



**EDMONTON
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*Subdivision &
Development
Appeal Board*

*10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
edmontonsdab.ca*

SDAB-D-16-263

Application No. 188934610-001

An appeal by A. Tilley to erect a fence higher than 1.2m in a Side Yard abutting a public roadway other than a lane was TABLED to November 23 or 24, 2016



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SDAB-D-16-264

Application No. 176981065-003

An appeal by 413140 Alberta Ltd. to construct exterior alterations to an approved Accessory Building (rear detached garage) was TABLED to November 23 or 24, 2016



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3537
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Date: November 3, 2016
Project Number: 142981618-003
File Number: SDAB-D-16-265

Notice of Decision

- [1] On October 26, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **September 28, 2016**. The appeal concerned the decision of the Development Authority, issued on August 31, 2016 to refuse the following development:

Construct a side, rear and front uncovered deck (rear deck is irregular shape, 9.5 m x 6.7 m, attached front and side deck is irregular shape, 18.5 m long) with a maximum Height of 1.2 m, with Privacy Screening (1.8 m tall above the deck floor), pergola (Pergola is irregular shape, 5.9 m x 3.1 m) and over Height gate in the west Side Yard, and to install a Hot Tub, existing without permits

- [2] The subject property is on Plan 0223933 Blk 162 Lot 1, located at 976 - Hollingsworth Bend NW, within the RF1 Single Detached Residential Zone. The Hodgson Neighbourhood Area Structure Plan 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, plans, and the Refused Development Permit;
- A copy of SDAB-D-13-312;
- The Development Officer's written submission;
- A Registered Mail Delivery Confirmation submitted by the Development Officer; and
- An on-line response from an adjacent property owner in opposition to the proposed development.

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 Presiding Officer referenced section 686(1)(a)(i) of the *Municipal Government Act* and indicated that there was a late filing issue to be addressed. The Presiding Officer stated that The Registered Mail was delivered on September 6, 2016 and the Notice of Appeal was filed on September 28, 2016, which is beyond the 14-day period to file an Appeal.

Summary of Hearing

i) Position of the Appellant, Mr. G. Hilbrecht, representing the property owners, Mr. J. Toy, and Ms. K. Toy

- [7] Mr. Hilbrecht stated that he attempted to file an appeal on-line with his iPad the day he was told by the Development Officer, Mr. B. Liang, that his application for a development permit had been refused. He filled out the form on his iPad and submitted it, but there was no confirmation number received.
- [8] He decided to fill out the on-line form again and this time when he pressed the submit button, a pop-up from the website asked if he wanted to re-submit. In his view, this meant the first form went through, so he clicked “no.” He waited for a confirmation to his e-mail for a couple of days and nothing appeared.
- [9] He tried to fill it out a third time and the pop-up from the website asked if he wanted to re-submit. He felt, he did not want to bother the SDAB with submission after submission so he clicked “no” again.
- [10] He did not receive any confirmation and became busy and did not know an appeal was not filed until the Development Officer, Ms. Swain notified him that the appeal period had run out and some tickets were issued.
- [11] At this point he drove to the SDAB office and filed the appeal in person. He stated he should have done this in the first place. He reiterated that he attempted to submit an appeal on-line at least three times.
- [12] With respect to questions from the Board, Mr. Hilbrecht provided the following:
- a. With regard to why he did not call or come into the SDAB office when he found out the second time there was no confirmation that the appeal was submitted, he indicated he was not sure what the process was.
 - b. He was aware of the 14-day appeal period.

