

RECORD OF DECISION

RM OF BAILDON NO. 131 – Development Appeal Board

Western Municipal Consulting Ltd.

Citation: *Kaiser vs RM of Baidon vs. RM OF BAILDON NO. 131, WM2024-0383*

Appeal Number: WM2024-0383
Date of Hearing: 17 July 2024
Location of Hearing: Zoom Communication

IN THE MATTER OF AN APPEAL UNDER
 Section 219 of the *Planning and Development Act, 2007*, to the
 RM OF BAILDON NO. 131 Development Appeals Board

Respecting a development appeal for:

Civic Address	Legal Land Description	Zoning District
Hamlet of Baidon	Source Quarter Section: NW-24-15-26-2 Lot 3, Lot 4, Lot 5, Lot 6, Lot 7 – Blk/Par 1-Plan K974 Ext 0	Hamlet District

Between:

Jerry Kaiser

(Appellant)

- and -

RM OF BAILDON NO. 131

(Respondent)

Heard Before:

Chairman:	Pam Malach
Member:	Dave Gurnsey
Member:	Stew Demmans
Secretary:	Claudette McGuire

Represented by:

For the Appellant: Jerry Kaiser

For the Respondent: Carol Bellefeuille, Administrator and Development Officer
 RM OF BAILDON NO. 131

Interested Third Parties:

Name	Relation to Appellant	Correspondence Received:
none		

1- Role of the Board:

[1] The role of a Development Appeals Board (DAB) is a quasi-judicial board responsible for hearing appeals and making decisions regarding development within a municipality. A DAB is an administrative tribunal, created by government to provide the public with an accessible, independent, and competent forum for a review of decisions in matters that affect the public's economic, cultural and personal interests.

[2] The main function of the DAB is to hear appeals on developments which a municipality (Development Officer, or Council) have approved or rejected under the *Planning and Development Act* (PDA). Furthermore, the DAB enhances local and regional planning and development by providing an opportunity for independent reviews of municipal planning decisions.

2- Exhibits:

[3] The documents listed below were provided and constitute the Record of the DAB. The exhibits have been separated between the Appellant and the Respondent, for increased clarity, titled as submitted:

EXHIBITS SUBMITTED:**ACRONYMS USED I N THE AGENDA:**

Adj LO	Adjacent Landowner	Afft	Affidavit	AH	Appeal Hearing
Attach	Attachments	Cvr	Cover	Dcltn	Declaration
DP	Development Permit	DAB	Development Appeal Board	NOH	Notice of Hearing
Env	Envelope	Ltr	Letter	Rcpt	Receipt
OCP	Official Community Plan	Pg	Page	SWO	Stop Work Order
Subm	Submission Summary	RM	Rual Municipality	w	With
ZB	Zoning Bylaw	Unadd	Unaddressed		

EXHIBITS SUBMITTED:**APPELLANT EXHIBIT SUBMISSIONS (WM2024-0383 Kaiser vs RM of Baidon):**

A.1 WM2024-0383 RM Cvr Email w Appeal Attach (May 29, 2024) (1 pg)

A.1A WM2024-0383 Appeal Ltr (May 12, 2024) (1 pg)

A.2 WM2024-0383 Appeal Smry & RM Resp to DP App (Apr, May 2024) (9 pgs)

A.2A WM2024-0383 Env Appeal Smry Posted In (Jun 6, 2024) (1 pg)

RESPONDENT EXHIBIT SUBMISSIONS (WM2024-0383 Kaiser vs RM of Baidon):

R.1 WM2024-0383 RM Cvr Email w SWO & Rcpt (May 30, 2024) (1 pg)

R.1A WM2024-0383 SWO (May 8, 2024) (1 pg)

R.1B WM2024-0383 AH Rcpt (May 30, 2024) (1 pg).pdf

R.2 WM2024-0383 RM Sbm to DAB & Decltn (Jul 11, 2024) (14 pages)

R.3 WM2024-0383 RM's ZB, OCP, Afft & Dcltn (Jul 11, 2024) (170 pgs)

DAB SECRETARY EXHIBIT SUBMISSIONS (WM2024-0383 Kaiser vs RM of Baidon):

