In the Court of Appeal of Alberta

Citation: Van Gelder v Edmonton (City), 2026 ABCA 372

Date: 20261123
Docket: 2603-0156AC
Registry: Edmonton

Between:

Simone Van Gelder, Craig Wilson, Judah Busheikin, Nathalie Agombar, and Rob Agombar

Applicants

- and -

The City of Edmonton, The City of Edmonton Subdivision and Development Appeal Board, and Berkshire Construction Ltd.

Respondents

Reasons for Decision of The Honourable Justice Karan M. Shaner

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Application for Permission to Appeal

Reasons for Decision of
The Honourable Justice Karan M. Shaner

Introduction

[1] The applicants seek permission to appeal a decision of the City of Edmonton Subdivision and Development Appeal Board (the board), which dismissed the applicants' appeals for want of jurisdiction, under s 688(3) of the *Municipal Government Act*, RSA 2000, c M-26 [*MGA*]. The board determined the applicants' appeals had been filed outside of the timeframe prescribed by s 686 of the *MGA* and that it therefore lacked jurisdiction to decide the appeals.

[2] The respondent Berkshire Construction Ltd (Berkshire) opposes the application but made no submissions.

Background

[3] Berkshire was granted four development permits. The first permit was issued on January 28, 2026. This permit authorized Berkshire to construct a semi-detached house with secondary suites in the basement. The second permit was issued on February 17, 2026, and authorized Berkshire to construct a backyard house with a balcony. The final two permits were issued on March 4, 2026, and authorized Berkshire to construct a multi-unit backyard house with basement development and a secondary suite with a basement development. These four permits were issued in relation to two lots, referred to as the interior lot and the corner lot.

[4] The applicants are nearby property owners. They allege they did not receive proper notice of the development permits as required by the City of Edmonton, Bylaw 20001, *Zoning Bylaw* [*Bylaw*]. As discussed below, the applicants contend they were entitled to be served by ordinary mail. The development authority published notice on the City of Edmonton website on February 18, 2026, and March 5, 2026, but did not provide notice by mail. The applicants' evidence is that no activity or signage was present on the properties, so they were not alerted to the issuance of the development permits. The applicants say they received actual notice of the development permits on April 26, 2026, and they filed their appeals on May 4 and 5, 2026. This gave rise to the preliminary question, whether they filed their appeals out of time.

[5] The way notice was provided was driven by how the development authority classified the proposed developments. The *Bylaw* has different notice requirements depending on whether the proposed development is permitted or discretionary. If the development permit is issued for a permitted development, the development authority need only to post the notice on the City of Edmonton website, as it did in this case. *Bylaw,* s 7.160.1.2. If the development permit is for a discretionary development, however, the development authority must send notice of the

permit to owners of property within 60 metres of the proposed development site by ordinary mail. *Bylaw,* s 7.160.1.3.

[6] The applicants argued before the board that the development authority incorrectly classified these developments as permitted, instead of discretionary. In this case, the sites as zoned allow for a maximum site coverage of 45%, but the approved plans show the site coverage for the interior lot at 45.72% and the corner lot at 45.82%, thus requiring a variance. Under s 7.110.3.4.4 of the *Bylaw*, when the development authority grants a variance, the development is deemed discretionary.

[7] On May 29, 2026, the board heard the four appeals together and dismissed them. The board did not decide whether the development authority had properly classified the development permit as permitted rather than discretionary. The board determined that the 21-day appeal period began when the development authority posted the notice on the City of Edmonton website, and accordingly, it lacked jurisdiction to hear the appeals because they were filed outside this timeframe.

Discussion

[8] Under s 688(3) of the *MGA*, an applicant must demonstrate the appeal involves questions of law or jurisdiction of sufficient importance to merit a further appeal and that the appeal will have a reasonable chance of success. ***Biernacki v Alberta (Land and Property Rights Tribunal)***, 2022 ABCA 56 at para 10; ***Conley v Calgary (City)***, 2026 ABCA 105 at para 6; ***Hawkesworth v Edmonton (City)***, 2026 ABCA 171 at para 8.

