



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: August 19, 2016
Project Number: 187404079-001
File Number: SDAB-D-16-189

Notice of Decision

- [1] On August 4, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on July 7, 2016. The appeal concerned the decision of the Development Authority, issued on June 15, 2016, to refuse the following development:

To install (2) Fascia On-premises Signs (Pharmasave & Lynwood)

- [2] The subject property is on Plan 5572HW Blk 1 Lots 4-10, located at 8720 - 149 Street NW, within the CSC Shopping Centre Zone. The CSC Shopping Centre Zone applies to the subject property.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - Registered Mail receipt confirming delivery of the refused Development Permit on June 17, 2016; and
 - Development Officer's written submissions, dated August 2, 2016.
 - Appellant's reasons for appeal and written submissions, received July 7 and July 21, 2016.

Preliminary Matter

- [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 Presiding Officer explained to the parties that the Board's jurisdiction to hear appeals is set out in Section 686(1)(a)(i) of the *Municipal Government Act*, which states:

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

(a) in the case of an appeal made by a person referred to in section 685(1), after

(i) the date on which the person is notified of the order or decision or the issuance of the development permit...

[7] The Board must therefore determine whether the Appellant filed his appeal within the 14 days limitation period. If the appeal was filed late, the Board has no authority to hear the matter.

i) Position of the Appellant, Priority Permits

[8] The Appellant did not appear. However, Mr. B. Winfield from the signage contractor, Sign Force, was present. He explained that Sign Force contracted with the business owner to install the sign, and as part of the agreement, Sign Force was also responsible for obtaining the necessary permits. In turn, Sign Force hired Priority Permits, as its agent to obtain the permit for the Sign in question in this appeal.

[9] Upon questioning by the Board, Mr. Winfield confirmed that Sign Force contracted with the lessee, not the landowner. Sign Force did keep the lessee informed about the Development Officer's refusal and the necessary appeal of that refusal decision.

[10] Mr. Winfield explained that he was not personally involved with respect to the late filing. He had no communications with the planning department. It was his understanding that Priority Permits had been in communication with the Development Officer with respect to the procedure for filing a notice of appeal. As a result of those communications, there was a misunderstanding about the process for filing an appeal.

[11] Mr. Winfield stated that he, himself, contacted the administrative office of the Subdivision and Development Appeal Board (the "Board"), and a staff member indicated that the preliminary issue of the potential late filing of the notice of appeal would need to be addressed. However, he understood from the staff member that the timing issue would likely not be a problem, due to the surrounding circumstances.

[12] Upon questioning by the Board, Mr. Winfield acknowledged that the Canada Post receipt confirming delivery of the decision is correct, and that the notice of appeal was filed late.

ii) Position of the Development Officer, Mr. S. Ahuja

- [13] Upon questioning by the Board, Mr. Ahuja acknowledged that he was in receipt of an email from Priority Permits, dated Monday, June 20, 2016. It would appear that this email constituted an appeal letter, and it was his understanding that Priority Permits had simply sent him a copy of an appeal letter that had been filed with the Board. In the normal course, he receives appeals from the Board.
- [14] Mr. Ahuja clarified that he did not confirm with the Appellant whether the appeal letter had also been filed with the Board, nor did he reply to the Appellant's June 20 email. In his view, it is not the Development Officer's responsibility to tell an Applicant to file an appeal. He acknowledged that it is possible that Priority Permits misunderstood that the appeal letter could be sent to Sustainable Development, which would then forward the letter to the Board.
- [15] However, Mr. Ahuja explained that this is not the first time he has worked with the Appellant, as Sustainable Development deals frequently with Priority Permits, which is familiar with the appeal process.
- [16] Upon questioning by the Board, Mr. Ahuja confirmed that the signed refusal decision is the standard format in which development permits are issued or denied. He noted that this decision includes information regarding how to file an appeal with the Board. He also has a registered mail receipt confirming delivery of the decision, with the accompanying instructions for filing an appeal, on June 17, 2016.

iii) Rebuttal of the Appellant

- [17] Mr. Winfield noted that Priority Permits is based out of Vancouver, British Columbia. Sign Force subcontracts frequently with Priority Permits. It was his belief that in all his dealings with Priority Permits, this matter was the first time that a development permit application has been appealed to this board.

