

**MINUTES OF THE MEETING OF THE SUBDIVISION
AND DEVELOPMENT APPEAL BOARD**

TUESDAY, OCTOBER 5, 2010 @ 7:00 p.m.

Present:	Members:	B. Hawrelak, D. Kilpatrick, V. Lutz, G. Shipley, C. Brown
	Planning Consultant	K. Snyder
	Development Officer	D. Mastel,
	Recording Secretary	S. Simon
	MPC Representative	Bill Duncan
	Appellant	D. Wolanski (Town of Redcliff)
Absent:	Members:	J. Steinke, P. Monteith,

1. CALL TO ORDER

Municipal Secretary called the appeal hearing to order at 7:02 p.m., confirmed there was a quorum present to hear this appeal; and opened nominations for Chairman.

2. ELECTION OF CHAIRMAN

G. Shipley nominated B. Hawrelak to be Chairman seconded by D. Kilpatrick. B. Hawrelak accepted and assumed control of the appeal hearing.

3. Development Permit No 10-DP-118

Tumbleweed Sales Ltd.
Lot 13, Block 6, Plan 9811617
1150 South Highway Drive SE
Redcliff, Alberta
Trailer and Shipping Container Sales and Rental Business

Chairman Hawrelak asked D. Wolanski, the Appellant if he had any objection to any board members hearing the appeal. The Appellant advised he had no objections to any of the board members.

a. PRESENTATION OF APPELLANT

D. Wolanski advised the main position of the Town is that the Municipal Planning Commission decision is inconsistent with the Land Use Bylaw and the decision should be overturned or amended.

D. Wolanski referred to Section 54 of the Land Use Bylaw and noted this section is clear on Council's intentions of how shipping containers were to be addressed. He indicated that the Town is not implying that they are opposed to the approval but that the conditions attached to the approval should be consistent with what is outlined in the Land Use Bylaw. He specifically referenced Section 54 (1) (f) which states "the shipping containers must be located in such a manner as they are not visible from the Trans Canada Highway". Mr. Wolanski also referred to the Municipal Planning Commission Minutes dated August 18, 2010 which give two main justifications for approving the application with the conditions that they applied and did not apply. One being that the application is for the sales and

rental of shipping containers vs. using shipping containers as temporary or permanent storage and thus the same conditions did not apply. D. Wolanski again indicated the intent of the bylaw is clear, in that it was to regulate the visibility aspect and not necessarily the use. He felt the same conditions as outlined in Section 54 of the Land Use Bylaw should be applied to the approval. He commented on the turnover rate of the containers at the site in terms of selling or renting, but you also have containers there indefinitely. In any event there should still be a requirement for screening. He advised they do not feel the sale and rental of shipping containers is similar to a car sales business and should not be classified the same. The requirement for having a shipping container visible to market the business is not necessary, a simple sign advertising the product would be sufficient. He again reiterated that the intent of the bylaw is clear, in that shipping containers are not to be visible from the Trans Canada Highway.

The second was if the shipping containers could be adequately screened at all due to the location. It was said in the minutes that it would be impossible to meet the condition because the highway is higher than the property. He did not agree with the logistics of not making screening a requirement just because it can not be met. He indicated whether or not the condition can be met should not factor into whether or not to apply the condition. The Land Use Bylaw is clear on the requirements. He further commented that he would not want to see this set as a precedent.

Another issue is that the application was approved on a temporary basis to allow for Council to review the matter and amend the Land Use Bylaw accordingly. His concern being that the application is approved on a temporary basis and in a years time we receive another application, and even if the land use bylaw has been amended, it will be grandfathered in because they have already been operating for a year.

To sum up D. Wolanski indicated that if the application is to be approved it should have conditions consistent with the Land Use Bylaw.

Chairman Hawrelak sought clarification from D. Wolanski questioning if visibility and provision of screening were the main concerns. D. Wolanski confirmed it was.

Chairman Hawrelak also commented that he has not seen a temporary development permit other than for a re-locatable building, and questioned what, if any, legal ramifications there would be for granting a temporary permit for a permanent sales operation. He further questioned what legal position it puts on the owner if the application is approved.

D. Wolanski indicated he has discussed the issue informally with a friend of his who is a lawyer and it was his opinion that the matter could be questioned and argued.

Chairman Hawrelak questioned D. Wolanski that if your appeal was successful, what kind of legal position does this put the company in that has been granted a temporary permit. It was clarified that the permit has not been issued yet and will not be issued until the appeal has been decided.

