



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Edmonton, AB T5J 0G9
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Date: May 8, 2018
Project Number: 269061810-001
File Number: SDAB-D-18-060

Notice of Decision

[1] On April 26, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **April 2, 2018**. The appeal concerned the decision of the Development Authority, issued on March 28, 2018, to refuse the following development:

Construct a Garden Suite (9.45 metres by 8.83 metres) with second storey balcony and to demolish an existing Accessory Building (detached Garage)

[2] The subject property is on Plan 5887HW Blk 19 Lot 45, located at 14605 - 110A Avenue NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

[3] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions; and
- The Appellant’s written submissions.

Preliminary Matters

[4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “MGA”).

Summary of Hearing*i) Position of the Appellants, J. Leenheer and P. Leenheer*

- [7] Mr. J. Leenheer spoke on behalf of the Appellants, who are his parents.
- [8] Mr. Leenheer referred to the photos he had submitted which provided views of the entire property. These photos show the pride of ownership and the attractive landscaping that his parents have developed.
- [9] His parents wish to age in place in the neighbourhood they have lived in for 43 years. The living area of the Garden Suite has been carefully designed to provide separate bedrooms which are required due to medical issues and to provide space for each parent to pursue their separate interests. His parents would occupy the Garden Suite and family members would eventually live in the original house.
- [10] Having the driveway exit into the lane is not practical as it would only be one meter long, creating safety concerns. There would also be insufficient room to provide a practical entry to the suite if driveway access is from the lane.
- [11] Mr. Leenheer referred to a previous SDAB decision (SDAB-D-16-191) which approved a Garden Suite of approximately the same size in the McQueen area. The main difference is that their proposed development is set down sixteen inches. The Appellants have gone to considerable expense to do this in an effort to be thoughtful of the neighbours and to make the development fit into the neighbourhood.
- [12] The proposed development aids with the City's densification goals and would increase taxes.
- [13] The neighbourhood is beginning to transform and has a mix of more traditional style houses, newer estate style homes and more modern looking homes. Photos were presented showing the various types of housing found in the area.
- [14] A letter from the Community League did not express any concerns with the proposed development.
- [15] The proposed development could create an opportunity for a future owner to buy into a neighbourhood where many of the homes are more expensive and difficult to get into.
- [16] Substantial community consultation was conducted and written support from 16 neighbours was submitted. The two most affected neighbours did not provide letters of support but did provide verbal support. The Appellants were unaware of any objections to the Garden Suite until they saw the Development Officer's report which stated that the abutting property owner had concerns regarding height and drainage.
- [17] The Appellant took photos from the roof of the current garage to show what the occupants of the proposed suite would be able to see from their windows. The windows

would overlook the neighbour's roof and would not create any privacy impacts. The Appellants would prefer not to frost any windows.

[18] The proposed development complies with the following policies of the *Municipal Development Plan, The Way We Grow*”:

- a) 4.2.1.1 “Support neighbourhood revitalization, redevelopment and residential infill that contributes to the livability and adaptability of established neighbourhoods.”
- b) 4.2.1.4 “Encourage redevelopment in established neighbourhoods, ... to incorporate age friendly design.”
- c) 4.2.1.10 “Consider the need for family oriented housing and the infrastructure necessary to support families with children in preparation of land use plans in established neighbourhoods.” Two bedrooms would allow a young, small family to live on the site who otherwise may not be able to afford to move into this neighbourhood.
- d) 3.5.2.5 “Promote the development of family oriented housing and walkability in established neighbourhoods. 1: Land Development Concept to support existing school and institutional infrastructure.” There are existing schools and institutions within walking distance.
- e) 4.4.1.1 “Provide a broad and varied housing choice, incorporating housing for various demographic and income groups in all neighbourhoods.”
- f) 4.5.1.2 “Encourage new development and infill redevelopments to incorporate affordable housing that is visually indistinguishable from market housing.”

