SUBDIVISION AND DEVELOPMENT APPEAL BOARD (SDAB)
AGENDA

Date: Tuesday, March 11, 2025
Time: 10:30 am
Location: Council Chambers

Pages

1. **Call to Order**

   The Subdivision and Development Appeal Board would like to acknowledge that the chambers in which we are holding today's meeting is situated on Treaty 6 territory, traditional lands of First Nations and Métis people.

2. **Chair Introduction**

3. **Introductions**

4. **Additional Information**

5. **Approval of Agenda**

   Recommendation:
   That the Subdivision and Development Appeal Board Agenda dated March 11, 2025 be approved.

6. **Approval of Previous Minutes** 3 - 6

   Recommendation:
   That the Subdivision and Development Appeal Board Minutes dated October 23, 2024 be approved.

7. **Introduction of SDAB Hearing** 7 - 8

APPEAL TO BE HEARD:	Development Permit Refusal
Municipal Address:	5411 44 Street, Lloydminster, Alberta
Zoning:	C2 Highway Corridor Commercial
Legal Description:	Lot 1, Plan 832-0990
Permit No.	25-4684
Appellant Name:	Sandeep Bhullar

8. **Introduction of Appellant**

9. **Objections to Board**

10. Hearing Process

11. Hearing of Appeal

11.1 Presentation of Development Authority 9 - 15

11.1.1 Questions by the Board

11.1.2 Presentation of Potential Conditions of Approval

11.2 Presentation of the Appellant 16 - 41

11.2.1 Questions by the Board

11.3 Presentation of Affected Parties in Favour of the Appeal

11.4 Presentation of Affected Parties Opposed to the Appeal

11.5 Rebuttal (to new evidence only) of the Appellant

11.6 Read into Record Additional Information (if required)

12. Brief Recess

Recommendation:
That the March 11, 2025 Subdivision and Development Board Hearing recess for a short break at _____ PM.

13. SDAB Reconvenes

13.1 Board Questions

14. Summaries

14.1 Development Authority Final Comments

14.2 Appellant Final Comments

15. Close of Hearing

The Board's decision will be made within fifteen (15) days upon conclusion of the Hearing and those affected will be notified of the decision and reasons for it by email.

16. In Camera

Recommendation:
That the March 11, 2025 Subdivision and Development Appeal Board Hearing go into a closed session at _____ AM.

Recommendation:
That the March 11, 2025 Subdivision and Development Appeal Board Hearing resume open session at _____ AM.

17. Adjournment

Recommendation:
That the March 11, 2025 Subdivision and Development Appeal Board hearing be adjourned at _____ AM.

LLOYDMINSTER

SUBDIVISION AND DEVELOPMENT APPEAL BOARD (SDAB)
MINUTES
Wednesday, October 23, 2024 9:00 AM

City of Lloydminster Council Chambers
4420 – 50 Avenue
Lloydminster, AB

APPEAL TO BE HEARD:	Development Permit Refusal
Municipal Address:	4720 50 Street, Lloydminster, Saskatchewan
Zoning:	C5 Service Commercial
Legal Description:	Lot 1 Block 10 Plan 101836852
Permit No.	20240615
Appellant Name:	Kagan Kneen

SDAB Members Present:	Bernal Ulsifer - Chair Dean Segberg Larry McConnell Joe Rooks
SDAB Support Present:	Shannon Rowan - SDAB Clerk Kylie Chupa - Recording Secretary
City Staff Present:	Natasha Pidkowa - Manager, Planning Terry Burton – Director, Planning & Engineering Marilyn Lavoie - City Clerk
Appellant Present:	Kagan Kneen

1. Call to Order 9:01 AM

Chair, Bernal Ulsifer called the October 23, 2024 Subdivision and Development Appeal Board Hearing to order at 9:01 AM.

2. Chair Introduction

SDAB Chair, Bernal Ulsifer introduced himself to those in attendance.

3. Introductions

3.1 All members of the SDAB introduced themselves.

3.2 All members of Administration introduced themselves.

4. Approval of Agenda dated October 23, 2024

Larry McConnell moved that the SDAB Agenda dated October 23, 2024 be adopted as presented. Seconded by Dean Segberg.

CARRIED

5. Approval of Previous Minutes from February 6, 2024 Hearing

Joe Rooks moved that the SDAB minutes dated February 6, 2024 be approved as circulated. Seconded by Dean Segberg.

CARRIED

6. Introduction of Hearing SDAB-02-24-4445

APPEAL TO BE HEARD:	Development Permit Refusal
Municipal Address:	4720 50 Street, Lloydminster, Saskatchewan
Zoning:	C5 Service Commercial
Legal Description:	Lot 1 Block 10 Plan 101836852
Permit No.	20240615
Appellant Name:	Kagan Kneen

7. Introduction of Appellant

Kagen Kneen, Executive Director for Lloydminster Social Action Coalition Society (AKA Lloydminster Men's Shelter) introduced himself.

Natasha Pidkowa, Manager, Planning represented the Development Authority.

8. Objections to Board

The Appellant had no objections to the members of the Board who were in attendance.

No objections were brought forward by audience members of the SDAB Board members who were in attendance for the hearing.

9. Hearing Process

Chair, Bernal Ulsifer provided an overview of the hearing process. No concerns were brought forward regarding the process of the hearing.

10. Hearing of Appeal

10.1 Presentation of the Appellant

Kagan Kneen presented on behalf of the Lloydminster Social Action Coalition Society and submitted documents to the Board.

As of 3:30 PM, October 22, 2024, the opportunity to purchase the building was revoked, forcing them to withdraw their application to the Subdivision and Development Appeal Board. Kagan Kneen stated that homelessness is a challenge for every city, including Lloydminster and that the number of unhoused people continues to grow. It was noted that the Lloydminster Men's Shelter will continue to provide support to the 28 members they have in their facility, leaving the remaining unhoused people to seek alternatives for supports as the Men's Shelter has reached capacity.

Question of the Board

No questions.

10.1 Presentation of Development Authority

Natasha Pidkowa, Manager, Planning, presented on behalf of the City of Lloydminster.

As the applicant withdrew their application, the Development Authority referred to their submission in the agenda, but did not have anything further add at this time.

10.2 Presentation of Affected Parties in Favour of the Appeal

Tyler Lorenz, Executive Director of Residents in Recovery, spoke in support of the appeal.

10.4 Presentation of Affected Parties Opposed to the Appeal

Graeme Friesen spoke in opposition to the appeal.

Tom Forsythe spoke in opposition to the appeal.

Glenn Cross spoke in opposition to the appeal.

Mohammed Dell spoke in opposition to the appeal.

Jason Schell spoke in opposition to the appeal.

Russell Moncrieff spoke in opposition to the appeal.

Elaine Bender spoke in opposition to the appeal.

Melinda Laley spoke in opposition to the appeal.

Sabrina Latimer spoke in opposition to the appeal.

Marianne Hohmann spoke in opposition to the appeal.

Border City Dental Center spoke in opposition to the appeal.

Dawn Hames spoke in opposition to the appeal.

Jasmin Paszkowski spoke in opposition to the appeal.

Don Mark spoke in opposition to the appeal.

Juan Segovir spoke in opposition to the appeal.

11. Summaries

13.1 Development Authority's Final Comments

Natasha Pidkowa reiterated that the refusal of the development permit was issued based on the discretionary use process in the Land Use Bylaw, including feedback received from the public. This decision was based on the proposed use, the public feedback was considered to the extent that valid planning considerations were raised, and the application was refused.

13.2 Affected Parties Final Comments

Jason Schell reiterated that he doesn't want to continue to have to speak to this every year and asked how to take further action on this topic with the City of Lloydminster.

13.3 Appellant's Final Comments

The Lloydminster Men's Shelter stated that a warming shelter for this winter is a City responsibility now, as the provincial government has stated that the responsibility falls on the City to look after this matter. The Lloydminster Men's Shelter will not be pushing this matter any further.

