



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: October 25, 2018  
Project Number: 286803282-001  
File Number: SDAB-D-18-170

**Notice of Decision**

- [1] On October 17, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **September 20, 2018**. The appeal concerned the decision of the Development Authority, issued on September 17, 2018 to approve the following development:

**Change the Use from a Restaurant to a Cannabis Retail Store.**

- [2] The subject property is on Plan 5401KS Blk 17 Lot 62, located at 13160 - 118 Avenue NW, within the (CSC) Shopping Centre Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application, proposed plans, the approved Development Permit and separation distance map;
  - The Development Officer’s written submission;
  - The Appellants’ written submissions and supporting materials;
  - The Appellants’ postponement request; and
  - The Respondent’s objection to Appellants’ postponement request.

**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.

- [7] Prior to the hearing, the Board received a written request for a postponement from the Appellants and an objection to the postponement from the Respondent.
- [8] Given that the proposed development is for a Permitted Use with no variances, at the commencement of the hearing, the Presiding Officer reviewed sections 685(3) and 642(1) of the *Municipal Government Act* (the *Act*) with the parties in attendance.
- [9] After noting that the Appellants failed to appear and that the attempts to contact them had been unsuccessful, the Presiding Officer asked the Respondents and the City to speak to the preliminary issue of whether it would be appropriate to grant the requested postponement in these circumstances.

### **Summary of Hearing Regarding Postponement Request**

*i) Position of the Appellants, Mr. D. Barsotti, Seed to Smoke Inc. o/a saj*

- [10] As the Appellants did not appear at the hearing, after waiting 15 minutes and attempting to contact them, the Board relied on their written application, subsequent written submissions and e-mail correspondence to determine the postponement request.

*ii) Position of the Respondent, Mr. J. Hrebeniuk – 2125810 Alberta Ltd.*

- [11] The Respondent was represented by Ms. R. Graham of Bryan & Company LLP. Mr. J. Hrebeniuk, Mr. K. Wetulani, Ms. K. Goiurlay and Mr. S Dowler were also present on behalf of the Respondent.
- [12] The Respondent objects to the Appellants' postponement request as there are no grounds for the appeal in the first place per section 687(3) of the *Act*. The Respondent was issued a Class A Development Permit and the *Edmonton Zoning Bylaw* (the *Zoning Bylaw*) was not relaxed, varied or misinterpreted by the Development Officer. The Respondent has already been unduly delayed as a result of this appeal process and a further delay of three weeks is not reasonable.
- [13] The *Act* clearly outlines the basis for an appeal. In this case, the postponement request is being used as a means of delay. Per section 642(1) this is an application for a permitted use with no variances and the Respondent is entitled to a permit. The Board does not have jurisdiction to consider the materials submitted by the Appellants and the matter should be dealt with in a civil court. Denying the postponement request does not take away the Appellants' ability to pursue this matter in civil court.
- [14] The Appellants had ample time to arrange for legal counsel as the appeal was filed on September 20, 2018. The Respondent was able to obtain legal counsel on short notice – Ms. Graham was only retained a few days ago.

- [15] The negative impact of a postponement is borne solely by the Respondent. The Appellants did not take part in the City's cannabis lottery and are in no position to apply for a permit.
- [16] The Respondent has already incurred severe monetary harm as a result of the delay which is very unlikely to be recoverable in a court of law:
- a) The opening of their business has been delayed by at least a month as the City would not issue a building permit pending the outcome of this appeal. Future profits are being impacted. But for the Appeal, the business would have been open or close to being open for October 17 – the first day of legal cannabis sales.
  - b) The Respondent is facing costs in relation to the lease.
  - c) All four individuals representing the Respondent incurred expenses to travel from Vancouver to be present at today's hearing. Additional costs would be incurred if they have to return for a second hearing.
- [17] She emphasized that the irrecoverable monetary harm will be increased if the Board grants a postponement.

*iii) Position of the Development Officer, Mr. S. Chow*

- [18] The Development Authority took no position regarding the postponement request.

**Decision regarding Postponement Request**

- [19] The postponement request is denied and the hearing will proceed as scheduled.

**Reasons for Decision**

- [20] The Board considered the following factors in making this decision about whether to grant a postponement.
- [21] The development permit under appeal was issued as a Class A Development Permit for a Permitted Use with no variances to the *Zoning Bylaw*.
- [22] The Respondent has incurred significant expense to date due to delay in construction and the costs associated with traveling from outside the province to attend the hearing in person along with three employees.