S.1 WM2024-0383 Map of Adj LO 80 m (1 pg)

S.2 WM2024-0383 Adj LO Unadd (1 pg)

S.3 WM2024-0383 NOH (Jun 20, 24) (2 pgs)

S.4 WM2024-0383 Dcltn of Mailing (Jun 21, 2024) (4 pgs)

ADJACENT LANDOWNERS SUBMISSIONS (WM2024-0383 Kaiser vs RM of Baildon):

none

INTERESTED THIRD PARTIES SUBMISSIONS (WM2024-0383 Kaiser vs RM of Baildon):

none

3- Preliminary Matters:

[4] With respect to the Board's internal process, this hearing was recorded for use of the Board only in rendering its decision.

[5] All materials and decisions shall be distributed by email, unless otherwise requested by either party.

[6] As per section 225(5) of the *Planning and Development Act* a copy of the decision will be forwarded to the appellant, the municipality, the director and all persons who made representations at the public hearing, by personal service, registered mail or email.

[7] All parties confirmed exhibits to be complete.

[8] Acronyms that may be used throughout the document:

ADJ LO – Adjacent Landowner

Afft – Affidavit

Cvr – Cover

DP – Development Permit

Env – Envelope

ISC – Information Services Corporation

ITP – Interested Third Party

AH – Appeal Hearing

Attach – Attachments

DAB – Development Appeal Board

DPA – Development Permit Application

ISC – Information Services Corporation

sf – Square Footage

ZB – Zoning Bylaw

[9] All parties were advised of the procedural instructions for the appeal hearing.

4- Grounds and Issues:

[10] An appeal has been filed by Kaiser vs RM of Baildon under section 242(5) of the *Planning and Development Act, 2007*, in relation to: Stop Work Order issued regarding the burying of an electrical wire and garden hose across the municipal road between the above listed properties. The site location has the legal land description of Lot 3, 4, 5, 6, and 7, Blk 1, Plan K974 of NW 24-15-26-W2, located within the RM OF BAILDON NO. 131.

[11] The property is zoned H – Hamlet District under the RM OF BAILDON NO. 131 Zoning Bylaw, and the application decision was made for the following reasons:

Requirement:	Section 3.2.b of the ZB states “every person shall obtain a development permit before commencing any development within the Municipality, except those developments that are listed as exempt.”
Deficiency:	The Appellant completed construction prior to receiving an approved development permit.

5- Facts:

[12] Jerry Kaiser (herein known as “the Appellant”) owns land within the boundaries of Baildon. Specifically, the appellant owns Lots 3, 4, 5, 6 and 7 - Blk/Par 1- Plan K974 Ext 0. The land is located in the Hamlet of Baildon and is zoned as the Hamlet District in Baildon's Zoning Bylaw No. 08-2015.

[13] Lots 3, 4 and 5, which are identified as the “church”, is the appellant’s residence.

[14] The Appellant stated that he needs a private power and water supply from his home, across the municipal lane, to operate a security camera and irrigate the landscaping on Lots 6 & 7, where he has installed monuments. He also noted that this connection is private and not a direct connection to a municipal or a communal distribution system.

[15] The subject lane is occasionally used from time to time by other residents from the area.

[16] On or about March 27, 2024, the Appellant applied for a development permit in order to construct a 110 Volt AC underground electrical wire across lots 3, 4, 5, 6 & 7. The proposed encroachment would also pass through a municipal laneway from lots 3, 4, & 5 to lots 6 & 7.

[17] The Appellant's development application was verified to have been submitted by the Appellant himself. The application specifies that work was expected to begin around May 1, 2024, with an estimated completion date of June 30, 2024.

[18] The RM of Baidon (herein known as “The Respondent”) states that the appellant’s development to bury an electrical wire and garden hose across a municipal laneway is an “accessory use”.

[19] The Respondent states in accordance with section 3.2(c) of the Zoning Bylaw, the application was presented to the RM of Baidon’s Council (herein known as “Council”) on April 4, 2024. The Appellant, who happens to be on Council, was present at the Council meeting to discuss the intended development with Council.