Decision

- [18] The appeal was not filed within the 14 days statutory time limit under Section 686(1)(a)(i) of the *Municipal Government Act*, and the Board therefore has no jurisdiction to hear the matter.

Reasons for Decision

- [19] Section 685(1) of the *Municipal Government Act* grants applicants the right to appeal decisions of the development authority and provides in part:

If a development authority

(a) fails or refuses to issue a development permit to a person,...

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

[20] Since the name that appears on both the Development Permit Application and the Development Permit Decision is Priority Permits, the Board finds in this case that “the person applying for the permit” is Priority Permits.

[21] Based on the records before the Board and the submissions of the parties, the Board finds the following:

- i) The Development Authority made the decision to refuse the permit on June 15, 2016.
- ii) The Applicant was notified of the Development Authority’s decision to refuse the permit on June 17, 2016, as documented by the signed Canada Post confirmation of receipt. The Appellant also acknowledged that the confirmation of receipt of refusal dated June 17, 2016 is accurate.
- iii) The Applicant sent the following email communications to Sustainable Development:
 - a) An email dated June 20, 2016 referring to an attached “appeal letter” The attached letter dated June 20, 2016 is addressed to the “City of Edmonton – Sign Permit Dept”, no specified address, and requests a “relaxation to all the Pharmasave sign.”
 - b) An email dated June 26, 2016 stating the Applicant “just wanted to follow up to make sure everything is moving with this project. Please keep me posted!” The June 20 email is attached.
- iv) The Applicant’s two emails were not answered by the Development Authority.
- v) The notice of appeal was filed with the Board on July 7, 2016.

[22] Section 686(1)(a)(i) of the *Municipal Government Act* states:

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

(a) in the case of an appeal made by a person referred to in section 685(1), after

(i) the date on which the person is notified of the order or decision or the issuance of the development permit...

- [23] In addition, Section 22(7) of the *Interpretation Act*, RSA 2000, c I-8, states: “If an enactment provides that anything is to be done within a time after, from, of or before a specified day, the time does not include that day.” Accordingly, since the Applicant received notification on June 17, 2016, it had until July 1, 2016 to file its Notice of Appeal.
- [24] However, since July 1, 2016 was a statutory holiday, the administrative offices of the SDAB were closed. Section 22(1) of the *Interpretation Act* extended the time within which the Appellant could file an appeal. Section 22(1) states: “If in an enactment the time limited for the doing of a thing expires or falls on a holiday, the thing may be done on the day next following that is not a holiday.”
- [25] The next day on which the SDAB administrative office was open fell on July 4, 2016.
- [26] Therefore, the Board finds that the Applicant had until July 4, 2016 to file its appeal.
- [27] Based on the records and submissions before the Board, it finds that the appeal was filed with the Board on July 7, 2016, three days after expiry of the time limit to appeal. The Board concludes that the appeal was not filed on time, in accordance with Section 686 of the *Municipal Government Act* and the Subdivision and Development Appeal Board has no jurisdiction to hear the matter.
- [28] The Appellant argued, given the circumstances, the Board should hear this appeal despite the fact that the appeal had been filed late; however, the Board notes it has no authority to waive the filing deadline and expand its jurisdiction under Section 686(1)(a).

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance:

Mr. V. Laberge, Mr. A. Bolstad, Ms. M. McCallum, Ms. K. Thind

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*, R.S.A. 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.
2. 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 5th Floor, 10250 – 101 Street, Edmonton.

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.



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SDAB-D-16-190

Application No. 222047927-001

An appeal b to install a Freestanding Off-premises Sign (6.1 metres by 3 metres facing N/S) was **TABLED** to September 1, 2016