- [23] The Respondent submits that further delay in the issuance of this Class A Development Permit due to a meritless appeal which is unrelated to the *Zoning Bylaw* will cost him additional financial losses that are highly unlikely to be recoverable through legal recourse.
- [24] The Respondent personally indicated by e-mail on October 10, 2018 (seven days ahead of the hearing) that he opposed the adjournment and would be seeking to proceed and that he had made arrangements to come from Vancouver to attend personally.
- [25] The Respondent argued that the Appellants had sufficient time to obtain counsel for the appeal they filed on September 20, 2018. The Respondent noted that his own counsel was retained just a few days in advance of the hearing and was able to attend and provide argument.
- [26] This is the Appellants' first request for an adjournment.
- [27] The Appellants sought to postpone to the next available date, potentially November 7, 2018 in order to have their counsel attend. This is an additional delay of at least three weeks.
- [28] The Appellants did not identify their counsel, nor provide contact information for their counsel in any of their written or electronic submissions or communications with the Board.
- [29] The Appellants filed this appeal and included their grounds for the appeal on September 20, 2018, via the on-line system.
- [30] The Appellants' grounds and their subsequent submissions do not relate in any way to the classification of Cannabis Retail Sales as a Permitted Use or with any other associated land use issues. In particular, there is no suggestion that the Development Officer in any way varied, relaxed or failed to correctly interpret or apply the provisions of the *Zoning Bylaw* as required by section 687(3) of the *Act*.
- [31] The Appellants' grounds and submissions speak solely to private matters between the Appellants and the landlord of the Respondent and the infringements of the anticompetition provisions in place in a Competition Act and also contain notice that a constitutional argument involving the Canadian Charter of Rights and Freedoms will be made.
- [32] The Appellants were well aware that the Board would be dealing with the preliminary issue of an adjournment and that they would have the opportunity to speak to the issue in person at the hearing:
- a) The Appellants written request for an adjournment made via the on-line system on October 10, 2018 states:

*To whom it may concern,*

*The reason for this communication is to request a postponement for our appeal date, as our legal council is unavailable.*

*We appreciate your understanding, please advise next date availability.*

*Thank you for your assistance in this matter.*

*Dan Barsotti*

As part of submitting their on-line postponement request the Appellants agreed to the following statement:

The Subdivision and Development Appeal Board has the right to accept or reject my postponement request, and that the opposing party must also agree to the postponement request if one is named in the Appeal, and I wish to proceed with the postponement request.

- b) On October 10, 2018, the Appellants were informed by e-mail from the Board that that the request could not be granted or denied as notices had already been sent out and that the matter would have to be dealt with as a preliminary matter by the Board on October 17, 2018. Furthermore, the Appellants were advised that their request would be forwarded to the Respondent for their views. The Appellants were also asked for possible alternative future dates.
- c) Within less than an hour, the Appellants replied stating: “We have diligently tried to reschedule our counsel, unfortunately we are unable to accommodate the current meeting date. A November 8, 2018 reschedule would work best for our partners and counsel. Thank you in advance for your consideration. Please advise.”
- d) Later that afternoon, the Respondent was advised of the request and also told by email “As mentioned to the Appellant the final decision to grant or deny the request will be made by the Board on October 17 at 1:30 p.m.” The Respondent replied later that same day objecting to the adjournment and explaining his reasons for objection.
- e) The next day, in an e-mail from the Board dated October 11, 2018, the Appellants were informed that: the Respondent objected to the postponement request; the Appellants and Respondent would each be given an opportunity to speak to the adjournment request; and the Board would make a determination and the appeal may proceed. The e-mail provided in part:

“The Respondent is not in agreement with your request for Postponement and has provided the following reasons:

*Further to the request for an extension, please note the following:*

1. *The Appellant has had several weeks to prepare for the hearing as the date was originally set on September 21, 2018.*
2. *I have re-scheduled my personal time to accommodate this hearing of the Appellant's complaint including making flight arrangements to attend the hearing in person.*
3. *The Appellant's complaint has caused our business activities to be postponed a month already and we would like to resolve the issue as soon as possible.*

*As I have made special arrangements to be in Edmonton on October 17, I respectfully request there be no postponement. I will be in attendance on October 17, unless I hear otherwise from you.*

Therefore the Postponement Request will be placed before the Board on October 17 at 1:30 p.m. as a preliminary item and both parties will be able to speak to it. The Board will then decide if the postponement will be granted or denied.

If the request is denied the hearing will proceed. Submissions can be made to the Board in person or by way of written submission.”

[33] The Appellants made no further submissions and they did not appear to speak to the postponement request. The hearing was delayed by 15 minutes and an unsuccessful attempt was made to contact the Appellants at the number that was provided at the time the appeal was filed.