12. Close of Hearing

The Chair, Bernal Ulsifer concluded the hearing at 10:57 AM and indicated that the written decision would be issued within fifteen (15) days of the Hearing.

13. Adjournment

Larry McConnell moved that the October 23, 2024 Subdivision and Development Appeal Board hearing be adjourned at 10:58 PM.

CARRIED

_____

SDAB Chair

_____

SDAB Clerk

Subdivision and Development Appeal Board
Application to Appeal

LLOYDMINSTER

Submission Date	Date: FEB 18, 2025	**OFFICE USE ONLY**
APPEAL PROPERTY INFORMATION	Municipal Address: 5411 - 44 Street Municipal Tax Roll #: 22137000000 Zoning: C2 Legal Description: Lot: 1 Block: Legal Plan: 832-0990 Permit Number Being Appealed: 25-4684	**RECEIVED DATE:** **SDAB APPEAL #** **APPLICATION #:** **PERMIT #:** **PERMIT FEE:** **RECEIPT #:**
APPELLANT INFORMATION	Appellant Name: Sandeep Bhullar Address: [redacted] Phone: Email:	**APPEAL HEARING DATE:** **DECISION ISSUED DATE:** **APPEAL GRANTED:** ☐ Yes ☐ No **CONDITIONS ON APPEAL:** ☐ Yes ☐ No

APPEAL AGAINST (Each appeal requires an application)

☒ **Development Permit**	☐ **Subdivision Application**	☐ **Notice of Contravention**
☐ Approval	☐ Approval	☐ Stop Order
☐ Conditions of Approval	☐ Conditions of Approval	
☒ Refusal	☐ Refusal	

REASONS FOR APPEAL (Sections 678 and 686 of the Municipal Government Act (MGA) require that written Notice of Appeal must contain specific reasons for the appeal.)

I do hereby appeal the decision of the Subdivision/Development Authority for the following reasons (Attach separate page if required):

Please see attached page.

[redacted] — **Signature of Appellant / Agent**

FEB 18, 2025 — **Date of Signature**

APPEAL BOARD DECISION

Collection and Use of Personal Information: The personal information being collected on this form is for the purposes of processing and acting upon this application in accordance with the Municipal Government Act, and is protected by the privacy provisions of the Freedom of Information and Protection of Privacy Act (FOIP). The City will not share your personal information for purposes outside of those stated without your permission in writing, unless there is a specific exemption stated in the Municipal Government Act.

IMPORTANT NOTICE: THIS APPLICATION **DOES NOT PERMIT YOU TO COMMENCE CONSTRUCTION** UNTIL SUCH TIME A DEVELOPMENT PERMIT HAS BEEN ISSUED BY THE DEVELOPMENT AUTHORITY AND ALL OTHER PERMITS (IF REQUIRED) ARE APPROVED. IF A DECISION HAS NOT BEEN ISSUED WITHIN 40 DAYS OF THE DATE THE APPLICATION IS DEEMED COMPLETE, YOU HAVE THE RIGHT TO FILE AN APPEAL TO THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD. APPEALS TO THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD CAN ALSO BE FILED IN REGARDS TO PERMIT REFUSALS AND/OR CONDITIONS WITHIN 21 DAYS OF A DECISION.

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Email: cityclerk@lloydminster.ca

Schedule "A" to Notice of Appeal

In Reference to Matter #25-4684

As Applicant and Appellant in the above noted matter, I confirm the grounds for my appeal are as follows:

1. Historically, an Alcohol Sales outlet operated from this location since at least 2009 without any complaints known to me in relation to Lions Park.

2. The proposed location is physically separated from the Park by at least 6 lanes of traffic comprising 44th Street / Highway 16.

3. The proposed Alcohol Sales outlet is set back some 45 metres from the north property line of the site and the entrance to the outlet is some 150 metres distant from the boundary of the Lions Park.

4. The Park's boundary is well treed, thereby further enhancing visual separation from the outlet.

5. The granting of the requested variance will not, in any meaningful way, unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

6. Such further and other reasons as may be presented at the hearing of this appeal.

DEVELOPMENT OFFICERS APPEAL STATEMENT

PERMIT NUMBER	
APPLICATION NUMBER	25-4684
PROPOSED USE	Alcohol Sales
DECISION OF THE DEVELOPMENT OFFICER	Refused
REGISTERED OWNER	Commonwealth Hospitality Management Ltd.
APPELLANT/APPLICANT	Sandeep Bhullar – Super Value Liquor
DECISION DATE	February 14, 2025
NOTIFICATION PERIOD	N/A
DATE OF APPEAL HEARING	March 11, 2025

CIVIC ADDRESS: 5411 – 44 Street
LEGAL DESCRIPTION: Lot 1, Plan 832-0990
DISTRICT: C2 – Highway Corridor Commercial District
STATUTORY PLAN: Land Use Bylaw 5-2016

DEVELOPMENT PERMIT APPLICATION: Schedule "A"
DEVELOPMENT OFFICERS DECISION: Schedule "B"
LOCATION SKETCH: Schedule "C"
APPLICABLE LAND USE BYLAW REGULATION SECTIONS: Schedule "D"

Is **REFUSED** for Alcohol Sales to be located at **5411 - 44 Street** as applied for on **February 13, 2025**, based on the following:

1. Refused as it is within a 100-metre separation distance from a park as required under Section 5.2 of Land Use Bylaw 5-2016.

DEVELOPMENT OFFICER'S APPEAL STATEMENT

BACKGROUND:

An application was received on February 13, 2025, for a liquor store to be located at 5411 - 44 Street, Lloydminster AB.

Upon review of Land Use Bylaw 5-2016, Section 5.2, Alcohol Sales, it is noted that there is a requirement to have a 100-metre radial separation from the site boundary to existing community or recreation activities, including but not limited to existing public parks.

Reviewing the area it has been identified that there is a public park at approximately 90 metres from the boundary of the lot of the proposed development to the boundary of the existing public park.

Land Use Bylaw 5-2016 Section 5.2: Alcohol Sales:

Alcohol Sales shall be located only on a site with a minimum radial separation of 100 metres, or more, from a site boundary of any site with any existing community or recreation activity, a Public Park or a school.

A Location Sketch showing the area with the buffer has been provided for context as Schedule "C".

Administration completed the review of Land Use Bylaw 05-2016, Municipal Development Plan (MDP), and other applicable City Bylaws and Policies and refused the application on February 14, 2025.

LAND USE BYLAW

The following Sections from the Land Use Bylaw are attached as Schedule "D" to this Report:

- Section 2.13.1 (ii) – Decisions on Development Application
- Section 5.2 – Alcohol Sales

FACTS TO THE BOARD:

Administration received a Development Permit Application on February 13, 2025.

Administration deemed the application complete on February 13, 2025.

The application was refused on February 14, 2025, with the Notice of Decision being sent to the applicant on February 14, 2025.

