

Edmonton Subdivision and Development Appeal Board

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-577-3537
Email: sdab@edmonton.ca
Web: www.edmontonsdab.ca

Date: July 28, 2015
Project Number: 172293063-001
File Number: SDAB-D-15-160

Notice of Decision

This appeal dated June 29, 2015, from the decision of the Development Authority for permission to:

change the Use from Indoor Participant Recreation Services to a Restaurant (221.3 square metres of Public Space) and to construct interior alterations - King of Dates

On Condo Common Area (Plan 0426972, 0727487, 1220940), located at 9308C - 34 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 22, 2015. The decision of the Board was as follows:

Summary of Hearing:

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.

The Presiding Officer first addressed the issue of jurisdiction and whether the appeal was filed within the allowable 14-day appeal period, pursuant to Section 686 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the "MGA").

The Appellant, Mr. A. Sabetghadam of Sabzy Persian Grill, confirmed that the appeal had been filed on June 29, 2015.

The Board heard from Mr. L. McClellan, representing the City of Edmonton Sustainable Development Department, who provided the following information:

1. He had approved the Development Permit on June 5, 2015, and entered it into the electronic system on that date.
2. He provided a list of the property owners on the Site and within a 60 metre radius (marked Exhibit 'B') that was generated by the electronic system. To the best of his knowledge, appropriate notice of the proposed development was mailed to all of the listed property owners on June 8, 2015.
3. The notifications are electronically generated and the mailing of the letters is handled by clerks.
4. Notice of the proposed development was published in a daily newspaper on June 11, 2015, (marked Exhibit 'A')

5. The 14 day notification period commenced on June 11, 2015, and ended on June 25, 2015.

The Presiding Officer then explained Section 686 of the *Municipal Government Act (MGA)* and Section 20.1 of the *Edmonton Zoning Bylaw* as they relate to the process of determining when the 14 day appeal period begins to run. He advised that it appeared the appeal period had expired on June 25, 2015 and the appeal had been filed on June 29, 2015. He invited the Appellant to speak to the late filing issue.

The Appellant, Mr. A Sabetghadam, provided the following information with regard to the late filing issue:

1. Notification of the proposed restaurant was not received by the condominium board, landlords or business owners.
2. He raised concerns regarding previous problems with notifications by the City of Edmonton regarding developments on the site.
3. He contacted the City of Edmonton on June 26, 2015, a Friday, and was advised he should make his appeal, which was filed the following Monday, on June 29, 2015.
4. He had spoken to his landlord, 1149218 Alberta Ltd., who advised him that notice had not been received regarding the proposed development.

The Board heard from the following property owners on the Site who are opposed to the proposed development:

- Mr. M. Saini, of New Asian Village. His wife is the property owner of 1230193 Alberta Ltd, the landlord of New Asian Village.
- Mr. O. Janjua, owner of Janjua Holdings Ltd.
- Mr. O. Chaggar, owner of 1112850 Alberta Ltd.

Each of the above named individuals advised that they had not received notification of the proposed development.

The Board then heard from Mr. H. Singh, property owner of 1551077 Alberta Ltd., one of the property owners on the Site. He is the landlord of the Respondent and he is in favour of the proposed development. He advised that he had received notice from the City of Edmonton regarding the proposed development via Canada Post.

The Respondent, Mr. M. Jannesor, had nothing to add regarding the late filing issue.

The Appellant, Mr. Sabetghadam, advised that on July 7, 2015, notice regarding this appeal was received by every owner. This was the notice mailed out by the Subdivision and Development Appeal Board advising an appeal had been filed.

Decision:

The Board does not have jurisdiction to hear the appeal because it was filed outside of the 14 day appeal period as per Section 686(1)(b) of the *MGA*.

Reasons for the Decision:

1. Section 686(1) of the *Municipal Government Act* 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, or
 - (ii) if no decision is made with respect to the application within the 40-day period or within any extension under section 684, the date the period or extension expires,
 - or
 - (b) in the case of an appeal made by a person referred to in section 685(2), after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.
2. It is important to note that Section 686(1)(a)(i) provides that an applicant for a development permit must file an appeal within 14 days of the date on which that person is notified of the decision. In contrast, Section 685(1)(b) provides that a person affected by a development permit must file an appeal within 14 days of the date on which notice of the permit was given in accordance with the land use bylaw.
3. For affected persons, the 14 day appeal period commences from the date when the Development Authority has complied with the notice requirements set out in the land use bylaw. The date that affected persons receive actual notice of the issuance of the permit does not come into play in determining when the appeal period begins to run.
4. Sections 20.1(1) and (3) of the *Edmonton Zoning Bylaw* state that:
20.1 Class B Development
 1. Within seven days of the issuance of a Development Permit for Class B Development, the Development Officer shall dispatch a notice by ordinary mail to:
 - a. each assessed owner of the Site or a part of the Site of the development;
 - b. each assessed owner of land, wholly or partly within a distance of 60.0 m of the boundary of the Site;
 - c. the President of each Community League operating within the notification boundaries described in clause (b), above; and
 - d. the President of each Business Revitalization Zone Association operating within the notification boundaries described in clause (b) above.

