

Appeal No.: 0262 013 2018
Hearing Date: December 04, 2018

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: F. Yakimchuk
PANEL MEMBER: K. Howley
PANEL MEMBER: M. Kartusch
PANEL MEMBER: T. Lacoste
PANEL MEMBER: D. Wyntjes

BETWEEN:

LIBERTEVISION WEST
Represented by Gerald Aucoin

Appellant

and

CITY OF RED DEER
Represented by Beth McLachlan, Development Officer
& Natasha Wirtanen, City Solicitor

Development Officer

DECISION:

The Red Deer Subdivision and Development Appeal Board has no jurisdiction to hear the appeal filed in regard to the October 24, 2018 decision of the Development Officer, which refused an application by Libertevision West (the "Applicant") for a new Dynamic Freestanding Sign, located at 3017 50 Avenue, legally described as Lot 3, Block 1, plan 132 1685. The appeal is dismissed.

Reasons for this decision are provided within.

JURISDICTION AND ROLE OF THE BOARD

1. The Subdivision and Development Appeal Board (the Board) is governed by the *Municipal Government Act*, RSA 2000, c M-26 (the MGA) as amended.
2. The Board is established by The City of Red Deer, By-law No. 3487/2012, *Appeal Boards Bylaw* (October 29, 2012). The duty and purpose of the Board is to hear and make decisions on appeals

for which it is responsible under the MGA and The City of Red Deer, Bylaw No. 3357/2006, *Land Use Bylaw* (August 13, 2006) (the LUB).

3. None of the parties had any objection to the constitution of the Board. There were no conflicts identified by the Board Members.
4. The Board considered one preliminary issue: November 19, 2018 request for Preliminary Hearing by the Development Authority with regards to the Board's jurisdiction to hear the merits of this appeal.
5. The Appellant filed an appeal of the refusal on October 25, 2018.
6. The Board entered into evidence the following:
 - Exhibit A-1: Hearing Materials (6 pages)
 - Exhibit B-1: Development Officer – (34 pages)
 - Exhibit B-2: Development Officer – SDAB Training Guidebook (4 pages)
 - Exhibit B-3: Development Officer – Implementation Fact Sheet (3 pages)

Timeline to File the Appeal

7. On October 24, 2018, the Development Officer refused a development permit application by Libertelevision West (the Appellant) for a new Dynamic Freestanding Sign proposed to be on the Lands located at 3017 50 Avenue, Red Deer, Alberta legally described as Lot 3, Block 1, Plan 132 1685 zoned C4 (Major Arterial) District.
8. The City Authority stated a copy of the written decision, as well as written notice specifying the date the decision was made (October 24, 2018), was sent to the Appellant via email on the same day pursuant to s. 642 of the *Municipal Government Act* RSA 2000 Ch. M-26 (the "MGA").
9. The decision specified the Appellant's right to file an appeal with the Subdivision and Appeal Board and detailed the process specifying the timeline to file is within 21 days from the date of notification pursuant to s. 686(1) of the MGA.
10. The City Authority stated that the Appellant had 21 days to file the Notice to Appeal from the date in which the written decision given by the Development Officer, not 21 days from the date the decision is received.
11. Therefore the City Authority stated pursuant to s. 642 of the MGA, the written decision was given October 24, 2018 and the Notice of Appeal was required to be submitted by November 14, 2018. The Notice of Appeal was submitted November 15, 2018.
12. The City Authority stated the appeal was not properly commenced; therefore the Board has no jurisdiction to hear this matter.

13. The Appellant stated that he did receive the Decision via email October 24, 2018, and that he does not dispute anything the City Authority has put forward.
14. The Appellant further stated that although the appeal information was listed on the decision letter, he had initially assumed a hearing would be scheduled with the Appeal Board and he would be notified with a date.
15. The Appellant contacted the Board Clerk on November 14, 2018 at which time he was advised he would need to fill the necessary paperwork and that payment would need to be made in person. Shortly after, the Appellant left town and filed the appeal the next day November 15, 2018.

Board Findings and Decision

16. The Board recessed to consider the positions of the Parties and reviewed legislation related to the timeline to file an appeal.
17. The Board finds the time to file a Notice to Appeal must be within 21 days after the date on which the written decision is given under s. 686 of the MGA.
18. The Board is confined by legislation. Therefore, the Board has no jurisdiction to hear the merits of this appeal,
19. For the reasons detailed above, the application is dismissed.

Dated at the City of Red Deer, in the Province of Alberta this 18 day of December, 2018 and signed by the Chair on behalf of all five panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



F. Yakimchuk, Chair
Subdivision & Development
Appeal Board

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal, you must follow the procedure found in section 688 of the *Municipal Government Act*, which requires an application for leave to appeal to be filed and served **within 30 days** of this decision.

APPENDIX A

Documents presented at the Hearing and considered by the Board.

- Exhibit A-1: Hearing Materials (6 pages)
- Exhibit B-1: Development Officer – (34 pages)
- Exhibit B-2: Development Officer – SDAB Training Guidebook (4 pages)
- Exhibit B-3: Development Officer – Implementation Fact Sheet (3 pages)