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# DEVELOPMENT ENFORCEMENT ISSUES

Alberta Development Officers'  
Association

By G.J. Stewart-Palmer  
September 25, 2019



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# Agenda

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- Purpose of and statutory provisions for Stop Orders
- Considerations before issuing a Stop Order
- Stop Orders at the Subdivision Development Appeal Board (SDAB)
- Enforcement of Stop Orders

Image Source: <https://huronshores.ca/wp-content/uploads/2012/05/Agenda-Posted.jpg>



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# PURPOSE OF AND STATUTORY PROVISIONS FOR STOP ORDERS





# STOP ORDER

meaning, definition, explanation

Image Source: <https://www.youtube.com/watch?v=N76BTrIqimA>



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# Purpose of Stop Orders

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- To encourage compliance with:
  - Part 17 of the MGA
  - a land use bylaw
  - regulations under Part 17
  - a development permit or
  - subdivision approval



# Statutory Provisions

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## ➤ Municipal Government Act

➤ s. 645

➤ s. 646

➤ s. 554

➤ s. 553



*Image Source: <http://www.afs.org/blog/icl/?tag=development>*



# s. 645 Stop Order

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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).



## s. 645 continued

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(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,**





## s. 645 continued

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- (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.**



## s. 645 continued

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(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.



## s. 645 continued

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(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.



Image Source: <https://www.joburg.org.za/Campaigns/PublishingImages/NOTICE.png>



# s. 646 Enforcement of Stop Order

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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.**



## s. 646 Continued

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(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.



# s. 554 Injunction

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## 554(1) When

- (a) a structure is being constructed in contravention of an enactment that a municipality is authorized to enforce or a bylaw,
- (b) a contravention of this Act, another enactment that a municipality is authorized to enforce or a bylaw is of a continuing nature, or



## s. 554 Continued

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(c) any person is carrying on business or is doing any act, matter or thing without having paid money required to be paid by a bylaw,

in addition to any other remedy and penalty imposed by this or any other enactment or a bylaw, the **municipality may apply to the Court of Queen's Bench for an injunction** or other order.



## s. 554 Continued

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(2) The Court may grant or refuse the injunction or other order or may make any other order that in its opinion the justice of the case requires.

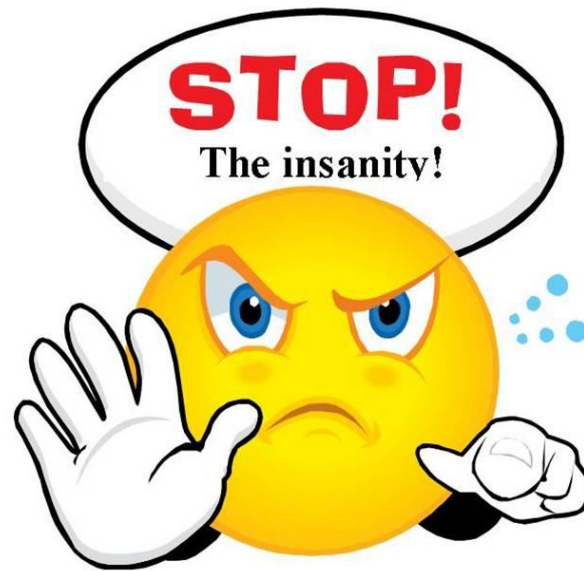


Image Source: <https://torontosportsmedia.com/2012/09/11/toronto-sports-media-sports-radio-lineups-246/>





## s. 553 Adding amounts owing to tax roll

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553(1) A council may add the following amounts to the tax roll of a parcel of land:

• • •

(h.1) the expenses and costs of carrying out an order under section 646;





# CONSIDERATIONS BEFORE USING A STOP ORDER



# Determining your objective

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- Other enforcement options exist:
  - Violation tickets
  - Violation tags
  - Administrative Orders (MGA, s. 545)

- Is a Stop Order the right tool for the job?



# Is a Stop Order the right tool?

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- What relief does the municipality want?
- Can a stop order be drafted clearly enough that the recipient knows what to do?
- If the recipient does not comply, is the municipality able to enforce compliance?
- Is the municipality prepared to enforce compliance?