[34] The Board also considered that:

- a) In the interests of certainty and fairness for all affected parties and applicants, the *Act* contemplates that subdivision decisions and development permit decisions, including appeals under section 687 of the *Act*, will be decided promptly. To this end, the Board is required to hold a hearing within 30 days of receipt of a notice of appeal (section 686(2)) and must give its decision in writing, together with its reasons for that decision within 15 days after concluding the hearing (section 687(2)).
- b) This Board deals with planning issues, it has no jurisdiction to deal with constitutional issues or any of the other legal matters raised by the Appellants. It has no jurisdiction to provide any remedies related to those matters, nor will its ruling with respect to the Development Permit impact those issues or legally prejudice the Appellants with respect to those issues in any way.

- c) Within the legislative limits of the *Act* and the *Zoning Bylaw* the Board has only the authority to confirm, revoke or vary the decision of Development Officer. The Board is mindful of sections 685(3) and section 642(1) of the *Act* which provide:

685(3) Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under section 683.1(8).

642(1) When a person applies for a development permit in respect of a development provided for by a land use bylaw pursuant to section 640(2)(b)(i), the development authority must, if the application otherwise conforms to the land use bylaw and is complete in accordance with section 683.1, issue a development permit with or without conditions as provided for in the land use bylaw.

- d) The proposed development is a Permitted Use. None of the grounds, nor any of the written arguments provided for the appeal have any relationship to any purported misinterpretation, relaxation or variance of the provisions of the *Zoning Bylaw*.

[35] After weighing all these factors and considering the potential of real prejudice to the Appellants and the Respondent, the Board finds the balance of fairness favours the Respondent.

[36] Accordingly, the Board declined to grant the Appellants' request for postponement.

### **Summary of Hearing**

*i) Position of the Development Officer, Mr. S. Chow*

[37] The Development Officer provided the following responses to questions from the Board:

- a) The proposed development is in full compliance with the locational requirements of section 105(3) of the *Gaming, Liquor, and Cannabis Regulation*, AR 143/96.
- b) Cannabis Retail Sales is a Permitted Use in this Zone.
- c) This permit has been issued as a Class A Development Permit – no variances were required and the development is in full compliance with the applicable development regulations including the Special Land Use Provisions applicable to Cannabis Retail Sales in section 70 of the *Zoning Bylaw*. The Development Officer referred the Board to the separation distance map which was included with his submission and confirms his determinations.

*ii) Position of the Respondent, Ms. Robin Graham*

- [38] Ms. Graham reiterated her earlier arguments with respect to the adjournment and emphasized that this is a Class A Development Permit and there are no valid grounds for appeal.
- [39] The grounds of the appeal in the Appellants' submissions are unrelated to the provisions of the *Zoning Bylaw* and do not show how these provisions were relaxed, varied or misinterpreted as required per section 685(3) of *Act*.

**Decision**

- [40] The Board declines to hear this appeal.

**Reasons for Decision**

- [41] The proposed development is to change a Restaurant Use to a Cannabis Retail Sales Use. Pursuant to section 320.2(3) of the *Zoning Bylaw*, Cannabis Retail Sales is a Permitted Use in the (CSC) Shopping Centre Zone.
- [42] Cannabis Retail Sales is subject to regulations under the *Gaming, Liquor, and Cannabis Regulation*, AR 143/96. Section 105 deals with the locations of premises described in a cannabis licence and distances between those premises and certain other premises. Section 687(3)(a.4) of the *Act* directs that in deciding an appeal the Board must comply with those requirements. Based on the submissions of the Respondent and the Development Officer, the Board finds that the proposed development complies with these regulations and any duty it may have pursuant to section 687(3)(a.4) has been discharged.
- [43] Based on the submissions of the Development Authority and a review of the materials provided by the parties, the Board finds that the proposed Cannabis Retail Sales is a Permitted Use and no variances or relaxations have been granted. Therefore this appeal is governed by section 685(3) of the *Act*:

Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under section 683.1(8).

- [44] Upon review of the Appellants' submitted grounds for appeal and supporting materials, the Board finds nothing related to a misinterpretation, relaxation or variance of the *Zoning Bylaw*; therefore, the Board finds that no appeal lies in respect of the issuance of



this permit and the Board has no further authority to hear this appeal, the appeal is declined.

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

Board members in attendance:

Ms. S. LaPerle, Mr. D. Fleming, Mr. R. Hachigian, Ms. D. Kronewitt-Martin

c.c. Seed To Smoke Inc. o/a Saj  
City of Edmonton, Development & Zoning Services, Attn. Mr. S. Chow / Mr. H. Luke  
City of Edmonton, Law Branch, Attn: Mr. M. Gunther

**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.