[19] The Appellants provided the following responses to questions from the Board:

- a) They prefer not to frost any windows to allow more light to come in and to be able to look out. They will not be overlooking any amenity areas of neighbours.
- b) They acknowledged there is a substantial difference in size between the existing garage and the proposed development. The existing garage is 624 square feet while the proposed development would be 899 square feet.
- c) The Appellants confirmed there will be no living space on the main floor. There will be room for two vehicles to park in the garage and the additional space is intended as a utility area to allow for bicycle storage, gardening, etc.
- d) They plan to install a lift to facilitate access to the second floor living area once the stairs are no longer manageable.

- e) The driveway of the property across the flanking street also exits onto 110A Avenue as does the driveway of the property across the lane.
- f) The principal building on the site is 1,140 square feet.
- g) He does not believe the site would look as if it consists of two houses as the proposed development has been dropped by 16 inches, has only one floor of living space and is on a corner lot. It has been designed to fit into the neighbourhood and will not alter what the street looks like.
- h) There is the possibility of constructing a duplex within the RF1 Single Detached Residential Zone. The proposed development is more compatible with the neighbourhood than a duplex would be.
- i) The Appellants have lived in the neighbourhood since the mid-seventies and have seen much change in the last ten years. The landscape is changing and they have seen infill houses and large storey duplexes come in which look similar to their proposal. They are excited about the changes and believe it helps achieve the City's goal of densification.

ii) Position of the Development Officer, Mr. B. Langille

[20] The Development Authority did not attend the hearing and the Board relied on Mr. Langille's written submission.

Decision

[21] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

1. An accessory building or structure containing a Garden Suite shall not exceed 6.5 metres in Height (Reference Section 6.1(55) and 87.3(a)).
2. Only one of a Secondary Suite or Garden Suite may be developed in conjunction with a principal Dwelling.
3. A Garden Suite shall not be allowed within the same Site containing a Group Home or Limited Group Home, or a Major Home Based Business and an associated principal Dwelling, unless the Garden Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business.
4. Notwithstanding the definition of Household within this Bylaw, the number of unrelated persons occupying a Garden Suite shall not exceed three.

5. The Garden Suite shall not be subject to separation from the principal Dwelling through a condominium conversion or subdivision.
6. Facades facing a Lane shall have exterior lighting (Reference Section 87.19).
7. The area hard surfaced for a driveway, not including the area used for a walkway, shall comply with Section 54.6 of the *Edmonton Zoning Bylaw 12800*.
8. Except for the hard surfacing of driveways and/or parking areas approved on the site plan for this application, the remainder of the site shall be landscaped in accordance with the regulations set out in Section 55 of the *Edmonton Zoning Bylaw 12800*.

Development Advisements:

1. Lot grades must comply with the *Edmonton Drainage Bylaw 16200*. Contact Drainage Services at 780-496-5500 for lot grading inspection inquiries.
2. Any future deck development greater than 0.6 metres (2 feet) in height will require development and building permit approvals.
3. Any future deck enclosure or cover requires a separate development and building permit approval.
4. The driveway access must maintain a minimum clearance of 1.5 metres from any service pedestal and all other surface utilities.

Transportation Conditions

1. Access from the site to 110A Avenue existing, as shown on Enclosure I. Any modification to the existing driveway access requires the review and approval of Subdivision Planning.
2. Permanent objects must NOT encroach into or over alley right-of-way. The existing planter box on the east side of the proposed garden suite must be removed or brought inside the property line as shown on Enclosure I.
3. There are existing boulevard trees adjacent to the site that must be protected during construction. Prior to construction, the owner/applicant must contact Bonnie Fermanuik of City Operations, Parks and Roads Services (780-496-4960) to arrange for hoarding and/or root cutting. All costs shall be borne by the owner/applicant.