BOARD'S AUTHORITY AND DEVELOPMENT OFFICER'S SUBMISSIONS

The Board's authority with respect to a development appeal is set out in s. 687(3)(c) and (d) of the *Municipal Government Act*:

(c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land, and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

Schedule "A"

Development Permit Application

Application for Development Permit

$500.00 Refund. BR.985869 (20250214)

LLOYDMINSTER

Application Submission Date: February 13, 2025

PROJECT

Is the project already constructed? [X] Yes [ ] No

Municipal Address: 5411 - 44St LLOYDMINSTER

Tax Roll #: 2213700000 Zoning District: C2

Legal Description: Lot: 1 Block: Plan: 8320990

APPLICANT INFORMATION

Applicant Name: SANDEEP BHULLAR

[redacted]

Are you also the property owner? [ ] Yes [X] No

(If property owner is different from applicant Owner Authorization Form is required)

Owner Authorization Form Attached? [X] Yes [ ] No [ ] N/A

OFFICE USE ONLY

Application #: 25-4684

Permit #:

Permit Fee: $590.00 / Cash

Receipt #: 985371

Approved by:

Refused by: R Shortt

Issue Date: Feb 14/25

Valid Date:

DEVELOPMENT INFORMATION

Development Class: [ ] Residential [ ] Industrial [X] Commercial [ ] Institutional [ ] Multi-family - # of Units

Proposed Development: (Select all that Apply) [X] Permitted Use [ ] Discretionary Use [X] Variance Application

- [ ] New Construction
- [ ] Renovation
- [ ] Addition
- [ ] Foundation
- [ ] Superstructure
- [ ] New Dwelling
- [ ] Accessory Building
- [ ] Attached Garage
- [ ] Detached Garage
- [ ] Front Deck
- [ ] Rear Deck
- [ ] Other:
- [ ] Income Suite: [ ] Secondary to Home [ ] Garage Suite [ ] Garden Suite
- [X] Business License Use Approval for (type of business): RETAIL LIQUOR STORE
- [ ] Home Based Business: [ ] Minor [ ] Major

Description of Home Business:

DECLARATION

I hereby declare [ ] I am [ ] I represent the owner of the property on which the work identified in this application will be conducted in accordance to the plans submitted, and upon approval will adhere to the conditions/terms of Land Use Bylaw 5-2016. I/We will notify the Development Authority of any proposed changes to the plans submitted with this application.

Note: By typing your name into the signature box below (or by signing a printed version of this application), you agree that all information submitted on this form is true and accurate.

[redacted] Signature of Registered Owner / Agent

FEB 13, 2025 Date of Application

DECISION OFFICE USE ONLY

Refused as per attached Notice of Decision, dated Feb 14/25

[redacted] Development Officer

Feb 14/25 Date

Collection and Use of Personal Information. The personal information being collected on this form is for the purposes of processing and acting upon this application in accordance with the Municipal Government Act, and is protected by the privacy provisions of the Freedom of Information and Protection of Privacy Act (FOIP). The City will not share your personal information for purposes outside of those stated without your permission in writing, unless there is a specific exemption stated in the Municipal Government Act.

IMPORTANT NOTICE: THIS APPLICATION DOES NOT PERMIT YOU TO COMMENCE CONSTRUCTION UNTIL SUCH TIME A DEVELOPMENT PERMIT HAS BEEN ISSUED BY THE DEVELOPMENT AUTHORITY AND ALL OTHER PERMITS (IF REQUIRED) ARE APPROVED. IF A DECISION HAS NOT BEEN ISSUED WITHIN 40 DAYS OF THE DATE THE APPLICATION IS DEEMED COMPLETE, YOU HAVE THE RIGHT TO FILE AN APPEAL TO THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD. APPEALS TO THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD CAN ALSO BE FILED IN REGARDS TO PERMIT REFUSALS AND/OR CONDITIONS WITHIN 21 DAYS OF A DECISION.

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Email: permits@lloydminster.ca

Schedule "B"

LLOYDMINSTER

NOTICE OF DECISION
LAND USE BYLAW 5-2016

You, **Sandeep Bhullar** at **654, 52327 -RR233, Sherwood Park, AB T8B 0E1,** hereinafter referred to as the "Applicant", are hereby notified that your application for development as follows:

Application Number:	25-4684
Permit Number:	REFUSED
Purpose:	Alcohol Sales
Involving:	5411 - 44 Street (Lot 1, Plan 832-0990)
Registered Owner:	Commonwealth Hospitality Management Ltd.

Is **REFUSED** for Alcohol Sales located at **5411 – 44 Street** as applied for on February 13, 2025, for to the following conditions:

1. Refused as it is within a 100 metre separation distance from a park as required under Section 5.2 of Land Use Bylaw 5-2016.

Although this permit is REFUSED it is subject to a twenty-one (21) day appeal period from the date of decision.

Any development commenced or undertaken during the twenty-one (21) day appeal period, or where an appeal has been filed but not finally determined, shall be solely at the risk of the developer in no event shall the City be liable for the filing or outcome of any appeal.

If you are not in agreement with this decision or conditions described herein, it may be appealed within twenty-one (21) days from the date of decision (as per Section 686 Development Permit Appeals: *Municipal Government Act*) by submitting a written notice and a four-hundred-dollar ($400.00) processing fee to the following:

City Hall – Office of the City Clerk
Attention - Secretary of the Subdivision and Development Appeal Board
4420 – 50 Avenue
Lloydminster, AB T9V 0W2

If you have any questions, or require any clarification, please contact the undersigned at (780) 874-3700 or by email at rshortt@lloydminster.ca.

Date of Decision:	February 14, 2025
Date of Notice:	February 14, 2025

Sincerely,
City of Lloydminster

Roxanne Shortt

Roxanne Shortt, ALUP
Development Officer, Planning
Operations Centre

Schedule "C"

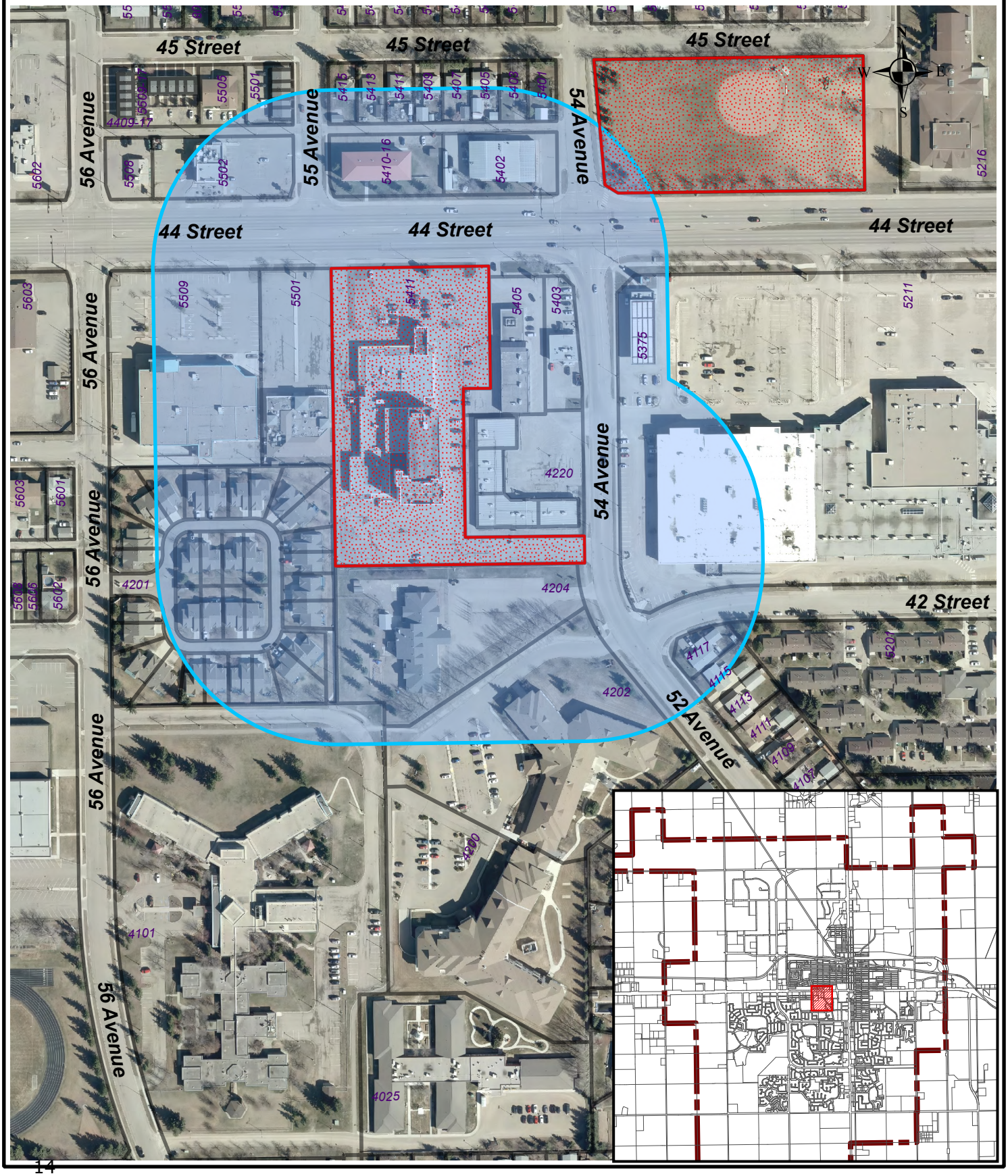
The City Of Lloydminster — ***Geomatics Services***

LLOYDMINSTER

Location Sketch

5411 44 Street
Lloydminster, AB

DP #:	25-4684 - Refused
Date:	February 27, 2025
Drawn by:	pkennedy



Schedule “D”

2.13 Decisions on Development Application

2.13.1 In making a decision on a Development Permit application for a Permitted Use, the Development Officer:

i. Shall approve the application, with or without conditions, if the proposed Development conforms with this Bylaw; or

ii. Shall refuse the application, and provide rationale for refusal, if the proposed Development does not conform to this Bylaw.

