



**SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
OF THE TOWN OF OKOTOKS  
DATED FEBRUARY 4, 2015**

**DECISION**

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Hearing held at: Town of Okotoks Municipal Centre  
Council Chamber  
5 Elizabeth Street, Okotoks

Dates of Hearing: January 8, 2015 and reconvened January 21, 2015

Members present: Jason Metcalf, Chair  
Ryan Brown  
Jasse Chan  
Marc Delannoy  
Fred Keen  
Kelly Rogers

Members absent: Councillor Matt Rockley  
Councillor Ed Sands

Staff present: Wendy Cardiff, Development Officer  
Karen Humby, Recording Secretary (January 8)  
Patty Huber, Recording Secretary (January 21)

Board Solicitor: Kelley Fiske-Nielsen of Brownlee LLP

Summary of Appeal: Appeal of the Stop Order (the "Stop Order") dated December 5, 2014 issued by the Development Officer of the Town of Okotoks (the "Town") pursuant to Section 645 of the *Municipal Government Act*, RSA 2000, as amended, (the "MGA") respecting unauthorized development or use of land, including storage, at 30 South Railway Street (Station Grounds "A", Plan 841 0463).

Summary of Grounds for Appeal: "To define and clarify the use of lands by current tenant."

On behalf of the tenant, "it would like to be appealed that the use of the current lands are not being used for the intent of

storing RV units (for given periods of time), but rather for the use of staging (temporary holding) while such units are in queue for service, and then dismissed from the premises/lands.”

Appeal filing:

The Subdivision and Development Appeal Board (the “Board”) finds that the Appeal was properly filed within the time allowed, pursuant to Sections 685 and 686 of the *MGA*.

The appeal form was filed with the Board on December 15, 2014, with further grounds and fees provided December 16, 2014. The Stop Order was served by registered mail on December 9, 2014 to Lansdowne Equity Ventures Ltd. (as registered owner of the property) and on December 12, 2015 to 831617 Alberta Ltd. and Mike’s RV & Trailer Repair Ltd. (as persons responsible for the contravention).

The appeal was filed by Don Sanford and Rod Neumann representing Lansdowne Equity Ventures Ltd. (owner of the subject property), and on behalf of the tenant, Crazy Horse RV Trailer Sales, also known as 831617 Alberta Ltd. and Mike’s RV & Trailer Repair Ltd.

Notice of Hearing:

Section 686 and Section 606 of the *MGA* set out requirements for giving notice of an appeal hearing. The Town of Okotoks Land Use Bylaw No. 40-98 (the “Land Use Bylaw”) does not set out requirements for giving notice of a stop order appeal hearing.

During the January 8, 2015 Hearing, the Board concluded that 7 and 9 South Railway Street should be added to the list of affected persons given personal notice of the hearing; and, that the subject lands should be identified on the notice. The Board adjourned the January 8<sup>th</sup> hearing to provide additional notice.

At the January 21, 2015 reconvened hearing, the Board heard from adjacent landowners including the owner of 7 and 9 South Railway Street. Mr. Mike Keith, who is known to the Board to be an owner or operator of Crazy Horse RV Trailer Sales, also known as 831617 Alberta Ltd. and Mike’s RV & Trailer Repair Ltd., did not personally make a submission to the Board. However, the Board confirmed with its Secretary that Mr. Keith was present during the January 8, 2015 hearing when the Board determined to adjourn the Hearing to January 21<sup>st</sup>; further, Mr. Keith was mailed notice of the January 21, 2015 hearing.

The Board heard verbal submissions from the following:

Wendy Cardiff, Development Officer  
Don Sandford, Executive Vice President, Lansdowne Equity Ventures Ltd., Appellant  
Rod Neumann, Development Manager, Lansdowne Equity Ventures Ltd., Appellant  
Brenda Edstrom, 49 South Railway Street, supporting the appeal  
Ricky Kerrison, 7 and 9 South Railway Street, supporting the appeal

Having received a written submission dated January 8, 2015 from Don Sandford, Executive Vice President, Lansdowne Equity Ventures Ltd, and Rod Neumann, Development Manager, Lansdowne Equity Ventures Ltd., Appellant.