4. There is an existing power pole in the alley that may interfere with construction of the proposed garden suite, as shown on Enclosure I. Should relocation of the pole/guy-wire or existing overhead power cables be required in order to re-direct power to new suite panel, all costs associated with relocation/modification must be borne by the 2 owner/applicant. The applicant should contact Ron Hewitt (780-412-3128) of EPCOR Customer Engineering for more information.
5. There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.
6. Any sidewalk or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Development Inspections, as per Section 15.5(f) of the *Edmonton Zoning Bylaw*. The sidewalks and boulevard will be inspected by Development Inspections prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.
7. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. OSCAM permit applications require Transportation Management Plan (TMP) information. The TMP must include:
 - the start/finish date of project;
 - accommodation of pedestrians and vehicles during construction;
 - confirmation of lay down area within legal road right of way if required;
 - and to confirm if crossing the sidewalk and/or boulevard is required to temporarily access the site.

It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at:

<http://www.edmonton.ca/transportation/onyourstreets/on-street-construction-maintenance-permit.aspx>

[22] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. Section 814.3.17 is waived to permit the driveway to be located off of 110A Avenue (flanking) instead of the alley.
2. The maximum allowable total Floor Area for a Garden Suite of 120 square metres as per Section 87.4 is varied to allow an excess of 47.04 square metres, thereby increasing the maximum allowed to 167.04 square metres.

3. The maximum allowable Floor Area for Dwelling Space of 75 square metres as per Section 87.5(b) is varied to allow an excess of 12.6 square metres, thereby increasing the maximum allowed to 87.6 square metres.
4. The maximum allowable second Storey Floor Area of 50.0 square metres as per Section 87.5(d) is varied to allow an excess of 28.63 square metres, thereby increasing the maximum allowed to 78.63 square metres.

Reasons for Decision

- [23] A Garden Suite is a Permitted Use in the RF1 Single Detached Residential Zone.
- [24] Based on information provided by the Development Officer in his written report, the Board finds that the community consultation requirements contained in Section 814.5 have been satisfied.
- [25] The variance with respect to vehicular access from a public roadway other than a lane regarding Section 814.3(17) was not a concern raised by any of the neighbours in the course of neighbourhood consultation. The proposed access is the same that has existed on this site for many years apparently without any issues or concerns.
- [26] With respect to the Floor Area variances with respect to Garden Suites, the Appellants provided evidence of widespread neighbourhood support for the proposed development including the most affected neighbours to the south and to the west. The Board notes that notwithstanding the required variances, the proposed development does not create any issues regarding total Site Coverage, accessory Site Coverage, required Amenity space or Setbacks on this lot.
- [27] The Board also notes that the proposed development is located on a corner lot with a back lane, with the result that to the west, north and east the Site is separated from neighbours by roadways, which mitigates the impact of the variances.
- [28] The neighbour located on the abutting lot to the south expressed concerns to the Development Officer in the course of community consultation about the Height of the proposed development and about potential drainage issues. However, no variance is required for Height and there is a condition that the development must comply with *Edmonton Drainage Bylaw 16200*.
- [29] Although the proposed development will result in a Garden Suite that is significantly larger than the regulations allow, on this particular site for the reasons set out above, the Board is of the opinion that the proposed development will not unduly interfere with the

amenities of the neighbourhood nor will it materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. K. Cherniawsky; Ms. N. Hack; Ms. G. Harris; Mr. R. Hobson

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.