[9] The applicants seek permission to appeal, arguing the board erred in law or jurisdiction, or both in:

(a) determining that it lacked jurisdiction to hear the applicants' appeals without deciding whether the approved development required variances from the requirements of the *Bylaw*;

(b) failing to address whether the development authority properly classified the approved development, and therefore, failing to decide whether the development authority provided the required notice under section 7.160 of the *Bylaw*; and

(c) determining that the appeal period commenced on the date that the notices of the development permits were published on the City of Edmonton website and not the date the applicants had actual or constructive notice of the development permits.

[10] These are questions of law or jurisdiction. They concern the board's jurisdiction to hear an appeal. They also concern whether, in determining the notice requirements and when the appeal

period begins, the board is bound by the development authority's classification of a development as permitted or discretionary.

[11] A question of law or jurisdiction will be sufficiently important if its resolution will affect "the parties to the dispute, their neighbours, the rest of the community subject to the zoning bylaw, and other communities that have similar zoning bylaws." ***Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)***, 2016 ABCA 129 at para 46 [***Edmonton (City)***]. The question becomes more important when both the number of persons it effects and the gravity of the effect on those persons increases.

[12] The applicants submit that their questions are sufficiently important not only to themselves, but also to the community subject to the *Bylaw* and to other communities with similar bylaws. They assert the development authority incorrectly classified the development permit, impairing their ability to appeal it. This led to the applicants not receiving notice by ordinary mail as required by the *Bylaw,* which in turn led to the applicants filing their appeals outside the 21-day period set out in s 686(1)(b) of the *MGA.* Further, they submit that if the development authority can classify a development permit as permitted, even with variances, then it renders the *Bylaw*'s separate notice rules for permitted and discretionary development permits meaningless.

[13] I am satisfied the questions for which the applicants seek permission to appeal are sufficiently important to the parties to this dispute, the broader community subject to the *Bylaw,* and other communities with similar bylaws. The notice requirements under the *Bylaw* serve a purpose: to alert those affected by the development permit of the decision, and whether they may be affected by it. ***World Health Edmonton Inc v Edmonton (City)***, 2014 ABCA 332 at para 27. It is important to ensure that those affected by development permits under the *Bylaw* receive proper notice so they may have the option of exercising their right to appeal.

[14] Lastly, the appeal must have a reasonable chance of success. This threshold is low and it is satisfied where the proposed grounds of appeal are arguable. ***Edmonton (City)*** at para 57. That threshold is met.

[15] The applicants submit the board erred by limiting its analysis to whether the appeals were filed within the 21-day appeal period prescribed by s 686(1)(b) of the *MGA*. Instead, the board should have asked whether the development permits contained any variances, whether the *Bylaw* required mailed notice to the applicants, and whether the appeal period ran from the date of publication on the City of Edmonton website or from when the applicants had actual or constructive notice. Only after analyzing these questions could the board decide whether the applicants appealed on time. By failing to analyze these related questions first, the applicants submit that the board determined its jurisdiction without first deciding the questions that inform that jurisdiction. Consequently, the applicants lost their right of appeal before they knew of the decision and how they were affected by it. ***Bowen v Edmonton (City),*** 1977 CanLII 1642 (AB SCAD) at 135.

Disposition

[16] Permission to appeal is granted on the following questions:

(a) Did the board err in determining it lacked jurisdiction to hear the applicants' appeals without deciding whether the approved developments required variances from the requirements of the *Bylaw*?

(b) Did the board err in failing to address whether the development authority should have classified the approved developments as discretionary developments and that, as a result, the development authority failed to provide notice as required under s 7.160 of the *Bylaw*?

(c) Did the board err in determining the appeal period under s 686(1)(b) of the *MGA* commenced on the date the notices of development were posted on the City of Edmonton website and not the date the applicants had actual or constructive notice?

Application heard on November 18, 2026

Reasons filed at Edmonton, Alberta
this 23rd day of November, 2026

Shaner J.A.

Appearances:

J.A. Agrios, KC
for the Applicants

K. Haldane
for the Respondent The City of Edmonton

K.L. Hurlburt, KC (no appearance)
for the Respondent The City of Edmonton Subdivision and Development Appeal Board

A. Nanda (no appearance)
M. Sidhu
for the Respondent Berkshire Construction Ltd.