**DECISION:**

The Appeal (Development Appeal Number 2014-01) be denied and the Stop Order be upheld, for the reasons set out herein.

**FINDINGS OF FACT:**

The Board finds that 831617 Alberta Ltd. and Mike's RV & Trailer Repair Ltd., also known as Crazy Horse RV Trailer Sales, are persons responsible for the unauthorized use of 30 South Railway Street (Station Grounds "A", Plan 841 0463) (the "Lands"), as tenants of the Lands and/or persons using the Lands for storage, including on-going or routine holding of multiple recreational vehicles out-of-doors as part of a commercial use operated at 3 and 5 South Railway Street. The Board finds that the Appellant is the owner of the Lands.

The Appellant submitted that the procedures used in issuing the Stop Order were heavy handed. The Board finds that the procedures used in issuing the Stop Order were consistent with the Land Use Bylaw and Section 645 of the *MGA* and were not heavy handed. The Appellant also speculated that the Town issued the Stop Order with improper purposes or motives, but the Appellant provided no persuasive supporting evidence or facts. The Appellant provided no evidence that the Town communicated to the Appellant any approval or acceptance of the current use of the Lands. The Board finds that the passage of approximately one year between the commencement of the use and the commencement of enforcement processes does not establish improper motivational issues of Town Council or Administration. The Board finds no improper motive or purposes in the Town Council motion of November 24, 2014 respecting the Lands.

The Board accepts the evidence of the Development Officer that a number of recreational vehicles, trailers, derelict vehicles and other materials (including parts of vehicles) that are associated with the businesses located at 3 and 5 South Railway Street (owned and/or operated by 831617 Alberta Ltd. and Mike's RV & Trailer Repair

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Ltd., also known as Crazy Horse Trailer Sales) are located upon and are being kept outdoors on the Lands.

The Appellant could not confirm how long individual items were being kept on the subject Lands. The Appellant's responses to the Board's questions about the use of the Lands led the Board to conclude that the Appellant based its position on information relayed to it by the tenant, and had limited first-hand knowledge of the length of time that individual or some of the recreation vehicles were held on the Lands. The Development Officer's evidence was that ongoing observation of the Lands indicated that some portion of the recreation vehicles and materials on the Lands were held on site for extended or long periods of time. The Board prefers the evidence of Administration over that of the Appellant relating to the length of time that portions of the recreational vehicles and materials have been held on the Lands.

The Development Officer's evidence of use was based upon site observation of the use of the Lands, review of Town files, and the review of available air photos of the Lands from 2009 to present. The Development Officer submitted and the Board accepts that the current use was a change in use of land or change in the intensity of use of land, from the prior use being "vacant" lands. The Development Officer's evidence on change of use from vacant was uncontested by the Appellant.

The Board finds that the Appellant's evidence and the Development Officer's evidence is consistent on the following points, which the Board accepts as fact:

- although historic use of the Lands included grain elevators and railway uses, the current use of the Lands -- including the keeping or holding of recreational vehicles that are associated with the businesses located at 3 and 5 South Railway Street -- began approximately October, 2013, with the tenancy of 831617 Alberta Ltd. and Mike's RV & Trailer Repair Ltd., also known as Crazy Horse Trailer Sales; and
- since approximately October 2013 there has been ongoing, routine, or day-to-day keeping or holding of multiple recreational vehicles, other vehicles, and other materials outdoors on the Lands as part of the commercial operation at 3 and 5 South Railway Street.