MCQUEEN GARDEN SUITE

LEGAL DESCRIPTION:

LOT 45, BLOCK 19, PLAN 5887 HW

MUNICIPAL ADDRESS:

14605 - 110A AVENUE
EDMONTON, ALBERTA

ARCHITECTURAL DRAWINGS:

- A1.0 - PROPOSED SITE PLAN
- A2.0 - GARAGE FLOOR PLAN
- A3.0 - SUITE FLOOR PLAN
- A4.0 - FOUNDATION PLAN
- A5.0 - EXTERIOR ELEVATIONS
- A6.0 - BUILDING SECTION DETAILS
- A7.0 - SPECIFICATIONS
- REAL PROPERTY REPORT

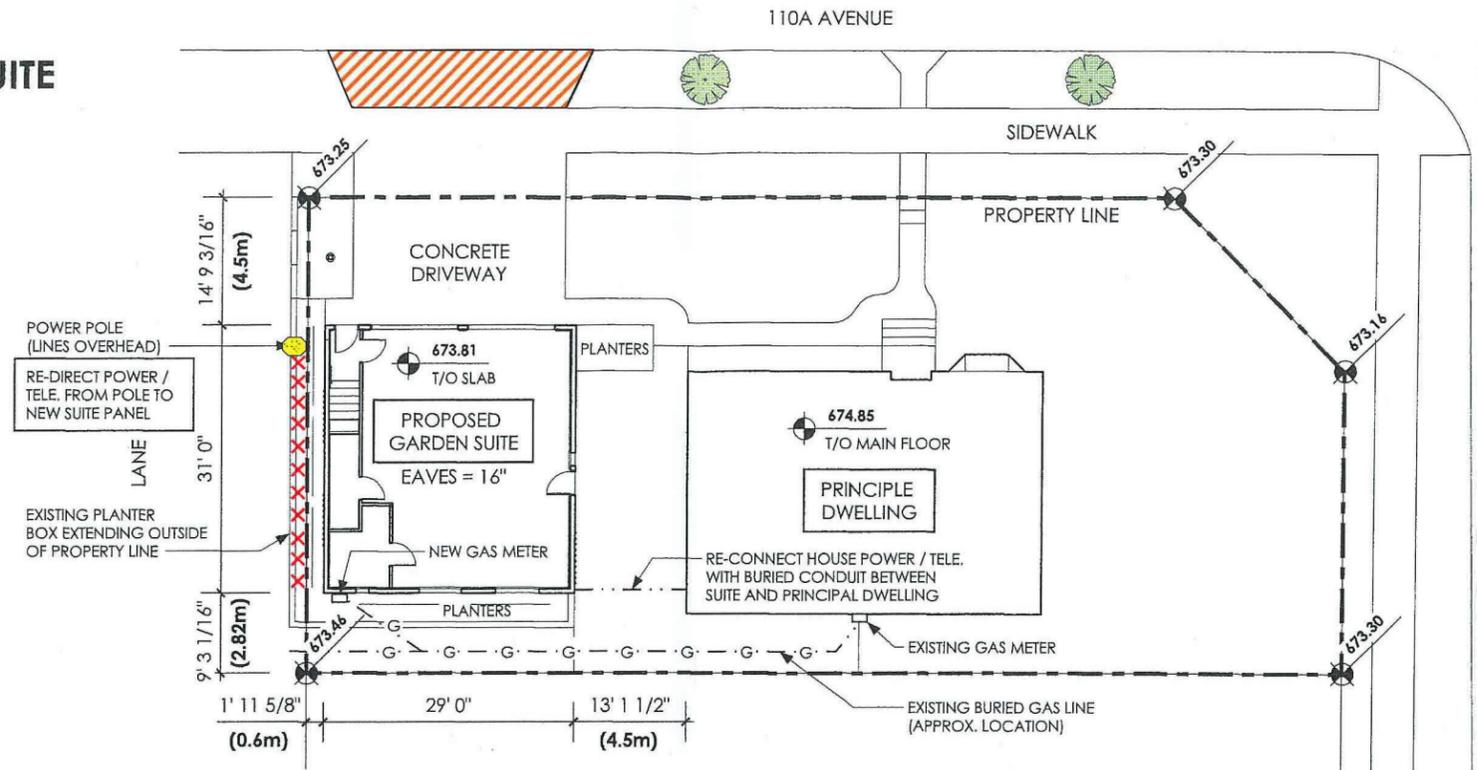
REAL PROPERTY REPORT AND GEODETIC ELEVATIONS ARE PROVIDED BY QUANTUM GEOMATICS LTD.