# Who is the Recipient?

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- Owner of land
- Person in possession of land
  - Tenant?
  - Occupier?
- Person responsible for infraction
- Any or all of the above



# Against which land?

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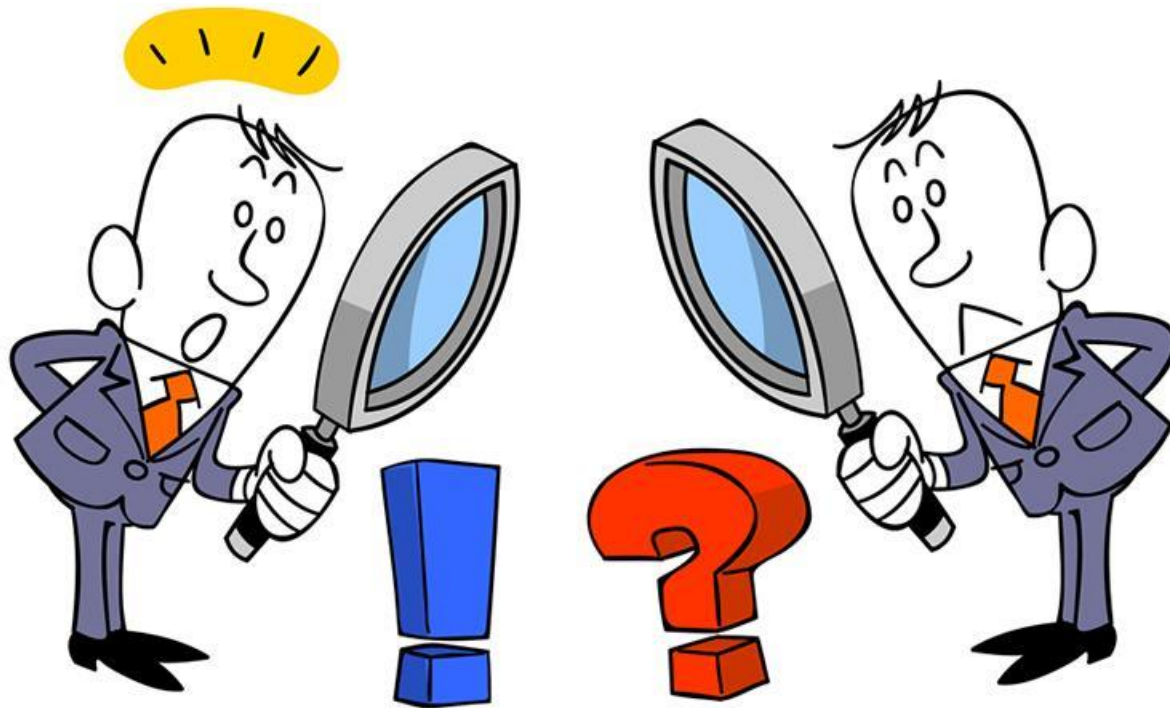
- Privately owned lands
- Public lands – boulevards, etc.
- Federal or Provincial Land
- Municipal or School Reserve

<https://www.adb.org/sites/default/files/publication/469536/50-climate-solutions/prc-cities.pdf>



# Gathering Evidence to issue a Stop Order

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<https://www.trainingjournal.com/articles/feature/evidence-based-training>



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# Evidence

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- Absence of Development Permits
- Infractions
  - Development Officer sees infraction
  - Photographs
  - Videos/Drone Videos
  - GPS coordinates
- Use of third parties to obtain evidence
  - Neighbours?
  - Bylaw Officers





# Entry onto land

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- Municipality may need use s. 542 to enter land to determine if compliance

542(1) If this or any other enactment or a bylaw authorizes or requires anything to be inspected, remedied, enforced or done by a municipality, a designated officer of the municipality may, after giving reasonable notice to the owner or occupier of land or the structure to be entered to carry out the inspection, remedy, enforcement or action,

(a) enter on that land or structure at any reasonable time, and carry out the inspection, enforcement or action authorized or required by the enactment or bylaw



# Cautions!

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- Personal knowledge if court enforcement required
- Security/Safety Considerations
- Is the remedy achievable?