The Board finds that the current use of the Lands involves storage, including on-going or routine holding of multiple recreational vehicles out-of-doors as part of a commercial use not approved for the Lands. The Appellant's submission did not refute that the use has been routine, day-to-day, or on-going since October 2013. For example, the Appellant's submission conveys that, "Since October 2013, the Town has been aware of the land use by LEV's current tenant...". Further, that the Town had the opportunity of 14 months observation of the use prior to issuing the Stop Order in December, 2014.

The Board finds that the current use of the Lands is not authorized and is in breach of the Land Use Bylaw. The current use is not an available listed use in the applicable C-SD District. There is no development permit authorizing the current use of the Lands.

The current use of Lands commenced after adoption of the applicable Land Use Bylaw and Land Use District (C-SD District).

The Board notes that the Appellant submitted written and verbal concerns relating to a perceived “real” (or hidden and improper) agenda of the Town in relation to the future of 30 South Railway Street. Submissions were made that the Town may be trying to devalue the Lands to acquire them at below market value in future. The Board concludes that these submissions were merely speculation. The Board was not persuaded by these submissions.

The Appellant also made submissions whereby it sought the direction of the Board on whether the Lands should be available for future commercial and residential development. As the Board addressed during the hearing, and reiterates here, the Board’s role in a Stop Order appeal is to determine whether the Stop Order was properly issued, including whether the current use of the Lands is lawful, considering the Land Use Bylaw. The Board has no jurisdiction to decide whether future hypothetical or potential development proposals are appropriate for the subject lands. The Board finds that the Appellants submissions respecting future hypothetical or potential development proposals were irrelevant to the issues before the Board.

The Appellant and adjacent landowners also raised issues or concerns with the Town’s planning and listed uses under the Land Use Bylaw. Adjacent landowners made verbal submissions that cited a lack of issues with the tenant and its operations. To the extent that these submissions ask the Board to review the appropriateness of the listed uses of the Land Use Bylaw those submissions are not relevant to the question of whether the Stop Order was properly issued. The Board has no jurisdiction to amend the listed uses of the Land Use Bylaw. At the core of the Stop Order is that the Appellant and persons responsible do not have a development permit. The Board notes that the development framework must be respected.

The submission of Brenda Edstrom, 49 South Railway Street, was that the Lands are subject to flooding. This evidence was unrefuted by the Appellant and is consistent with Flood Risk Map (Appendix 2) of the Land Use Bylaw. The Flood Risk Map identifies the Lands as within the Flood Fringe.

**REASONS:**

On Stop Order Appeals, the main question that the Board must resolve is whether the Stop Order was properly issued. This main question considers both the procedures in issuing the Stop Order and the substance of the Stop Order.

**STOP ORDER**

Pursuant to Section 645 of the *MGA*, a stop order can be issued if a development authority finds that a development, land use or use of a building is not in accordance with:

- a. Part 17 of the MGA or a land use bylaw or regulations under Part 17 of the MGA, or
- b. a development permit or subdivision approval.

Section 645 further specifies that a stop order can direct or order:

- a. the development or use of land or building be stopped, in whole or in part as directed by the notice;
- b. demolition, removal or replacement of the development; or
- c. the carrying out of any other actions required by the notice so that the development or use of the land or building complies with Part 17 of the MGA, the land use bylaw or regulations made under Part 17, a development permit or a subdivision approval.

In this case, the Board has concluded that the Stop Order was properly issued to stop unauthorized development or use (i.e. development having no development permit and which is not lawfully non-conforming) at the subject Lands. The Board found that the unauthorized development at the Lands includes unauthorized storage, including on-going or routine holding of multiple recreational vehicles as part of a commercial use not approved for the Lands.

The Board finds that the Stop Order was issued to persons responsible for contravention of the Land Use Bylaw (i.e. the persons responsible for the unauthorized use of the lands) and the owner of the Lands, as contemplated in Section 645 of the MGA. 831617 Alberta Ltd. and Mike's RV & Trailer Repair Ltd., also known as Crazy Horse RV Trailer Sales, are persons responsible for the unauthorized use of the Lands, as tenants of the Lands and/or persons using the Lands in conjunction with the business operated at 3 and 5 South Railway Street. The Board finds that the Appellant is the owner of the Lands.