5.2 Alcohol Sales

5.2.1 Alcohol Sales shall be located only on a Site with a minimum radial separation of 100 m or more from the Site boundary of any Site with an existing community or recreation activity, a Public Park or a School. **(Bylaw 29- 2016)**

City of Lloydminster Subdivision and Development Appeal Board

Matter #25-4684 Proposed Alcohol Sales at 5411 – 44 Street

APPELLANTS' LEGAL BRIEF AND SUPPORTING MATERIALS

In this matter, the Appellant has applied to operate an Alcohol Sales facility in the Border Inn & Suites Hotel building at 5411 - 44 Street. A similar facility was located there for many years, but has since gone out of business.

September, 2012

The Application was refused pursuant to section 5.2 of the current Land Use Bylaw (amended in 2016) which provides: "*Alcohol Sales shall be located only on a Site with a minimum radial separation of a 100 m or more from the Site boundary of any Site with an existing community or recreation activity, a Public Park or a School*." The Alcohol Sales Use is a Permitted Use in the applicable C2 Highway Corridor Commercial Zone so there is no question about the propriety of the proposed development at the subject location. However, it is also the case that the site boundary of the Hotel property is within 100 metres of the site boundary of the Lions Park, and for that reason, the Appellant is seeking a variance of that radial separation requirement from the Board.

The current Land Use Bylaw does provide the Development Officer with some variance powers, but they are limited by section 2.13.1(i) as follows: *"A variance shall only be granted for: a Yard; Lot Coverage; the minimum required distance of a Building or Structure to any other Building or*

Structure on a Lot, the Height of a Building (measured in metres, rather than Storeys); or, the parking required for a Development." In the result, the Development Officer was not able to assist the Appellant here, no matter how reasonable his case might be.

But the limitations on the Development Officer's variance powers set out in the Land Use Bylaw do not apply to the Board. Under section 687(3)(d) of the ***Municipal Government Act***, the SDAB has the power to vary any and all regulatory provisions contained in a Land Use Bylaw to any extent as follows:

> **687(3)** In determining an appeal, the board hearing the appeal referred to in subsection (1) . . .
>
> (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
>
> (i) the proposed development would not
>
> (A) unduly interfere with the amenities of the neighbourhood, or
>
> (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
>
> and
>
> (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

(See ***Tymchak v. Edmonton (Subdivision and Development Appeal Board)***, 2012 ABCA, TAB 1.)

The issue before the Board on this matter, then, is whether allowing the Alcohol Sales Use to re-open in the Hotel Building would <u>unduly</u> interfere with the amenities of the neighbourhood, or would <u>materially</u> interfere with or affect the use, enjoyment or value of neighbouring parcels of land. On the face of it, the apparent answer to these questions is, "No."

This is so because:

(a) The Land Use Bylaw sets the radial separation distance from property line to property line rather than from Use to Use, and this creates an undue restriction for highway commercial properties like the Hotel which front onto the Highway and accommodate their parking between their building and the Highway. Those parking areas actually do contribute to the setback from the Park, but the Bylaw does not recognize that.

(b) The actual property-line to property-line separation between the Hotel site and the Park boundary is approximately 90 metres or so with the result that the requested variance is minor in nature. It is impossible to see how the slight reduction in setback requested could impact at all on the amenities of the neighbourhood or otherwise affect the use, enjoyment or value of neighbouring parcels of land.

(c) The multi-lane Highway, the broad intersection at 54th Avenue and the treed boundaries of the Park, itself, provide plenty of separation and practical isolation between the Park and the Alcohol Sales Use.

(d) The Alcohol Sales Use is not a stand-alone operation – it is to be conducted from the Hotel Building. Accordingly, any impact it might have on the surrounding area will be negligible. More to the point, as a Tenant of the Hotel property, the proposed Alcohol Sales Use will be subject to the strict supervision of the Landlord. The Hotel parking area in front of the proposed location is well lit.

All of this is shown on the Satellite Image attached at TAB 2.

On a related note, when reviewing a variance request such as the one presented today, the Board cannot simply say, "City Council made the separation distance in the Land Use Bylaw, so lowering it will cause a problem." Neither can the Board say, "This is too big a variance to allow." Instead, and in every instance, the Board must ask: Would granting the Appellant's request unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land? If the Board concludes that either of these tests would not be met, the Board must be able to articulate why this is so on the basis of the evidence taken at the hearing. (See ***Newcastle Centre GP Ltd v Edmonton (City)***, 2014 ABCA 295, TAB 3.) In the present case, it is respectfully submitted that the section 687(3)(d) tests are met based on the evidence presented here and that the proposed development ought be approved.

All of which is respectfully submitted this 3rd day of march, 2025 by

Ogilvie LLP, solicitors for the Appellant, per:

[redacted]

James W. Murphy, KC

TAB 1

In the Court of Appeal of Alberta

Citation: Tymchak v. Edmonton (Subdivision and Development Appeal Board), 2012 ABCA 22

Date: 20120124
Docket: 1103-0249-AC
Registry: Edmonton

Between:

Wayne Tymchak and Oksana Tymchak

Applicants

- and -

The Subdivision and Development Appeal Board of Edmonton (SDAB)

Respondent

- and -

The City of Edmonton

Respondent

- and -

Tamara Nicholson and Todd Nicholson

Respondents by Order

Reasons for Decision of
The Honourable Mr. Justice Jean Côté

Application for Leave to Appeal

Reasons for Decision of
The Honourable Mr. Justice Jean Côté

A. Introduction

[1] There are two basic issues here:

1. Whether the applicants show any suitable question of law or jurisdiction to justify leave to appeal to the Court of Appeal from the decision of the Subdivision and Development Appeal Board.

2. Whether the motion for leave was served in time.

[2] Before the motion was first returnable, the applicants changed solicitors and engaged their present counsel. So any procedural defects cannot be attributed to the law firm now acting.

B. Facts

[3] The respondent Nicholsons wish to build a new house on a lot in an established Edmonton neighborhood, Windsor Park. The proposed house is large, but it does not exceed the rules for density. Some of the neighbors favor the proposal, and some oppose. One set opposing are the applicant Tymchaks, who live next door.

[4] Some of the requirements of the zoning bylaw were not met, especially inadequate backyard setback. The development officer had to refuse a development permit. The Nicholsons appealed to the Subdivision and Development Appeal Board, which has power to relax such requirements.

[5] Since this is a mature neighborhood, the "overlay" on that topic in the bylaw requires consultation with the neighbors. The Nicholsons did that, with mixed results (as noted).

[6] Three days before the Subdivision and Development Appeal Board hearing, the Nicholsons produced a revised site plan. The proposed house had the same footprint, but it was a little further forward on the lot, and very slightly rotated. It is not plain exactly when the Subdivision and Development Appeal Board got the new version, but plainly it was before the hearing began. The new site plan was fully discussed at the hearing.

