that in addition to the circumstances listed in section 685(2.1)(a)(i), a notice of appeal may be filed with the LPRT where the land that is the subject of the application is the subject of an approval granted by the EPEA or is granted under any Act the Minister is responsible for under section 16 of the Government Organization Act (s 29(1) and (2)).

The *Government Organization Act* provides the Lieutenant Governor in Council may, by regulation, designate a Minister as the Minister responsible for an Act (s 16(1)). The *Designation and Transfer Of Responsibility Regulation* provides that the Minister of EPEA is designated as the Minister responsible for the *Water Act*, except section 6, Part 6, and section 159 and 163 (s 9(l)(r)). Section 6 [cost-sharing agreements for water infrastructure], Part 6 [about Water Management Works and Undertakings], section 159 [relates to the expropriation of works], and section 163 [designation powers of the Minister] of the *Water Act* are not relevant exceptions in this matter.

As such, if the land that is the subject of the application is the subject of approval is granted by the EPEA under an Act the EPEA is responsible for, such as the *Water Act*, the appeal should

be directed to the LPRT.

The Lands in question have an approval, Approval DAUT0008309, issued pursuant to the *Water Act*. The Approval was issued November 22, 2021, for various activities related to the construction and maintenance of erosion protection works on the Lands as specified in a Geotechnical Report dated August 31, 2021, and a Sketch. The Approval notes it expires on September 20, 2023, however section 45(2) of the *Water Act* provides that approvals run with the land.

Although Approval was granted by a "Designated Director under the *Water Act*", so it does not explicitly fall within the language of section 678(2)(a)(i)(D), it is also an approval granted by the Minister under an Act the Minister is responsible for.

**APPELLANTS
POSITION**

The Appellants agree with the position of the DA with respect to the jurisdiction issue, and do not oppose the DA's application to transfer the Appeal to the LPRT.

DECISION

The SDAB directs that the Appeal be transferred to the LPRT pursuant to section 686(1.1) of the MGA.

REASONS

1. Section 685(2.1)(a)(i)(D) of the MGA provides that appeals may be made to the LPRT where the lands that are the subject of the application are the subject of an authorization granted by the Minister of Environment and Protected Areas.
2. The Minister of Environment and Protected Areas is the Minister responsible for the *Water Act*.
3. The Lands are the subject of the Approval, which is issued under the *Water Act*.
4. The Approval relates to the construction and maintenance of erosion protection works on the Lands. While the Approval has an expiry date of September 20, 2023, the SDAB finds that the expiry date relates to the time frame during which construction of the work was to occur. The work on the Lands related to the Approval remains in place.
5. As such, the SDAB is of the view that the Approval is sufficient to trigger section 685(2.1)(a)(i)(D) of the MGA.
6. The SDAB considered the LPRT decision of *Jonk v Westlock* to be both instructive and analogous to this Appeal.
7. As the Lands are the subject of the Approval, the SDAB does not have jurisdiction to hear this Appeal. The SDAB finds that this Appeal should be heard by the LPRT.
8. The SDAB notes that the Appellants consent to the transfer of this Appeal to the LPRT.
9. As the SDAB does not have jurisdiction over this Appeal, and the Appellants have consented to the transfer the Appeal, the SDAB directs that the Appeal shall be transferred to the LPRT

pursuant to section 686(1.1) of the MGA.

The hearing was adjourned at 1:16 p.m.

**DATED AT THE TOWN OF SYLVAN LAKE THIS 12TH DAY OF
AUGUST 2024.**

**THE SUMMER VILLAGE OF
NORGLNWOLD SUBDIVISION AND
DEVELOPMENT APPEAL BOARD**

**Roger Dufresne
SDAB Chair**