



DEVELOPMENT APPEALS BEFORE THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

The Subdivision and Development Appeal Board (SDAB) is an independent quasi-judicial tribunal established by City Council bylaw under the authority of the *Municipal Government Act (MGA)*. Its primary mandate is to provide an impartial forum for the adjudication of appeals pertaining to decisions made by the City of Edmonton's Development Authority and Subdivision Authority. This includes:

- Issuance, refusal, or conditions imposed on Development Permits
- Refusals or conditions imposed on subdivision applications
- Stop orders issued against development activities
- "Deemed refusals" arising from the City's failure to render a decision within the prescribed timeframe

The SDAB's jurisdiction is confined to matters explicitly outlined in the *MGA* and associated bylaws.

Development Permit refusals

In cases where a proposed development does not comply with the *Edmonton Zoning Bylaw* and the Development Permit was refused, the SDAB has the authority to vary regulations of the *Edmonton Zoning Bylaw*. In determining whether a change should be made to the Development Planner's decision, the SDAB must:

- 1) Ensure the proposed use is either a Permitted or Discretionary Use in the applicable zone.
- 2) Establish that the proposed development does 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

Depending on the particular circumstances of the appeal, the SDAB will consider relevant planning and development concerns (supported by independent and reliable evidence as appropriate), which *may* include the following:

- Proposed Use
- Massing effect
- Siting of development
- Sun-shadowing effect
- Streetscape
- Compatibility
- Pedestrian or vehicular traffic
- Parking (when required)
- Noise
- Any additional planning concerns



Permitted Use Development Permits approved with no variances

The SDAB does not have jurisdiction to hear appeals regarding the issuance of a Development Permit for a Permitted Use with no variances unless the provisions of the *Edmonton Zoning Bylaw* were relaxed, varied or misinterpreted by the Development Planner.

If the case of an appeal is filed against a Permitted Use development, parties should focus their submissions on how they believe the Development Planner relaxed, varied or misinterpreted the *Edmonton Zoning Bylaw*. If the Board determines that a variance was required, then the Board's powers would be the same as those for Permitted Use Development Permits approved with variances.

Permitted Use Developments Permits approved with variances

In cases where an appeal is filed against an approved development permit with variances to the *Edmonton Zoning Bylaw*, the Board will need to determine whether or not the proposed variance would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, as per section Section 687(3)(d) of the *MGA*. The Board will only review the impacts of the requested variance, not the proposed development as a whole.

Discretionary Uses

In cases where an appeal solely concerns a Discretionary Use in the *Edmonton Zoning Bylaw*, the SDAB, with regard to planning principles, must determine if the development is reasonably compatible or not with the surrounding area.

Decisions

A decision of the SDAB is issued within 15 days of the conclusion of a hearing. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction within 30 days of the date of decision under Section 688 of the *MGA*.



Relevant sections of the *Municipal Government Act* are reproduced on the following pages.

MUNICIPAL GOVERNMENT ACT, c. M-26

685(1) If a development authority

- c) fails or refuses to issue a development permit to a person,
- d) issues a development permit subject to conditions, or
- e) issues an order under Section 645,

the person applying for the permit or affected by the order under section 645 may appeal the decision in accordance with subsection (2.1).

(1.1) A decision of a development authority must state whether an appeal lies to a subdivision and development appeal board or to the Land and Property Rights Tribunals.

(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal the decision in accordance with subsection (2.1).

(2.1) An appeal referred to in subsection (1) or (2) may be made

(a) to the Land and Property Rights Tribunal

(i) unless otherwise provided in the regulations under section 694(1)(h.2)(i), where the land that is the subject of the application

(A) is within the Green Area as classified by the Minister responsible for the *Public Lands Act*,

(B) contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site,

(C) is the subject of a licence, permit, approval, or other authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board or Alberta Utilities Commission, or

(D) is the subject of a licence, permit, approval or other authorization granted by the Minister of Environment and Protected Areas or the Minister of Forestry, Parks and Tourism,

or

in all other cases, to the subdivision and development appeal board.

(3) Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under section 683.1(8)

687(3) In determining an appeal, the board hearing the appeal

- (a.1) must comply with applicable land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;



EDMONTON TRIBUNALS

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- (a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;
- (a.4) must comply with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises;
- (b) must have regard to but is not bound by the subdivision and development regulations;
- (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.

688(1) An appeal lies to the Court of Appeal on a question of law or jurisdiction with respect to

- (a) a decision of the subdivision and development appeal board

(2) An application for permission 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 permission to appeal must be given to

- (a) the Land and Property Rights Tribunal or the subdivision and development appeal board, as the case may be, and
- (b) any other persons that the judge directs.