- c. He tried to file the appeal on-line as soon as he received the phone call from the Development Officer. When he signed the Registered mail on September 8, 2016 he assumed the appeal was already filed.
- d. He stated that he first tried to file an appeal on-line Friday, September 1, 2016. The second attempt was Monday, September 5, 2016.
- e. With regard to why he did not contact the SDAB office if he did not receive any confirmation within those two weeks he indicated he was very busy and did not notice the two weeks had gone by. He reiterated he was not aware and got tied up with another job.
- f. With respect to Ms. Swain calling to inform him that the appeal period ended and he explaining that he thought he filed, she told him to call the SDAB office. He came into the SDAB office within a couple of hours.
- g. He indicated that he did not take any 'screen shots' of his attempts to file on-line.
- h. Mr. Toy stated that maybe there were some technology challenges and in his view it might be an area that can be improved.

ii) Position of Mr. B. Liang and Ms. N. Swain, Development Officers

- [13] In Mr. Liang's view the applicant received the Refusal decision on September 6, 2016.
- [14] He did however; send the applicant the attached decision via e-mail on August 31, 2016. The decision sent by e-mail was a scanned version of the original copy that was sent by Registered mail.
- [15] He indicated that it is not typical to follow up with the expiry of the appeal filing.
- [16] Ms. Swain indicated she called the Applicant with regard to taking enforcement action. She called the SDAB office about her conversation with Mr. Hilbrecht and an employee advised her that if someone entered something into the SDAB system, they would have seen it.

iii) Position of Ms. E. Tack, an affected property owner

- [17] She indicated when she received her Notice in the mail about the SDAB hearing, she went to the SDAB website and filled out her on-line form. The next day she called the SDAB office and explained she filled it out late at night and wanted to make sure the office received it and they confirmed it was submitted.

[18] She indicated that this issue is important to her, which is why she followed up. In her opinion, if it is an important issue, an effort should be made.

iv) Position of the Appellants in Rebuttal

[19] Mr. Hilbrecht indicated that he is not very computer savvy, and he reiterated if a pop-up asks him if he wants to re-submit, he assumed that meant it was sent. He reiterated he did not call the SDAB office because he assumed it was completed.

[20] Mr. Toy reiterated there was a technology challenge and he was unaware when the 14-day appeal period started.

[21] Ms. Toy indicated that Ms. Tack's ability to submit is not the same as Mr. Hilbrecht's ability as one is to submit an appeal and one is to submit a comment. She stated that they take their deck application and development proceedings very seriously.

[22] Mr. Hilbrecht indicated that this application has been on-going for three years, and there were many times when they waited several months for a response from the City planning department. When he did not receive a confirmation from the SDAB office he felt unsurprised at the time, given the history dealing with the City.

[23] With respect to questions from the Board, Mr. Hilbrecht provided the following:

- a. Mr. Hilbrecht confirmed that he was the person who filed the first appeal in 2013 and he filed the appeal in person. He was unaware if it could be done on-line three years ago.
- b. With respect to the fee needed to be paid to file an appeal, he indicated that he paid with a credit card. However, he has not received his bill yet to see if the payment was made three times.

Decision

[24] **The Board does not assume jurisdiction.**

Reasons for Decision

[25] The Appellant acknowledged that he received an e-mail decision notice on August 31, 2016 sent by the Development Officer and Registered Mail with the written decision on September 6, 2016.

[26] The Board notes that the Appellant acknowledged that he had not received a confirmation from any of his three attempts to appeal the Development decision.

- [27] Having attempted to file his appeal on-line three times and not having received the confirmation of receipt he expected, the Appellant must have had some apprehension that his appeal had not gone through successfully. However, he made no attempt to follow up with a phone call to the SDAB office to confirm receipt of his appeal.
- [28] The Board finds there is no evidence and no record of the Appellant attempting to file an Appeal on-line or at the SDAB office.
- [29] The Appeal was filed on September 28, 2016, a full eight days after the expiry of the 14-day Registered Mail receipt of Notice and a full 27 days following an e-mail from the Development Officer advising him of the refusal decision.
- [30] Section 686(1)(a)(i) of the *Municipal Government Act* states that an appeal to this Board must be filed within 14 days of the date which the person is notified of the decision.
- [31] Accordingly, the Board does not have jurisdiction to hear this appeal.

Noel Somerville, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

P. Jones, S. LaPerle, M. McCallum, C. Weremczuk

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 5th Floor, 10250 – 101 Street, Edmonton.