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Further the Board finds that the Stop Order included lawful and reasonable orders to direct compliance with the Land Use Bylaw by:

1. Removing all storage including but not limited to Recreation Vehicles, trailers, equipment, automotive parts and material from the property; and
2. Discontinuing the unauthorized use of property to bring it into compliance with the Town of Okotoks Land Use Bylaw; and
3. If there has been any damage to the property as a result of the use of the land for storage and related purposes taking all measures necessary, in the opinion of the Town, to remediate the land

by June 1, 2015 and following the removal and remediation take all reasonable measures to prevent the re-occurrence of the contravention.

The Board found that the Stop Order provided reasonable time for compliance (June 1, 2015) considering:

1. that the use involves surface storage that appears relatively movable;
2. that the use is not a listed use within the C-SD District and therefore could not be approved without land use bylaw amendment; and
3. no imminent public safety concern was put before the Board but there was evidence that the Lands are subject to flooding in flood events (e.g. in summer).

**PROCEDURES IN ISSUING THE STOP ORDER**

The Appellant submitted that Administration was heavy handed in issuing the Stop Order without prior notice of concern or warning expressed to the Appellant, although the use of the Lands had been ongoing since approximately October 2013 with the Town's awareness. The Appellant also stated that Administration did not discuss the matter with the Appellant prior to the Stop Order being issued.

The Land Use Bylaw does not require any warnings or special enforcement steps to be taken prior to issuing a stop order except in the context of home occupations (Land Use Bylaw, Section 9.9.3). However, the Board inquired of Administration as to the stop order process. Administration indicated that typically enforcement is complaint driven. In this instance, the Development Authority received direction from Town Council to investigate whether the use of the Lands was in accordance with the provisions of the Land Use Bylaw. Administration also indicated that typically after receipt of a complaint, the Town either issues an order or if there is an option to make application for a development permit, the landowner would be encouraged to do so. In this case, as the use was not something that could be approved by a development permit, the Stop Order was issued.

The Board finds no improper motive or "heavy hand" in the Town Council motion of November 24, 2014 respecting the subject Lands or in the issuance of the Stop Order. The Board considers the direction given by Town Council to be akin to a complaint

scenario where inquiry is being made respecting whether a use is allowed and, if not, requesting it be changed or stopped. In the alternative, the Board finds that there is no requirement in the Land Use Bylaw that the enforcement be commenced by complaint.

The Appellant provided no evidence that the Town communicated to the Appellant any approval or acceptance of the current use of the Lands. The Appellant's submissions speculated at improper Town motives, but the Appellant provided no persuasive supporting evidence or facts. The Board finds that the passage of approximately one year between the commencement of the use and the commencement of enforcement processes does not establish improper motivational issues of Town Council or Administration. Further, Section 645 of the MGA does not require warning prior to the issuance of a stop order. Accordingly, the Board could find no persuasive reasoning to conclude that the procedure used in issuing the Stop Order was heavy handed, improperly motivated, or deficient.

## **SUBSTANTIVE ISSUES RELATING TO THE STOP ORDER**

### *Summary Background*

The Development Officer provided evidence to the Board that a number of recreational vehicles, trailers, derelict vehicles and other materials (including parts of vehicles) that are associated with the businesses located at 3 and 5 South Railway Street (owned and operated by 831617 Alberta Ltd. and Mike's RV & Trailer Repair Ltd., also known as Crazy Horse Trailer Sales) are located on the Lands. The evidence of the Development Officer, which was uncontested by the Appellant, was that this use has been occurring since approximately October of 2013 and has not been authorized by a development permit.

The Development Officer observed the use of the Lands and reviewed available photos of the Lands from 2009 to present. The Development Officer determined that from the uses listed in the Land Use Bylaw, the current use of the Lands would best fit the classification of Storage Yard. The Appellant contested this classification, and argued that the use of the Lands was related to the staging of units prior to service.