[7] After the hearing, the Subdivision and Development Appeal Board announced orally that it would allow the appeal, and grant variances, and grant the permit. Following the Board's usual practice, a written decision with reasons would follow, and be mailed to all concerned. A few days later that occurred.

C. History of Leave Motion

[8] A notice of motion was filed (by the Tymchaks' first solicitors) with the Court of Appeal, seeking leave to appeal to the Court of Appeal. It was filed within the time prescribed by statute, but the only respondent it named was the Subdivision and Development Appeal Board. The statute requires that the municipality also be a respondent. It was eventually added by an unopposed order of a judge. However, that was some weeks after the statutory deadline for filing and service of the notice of motion.

[9] No one was served with the notice of motion until about five days after the statutory deadline. The entity served then was the Subdivision and Development Appeal Board. The municipality was not named as a party then, and did not get copies until quite some time after the deadline for service (see Stacey Bell affidavit of Nov. 3).

D. Change of Site Plan as a Ground of Appeal

[10] I will begin with the grounds of appeal (merits) now proposed, and turn later to the deadline issue. I am confident that the applicants' counsel will have explained to them that I cannot opine on the planning results, nor weigh any of the evidence about the relaxations in question.

[11] The first few proposed grounds of appeal are interconnected, all flowing from the revised site plan. This involved no change in the house, only in its exact placement on the lot.

[12] One objection by the applicant Tymchaks is lack of notice. However, they attended the Subdivision and Development Appeal Board hearing, and learned then and there of the new (amended) site plan. The hearing opened with a discussion of it (see Record, p 2). There is no evidence, nor positive assertion, that anyone objected, nor sought an adjournment. The Nicholsons' counsel asserts that the Tymchaks did not. The Tymchaks' presentation to the Board was after the discussion of the new plan. Short notice is not the same as no notice, and in my view, the amount of change on the plan was not large enough to make it impossible to understand, nor to meet the revised case of the owner Nicholsons. Evidently that was the view of the Subdivision and Development Appeal Board also. Besides, this may be academic. Before the hearing the Nicholsons tried to contact the Tymchaks and dropped off a letter (which is not in evidence): see the Record, p 7, para 8. Dr. Tymchak affirmed an affidavit on September 23, and it does not allege any surprise.

[13] It is dangerous for the Court of Appeal to allow an appeal on a ground not raised before the tribunal under appeal, if a timely objection to that tribunal could well have removed the problem now complained of, e.g. by a brief adjournment, or a chance to reply or lead more evidence. So in my view, the chance of the Court of Appeal allowing the appeal on that ground is slight. And it would be unfair.

[14] There are particular grounds for the previous two paragraphs. Both site plans are together in the Record of the Subdivision and Development Appeal Board filed with the Court of Appeal (and verified by affidavit). That contiguity suggests that the two plans were together in the submission of one of the parties to the Board, likely the Nicholsons. Not only are the two plans' formats identical, but each gives very precise actual setbacks from all four lot boundaries. Each plan even shows the frontyard setback of each house on the block (which impacts on the legal front setback for the lot in question). Such setbacks (actual and required by bylaw) were the biggest feature of this appeal, and well-known to all the parties. So the significance (physical and legal) of the small change in house position could be seen at a glance by any person involved. Furthermore, the difference was emphasized in the presentation of the owner Nicholsons, since it was made to mollify the objections by neighbors that the first plan left too small a backyard.

[15] The overlay part of the bylaw calls for consultation with the local community league and the neighbors: s 814.3(23). That was done. The applicant Tymchaks say that the consultation should have been repeated after the site plan was revised. Both counsel suggest that not every amendment to the proposed development requires a new consultation: it depends on the degree of change. I agree. In my view, the degree here was not enough, as I explain above and below. As counsel for the Nicholsons says, any rule requiring new consultation for any change whatever could have bad effects. It could lead to perpetual consultation, and no hearing ever. That is because a reasonable owner/developer often will amend his or her plan to meet any proper objection raised by anyone, whether the municipality or a neighbor. Subdivision and Development Appeal Board hearings are to be scheduled promptly, so a long consultation process could be highly problematic. Indeed, s 814.3(23)(c) specifically speaks of modifications made to address the concerns of those consulted. Though the original proposal must be outlined to them, the modifications only have to be "document[ed]", it says. In any event, as counsel for the Tymchaks says, the Subdivision and Development Appeal Board has power to relax the consultation requirement, if necessary.

[16] The other proposed ground of appeal flowing from the change to the site plan is this. The first site plan had a considerable deficiency in backyard setback, but otherwise had sufficient setback on the other three sides. The revised plan had three other inadequate setbacks (but of course a somewhat better backyard). The new sideyard deficiencies were one inch on one side and two on the other. Counsel for the applicant Tymchaks properly declines to rely upon that trivial relaxation.

[17] At the front, a new deficiency of about three feet was created. Counsel for the applicant Tymchaks relies on it, and says that the Subdivision and Development Appeal Board did not discuss it, and therefore probably did not notice or address its mind to it. I cannot agree. In context, the point is obvious, especially to an experienced tribunal. And in my view, it is very small. The plans show at a glance that a number of houses on the block already have smaller front setbacks than the Nicholsons' proposed house, including some houses quite close to it. The whole general topic of setbacks was exhaustively discussed. This is exactly the type of question which the Legislature and the bylaw confide in the Subdivision and Development Appeal Board. That is especially so of frontyard setbacks in s 814.3(1) (mature neighborhood overlay). It gives a formula to compute, and

words of judgment, such as “consistent”, and “general context”. Expertise is obviously important. In my view, there was no missed issue there. Indeed there was no question of law or jurisdiction.

[18] Counsel for the applicant Tymchaks also mentioned the need for relaxation of the rules about height, and number of storeys, but in my view the Subdivision and Development Appeal Board did consider and mention that in its reasons (Record, p 9, para 9). The relaxations there were small, and arguably technical only. See p 97 of the Record. Counsel conceded that the Tymchaks understood the height issue, but postulates that other neighbors may not have. The height of the house was the same in both plans. The topic was fully discussed at the Subdivision and Development Appeal Board hearing. It had been an express reason for the development authority’s refusing the permits, i.e. for the decision appealed to the Subdivision and Development Appeal Board.

E. Section 11.4 of Bylaw

[19] Counsel for the applicant Tymchaks suggests that the Subdivision and Development Appeal Board erred in law by failing to discuss the tests for a variance in s 11.4(1) of the bylaw. They are fairly narrow, and require unnecessary hardship, or practical difficulties peculiar to that lot.

[20] I see no error. That section expressly gives the tests for relaxation by the development officer. The Subdivision and Development Appeal Board is subject to different tests, set by s 687(3)(d) of the *Municipal Government Act* (RSA 2000, c M-26). They are laxer: no undue or material interference to neighbors’ land or the neighborhood. So I cannot see why the Subdivision and Development Appeal Board could or should use the tests in the bylaw. Furthermore, for a generation or more, Alberta planning law gave development officers no power to relax the zoning law, and confined that power to Subdivision and Development Appeal Boards. This s 11.4 is a much more recent enactment in a bylaw, passed in light of the well-known history and statute. That reinforces my view that a Subdivision and Development Appeal Board need not satisfy s 11.4 when the *Municipal Government Act* permits it to relax a bylaw requirement, and the *Municipal Government Act’s* tests (no undue or material interference with neighborhood amenities, etc.) are met (s 687(3)(d)).

[21] A bylaw cannot validly contradict an “enactment” of the Province: s 13, *Municipal Government Act*.

F. Evidence Used or Not

[22] The applicant Tymchaks also have two objections to use or non-use of evidence by the Subdivision and Development Appeal Board.

[23] The Tymchaks presented to the Board a letter by a realtor (who was not present at the hearing). It says that building the new house would lower the value of the Tymchaks’ house. It gives

little or no detail, and does not name a dollar figure, nor a percentage. The Tymchaks now suggest that the Board had to give that letter evidence effect because it was unrebutted.