[20] At the April 4, 2024 Council meeting, Council passed resolution number 67/24 which required the applicant to provide additional information from SaskPower. Specifically, the Council sought confirmation that the proposed underground electrical installation would meet SaskPower’s standards for electrical encroachments.

[21] On April 8, 2024, the appellant informed the RM of his request to amend his application to now bury a 12 Volt DC Wire as opposed to an 110 Volt AC Wire and now sought to also bury an irrigation line from lots 3, 4, and 5 to lots 6 and 7 of the land.

[22] On April 15, 2024, the Respondent issued a letter to the Appellant requesting additional information from SaskPower prior to further consideration of the DPA.

[23] The Appellant indicates he spoke with representatives from SaskPower Corporation (herein known as “SPC”) that advised him SPC is not involved in the proposed development.

[24] The Appellant admitted to starting work without municipal consent on or about April 10, 2024, and during questioning, acknowledged that the work began earlier than the date he had specified in his development application. The Respondent submitted photos taken in April 2024, which show completed trenching across the roadway from the Appellant’s property to his property on the other side of the lane, as well as an electrical line and water line protruding from the ground near his monuments.

[25] On May 2, 2024, Council passed resolution number 92/24, a Stop Work Order (SWO) for the Appellants properties under appeal. Council also requested that the Appellant submit a separate DPA for the irrigation line.

[26] The Appellant did not submit a separate DPA for the irrigation line.

[27] The Appellant argued that the Council had previously passed a motion in March 2023 to suspend enforcement of the ZB.

[28] The Respondent stated that ZB 08-2015 has been under review since March 2023, however, neither the Zoning Bylaw nor its enforcement provisions have been repealed or suspended.

[29] The Appellant requests the Board to overturn the issued SWO.

[30] The Respondent requests the Board to deny the appeal and uphold the SWO.

6- Statements from Third Parties:

[31] No adjacent landowners submitted evidence or arguments for the appeal.

7- Rules, Statutes and Case Law:

[32] The Board shall consider all facts, evidence and testimony presented in a fair and impartial manner to evaluate whether the appeal has merit.

[33] In general course of its deliberations, the Board was guided by the following regulations:

[34] From the *Planning and Development Act, 2007*:

[a] Section 62 Development Permit Required:

(1) If a zoning bylaw is in effect and a development permit is required, no person shall undertake a development or commence a use unless the person obtains a development permit.

(2) If a person applies for a development permit with respect to a development or use described as a permitted use by a zoning bylaw, the development officer shall, if the application conforms to the zoning bylaw, issue a development permit.

(3) If a person applies for a development permit with respect to a development or use that is described as a discretionary use by a zoning bylaw, the development officer shall, if the application is approved by council, issue a development permit subject to any development standards or conditions prescribed pursuant to subsection 56(3).

(4) If a person applies for a development permit with respect to a development or use subject to performance standards, development standards or conditions prescribed pursuant to subsection 52(2):

(a) the development officer, in issuing a development permit, shall incorporate in the permit the performance standards, development standards or conditions with which the development or use shall comply; and

(b) the standards or conditions incorporated pursuant to clause (a) must be consistent with the standards or conditions as set out in the bylaw.

(5) Every decision of the council or the development officer with respect to an application for a development permit shall be in writing, and a copy of the decision shall be sent to the applicant by the development officer.

(6) If the council or development officer refuses an application for a development permit, the decision is required to state the reasons for the refusal.

(7) No development permit is valid unless it conforms with the zoning bylaw and this Act.

(8) No building permit is valid unless a subsisting development permit, if such a permit is required, has been issued.