### *Has There Been a Breach of the Land Use Bylaw - Was a Development Permit Required?*

The main issue in this appeal is whether the Stop Order was correctly issued by the Development Authority. To answer this, the Board had to determine whether pursuant to the Land Use Bylaw, a development permit was required for the current use of the property.

Section 1.1.0 of the Land Use Bylaw provides that, "Except as provided in Section 1.2.0 of this Bylaw, the approval of a development permit application and the release of a development permit must be obtained before development can commence or be allowed to continue."

The Board finds that the current use of the Lands (as described in the Board's findings of fact) does not fall within a listed 1.2.0 "exception" to the requirement for a development permit.

Accordingly, if the Board finds that the current use of the Lands is a "development", then pursuant to Section 1.1.0 of the Land Use Bylaw, release of a development permit was required before commencement of the use, or, release of a development permit is required before the use can be continued.

Section 30 of the Land Use Bylaw defines "development". Included in the definition is, a *"change of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building; or a change in intensity of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the intensity of use of the land or building."*

The definition of "development" is broad and is considered in the context of the Land Use Bylaw and the purposes of Part 17 of the MGA as set out in Section 617 of the MGA. The Board has found that the Lands are being used for storage, including on-going or routine holding of multiple recreational vehicles out-of-doors as part of a commercial use. Further, that the use was commenced in approximately October of 2013, being a change in use from "vacant" lands. Accordingly, the Board finds that the current use of the Lands is a "development" as defined in the Land Use Bylaw; and, that the current use required a development permit before its commencement or requires a development permit before it can be continued.

*Submissions Were Made Respecting the Meaning of "Storage" and Whether the Current Use is a "Storage Yard"*

The Board considered Administration's characterization of the use of the Lands being that of a Storage Yard. Storage Yard under Section 30 of the Land Use Bylaw means:

"the use of a site for the storage of materials and is screened in accordance with the requirements of the district in which it is situated."

The Board has found that the current use of the Lands includes storage, within the regular meaning of the word "storage", and as the word "storage" is intended to be interpreted under the Town's Land Use Bylaw. Further, the Board has found that the Stop Order's reference to, "storage including but not limited to Recreational Vehicles, trailers, equipment, automotive parts and material" is a sufficiently clear description of the current and unauthorized use, in context.

The Board notes that Section 30 of the Land Use Bylaw does not expressly define storage. However, Section 30 provides that unless the content (context) otherwise requires, the interpretations set out in Section 30 shall be used. Where no interpretation is set out in Section 30, the referenced Webster's dictionary definition is to be used. The Board notes the following Webster's dictionary definition of "storage" in making its decision,

“stor·age noun \ 'stôr-ij\ : space where you put things when they are not being used

: the state of being kept in a place when not being used : the state of being stored somewhere

: the act of putting something that is not being used in a place where it is available, where it can be kept safely, etc.: the act of storing something.”

The Board is directed by case law to read Section 30 and the incorporated dictionary or regular definition of “storage” in the entire context of the Land Use Bylaw and harmoniously with the scheme and purposes of the Land Use Bylaw and Part 17 of the MGA<sup>1</sup>, including Section 617.<sup>2</sup>

On the evidence, and considering the entire context, including a regular, grammatical or dictionary understanding of storage, the Board finds that the use of the Lands is a form of storage, including on-going or routine holding of multiple recreational vehicles out-of-doors as part of, or related to, a commercial use.

The Board notes that the Appellant’s grounds of appeal describe the Lands’ use as including “temporary holding” of recreational vehicles. That is, the holding, or putting, or keeping of recreational vehicles on the Lands temporarily. The Appellant’s evidence is that the holding or keeping for each unit continues until the tenant is able to “service” the recreational vehicle. It is the Board’s conclusion that in the context of the tenant’s business, such “service” is “making use of” the recreational vehicle. Accordingly, the Board finds that the current use is a form of storage as that term is intended to be understood under the Land Use Bylaw.