D. Kilpatrick indicated that he would be asking the Planning Consultant this same question when it was his turn to speak.

b. PRESENTATION OF DEVELOPMENT OFFICER

Development Officer referenced the application and indicated that if the Board considers the application, she would suggest the following conditions be added to the approval

1. adding to condition # 1 “and screened to minimize the visibility of such containers from the Trans Canada Highway.
2. Adding a condition with regard to a site drainage plan such as “A site drainage plan shall be prepared by a qualified Engineer that meets with the requirements of the Town Engineer.
3. Adding a condition relating address the access to the parcel. If the access to the parcel is changed or in an additional approach is needed that it be approved by the Town’s Engineer prior to any construction taking place.

Development Officer also indicated she had reviewed several other properties/files for permits relating to shipping containers in the Town along the highway. She referred to Tim Hortons who has an approved shipping container and that it was placed behind the building which resolved the issue of visibility from the highway. Others such as Flint (1801 & 1901 Highway Avenue), Precision RV (1576 South Highway Drive) and Medicine Hat Drywall (1650 Broadway Avenue) do not have an approved development application in the files. However, it was clarified that these shipping containers were placed prior to the Land Use Bylaw being amended to regulate shipping containers.

c. PRESENTATION OF MUNICIPAL PLANNING COMMISSION CHAIRMAN

B. Duncan, chairman of the Municipal Planning Commission referenced the minutes of their meeting dated August 18, 2010. He noted that under Section 54 implies that the regulations outlined are for shipping containers being used for the purpose of temporary or permanent storage. Further commenting that while he was on Council the mandate was to support and encourage business owners. The Commission felt that a temporary permit could be approved and the issue could be addressed during the review of the Land Use Bylaw that is being conducted. The proximity to the Trans Canada Highway he felt is a moot point and commented that they would still be visible from the old highway (Saamis Dr.) He noted the Commission discussed this application at length and they decided a temporary permit be granted, providing opportunity for the owner to prove himself.

B. Duncan indicated that other sales and rental companies are permitted to operate their business. He referenced other business that have man lifts, compressor stations, oilfield trucks and other equipment and materials along the highway that are visible from the highway. He referenced the tire shops along the highway and noted the Commission did not think that the shipping containers would attract the same unsightliness as the tire shop. The Commission was not looking to perpetuate the situation but did want to support the business.

d. **PRESENTATION OF PLANNING CONSULTANT**

K. Snyder first addressed the questioned posed by D. Kilpatrick, on the validity of a temporary permit on a business and any legal ramifications to the Town.

He referenced Section 41 of the Land Use Bylaw which states that “Notwithstanding any provision of this Bylaw the Commission may conditionally approve a development on a temporary basis in any land use district and establish conditions for the removal of the development as deemed appropriate”.

He clarified that a temporary status could be applied to anything in the bylaw. It is not practical to do that, and typically you would only apply it to low intensity development.

With regard to the comments/suggestion of the Development Officer for additional conditions, that you would not typically place these types of conditions on a temporary permit. They would be onerous and not feasible for the applicant if the permit would not be granted again.

With regard to grandfathering he indicated it applies more to someone who has been granted a permanent development approval and regulations are enacted after. Noting that a temporary permit is just a temporary permit.

Planning Consultant advised his interpretation of the concern is with how shipping containers are defined. Planning Consultant referenced Section 54 which relates more to the use of shipping containers for temporary or permanent storage whereas this application is for the sale and rental of shipping containers. In his opinion this application falls more under a similar use for sales and service type developments. He further noted that in this case applying the similar use concept the rules for shipping containers are useful references but they are not governing. His example was that along the highway you would not allow for trailer storage but you would allow for the sale or rental of trailers. You would not allow vehicle storage but you would allow for the sale and rental of vehicles. Thus you do not want to see shipping containers used for storage along the highway but they could be for sale. He felt it was the same principle as those other uses. .

He commented that something for sale would typically be visible and this is supported by the Land Use Bylaw. He referenced Section 40 Outdoor storage and Maintenance – Non Residential Districts. Section 1 states “Outdoor storage of raw materials, finished or partially finished products, fuel, salvage material or waste material on a site shall be fenced and/or screened as required by the Commission. But Section 2 states “This section shall not limit the customary display of any commodities or goods intended and permitted to be sold on the lot, or the storage of fuel, oil or gas tanks.” He further commented that Section 40 (4) states

“If an outdoor display of vehicles, recreation vehicles, farm or construction machinery or equipment or other machinery, goods, merchandise or equipment is permitted as an accessory use the applicant shall:

- a) construct the area in such a manner as is consistent with other developments in the vicinity while permitting the machinery or equipment to be displayed.
- b) provide such additional access, parking, screening and lighting as may be necessary to accommodate the outdoor display.”

