



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: July 22, 2019
Project Number: 130365833-048
File Number: SDAB-D-19-109

Notice of Decision

- [1] On July 17, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on June 24, 2019. The appeal concerned the decision of the Development Authority, issued on May 13, 2019, to refuse the following development:

Construct exterior alterations to an existing Commercial development (add vehicular access onto 50 Street NW, amend approved landscaping plan)

- [2] The subject property is on Plan 1025566 Blk 3 Lot 9, located at 5003 - 55 Avenue NW, within the CSC Shopping Centre Zone.

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

- Refused Development Permit and Plans;
- Roadwork Access Plans;
- Correspondence from Transportation;
- Landscaping Security Estimates;
- Correspondence between the Development Authority and the Appellant;
- Canada Post Confirmation of Delivery of Permit Refusal;
- Technical Report; and
- Written Submission with attachments

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] Based on the appeal documents received, the 21 day appeal period began to run on May 13, 2019, which meant that the time for filing the appeal expired on June 3, 2019. The appeal was filed on June 24, 2019. On its face, it appeared that the appeal was filed out of time. The Board asked the Appellant to address this issue.

i) Position of the Appellant, Amnor Group

[9] The Appellant was not familiar with the appeal process and was unaware that there was a 21 day limit to file an appeal.

[10] A copy of the refused Development Permit dated May 13, 2019, was referenced and the Appellant confirmed that it had been received. The final paragraph on page 1 of this refused permit stated:

Rights of Appeal

The Applicant has the right of appeal within 21 days after the date on which the decision is made, as outlined in Section 683 through 689 of the *Municipal Government Act*.

[11] The Appellant did not see this paragraph and was focused on how to solve the issues with the traffic department and the conflict with the power pole. They had arranged a meeting with their local municipal councillor and by the time they were able to meet and were advised they could appeal, it was already too late.

ii) Position of the Development Officer, I. Welch

[12] Mr. Welch first sent out a copy of the refused Development Permit by email and also sent a copy by registered mail. Proof that the registered letter was received by the Appellant was included in the documents he submitted to the Board.

[13] It is the City’s position that the appeal was filed out of time.

Decision

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

Reasons for Decision

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

[16] 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 given and containing any other information required by the regulations, must be given or sent to the applicant on the same day the written decision is given.

[17] 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.

[18] In this case, the Development Officer issued its written decision and complied with the requirements of Section 642 on May 13, 2019. The refused Development Permit specifically stated that the Appellant had 21 days from the date of the decision to file an appeal. The Development Officer also sent a registered letter with a copy of the refused Development Permit application on May 13, 2019.

[19] The Board finds that the Development Officer complied with the requirements of Section 642(3) on May 13, 2019, meaning that the appeal period commenced on that date and expired on June 3, 2019. The appeal was not filed until June 24, 2019 and is therefore out of time. Accordingly, the Board has no jurisdiction to hear the appeal.



Kathy Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. B. Gibson; Ms. G. Harris; Mr. A. Peterson; Ms. E. Solez

CC: Development & Zoning Services – I. Welch / H. Luke

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.
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 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.