In considering the overall context of “storage” under the Land Use Bylaw, the Board also considered Section 9.7.1 “Outdoor Storage”. Under Section 9.7.1, the Land Use Bylaw appears to consider the holding of vehicles awaiting service to be a form of “temporary storage”.

Though the use of the Lands may not fit the narrow description of storage suggested by the Appellant (i.e. storing recreational vehicle units for given periods of time), the Board finds that case law and the context of the Land Use Bylaw and Part 17 of the MGA requires the Board to apply a broader and more purposive definition of “storage” than that suggested by the Appellant.

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<sup>1</sup> *Focaccia Holdings Ltd. v. Parkland Beach (Summer Village Subdivision and Development Appeal Board)*, 2014 ABCA 123, leave to appeal refused 2014 CarswellAlta 1957 (S.C.C), at paragraph 15.

<sup>2</sup> Section 617 of the MGA provides that, “*The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted (a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta, without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall public interest.*”

Respecting whether the current use of the Lands fits within the definition of Storage Yard under the Land Use Bylaw, the Board finds as follows:

- Current use of the lands includes the “storage of materials”, which is within the definition of “Storage Yard”;
- The use “Storage Yard” includes an express limit – i.e. that the use “is screened in accordance with the requirements of the district in which it is situated”;
- Even if the use could fit within the definition of “Storage Yard”, the Board finds that “Storage Yard” is not a listed use within the C-SD District. Therefore, the current use could not be authorized under the Land Use Bylaw as “Storage Yard” without a Land Use Bylaw amendment. Accordingly the Board does not find it necessary to finally determine whether the use is screened “in accordance with the requirements of the district in which it is situated.”

*Outside Storage – Section 9.7.1 of the Land Use Bylaw*

The Board considered whether the outside storage provisions contained in Section 9.7.0 were of any assistance to the Appellant.

The Development Officer’s submission was that, based on the Appellant’s description of the current use of the Lands, “the use might be considered a storage yard associated with an automotive repair and service shop or an autobody and paint shop.”<sup>3</sup>

Read on its own, regulation Section 9.7.1(c) appears to allow for the “temporary storage of vehicles intended for repair at an Automotive Repair and Service Shop or Auto Body and Paint Shop.” However, the Board finds that Section 9.7.1(c) does not authorize the current use of the Lands by the Appellant and the persons responsible. The Board finds that Section 9.7.1 does not help the Appellant. The Board’s reasons include the following:

- The plain language of Section 9.7.1(c) appears to limit any allowable temporary storage to the same site as the Automotive Repair and Service Shop or Auto Body and Paint Shop.
- One of the key purposes of the Town’s Land Use Bylaw is to achieve orderly planning. An interpretation of the Land Use Bylaw that would allow any lot in Town to temporarily store vehicles intended for repair at an Automotive Repair and Service Shop or Auto Body and Paint Shop would undermine a key purpose of the Land Use Bylaw.
- Likewise, Section 9.7.1(c) should not be interpreted to undermine the listed uses of the applicable C-SD District. In determining the appeal, the Board must conform with the uses prescribed for the Lands in the Land Use Bylaw.<sup>4</sup> The C-SD District does not list Automotive Repair

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<sup>3</sup> Page 7 of the Written report of the Development Officer dated December 29, 2014.

<sup>4</sup> Section 687(3)(d)(ii) of the MGA.

and Service Shop or Auto Body and Paint Shop. Further, associated storage use (i.e. storage use that is accessory to or associated with other land uses not listed under the C-SD District) could not properly fit as an “Accessory Use”. Accessory Use (under Section 30 of the Land Use Bylaw) means a use on a site which is normally incidental or subordinate to the main use on the same site. The Lands are not part of the same site as, and are not even adjacent to, 3 and 5 South Railway Street.

