



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: August 12, 2016
Project Number: 188021214-001
File Numbers: SDAB-D-16-180

Notice of Decision

- [1] On July 28, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on June 30, 2016. The appeal concerned the decision of the Development Authority, issued on June 1, 2016, to approve the following development:

To construct a Single Detached House with a front attached Garage, a veranda, a fireplace, a rear covered patio and Basement development (NOT to be used as an additional Dwelling).

- [2] The subject property is on Plan 1620577 Blk 5 Lot 51A, located at 128A - Fairway Drive NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay 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:

- A package of submissions from counsel for the Appellant;
- A letter appointing an agent for the Appellant;
- Submissions from the agent for the Appellant;
- A truss plan;
- Letters from the building supplier;
- A copy of the home warranty;
- The residential building requirements;
- A revised Plot Plan;
- The Approved Development Permit with plans attached;
- A Site evacuation plan;
- The Development Officer's written submissions;
- An online response in opposition to the proposed development;
- A letter in opposition to the proposed development;
- A prior SDAB decision provided by the Respondent; and
- The Respondent's written submissions.

Summary of Hearing on 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 then raised the issue of late filing to determine whether or not the appeal had been filed in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.
- i) *Position of the Appellant, Ms. B. Grieve*
- [6] Ms. Grieve appeared at the hearing as the appointed agent of the Appellant, Mr. Balko.
- [7] She indicated that she did not know about the Development Permit being issued until June 28th, 2016, two days prior to the day the appeal was filed. It was her understanding that the Respondent was required to install Signs on the subject Site within two weeks of any permit being issued, and, as she did not notice any Signs until late June, she was unaware that a permit had been issued on June 1, 2016.
- [8] She stated that the Appellant, Mr. Balko, had similarly noticed that the Signs had been erected on June 28, 2016. He filed his appeal two days later.
- [9] In response to questions from the Board, she confirmed that both she and the Appellant are parties to litigation pertaining to the Subdivision Approval associated with the subject Site. The lawsuit was filed earlier this year. However, she is not aware of whether or not anyone involved in that litigation has been tracking the developments of the subject Site.
- ii) *Position of Affected Property Owner in Support of the Appellant, Mr. P. Lister*
- [10] Mr. Lister resides at 122 Fairway Drive NW. He stated that he was never told that a Development Permit had been issued for the subject Site. He had not received anything in the mail. He, like the Appellant and Ms. Gieves, learned of the proposed development when the Signs were erected on the subject Site.
- iii) *Position of the Development Officer, Mr. G. Robinson*
- [11] The Development Officer confirmed that Section 20.2.2(3) dictates that Signs shall be erected on the Site within 14 days of the permit becoming valid. The Sign's copy has to include contact information for the property owner, the developer, the City and a description of the proposed development. When he approved the Development Permit, he indicated that the Signs would need to go up within the stipulated timeframe. However, he does not believe that the intention of Section 20.2.2(3) is to provide statutory notice of a development. The provision was merely intended to provide contact information and describe the new development in the event that any construction issues arise. The Signs are not to be considered as formal statutory notification.

[12] Subsequent to the Development Permit approval, he sent notice to the Respondent on June 2nd, 2016, that Signs would be required. He received a photograph from the Respondent on June 23rd, 2016, showing that the Signs had been erected on Site. However, this does not necessarily demonstrate that the Signs were posted on that date. They could have been posted earlier. In any event, he does not believe that there was any unreasonable delay in the Respondent providing proof that the Signs had been posted.

[13] The Development Officer stated that he had not been contacted by any of the neighbours with respect to the proposed development, but he indicated that he was familiar with the property because of the ongoing litigation regarding the Subdivision of the subject Site.

iv) Position of the Respondent, Mr. S.Oviatt & Mr. D. Etcheverry

[14] Mr. Oviatt, counsel for the Respondent, stated that, as the deadline to file the appeal was June 15th, 2016, any discussion of Signage should not come into play.

[15] The individual who filed the appeal is not here to provide any information at all with respect to what he knew or when he knew it. All that has been presented is some hearsay discussion about what he knew.

[16] In any event, it is not believable that someone who has started a lawsuit regarding the subject Site in the Court of Queen's Bench would not have any idea that something was happening on that Site.