He indicated this is the reasoning for allowing this application to be allowed. He felt it is counterproductive to sell something that is not visible.

He also mentioned that the site is lower than the highway and will be difficult to impossible to screen from the highway. Noting that even if they were to erect fencing you would still see the shipping containers from the highway.

While he agrees that it is not good planning practice to put shipping containers along the highway with it being the gateway corridor, the Land Use Bylaw does not support his thoughts. He would suggest leaving the approval with conditions as is. However, if the Board considers changing the approval from being temporary he suggests that other conditions be considered such as parking, site drainage plan, paving, access issues.

Discussion ensued with regard to applications being grandfathered and K. Snyder's interpretation.

Chairman Hawrelak expressed concern and advised his concerns were more long term in nature when the Eastside becomes more developed and these properties will become more visible along Saamis Drive. The concern seems to be to screen these containers from the highway but yet they are still visible to the Eastside area.

Discussion ensued with screening, it was suggested that some landscape screening could be incorporated such as a berm and trees.

- e. **PRESENTATION OF ANYONE SERVED NOTICE OF HEARING**
The Board received for information correspondence from Alberta Transportation indicating they had no objections to the proposed development.
- f. **PRESENTATION OF ANYONE CLAIMING TO BE AFFECTED**
No one was in attendance.
- g. **REBUTTAL OF APPLICANT**
With reference to the Development Officers comments to add more conditions, D. Wolanski commented that from the Town's perspective we could not propose anything that didn't meet the Land Use Bylaw.

In regards to the discussion on other shipping containers that may not have approved development permits, or the situations where other businesses may be considered eyesores, the Town's position is not to add to the situation just because there may be other sites like that. The Town is working towards cleaning up situations like that.

D. Wolanski again advised that Town's position is not necessarily to say not approve the development but that the conditions be consistent with the Land Use Bylaw. Where the Planning Consultant indicated that the Section on Shipping Containers is a useful reference, the Town recognizes that there is no reference to sales and rental. However, he still feels the intent is clear that they were not to be visible from the highway, again stating that the conditions should be consistent.

D. Wolanski also commented that he did look at the sections referenced by the Planning Consultant with regard to a temporary permit, but thinks it becomes difficult to refuse an application that has been acceptable for the past year.

h. OTHER

No further comments.

i. RECESS

G. Shipley moved the Board to recess at 7:50 p.m. and the Board met in camera to discuss the situation.

Planning Consultant, Development Officer, Appellant D. Wolanski, Municipal Planning Commission representative left the room at 7:50 p.m.

j. DECISION

V. Lutz moved that the appeal against the decision of the Municipal Planning Commission, to issue a permit for Trailer & Shipping Container Sales and Rental Business with conditions, be denied and that the decision of the Municipal Planning Commission be varied and development permit for Tumbleweed Sales on Lot 13, Block 6, Plan 9811617 (1550 South Highway Drive) for Trailer and Shipping Container Sales and Rental Business be approved with the following conditions:

1. Maximum of four (4) shipping containers representative of the selling product to be located as per plan presented by Tumbleweed Sales.
2. The exterior of the shipping containers shall be painted a neutral color.
3. The height of the shipping containers is to be limited to one unit in height or a maximum of 3.0 m; they cannot be stacked.
4. There shall be no on-site storage within the shipping containers.
5. Any signage on-site requires a separate Development Permit Application.
6. This approval is granted for a limited term of 1 (one) year from the date of issue. Prior to the expiration of the permit, a new Development Permit Application must be received.

- Carried.

Further the Board advised the reasons for its decision is that the shipping containers are for display only and strictly for sales and rental (off-site) purposes and not for storage purposes.

The Board reconvened at 8:27 p.m.

Planning Consultant, Development Officer, Appellant, rejoined the meeting at 8:27 p.m.

Chairman Hawrelak advised the applicant of the Boards decision and further advised that a letter stating the decision of the Board would be forthcoming.

4. **ADJOURNMENT**

C. Brown moved the meeting be adjourned at 8:30 p.m.