GENERAL NOTES:

1. DO NOT SCALE DRAWINGS. SCALES NOTED ARE ACCURATE WHEN PACKAGE IS PRINTED ON 11 x 17 PAPER SIZE

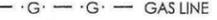
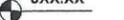
LEGEND:

-  - Existing 6.2 m Access to 110a Avenue
-  - Existing Boulevard Trees
-  - Existing Power Pole
-  - No encroachment of permanent objects into road right-of-way



1 PROPOSED SITE PLAN

SCALE: 1/16" = 1'-0"

- LEGEND:
-  - GAS LINE
 -  - PROPERTY LINE
 -  - GEODETIC ELEVATION

LANDSCAPE NOTE:

ALL LANDSCAPE FINISHES ARE TO BE RETURNED / MATCHED TO THE ORIGINAL CONDITIONS OF THE SITE. OWNER TO CONFIRM ALL MATERIALS AND STYLES.

BUILDING FOOTPRINT:

PRINCIPLE DWELLING:	1152 SF (107 SM)
TOTAL SITE AREA:	6396 SF (594.21 SM)
PROPOSED FOOTPRINT:	899 SF (83.52 SM)
GARAGE AREA:	737 SF (68.47 SM)
SUITE AREA:	840 SF (78.01 SM)
STAIR OPENING:	45 SF (4.18 SM)

GEODETIC ELEVATIONS:

EXISTING PRINCIPLE DWELLING MAIN FLOOR:	674.85
EXISTING GARAGE SLAB:	673.81
PROPOSED GARAGE SLAB:	673.81
AVERAGE SITE CORNER ELEVATION:	673.29

ENCLOSURE I

FILE: 269061810-001

DATE: January 22, 2018

2507 Sheridan Drive
Fort Saskatchewan, AB
T8B 0T4
myes.kontracting@gmail.com

PROPOSED SITE PLAN
LEENHEER GARDEN SUITE / MCQUEEN COMMUNITY
14605 110A AVENUE NW / Edmonton AB, T5N 1K2

DATE	ISSUE	DRAWN BY: MK
2017/10/17	ISSUED FOR CLIENT REVIEW	THE DRAWINGS AND DESIGN ARE AT ALL TIMES TO REMAIN THE EXCLUSIVE PROPERTY OF KOESTER CONSULTING AND SHALL NOT BE USED OR REPRODUCED WITHOUT PRIOR WRITTEN CONSENT
2017/11/07	ISSUED FOR CLIENT REVIEW 2	
2017/11/19	ISSUED FOR BUILDING PERMIT	

A10



**EDMONTON
TRIBUNALS**

*Subdivision &
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*10019 – 103 Avenue NW
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P: 780-496-6079 F: 780-577-
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sdab@edmonton.ca
edmontonsdab.ca*

Date: May 8, 2018
Project Number: 231617877-002
File Number: SDAB-D-18-061

Notice of Decision

- [1] On April 26, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **March 28, 2018**. The appeal concerned the decision of the Development Authority, issued on March 5, 2018, to refuse the following development:

Convert a Semi-detached House to 4 Dwellings of Apartment Housing

- [2] The subject property is on Plan 1978ET Blk 22 Lot 7, located at 10016 - 153 Street NW, within the RA7 Low Rise Apartment Zone. The Medium Scale Residential Overlay and Jasper Place Area Redevelopment Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions;
 - The Appellant’s written submissions; and
 - One response in opposition.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The Chair advised the Appellant that the Board must first determine if the appeal was filed on time in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “MGA”).

[7] Section 686(1)(a)(i)(A) states:

A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board, in the case of an appeal made by a person referred to in section 685(1), with respect to an application for a development permit, within 21 days after the date on which the decision is made under section 642.