[b] The evaluation criteria outlined by section 221 of the PDA:

Determining an appeal

221 In determining an appeal, the board hearing the appeal:

- (a) is bound by any official community plan in effect*
- (b) must ensure that its decisions conform to the uses of land, intensity of use and density of development in the zoning bylaw*
- (c) must ensure that its decisions are consistent with any provincial land use policies and statements of provincial interest; and,*
- (d) may, subject to clauses (a) to (c), confirm, revoke, or vary the approval, decision, any development standard or condition, or order imposed by the approving authority, the council or the development officer, as the case may be, or make or substitute any approval, decision or condition that it considers advisable if, in its opinion, the action would not:*
 - (i) grant to the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district*
 - (ii) amount to a relaxation so as to defeat the intent of the zoning bylaw; or*
 - (iii) injuriously affect the neighbouring properties.*

[c] Section 242 Enforcement:

- (5) In a written order made pursuant to subsection (4), the development officer:*
 - (a) shall specify the contravention;*
 - (b) may direct the person to whom the order is issued to do all or any of the following:*
 - (i) discontinue the development or form of development;*
 - (ii) alter the development or form of development so as to remove the contravention;*
 - (iii) restore the land, building or premises to its condition immediately before the undertaking of the development or form of development;*
 - (iv) complete all work necessary to comply with the zoning bylaw;*
 - (c) shall set a time in which a direction made pursuant to clause (b) is to be complied with; and*
 - (d) shall advise of the right to appeal the order to the Development Appeals Board*

[35] From the RM OF BAILDON NO. 131 Official Community Plan – Schedule A:

- [a] Section 1.2.a Our Goals for the future are:** *To minimize and avoid land use conflicts.*
- [b] Section 3 Hamlet**
 - 3.1.b Goals: To minimize the potential for conflict between different types of land uses.*
- [c] Section 6 Infrastructure and Services**

6.2.h Policies: Where pipelines, utility lines or other transportation facilities cross municipal roads the municipality may apply special standards for their construction that are necessary to protect municipal interest.

[36] From the RM OF BAILDON NO. 131 Zoning Bylaw – Bylaw 08-2015:

- [a] Section 2 Definitions:**

Accessory Use – use or structure that is customarily incidental, subordinate, and exclusively devote to the principal use or building and is located on the same site with such principal use or building.

Development – the carrying out of any building, engineering, mining or other operations in, on or over land or the making of any material change in use or intensity of the use of any building or land.

Development Permit – a document authorizing a development issued pursuant to this Bylaw.

Lane – legal site intended to provide secondary access to the rear or side of abutting sites.

Permitted Use – a use or form of development rightfully allowed in a zoning District, subject to the regulations contained in this Bylaw.

Principal Use – the main activities conducted on a site.

Public Road – a road allowance or a legally surveyed road vested in the name of Ministry of Highways and Infrastructure.

Site – an area of land with fixed boundaries that has been registered in the Land Titles Office by Certificate of Title, and for which all portions of the land are consolidated under a single title.

Structure – anything that is built, constructed, or erected, located in, on or over the ground, or attached to something located in or over the ground.

Use – the purposed or activity for which a piece of land or its buildings are designed, arranged or intended, occupied or maintained.

[b] Section 3.2 Development Permit Process

- a. *Every person shall obtain a development permit before commencing any development within the Municipality, except those developments that are listed as exempt.*
- c. *Upon receipt of the completed application and prior to making a decision, the Development Officer may refer any application to Council for a decision on the interpretation of the Bylaw or regarding special considerations provided for in the Bylaw and shall inform the applicant of the date and time when Council will consider this matter. Council or the Development Officer may require the applicant to provide further information necessary to render a decision.*
- f. *The Development Officer shall determine if the proposed development is either:*
 - i. *Permitted Use:*
 - *The Development Officer will issue a development permit when the application conforms to the Zoning Bylaw, incorporating any special regulations, performance standards or development standards authorized by this Bylaw.*
 - *The Development Officer will issue a refusal, when the application does not comply with a provision or regulation of this Bylaw and write a letter to the applicant stating the reason for refusal.*
 - ii. *Prohibited Use:*
 - *If the proposed development is not listed as a Permitted or Discretionary Use, it is considered a prohibited use.*

[c] Section 3.7 Development Not Requiring a Permit

The following developments are exempt from obtaining a development permit provided they meet the requirements of this Zoning Bylaw:

- b. *Accessory buildings which are less than 10m² (107ft²) in area that do not contain any habitable rooms and are smaller in area than the principle residence. Including but not limited*

to sheds and storage buildings. Accessory buildings shall adhere to the minimum setback requirements in the applicable sections of this Bylaw.

c. The repair and maintenance of existing buildings that does not include structural alterations, additions or major works or renovation.

d. Sidewalk and steps.

e. Patios under 100 square feet and decks under 100 square feet.

f. Landscaping on private lands: provided the drainage pattern of the site and adjacent sites are not negatively impacted including surrounding waterways.

