

Edmonton Subdivision and Development Appeal Board

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Date: February 4, 2016
Project Number: 178476858-003
File Number: SDAB-D-16-039

Notice of Decision

- [1] On January 27, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on December 21, 2015.
- [2] The appeal concerned the decision of the Development Authority, issued on December 9, 2015, to approve the following development:
- Construct exterior alterations to a Single Detached House (Driveway extension, existing without permits) [unedited from the Development Permit]
- [3] The subject property is located on Plan 1125154 Blk 1 Lot 53, municipal description 4163 Whispering River Drive NW, within the RF1 Single Detached Residential Zone. The Windermere Area Structure Plan and Windermere Neighbourhood Structure Plan apply to the subject property.

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 explained to the parties that the Board's jurisdiction to hear appeals is derived, in part, from 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...

- [6] 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.
- [7] In this instance, the decision of the Development Officer was dated December 9, 2015, and the Canada Post receipt confirmed delivery of the decision on December 18, 2015. The Presiding Officer explained that 14 days after December 18, 2015 falls on January 1, 2016, which is a statutory holiday. The deadline to file the appeal therefore fell on the next business day when the administrative offices for the Subdivision and Development Appeal Board (“SDAB”) opened, which was January 4, 2016.
- [8] Since the Appellant filed his Notice of Appeal on January 5, 2016, it would appear that the appeal was filed one day after the 14 days limitation period.
- [9] The Presiding Officer invited the Appellant to provide submissions in this regard.
- i. *Position of the Appellant, Heiko Developments Ltd*
- [10] The Appellant was represented by an agent, Mr. H. Lotzgeselle, who was accompanied by Mr. G. Olson, the legal owner of the subject property.
- [11] Mr. Lotzgeselle stated that mail to the company is delivered to a postal box, and due to some travel issues, he had been unable to get to the box until December 19, 2015. Mr. Olson himself was away on a family vacation in Mexico, and returned to Edmonton a few days before Christmas.
- [12] Mr. Lotzgeselle stated that he was only able to inform Mr. Olson about the Development Permit decision on December 22, 2015.
- [13] Upon receiving notice of the decision on December 18, 2015, Mr. Lotzgeselle contacted the Development Officer on the next business day, which was Monday, December 21. They discussed the possibility of amending the development application to avoid the appeals process, as Mr. Lotzgeselle was concerned that he might not be able to meet the appeal timelines.
- [14] At the time, Mr. Lotzgeselle thought he had 14 days from the date of the decision to file his appeal. The Development Officer did not indicate – and nor did Mr. Lotzgeselle realize – that the clock started from December 18, 2015, the date he actually received notice. Indeed, the Development Officer had indicated to him that the Appeal Board may be able to extend the appeal period.
- [15] Mr. Lotzgeselle subsequently contacted the administrative offices for the SDAB, but due to the winter holiday closure, he was only able to leave a voicemail message. SDAB administrative staff did return his call on January 4, 2016, at which time he learnt that he

must file within 14 days of receiving notice. As a result, he filed his appeal the next day on January 5, 2016.

- [16] It was his belief that if not for the statutory holidays, he would have definitely filed his Notice of Appeal on time.
- [17] Upon questioning by the Board, Mr. Lotzgeselle confirmed that he did, in fact, sign the Canada Post delivery receipt on December 18, 2015. He also confirmed that no other conversations regarding the Development Permit decision occurred between himself and the Development Officer prior to this date.
- [18] He further acknowledged that it is both his name and his company's name – and not that of the legal owner, Mr. Olson – listed on both the Development Permit Decision and the Development Permit Application.

ii. *Position of the Development Officer, Mr. J. Xie*

- [19] Mr. Xie confirmed that email and phone communication occurred between himself and the Appellant following December 18, 2015. Both parties sought to find a compromise during these communications.
- [20] The Appellant provided two alternatives: the first was to cut 3' x 3' planters along the Driveway extension to prevent parking and to reintroduce some landscaping; the second option was to cut out a major portion of the Driveway extension, which would also reintroduce landscaping.
- [21] Following discussions with his supervisor, Mr. Xie emailed the Appellant to confirm that the Development Authority would be amenable to the second alternative solution. However, he did not hear back from the Appellant.
- [22] With respect to the potential late filing, Mr. Xie confirmed that for approved Class B Development Permits, the Development Authority will set the 14 days notification period. This period starts seven days after the date that the Development Permit decision was issued, effectively allowing the potential appellant to file within 21 days after the Development Permit decision.
- [23] Mr. Xie explained that the additional seven days is provided to ensure compliance with the mail notification requirements under Section 20.1(1) of the *Edmonton Zoning Bylaw*.
- [24] However, in this instance, the Development Permit decision was refused, and because the *Edmonton Zoning Bylaw* does not stipulate additional notification requirements with respect to refused permits, the Development Authority defaults to the appeals process set out under Sections 685 and 686 of the *Municipal Government Act*.

iii. *Rebuttal of the Appellant, Heiko Developments Ltd*

- [25] The Appellant reiterated that he had assumed the 14 days limitation period started from December 9, 2015.
- [26] With respect to the alternative options discussed with the Development Officer, he stated that the second option was no longer feasible because it involved much more concrete cutting, debris removal, and environmental disturbances. Further, during the holiday period, he learned that curved concrete cuts are not feasible and the aesthetics of angular cuts relative to the existing development was not ideal for the owner.
- [27] The property owner stated that the width of the extension actually makes it impossible to park a vehicle on that extension. At the moment, the extension is mostly used by his son for recreational purposes.

Decision:

- [28] The appeal was filed outside 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:

- [29] Section 685(1) of the *Municipal Government Act* states:

If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

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

- [30] Since the name that appears on both the Development Permit Application as well as the Development Permit Decision is Mr. Lotzgeselle, the Board finds that “the person” to whom Section 685(1) refers is in fact, Mr. Lotzgeselle himself, and not the property owner, Mr. Olson.
- [31] Accordingly, Mr. Lotzgeselle had 14 days from the date he received notification of the Development Authority’s decision to file his appeal, pursuant to Section 686(1)(a)(i) of the *Municipal Government Act*.

- [32] The Board accepts that the Appellant received notification of the Development Authority's decision on December 18, 2015, and that he filed his Notice of Appeal on January 5, 2016.
- [33] 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 Appellant received notification on December 18, 2015, he had until January 1, 2016 to file his Notice of Appeal.
- [34] However, since January 1, 2016 was a statutory holiday, the administrative offices of the SDAB were closed, and therefore, Section 22(1) of the *Interpretation Act* applies. 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." The next day on which the SDAB administrative office was open fell on January 4, 2016, therefore, the Appellant would have needed to file his appeal on January 4, 2016.
- [35] Since the appeal was filed on January 5, 2016, the Appellant filed his appeal one day after the time limit to appeal. Accordingly, no appeal lies pursuant to Section 686(1)(a)(i) and the Subdivision and Development Appeal Board has no jurisdiction to hear the matter.

Mr. N. Somerville, Presiding Officer
Subdivision and Development Appeal Board

CC:

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-16-041

Application No. 181864289-001

An appeal by Pattison Outdoor Advertising / Ogilvie LLP to remove an existing Freestanding Off-premises Sign and install a Freestanding Minor Digital Off-premises Sign on SW-9-52-24-4, located at 3803 – Gateway Boulevard NW, was **TABLED TO FEBRUARY 11, 2016.**