[8] Section 642(3) of the *MGA* states:

A decision of a development authority on an application for a development permit must be in writing, and a copy of the decision, together with a written notice specifying the date on which the decision was made and containing any other information required by the regulations, must be given or sent to the applicant on the same day the decision is made.

[9] The Board is aware that the Development Officer made his decision on March 5, 2018, and he mailed a hard copy of the decision and also sent it out via e-mail that same day. A copy of the Development Officer's e-mail dated March 5, 2018, with the attached refused application was displayed. This e-mail stated: "Please note that you have 21 days from today's date to make an appeal to SDAB."

[10] It appears to the Board that the 21 day appeal period began to run on March 5, 2018, which means that the time for filing the appeal expired on March 26, 2018. The appeal was filed on March 28, 2018. On the face of it, it appears that the appeal is out of time. The Board asked Mr. Kucy to address this issue.

i) Position of the Appellant, Mr. J. Kucy

[11] Mr. Kucy was accompanied by Mr. T. Kondrat, manager of the proposed development.

[12] Mr. Kucy received notice of the refused development permit via registered mail. The notice of the registered mail that came to his mail box was the second notice. He is not sure what happened to the first notice. He picked up the registered letter the same day he received this second notice and submitted the appeal as soon as possible.

[13] He has had difficulties with receiving e-mails from City of Edmonton in the past due to wrong names or wrong e-mail addresses. He acknowledged that he did receive the March 5, 2018, e-mail from the Development Officer and responded to it that same day. Unfortunately he misread the e-mail and was under the impression that the 21 days to file an appeal began once he received the hard copy of the refused permit.

[14] It is his opinion that notification should not just be digital but should be provided in paper format.

Decision on Preliminary Matter

[15] The appeal was filed out of time so the Board has no jurisdiction to hear the matter.

Reasons for Decision

[16] Section 686(1)(a)(i)(A) of the *MGA* provides the time line for filing the appeal with respect to a refused development permit is “within 21 days after the date on which the decision is made under section 642”.

[17] Section 642(3) of the *MGA* states:

A decision of a development authority on an application for a development permit must be in writing, and a copy of the decision, together with a written notice specifying the date on which the decision was made and containing any other information required by the regulations, must be given or sent to the applicant on the same day the decision is made.

[18] The Board is of the view that the 21-day appeal period commences after the Development Officer has complied with the requirements of Section 642.

[19] In this case, the Development Officer sent an e-mail with a copy of the refused Development Permit application to the Appellant on March 5, 2018, the same day the decision was made. That e-mail specifically stated that the Appellant had 21 days from the date of the e-mail to file an appeal. The Development Officer also sent a registered letter with a copy of the refused Development Permit application on March 5, 2018.

[20] The Appellant indicated that he felt the written notice referred to in Section 642(3) should be hard copy rather than email. The Board disagrees. The email sent to the Appellant with the attached copy of the decision complies in every respect with the requirements of the section for written notice. In any event, the hard copy that was sent by registered mail on the same date also complies with the section and also commences the appeal period.

[21] The fact that the Appellant did not receive the hard copy until March 24 is of no consequence. Nothing in Section 686(1)(a) or Section 642(3) indicates that the date the Appellant is notified of the decision has any bearing on when the appeal period commences. The Board notes that Section 686 was recently amended. It used to state that an applicant for a development permit had 14 days from when he was notified of the decision to file an appeal. The Board is of the view that the amendment was intended to address uncertainties about when applicants were notified.

- [22] The Board finds that the Development Officer complied with the requirements of Section 642(3) on March 5, meaning that the appeal period commenced on that date and expired on March 26, 2018. The appeal was not filed until March 28, 2018 and is therefore out of time. Accordingly, the Board has no jurisdiction to hear the appeal.



Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. K. Cherniawsky; Ms. N. Hack; Ms. G. Harris; Mr. R. Hobson

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.