- Section 9.7.1 is not cross-referenced or otherwise incorporated into Section 1.2.0 of the Land Use Bylaw. Considering the express wording of Sections 1.2.0 and 1.1.0, the structure of the Land Use Bylaw, and the purposes of the Land Use Bylaw, the Board finds that Section 9.7.1 does not operate as an exception to the Section 1.1.0 requirement for a development permit. The Board has found that the current use of the Lands is a development that requires a development permit under Sections 1.1.0 (and 1.2.0) of the Land Use Bylaw.

Read on its own, Section 9.7.1(a) appears to allow for “the parking of vehicles used in the operation of an approved commercial or industrial use for periods no longer than 72 hours”. As drafted, Section 9.7.1(a) raised a question as to whether 9.7.1(a) provides a blanket authorization to use a site to park vehicles used in the operation of an approved commercial or industrial use at an adjacent or nearby property.

However, the Board finds that Section 9.7.1(a) does not authorize the current use of the Lands by the Appellant and the persons responsible. The Board finds that Section 9.7.1 does not help the Appellant. The Board’s reasons include the following:

- An interpretation of Section 9.7.1(a) that would allow the parking of Recreational Vehicles at the subject Lands in queue for service at 3 and 5 South Railway Street for periods not longer than 72 hours would undermine the listed uses of the C-SD District (applicable to the subject Lands) and be outside the Board’s jurisdiction in this appeal because:
  - The commercial use at 3 and 5 South Railway Street is described as an RV Sales and Service business, which is not a listed use in the C-SD District applicable to the Lands (30 South Railway Street);
  - Associated parking use on the Lands could not properly fit as an “Accessory Use” under the C-SD District. Accessory Use (under Section 30 of the Land Use Bylaw) means a use on a site which is normally incidental or subordinate to the main use on the same site. The Lands are not part of the same site as, and are not even adjacent to, 3 and 5 South Railway Street; and
  - The Board is required to conform to the uses of the C-SD District in reaching its decision.
- Section 9.7.1 is not cross-referenced or otherwise incorporated into Section 1.2.0 and 1.2.1 of the Land Use Bylaw. Considering the express wording of Sections 1.2.0 and 1.2.1, the structure of the Land

- Use Bylaw, and the purposes of the Land Use Bylaw, the Board finds that Section 9.7.1 does not operate as an exception to the Section 1.1.0 requirement for a development permit. As drafted, Section 9.7.1(a) may provide a right to park vehicles at the site of an approved commercial or industrial site, without seeking a separate development permit. However, where a nearby approved commercial development uses a site for the purposes of outside storage within the meaning of Section 9.7.1, the breadth of the term "development" makes it difficult to conclude anything other than such use being a "change of use" or a "change in intensity of use", which would require a Development Permit. As the Board found that the use is a development which would require a development permit, Section 9.7.1 does not provide a right to use a separate site for the purposes of outside storage in support of an approved commercial or industrial use at a nearby site.
- In the alternative, the Board has found that the use of the Lands includes unauthorized outdoor storage of items and materials other than recreational vehicles which are not items included in Section 9.7.1(a). Further, the Board has found that the use of the Lands includes on-going or routine holding of multiple recreational vehicles as part of the commercial use at 3 and 5 South Railway Street and that such use is beyond the intention and scope of the "parking use" described in Section 9.7.1(a).

Lastly, the Board notes that Section 9.7.1(e) does not apply as there is no approved "storage yard" in the present case. There is no development permit approving the current use. Further, Storage Yard is not a listed use in the C-SD District applicable to the Lands. As discussed above, the current use cannot be considered an "Accessory Use" storage yard to an approved industrial site because "accessory use" (under Section 30 of the Land Use Bylaw) means a use on a site which is normally incidental or subordinate to the main use on the same site.

#### *Permitted, Discretionary Uses and Legally Non-Conforming Uses*

The Development Officer indicated that a Development Permit was not currently issued in respect of 30 South Railway Street for any use. The Appellant did not contradict the evidence presented by the Development Officer.