[24] But this was not a discretionary use of land. Single detached housing is a permitted use (bylaw s 110.2). And the objections to the house had to do with its size, bulk, effect on sunlight, and setbacks. Most of those features were within the bylaw's limits. The realtor's letter does not say that the diminution in value would come from the small backyard of the new house. It mentions sun and view, but they are largely a product of height, and the height relaxation was trivial. Nor did the letter say by what amount the value would drop. The *Municipal Government Act* allows relaxations by the Subdivision and Development Appeal Board if their effects are not undue. It does not require that they have no effect whatever. The respondent Nicholsons had filed a good deal of directly-applicable evidence with the Subdivision and Development Appeal Board, including a sun/shade study, a landscaping plan, building elevations, and photographs (pp 83-87 of Record). The pieces of evidence were not vague or merely conclusory. At best, this was a matter of weighing and apportionment for the Board.

[25] Counsel for the applicant Tymchaks conversely objected that the Subdivision and Development Appeal Board looked at photographs showing the character of the neighborhood. It is suggested that that was irrelevant. I cannot agree, especially as the *Municipal Government Act* links relaxations by the Subdivision and Development Appeal Board to the effect on the amenities of the neighborhood. And that evidence is more relevant because the biggest objection to the new house was its attached garage at the back, and the new objection before me was to a three-foot deficiency in the frontyard setback. The Board mentions garages in the photographs, but everything the photographs showed made them candidates for admission into evidence. Given s 687(3)(d), few neighborhood photographs would be plainly irrelevant.

[26] Maybe these photographs had somewhat modest materiality, but they were not irrelevant.

[27] Besides, probably 90% of appeals to Subdivision and Development Appeal Boards hear some irrelevant evidence. Commonly no lawyers are involved (as the legislation doubtless contemplates). There are no real pleadings, so what is in issue remains fluid until the last speaker sits down. These Boards are usually too polite to point out how utterly irrelevant some topics raised by lay participants are. If that tact were reversible error of law, the Court of Appeal might need two more judges to hear the additional subdivision and development appeals which would result.

[28] In any event, the two questions of evidence raised here are totally, or almost entirely, questions of fact. The Court of Appeal has no power to hear such questions, and I could not give leave to appeal on such topics.

G. Inadequate Reasons

[29] Poverty of reasons was also alleged by the applicants. For the most part, this largely overlapped with the alleged overlooked issues (discussed in Part D above). As noted there, what the Subdivision and Development Appeal Board did here was obvious, especially in context of the presentations.

[30] Though lawyers might draft fuller reasons than Subdivision and Development Appeal Boards typically do, I find the reasons here adequate. Furthermore, I can find no lurking substantive issue here which fuller reasons would smoke out. Argument and review of the material proves that meaningful appellate review is possible on these reasons, especially on topics of law or jurisdiction, and even more on the particular topics argued before me. Reasons of all courts and tribunals must be read in light of the issues and evidence already heard, and of the background knowledge which all involved already had. They are not to be read in the abstract by those whose slates are blank.

[31] Therefore, I need not decide whether lack of adequate reasons alone is (still) a freestanding ground of appeal in Alberta.

[32] Are the questions raised important for making precedent? The tests for leave to appeal are not confined to "a reasonable chance of success". The proposed appeal must **also** involve ". . . a question of law of sufficient importance to merit a further appeal": s 688(3). These questions would not make useful precedents of interest to many people. See ***Strathcona (Cty) v Allan***, 2006 ABCA 129, 384 AR 290 (para 13, one JA), and ***Ouimet v Sturgeon SDAB***, 2002 ABCA 187, 312 AR 181 (para 10, one JA).

H. Late Motion

1. Introduction

[33] There have always been deadlines for motions for leave to appeal to the Court of Appeal from a Subdivision and Development Appeal Board. The deadline used to govern when the motion was made, which led both to controversy in interpretation, and to easy evasion by adjournments. Now the statutory test is different.

[34] A motion for leave must be filed and served within 30 days of the decision to be appealed. Section 688(2) of the *Municipal Government Act* reads as follows:

> **(2)** An application for leave to appeal must be filed and served within 30 days after the issue of the decision sought to be appealed, and notice of the application for leave to appeal must be given to
>
> (a) the Municipal Government Board or the subdivision and development appeal board, as the case may be, and

(b) any other persons that the judge directs.

So the Subdivision and Development Appeal Board must be one of the people served.

[35] Many reported cases say that time runs from when the applicant gets notice of the decision. See Laux, *Planning Law and Practice in Alberta*, pp 16-10 to 16-11 (looseleaf, Jan. 2010). Both counsel here adopted that view, and applied it to receipt (by mail) of the Board's written decision, even though it had been announced orally quite some days earlier in the presence of all the parties. I will assume that is correct, especially in view of the result here; the assumption gives the applicant Tymchaks the benefit of the doubt.

2. Filing

[36] It seems clear, and is admitted, that the notice of motion for leave was filed with the Court of Appeal within the prescribed time after receipt of the written decision. The respondent Nicholsons do not suggest late filing. The absence of a mandatory respondent on the notice of motion filed, and its addition only well after the prescribed period, is intriguing; but I will not pursue that unargued topic.

3. Timing of Service

[37] The municipality and the Subdivision and Development Appeal Board have not objected to late service, but then they have taken no active part at all, and I doubt that they have any real interest in these proceedings. I cannot see why it matters which respondent raises the timing objection.

[38] I have studied carefully all the evidence about receipt of the Subdivision and Development Appeal Board's decision by various people, about service of the notice of motion, and about when and how various people got copies. And I have made myself a complete chronology. Studying it and the *Interpretation Act*, s 23 (RSA 2000, c I-8), convinces me that counsel for the applicant Tymchaks computes correctly. She says that the notice of motion was not served on (or notified to) anyone until about five days after the time specified for that in the *Municipal Government Act*. (Counsel for the Nicholsons does not dispute that calculation, which supports his argument.) What is more, the municipality did not see the notice of motion until some weeks still later. Yet s 688(5) says the municipality must be given notice, and must be a respondent. That must happen within 30 days: ***N Sunrise*** case, *infra* (para 14). The Subdivision and Development Appeal Board got notice before that, about five days late. Ironically the *Act* does not make the owners, the Nicholsons, automatic or mandatory parties: it merely allows them to be added later by a judge (as was later done here). They did not get notice of the application for leave for a long time, maybe a month late.

[39] It is also common ground that the *Act* does not say that anyone has the power to extend its time deadline for service (or for filing).

[40] And the *Act* merely says (s 688(4.1)) that the usual procedures of the Court of Appeal apply to **later** stages. It does not say that the Rules of Court, or any other usual Court of Appeal procedures, apply to this leave stage. The Rules of Court are not incorporated by reference, especially at the early leave stage.

4. Curing Late Service?

[41] No one would suggest that filing a notice of motion late (which did not occur here) could be cured. Obviously that is a statutory limitation period. However, the applicant Tymchaks' counsel argues that the time limit for service is a mere point of procedure, and so can be extended if the circumstances warrant. They rely upon ***KC v College of Physical Therapists***,1998 ABCA 213, 212 AR 16. But there the appeal lay as of right and was timely filed; service was not part of commencement of an appeal.

[42] On this topic, I do not find very helpful statements in the case law that nothing should be held to be a nullity. Counsel relied on ***Bridgeland Riverside Community Assn v Calgary (City)*** (1982) 37 AR 26, 19 Alta LR (2d) 361 and ***Lamont (County) No 30 v St Michael & Area Landowners etc***, 1998 ABCA 150, 216 AR 168 (one JA). They are about somewhat different problems, such as whether proceeding and deciding after insufficient notice is a nullity. But here the question is whether the court, knowing of the missed deadline, should proceed anyway. And in the other case, the question was when to file evidence. The discussion of nullities may be *obiter*. And in any event, whether or not a statement of claim issued after the limitation period is a nullity, any defendant who pleads the limitation period and shows that it applies, has an ironclad defence.

[43] Has the Court of Appeal the power to relieve against late service of the notice of motion?