[d] Section 4.11: *Where a pipeline, other utility or transportation facility, crosses a municipal road Council may apply special design standards as considered necessary to protect the municipal interest in the road, including but not limited to requiring the pipeline to be punched under the road.*

[e] Section 4.18 (c) approaches and road crossings require approval from Council, the approval issued through a separate permit process than from this Bylaw.

[f] Section 4.21.a *Accessory Uses: The peace, order and character of adjacent land uses shall not be disturbed by dust, noise, odour, smoke, traffic or similar nuisances generated by any accessory use.*

[g] Section 8 Hamlet District (H)

8.1.b Permitted Uses that require development permit approval: Accessory uses and buildings greater than 10m² (107ft²)

[37] Case Law:

[38] In *RM Big River v. Pettigrew* 2021 SKCA 30 the Court of Appeal at para 71 wrote “If this Court allows the Committee Decision to stand, a landowner who is dissatisfied with a municipality’s refusal to issue a development permit can build first and once the structure is built, prevail upon the municipal authority for an exemption or a variance to the detriment of all concerned. It is this sort of self-help that the law discourages, and the rule of law is intended to prevent.”

8- Analysis:

[39] The Board carefully considered the evidence and arguments presented by the Appellant and the Respondent.

[40] The appeal was based on the written material provided ahead of time, shown in the Exhibit list above, and the verbal evidence and arguments presented during the hearing.

[41] The Appellant knowingly proceeded without a DP, and, in fact began the work earlier than the date specified in his permit application. At that time, the municipality had only adjourned its decision to a date immediately following his intended start date.

[42] The Board finds it reasonable for the municipality to evaluate the issuance of a DP contingent upon SaskPower’s approval and the municipality’s issuance of a permit under section 4.18(c) of the ZB. In reviewing such an application, the municipality must consider safety issues related to power and water lines buried under the municipal lane, as well as potential future projects affecting the lane that may be necessary for public use. It is unreasonable for the appellant to preempt this review with unilateral action.

[43] The Board determines that the intent to install power and irrigation lines on private property, without connecting to a distribution system, falls under section 3.7(f) of the Zoning Bylaw and is therefore exempt from requiring a development permit, and are undertaken at the property owner's own risk. For additional clarity, this exemption does not extend to the intent to cross a municipal laneway.

[44] Focusing on the appellant's action of crossing a municipal laneway, Section 12(1) of the Municipalities Act states that a municipality has authority over the direction, control, and management of all streets within its jurisdiction, including all roads except provincial highways. As a result, road crossings are regulated by Section 4.18(c) of the ZB through a separate permit process. The standards or conditions related to crossing a municipal laneway are discretionary and not subject to appeal.

[45] The Board reviewed its authority in Section 221(d) of the PDA, specifically the three bars of relief that must be met in order to confirm, revoke or vary the approval, decision, any development standard or condition, or order imposed by the RM or make or substitute any approval, decision or condition that it considers advisable if, in the Board's opinion, the action would not grant special privilege, would not defeat the intent of the ZB, and would not injuriously affect the neighbouring properties.

[46] Although it is clear that the appellant is in complete contravention, the Board reviewed the request for relief based on the three bars and found that the appellant has not demonstrated any special need or circumstances that would justify a different decision. Consequently, the Board concludes that granting permission to the appellant would constitute a special privilege. Furthermore, as per the Court of Appeal in *RM BIG RIVER v. PETTIGREW*, the Board finds that granting permission at this point would undermine the fundamental principles of the development process outlined in the ZB. Additionally, there is no evidence from neighbouring properties either supporting or opposing this application but suffice it to say there are safety concerns when a property owner independently buries power and water lines across a municipal lane at their own discretion.