The Permitted and Discretionary Uses in the C-SD (Special Development Commercial District) include:

- a. Permitted Uses
  - i) Eating Establishments
  - ii) Entertainment Establishments
  - iii) Financial Institutions
  - iv) Medical Clinics
  - v) Offices
  - vi) Household Service Shops

- vii) Recreation Facilities – Private
  - viii) Retail Stores
  - ix) Utility Buildings
- b. Discretionary Uses
- i) Accessory Uses
  - ii) Business Support Services
  - iii) Bowling Alleys
  - iv) Child Care Facilities
  - v) Drinking Establishments
  - vi) Dwelling Accommodations
  - vii) Existing Buildings and Uses
  - viii) Motels
  - ix) Hotels
  - x) Theatres

While a number of the uses listed therein are clearly inapplicable to the use of the Lands, the Board inquired as to whether Accessory Uses or Business Support Services would apply to the current use of the Lands. The Board determined that such uses would not allow the current use of the Lands.

Even if a Permitted or Discretionary Use would allow for the current use of the Lands, the Appellant would not be permitted to use the Lands in such fashion without a Development Permit.

The Development Officer indicated that the Lands were previously part of the railway right of way lands owned by Calgary and Edmonton Railway Company. The evidence submitted by the Development Officer and accepted by the Board was that when the Lands were districted Railway Industrial District, development permits were issued for grain elevators, seed cleaning, bulk fertilizer, associated agricultural, and included storage associated with those uses. Development permits issued since 1977 were only for those types of uses. The Lands were redistricted to C-SD with adoption of the current Land Use Bylaw in October of 1998. This historic uses (grain elevator, etc.) were all removed and the Lands left vacant for years. No development permits were issued that would authorize the current use of the Lands.

The owner of 7 and 9 South Railway Street indicated to the Board that the railway had historically used the Lands for the purposes of storage of materials relating to the railway (railway ties, equipment for the railway). Details of the timing of the use, whether sporadically used or regularly used were limited. The Board accepts that the Lands may have been put to such use, but there is no record that the Lands have been subject to a Development Permit allowing for the use of the Lands in this fashion. The fact that the Lands may have been used for railway storage purposes at times in the past does not assist the Appellant in establishing a right to use the Lands for the current storage purposes.

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In the context of a stop order appeal, if the Board finds that there is no applicable development permit, the Board must resolve whether the development is either exempt from the requirement of a development permit under the Land Use Bylaw or is saved by the "non-conforming use" provisions of the *MGA*, Section 643 and Section 616(r).

The Board has found that the development is not exempt from the requirement of a development permit under the Land Use Bylaw. Further, the Board finds that the development contravenes the current Land Use Bylaw and is not protected by Section 643 and Section 616(r). There has never been a development permit issued for the current use. Historically issued development permits did not apply to the current use and the uses approved under historic permits were discontinued. The current use is not a continuation of a use that may have been lawfully occurring under a prior Land Use Bylaw without a development permit. Rather, the current use of the Lands was a change in use started in approximately October 2013. The Board has found that since the time of commencement of the use, a development permit was required but has not been obtained.

As there does not appear to be any legally non-conforming, Permitted or Discretionary Uses which would allow the current use of the Lands, and there is no approved Development Permit in respect of the current use of the Lands, the Board is required to uphold the Stop Order.

**CONDITIONS OF THE STOP ORDER**

As discussed above, the Board supports the conditions of the Stop Order. The Board does not find a legitimate reason to extend the time for compliance of the Order. Having found that the Stop Order was validly issued, the Board cannot vary the Stop Order to enable continuation of a use that is not allowed within the applicable Land Use District; the Board is restricted by Section 687(3)(d)(ii) of the *MGA*.

Accordingly, the Stop Order is upheld without amendment.

  
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**Karen Humby**  
Subdivision and Development Appeal Board Secretary