[17] No discussion took place between the Respondent and his neighbours prior to the filing of the appeal. It is not common practice for a developer to consult the neighbours when a Class A permit, which has no notice requirement, is issued.

[18] The Respondent erected Signs on the subject Site on June 18th, 2016. He sent photographic proof to the Development Officer that the Signs had been posted on June 23rd, 2016.

iv) Rebuttal of the Appellant

[19] In rebuttal, Ms. Grieves stated that, while the written submission from the Respondent's counsel stated that the appeal was filed late, it also acknowledged that the 14-day period within which one can file an appeal runs from the effective date of knowledge. The date the Signs were erected on Site represents the effective date of knowledge that a permit had been issued in this case. Consequently, as the appeal was filed on June 30th, 2016, it was filed on within the 14-day filing period.

Decision

[20] The Board determines that it does not have jurisdiction to hear the appeal.

Reasons for Decision

- [21] The Development Permit for the proposed development was issued on June 1, 2016, and the appeal was filed on June 30th, 2016. Section 686(1)(b) of the *Municipal Government Act* states that an appeal is commenced by filing a notice of appeal with the Board within 14 days of the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.
- [22] Section 12.3 of the *Zoning Bylaw* describes Class A Permitted Developments as “all developments for which applications are required and are for a Permitted Use or Accessory building or activities and the Development Application complies in all respects to the regulations of this Bylaw.” Pursuant to Section 12.3, the Board finds that the proposed development is a Class A Permitted Development.
- [23] Section 11.2(8)(a) of the *Zoning Bylaw* directs that public notification be given in accordance with Section 20.
- [24] The Board notes that Section 20 of the *Zoning Bylaw* contains no provision requiring public notification to be given in association with Class A Permitted Developments. The Board further notes that, although the subject Site is subject to the Mature Neighbourhood Overlay, as the proposed development does not require any variances to the *Zoning Bylaw*, community consultation is not required pursuant to Section 814.3(24).
- [25] In making its decision, the Board has considered the Alberta Court of Appeal’s decision in *Coventry Homes Inc. v Beaumont (Town of) Subdivision and Development Appeal Board, 2001 ABCA 49*, in which the Court held that the lack of a notice provision in the applicable land use bylaw did not create an unlimited appeal period, nor did it preclude Beaumont’s SDAB from finding the statutory 14-day appeal period had not been met. The Court also stated, at paragraph 36, that “whether or not an affected party has sufficient notice to trigger the appeal period will depend upon the facts of each case.” As such, the Board notes that the facts of this appeal distinguish themselves from those considered by the Court in *Coventry Homes*.
- [26] As the Appellant did not attend the hearing, the Board did not receive sufficient evidence with respect to what the Appellant knew and when he knew it. The Board determines that, due to the fact that they had filed a suit against the Subdivision Authority, the individuals associated with this appeal were aware that development would take place on this Site. They made this representation in January of 2016. Therefore, although the Respondent did not make application for development permits until June 1, 2016, the Board finds that the Appellant’s knowledge of future development on this Site dating back to January of 2016 would have made imminent development foreseeable. The Board makes this finding from the evidence presented by the Appellant containing a great deal of e-mail correspondence between the City and some of the affected parties to the suit, including the Appellant and the Appellant’s agent.
- [27] The Development Officer stated that no individual from the community had contacted him with regards to the proposed development during the period time between January of 2016 and the date of the filing of this appeal. The Board determines that, if there were

concerns associated with the proposed development, the interested parties would have continued to monitor any development on this Site, as they had filed a lawsuit regarding the subdivision of the subject Site earlier in the year.

- [28] The Board acknowledges that there is a requirement under Section 20.2.2(3) for Signage to be placed on the Site within 14 days of a Development Permit becoming valid. However, this requirement merely intends that Signs be provided for informational purposes. As stated by the Development Officer, these Signs are not intended to represent formal statutory notification of a development.
- [29] Based on the above, the Board determines, pursuant to Section 686(1)(b), that the appeal was filed outside of the 14-day notification period. Therefore, the Board finds that it cannot assume jurisdiction.

Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. V. Laberge, Ms. S. LaPerle, Ms. N. Hack, Ms. C. Chiasson

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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Date: August 12, 2016
Project Number: 188024525-001
File Number: SDAB-D-16-181

Notice of Decision

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v) Rebuttal of the Appellant

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