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# STOP ORDERS AT THE SDAB



# Who can appeal?

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- Only the recipient of the Stop Order

*Cross Country Homes v. Town of Grande Cache,*  
1998 ABCA 230



# Who does the SDAB hear from?

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- Development Authority/Subdivision Authority
- Appellant (recipient of Stop Order)
- Any person given notice of the hearing
- Any person who claims to be affected by the Order (MGA, s. 686)





# SUBDIVISION

<https://pixabay.com/illustrations/houses-homes-property-estate-real-1719055/>



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# SDAB Considerations

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The SDAB must:

- act in accordance with any applicable ALSA regional plan
- have regard to any statutory plan
- conform with the uses of land in a land use bylaw
- Be consistent with the land use policies



# SDAB Considerations

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## The SDAB:

- may vary regulations under the Land Use Bylaw provided that the test in MGA, s. 654(2) is satisfied





# What does the Subdivision Authority need to show?

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- Evidence that there is a development, land use or use of a building is not in accordance with subdivision approval



# How is this done?

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- What is the breach?
  - Failure to pay levies or charges?
  - Breach of term of servicing/development agreement?  
(*Focaccia v. Parkland Beach*, 2014 ABCA 132)
  - Other?





# DEVELOPMENT

<https://pixabay.com/images/search/neighborhood/>



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# SDAB Considerations

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The SDAB must comply with:

- any applicable ALSA regional plan
- any applicable land use policies
- any applicable statutory plans
- any land use bylaw in effect (subject to variance)
- regulations under the Gaming, Liquor and Cannabis Act for location of premises in a cannabis licence and separation distances



# SDAB Considerations

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## The SDAB:

- must have regard to but is not bound by the subdivision and development regulations
- may vary regulations under the Land Use Bylaw provided test in MGA, s. 687(3)(d) is satisfied



# What does the Development Officer need to show?

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- Evidence that there is a development on the lands
  - Photographs
  - Videos
  - Etc.
- The development needs a permit
  - Land Use Bylaw provisions (definition of use, District provisions)
  - Administrative sections



# Is it a development?

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- Excavation, stockpile
- Building, addition, replacement of building
- Change of use or building
- Change in intensity of use of land or building

But note *Legacy v. Red Deer (City)*, 2018 ABCA – the definition does not include “use”



# Possible Arguments from Appellant

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- No development permit required
  - Use predated need for permits
  - Lawful non-conformity
- Development permit issued, but lost or unable to be located





# Possible Arguments from Appellant

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- Evidence of other municipal actions support finding that use was approved
  - Assessment and Tax Notices
  - Lease from municipality – which may include a “use” provision
  - Utility bills
  - Business licenses



# Issue Estoppel

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- Cannot advance a position in contravention to previous finding of SDAB

*Sihota v Edmonton (City)*, 2013 ABCA 43

*Yellowhead Engine Rebuilders Ltd. v. Edmonton (City)*, 2005 ABCA 429

*Donnelly v. Bighorn*, 2010 ABCA 68



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# ENFORCEMENT OF STOP ORDERS



# Who enforces?

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- Even if the SDAB has issued a decision, the Subdivision Authority or Development Authority is responsible for enforcement



# How is enforcement done?

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- Application to Court of Queen's Bench
- Brought by the municipality



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# COURT APPLICATIONS



Image Source: <https://cdn3.vectorstock.com/i/1000x1000/50/97/judge-wood-hammer-icon-cartoon-style-vector-20785097.jpg>



# Court Application

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- Originating Application with supporting affidavit by Development Officer
  - Minimum of 10 days' notice to respondent
  - Affidavit **MUST** be based on Subdivision Authority/Development Officer's personal knowledge
  - No need for Subdivision Authority/Development Officer to attend in court



# What relief will court grant?

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- Generally, a declaration of breach
- Directions for compliance
  - Specific directions required
    - Holden (Village) v Sen, 2019 ABQB 472*
    - Rogers v. RMWB, 2014 ABCA 107*
- Possibly - relief if respondent fails to comply
- Police presence, if supported by evidence



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(a) enter on that land or structure at any reasonable time, and carry out the inspection, enforcement or action authorized or required by the enactment or bylaw



# Costs

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- Court Costs
- Costs of Enforcing the Stop Order
  - S. 553(h.1) – municipality can place the costs on the tax roll
- Timing of placing costs on the tax roll



# After the Court Order

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- Best case, respondent complies
- Less than best case, municipality may need to remove development



# Considerations for municipality

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- Documenting the clean up
  - Photographs
  - Video
- What does the municipality do with the items removed?
  - Storage costs?
  - Salvage?
  - Risk of claim for conversion?



➤ Image Source: <https://caritaseco.in/urban.html>





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# QUESTIONS

Image Source: <https://images.app.goo.gl/YGKXFnxY1osFFu39>

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