3. Within 10 days of the issuance of a Development Permit for Class B Development, the Development Officer shall cause to be published in a daily newspaper circulating within the City, a notice describing the development and stating his decision, and the right to appeal therefrom.
5. Notwithstanding the fact that some affected persons may not have received notice of the issuance of the Development Permit, the Board accepts the evidence of the Development Officer that he complied with the requirements of Section 20.1(1) of the *Edmonton Zoning Bylaw* by sending out notices of the issuance of the Development Permit on June 8, 2015, by ordinary mail to the assessed owners of the Site or part of the Site and the assessed owners of land within 60 metres of the boundary of the site as well as other individuals required to receive notice by mail as listed in Exhibit "B".
6. The Board further accepts the Development Officer's evidence that he complied with the requirements of Section 20.1(3) of the *Edmonton Zoning Bylaw* by causing to be published on June 11, 2015 in a daily newspaper circulating within the City of Edmonton a notice with respect to the issuance of the Development Permit (Exhibit "A").
7. The 14 day appeal period began to run on June 11, 2015 and expired on June 25, 2015. The notice of appeal was filed on June 29, 2015, outside the 14 day appeal period. Accordingly this Board has no jurisdiction to hear the appeal.

Mark Young
Subdivision and Development Appeal Board

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Phone: 780-496-6079 Fax: 780-577-3537
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Date: July 28, 2015
Project Number: 149159648-001
File Number: SDAB-D-15-161

Notice of Decision

This appeal dated June 29, 2015, from the decision of the Development Authority for permission to:

construct 4 Dwellings of Row Housing with attached Garages and to demolish the existing Single Detached House and rear detached Garage

On Plan 4874HW Blk 12 Lot 1, located at 15104 - 110 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 22, 2015. The decision of the Board was as follows:

Summary of Hearing:

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.

The Presiding Officer first addressed the issue of jurisdiction and advised that the appeal appeared to have been filed outside the allowable 14-day appeal period, pursuant to Section 686 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the *MGA*).

The Board heard from Mr. E. Hammermeister of Graphtec Design, representing the Appellant, Mr. A. Abdulhadi, who provided the following information:

1. He has been involved with this project from the outset as Mr. Abdulhadi's representative.
2. Mr. Abdulhadi was overseas at the time the notice was received. Mr. Hammermeister was unable to provide any details of the Appellant's travel history and offered to provide this information at a later date.
3. When he was advised by the Presiding Officer that the late filing issue had to be decided before the merits of the appeal could be heard he was given an opportunity to contact his client, Mr. Abdulhadi.
4. Mr. Abdulhadi instructed Mr. Hammermeister to request that the matter be tabled so he would have the opportunity to provide details about his travel arrangements at the time the Development Officer's decision was received.

The Board heard from the Mr. K. Bacon, representing the City of Edmonton Sustainable Development Department, who advised he had no objection to an adjournment.

The Board heard from Mr. and Mrs. Haggith, adjacent property Owners, who appeared in opposition to the appeal. They advised that they will be out of the City from August 9, 2015, to September 15, 2015. When the Board Officer advised that the earliest possible hearing dates were August 19 or 20, 2015, they advised they preferred to be present at the hearing, although they would not be providing any further written submission other than what was provided today.

Mr. Hammermeister said that although tabling this matter to after September 15, 2015, would not be his preference, he was prepared to agree to that if the Board felt it was necessary to accommodate Mr. and Mrs. Haggith.

Motion:

“With the consent of the parties, this matter is tabled to September 23 or 24, 2015, to give the Appellant the opportunity to present evidence regarding the late filing issue.”

You will be advised regarding the time and location of the hearing at a later date.

Should you require further information in this regard, please contact the Subdivision & Development Appeal Board Office at 780-496-6079.

Mark Young
Subdivision and Development Appeal Board