[44] I do not see how it can. The Legislature says to serve the notice of motion within 30 days. Many Acts expressly allow the court or a judge to extend such time limits; the Legislature knows how to enact such a power. This *Act* does not do that. After this many reenactments of this legislation over half a century, that cannot be an accident.

[45] A great many cases hold that statutory time limits relating to commencing proceedings cannot be extended by the courts unless some statute says so: ***Houg Alta v 417034 Alta*** (1991) 117 AR 196, 200 (para 27) (one JA); ***Sommers v Red Deer SDAB***, 2000 ABCA 225, 266 AR 90 (one JA); ***N Sunrise v De Meyer***, 2009 ABCA 205, 454 AR 88 (paras 7, 11); ***BDW v GBGR*** (1989) 68 Alta LR (2d) 377, 380 (CA); ***Re Hudson Fashion Shoppe*** [1926] SCR 26; cf ***JU v Reg Dir of Child W***, 2001 ABCA 125, 281 AR 396, 398 (paras 6-7), leave den 283 NR 398 (SCC); ***Stoddard v Watson*** [1993] 2 SCR 1069, 1082a-b, 156 NR 263; ***Lakevold v Dome Petr*** (1979) 181 AR 254 (CA); ***Yorks Tr Co v Mallett*** (1986) 71 AR 23 (CA). Many more cases are cited in 4 Stevenson & Côté, *Civil Procedure Encyc.*, Chap 76, Part C.15 (p. 76-22) (2003). That law is apt, because the time limits here relate to a stage before the notice of appeal can be filed.

[46] The only exceptions where the court can extend time (which I have seen) are some cases which say that where an Act makes the Rules of Court apply, that incorporates by reference the Rules' time-extension Rules. There is no such statement in the *Municipal Government Act*; even the provision that the usual Court of Appeal procedure is to be followed. Section 688(4.1) is expressly confined to a later stage after leave is given.

[47] Nor is this a type of appeal which lies as of right with no need for leave. That situation might raise very different considerations. Then it might be easier to say that service was mere machinery **during** a court proceeding, not part of (or even before) commencement. If it is part of (or before) commencement, it is a limitation period.

[48] Furthermore, the Alberta Court of Appeal has often held that the Subdivision and Development Appeal Board appeals are urgent, as they hold in limbo the right to use land. See ***Van Panhuis v Lamont (Town)***, 2000 ABCA 201, [2000] AJ #834 (para 21) (July 14, one JA); ***Seabolt Watershed Assn v Yellowhead (Cty)***, 2002 ABCA 124, 303 AR 347 (paras 11-12) (one JA); cf. ***Edith L Service v Edm (City)*** (1981) 34 AR 390 (para 9) (CA). It is significant that the Subdivision and Development Appeal Board only has 15 days from hearing to give its decision (s 687(2), *Municipal Government Act*).

[49] I noted in the reasons for my previous decision on adjournment (2011 ABCA 337) that the respondent Nicholsons' counsel had said such a leave motion is sometimes "a poor man's injunction". As noted, the former legislation gave a time limit only to make the motion. Such motions were inevitably adjourned *sine die*, or for months. Sometimes that was done *ex parte*, "to preserve time". Quite often there was service on only the Subdivision and Development Appeal Board, and the municipality, not on the real opponent (the developer/owner or the objecting neighbor).

[50] The Legislature's change of deadline for service must be deliberate, not an oversight. Doubtless it is to cure the previous situation where the real opponent (or maybe even the statutory respondent) did not learn of the potential appeal to the Court of Appeal for months.

[51] The cases cited by the Tymchaks' counsel for the time extension here are mere analogies, and not directly on point. I do not find the analogies apt.

[52] Finding that a timely act which is not formal service nevertheless in substance is service, is a different question (as was found in ***N Sunrise***, *supra*). It does not arise here. No one got notice in time. What would be the result if some parties were served in time, and others were served late, does not arise here, and need not be decided.

[53] In my view, the Court of Appeal has no power to waive the time limit for service.

5. Should Time Be Extended?

[54] I could stop there. But even if my legal view were wrong, I still would not have extended time here.

[55] It was suggested that the respondents got timely notice of intent to appeal. I cannot agree. I went carefully over the evidence, and cannot find such a communication. It could be that there was some oral statement which was not recorded, but I find no evidence even of that.
[56] Before the deadline expired, there were one or two written communications which showed that the Tymchaks were unhappy with the Subdivision and Development Appeal Board's decision. But the avenues which they suggested (and then vaguely) were reconsideration by the Subdivision and Development Appeal Board, negotiation, or some sort of action by the municipal government. That is certainly true of the Tymchaks' e-mail to the Mayor (reproduced on pp 12-13 of the McDonald affidavit).

[57] Their e-mail to the Nicholsons (Tamara Nicholson's affidavit, Exhibit B) was received before the notice of motion for leave was filed or served. It suggests negotiating amendments to the house plan. It encloses a draft notice of appeal to the Court of Appeal with the wrong parties, but nothing about seeking leave. There is no evidence of continuous intent to appeal, still less to seek leave. The express proposal in that e-mail was to negotiate plan changes first, and to file an appeal as of right only if negotiation failed. Though not so headed, the letter is obviously without prejudice, and an attempt to compromise. Absent consent of the addressee Nicholsons, it would appear to be inadmissible as evidence because it was privileged. Besides, it is unfair to send someone a proposal of a negotiated compromise, and then later (after negotiation has failed) turn it into an official notice. Whether it was notice of applying for leave to appeal, I need not decide.

[58] In any event, the Nicholsons were not parties then. The people to whom the *Municipal Government Act* requires notice in time are the municipality and the Subdivision and Development Appeal Board. See the ***N Sunrise*** case, *supra* (paras 12, 14). Neither got a copy of that negotiating letter.

[59] Was there clear evidence of lack of prejudice to the respondent owners, the Nicholsons? In some types of litigation, I would accept a mere sworn statement by the applicant that he or she knows of no prejudice. But planning (land control) matters make prejudice to the owner or developer from delay much more likely, and require more evidence than that. For one thing, idle land still incurs municipal taxes. And though interest rates are very low now, lots in mature neighborhoods can be expensive. So lost opportunity costs are almost inevitable, unless some other impediment to construction intervenes. However, all that is academic here, as it is admitted that late service did not prejudice the respondent Nicholsons.

[60] Of course, an extension of time to appeal (or seek leave) would require evidence of merits of the proposed appeal (if an extension is possible). I show above why I conclude that no sufficient merits existed here on a question of law or jurisdiction, the only types of appeal which are even potentially open.

6. Question of Jurisdiction?

[61] I am tempted to say that therefore I have no jurisdiction to give leave here. But the applicants' case law about the unhelpfulness of the notion of nullity gives me pause. I need not decide whether this is a question of jurisdiction, strictly speaking.

[62] At the very least, the Legislature commands that there be a formal notice of motion filed and served within a certain time: that is three requirements. That is a rule of law, and I should follow it. It would be an error in principle to ignore it, and to give leave if that command (or part of it) was not followed. Part (time of service) was not followed here.

I. Conclusion

[63] I have combed the material, and heard full oral argument, but I can find no legitimate way for me to give the Tymchaks any relief.

[64] The motion for leave to appeal fails both on the merits, and on the issue of time.

[65] I have sympathy for the Tymchaks, but I trust that they will understand that the legislation does not allow the Court of Appeal to jump into the planning merits or suitability of that large new house next door.

[66] Neither my sympathy for the Tymchaks, nor any temptation for me to play amateur town planner, can intrude on the question of costs. I am aware of no misconduct by the respondents. The City and the Subdivision and Development Appeal Board took no real part (and did not appear on January 12). They will neither pay nor receive costs. The Tymchaks will pay (jointly and severally) one set of costs of all these Court of Appeal proceedings to the Nicholsons. However, there will be no duplication with my earlier costs order given on the adjournment. No step will get costs under both orders. If one order gives costs on a higher level or basis for a certain step (or piece of work) than does the other order, the higher one will be used, but only to the extent of the same work (or step).