[47] The Board is satisfied based on the evidence provided by the administrator that no motions or amendments have been implemented to suspend any of the provisions of the ZB relevant to this case.

9- Decision:

[48] In view of the Board, the Stop Work Order was issued under section 242(4) of the Planning and Development Act, and the Appellant has admitted to acting without a development permit and to crossing a municipal road using an open trench to install electrical and water lines without permission. Section 4.18(c) of the Zoning Bylaw mandates that the Appellant must obtain Council approval through a separate permit process therefore the Board, unanimously, decided that the appeal be ***DENIED***.

[49] Further to section 221(d) of the PDA the Board also hereby varies the order which shall now read as follows:

To: Mr. Kaiser owner of Source Quarter Section: NW-24-15-26-2 **Lot 3, Lot 4, Lot 5, Lot 6, Lot 7 – Blk/Par 1-Plan K974 Ext 0** located within the RM OF BAILDON NO. 131 is **hereby ordered** to:

From: RM OF BAILDON NO. 131 – Development Appeal Board

Notice is hereby given that development on, above of below a municipal roadway is in contravention of the following:

- 1) Section 4.18(c) of Baidon's Zoning Bylaw No. 08-2015 that states approaches and road crossings require approval from Council, the approval issued through a separate permit process than from this Bylaw, and

- 2) Section 243(1) of *The Planning and Development Act* which requires that No person shall (a) contravene or refuse or neglect to comply with, fail to do any act or thing required to be done, or suffer or permit any act or thing to be done, in contravention of: (ii) a bylaw, permit or regulation passed by the council, or any approving authority or the minister, or enacted by the minister, pursuant to this act.

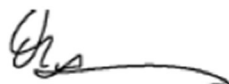
Mr. Kaiser owner of Source Quarter Section: **NW-24-15-26-2 Lot 3, Lot 4, Lot 5, Lot 6, Lot 7 – Blk/Par 1-Plan K974 Ext 0**, located within the RM OF BAILDON NO. 131 is **hereby ordered** to:

- 1) Discontinue the development on, above or below the municipal roadway.
- 2) Obtain written agreement or permission pursuant to Section 4.18(c) of Baidon's Zoning Bylaw No. 08-2015 on or before September 15, 2024, otherwise remove any unapproved material and restore the land to its condition immediately before the undertaking of the development or form of development.

DATED AT MEOTA, SASKATCHEWAN, THIS DATE: August 9, 2024.
RM OF BAILDON NO. 131 DEVELOPMENT APPEALS BOARD



Pam Malach, Chair, Development Appeals Board



I concur: _____
Dave Gurnsey, Member, Development Appeals Board



I concur: _____
Stew Demmans, Member, Development Appeals Board

TAKE NOTICE, that the minister, the council, the appellant or any other person may, within 30 days after the date of receipt of a copy of the decision of the board, file with the Saskatchewan Municipal Board (SMB) a notice of appeal, in the form and manner established by the SMB, setting out all grounds of appeal.

A notice of appeal form can be downloaded from <https://www.saskatchewan.ca/government/municipal-administration/appealing-decisions-made-by-municipalities/file-a-planning-appeal>. The appeal must be filed within 30 days after being served with this Record of Decision, to:

Planning Appeals Committee
Saskatchewan Municipal Board 480 - 2151
Scarth Street
REGINA, SK S4P 2H8

(306) 787-6221
info@smb.gov.sk.ca

For additional information, please contact the Saskatchewan Municipal Board, at the website, address, email and/or telephone number indicated above.

If no such appeal is made, this decision becomes effective 30 days after the signatory date above.

Cc: Minister of Government Relations

- Ian Goeres, Director, Community Planning, Municipal Relations Division (Registered Mail) (Email)
- Eric MacDougall, Director, Community Planning, Municipal Relations Division (Email)
- Shelby Williams, Director, Community Planning, Municipal Relations Division (Email)

Cc: Appellant

- Jerry Kaiser (Registered Mail) (Email)

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Cc: Respondent

- Carol Bellefeuille, Administrator & Development Officer, RM of Baildon (Registered Mail) (Email)