Application heard on January 12, 2012

Reasons filed at Edmonton, Alberta
this 24th day of January, 2012

Côté J.A.

Appearances:

J.A. Agrios, Q.C.
for the Applicants Wayne Tymchak and Oksana Tymchak

K.L. Hurlburt
for the Respondent SDAB (no appearance)

J. Johnson
for the Respondent City of Edmonton (no appearance)

K.D. Wakefield, Q.C.
for the Respondents by Order Tamara Nicholson and Todd Nicholson

TAB 2


45 St
56 Ave
55 Ave
54 Ave
Lions Park
Lion's Park
Mother Teresa Early Childhood...
Wendy's
Only In The Morning
Subway
$5 gets you a Snackwich + Side
Dairy Queen Grill & Chill
DQ® food always hit the spot
Willow Creek Clothing & Collectibles
Clothing store
Mainstreet Apartments
155.72 m
Ray Nelson Dr
44 St
Yellowhead Hwy
100.00 m
Acoustic Audiology & Hearing Aid Services Inc
The Brick
Huge Savings—One Day Only
Cheers Tap & Grill
Lil Squirt Sprinklers Corporation
Starbucks
More Stars Mean More Rewards
Mr Bill's Family Restaurant
Paris Jewellers
Jewelry store
Safeway Lloydminster Mall
View The Safeway Weekly Flyer
Wayside Dental Centre
Lloydminster Public Library
LLOYD Mural
Lloydminster (City of) - Public Library...
Horizon Village
43 St
42 St
52 Ave
Measure distance
Click on the map to add to your path
Total distance: 155.72 m (510.89 ft)
Layers
Imagery ©2025 Airbus, CNES / Airbus, County of Vermilion River, Maxar Technologies, Map data ©2025
Canada
Terms
Privacy
Send Product Feedback
20 m

TAB 3

In the Court of Appeal of Alberta

Citation: Newcastle Centre GP Ltd v Edmonton (City), 2014 ABCA 295

Date: 20140916
Docket: 1303-0291-AC
Registry: Edmonton

Between:

Newcastle Centre GP Ltd.

Appellant

- and -

The City of Edmonton and the Subdivision and Development Appeal Board of the City of Edmonton

Respondents

- and –

Liquor Stores Limited Partnership, by its General Partner, Liquor Stores GP Inc.

Respondent by Order

The Court:

The Honourable Mr. Justice Jean Côté
The Honourable Madam Justice Marina Paperny
The Honourable Mr. Justice Stephen Hillier

Memorandum of Judgment

Appeal from the Decision by the Subdivision and Development Appeal Board of the City of Edmonton
Dated the 7th day of November, 2013

Memorandum of Judgment

The Court:

[1] The appellant has a large shopping centre and wishes to have a liquor store as a tenant, and to construct there a building for that purpose. The zoning permits that. However, the development officer had to refuse a development permit under the terms of the zoning bylaw, because there is another liquor store within 500 meters.

[2] The appellant appealed to the Subdivision and Development Appeal Board, because it has the power to waive or relax all regulations under the bylaw, except use restrictions. The only criticism or objection heard by the Board came from the owner of the existing liquor store. Its one objection is described below. The Board denied the appeal, and the appellant appeals further to us (with leave).

[3] The appellant submits that the Board wrongly thought that it had no power to relax the various bylaw restrictions on liquor stores too close to each other. Whether that is so is not completely clear. The Reasons of the Board conflict on this topic. (The paragraphs cited below are from its portion called "Reasons for Decision" or "Reasons of Decision".)

[4] There are many indications that the Board thought that it could not contradict the bylaw. Paragraph 4 mentions that the bylaw itself gives grounds to relax the 500-meter requirement, but points out that none of those grounds is met here. That implies that the Board cannot contradict the bylaw. And paragraph 5 refers to the 500-meter restriction as "absolute". The appellant had expressly suggested relieving against this separation distance because a major road intervened, and because the two stores would be in different shopping centres. Paragraph 5 merely says that the bylaw does not list those as mitigating factors. And paragraphs 7 and 8 state that the relevant restrictions in the bylaw have a legitimate rationale.

[5] Yet paragraph 6 conceded that the relevant section of the bylaw came within the Board's variance power.

[6] An attempt to try to reconcile the Reasons' internal conflicts would be to interpret the Reasons as follows. We, the Board, have a power to grant variances, but the bylaw creates a presumption of harm to the public, and we the Board cannot intervene unless that presumption is rebutted by the applicant. That is an error.

[7] The legal test for such waivers is in the *Municipal Government Act*, and is clear. Section 687(3)(d) mandates this test:

> the proposed development . . . would not (A) unduly interfere with the amenities of the neighbourhood, or (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land . . .

[8] We have noted the Board's various references to the tests and presumptions in the bylaw. But these are different from the Board's own powers under the *Act*.

[9] The Board may have enunciated a test for variance: "the overall greater public interest" (Reasons, paragraph 8). That phrase is in quotation marks in the Reasons, and as they say, it comes from s 617 of the *Municipal Government Act*. But that is not a test for development appeal boards waiving zoning bylaws' regulations. It is a test for municipal councils restricting individual rights when enacting "plans and related matters". Who enacts and who can waive rules, are two very different questions. The overall greater public interest in restricting liquor outlets is not the same as the tests in s 687(3)(d). Nor does s 617 enact a presumption.

[10] Counsel for the respondent suggested to us that paragraphs 4, 5, 7, and 8 are not reasons by the Board for what it did, but mere recitals of facts or law. We disagree. They are in the brief "Reasons for Decision" portion at the end, which comes after 5-1/2 pages of recitals. We must take the Reasons at their word, and not imagine something different.

[11] Were the Board's Reasons adequate? Was the result of applying the proper tests in s 687(3)(d) so obvious as to require no explanation in the Reasons? No. It is not self-evident that or how two liquor stores within 500 meters would interfere with neighbourhood amenities, nor that or how they interfere with or affect use, enjoyment, or value of neighbouring pieces of land. This is not a boiler factory in a residential neighbourhood. The problem only arises because there would be two liquor stores in the area. One alone is a permitted use.

[12] Therefore, if there is any interference with neighbourhood amenities, or with use, enjoyment, or value of other land parcels, the Board had a duty to explain that in its Reasons, and it did not. A mere conclusory statement does not suffice, and that is all that paragraph 10 is.

[13] There was only one adverse effect postulated by the respondent flowing from this proposed second liquor store. It was that if the existing liquor store ever later needed a new development permit (eg to move, enlarge, renovate, or rebuild), then it would be the second liquor store, and so might be refused a new development permit.

[14] Does that possibility of future harm to the tenant relate to the neighbourhood or its amenities? Does it affect the use, enjoyment, or value of any other parcels? Or does it relate instead to the other business or its owner? The Board made no fact findings to link the respondent's permit-for-a-move concern with any test in s 687(3)(d).

[15] Indeed, the Board made its error express. Its Reasons, paragraph 9, say "affect the Respondent". They do not say affect its parcel or lot, nor say affect the neighborhood.

[16] We conclude that the Board used the wrong legal test for variances.

[17] We allow the appeal, quash the decision of the Subdivision and Development Appeal Board, and send the matter back to the Board to rehear before a fresh panel.

[18] The appellant will have its costs of the appeal to this Court payable on assessment, by the respondent Liquor Stores. The City and the Board took no part here, and will neither receive nor pay costs.

Appeal heard on September 4, 2014

Memorandum filed at Edmonton, Alberta
this 16th day of September, 2014

Côté J.A.

Paperny J.A.

Authorized to sign for: Hillier J.

Appearances:

J.W. Murphy, Q.C.
K.A. Haldane
for the Appellant

J.C. Johnson (No appearance, no factum)
for the Respondent City of Edmonton

P.A. Smith, Q.C. (No appearance, no factum)
for the Respondent Edmonton SDAB

R. Noce, Q.C.
for the Respondent by Order Liquor Stores Limited Partnership