

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
PARKLAND COUNTY**

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HEARING DATE: October 17, 2022
FILE NO.: 12-S-052

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Subdivision Authority of Parkland County (the "Subdivision Authority") refused to issue an extension of the subdivision approval for subdivision of lands located at NW-22-52-1-W5M, Parkland County (the "Lands"). The owner of the Lands, Excella Equine Park Inc. was represented by Michael Marchen, Hladun & Co.

[2] On August 16, 2022, Mr. Marchen of Hladun & Co. LLP, Agent for the Appellant (the "Appellant"), filed an appeal of the refusal.

[3] Following the Appellant's agreement to waive the 30 day hearing timeline, the Subdivision and Development Appeal Board (the "Board") held a preliminary hearing on October 17, 2022 in person.

[4] The sole purpose of the hearing was to determine whether the appeal had been filed in time. If the Board determines that the appeal was filed in a timely manner, then a merit hearing will be scheduled.

PRELIMINARY MATTERS

A. Board Members

[5] At the outset of the appeal the Chair requested confirmation from all parties in attendance that there was no opposition to the composition of the Board hearing the appeal. None of the persons in attendance had any objection to the members of the Board hearing the matter.

B. Exhibits

[6] At the beginning of the hearing the Chair asked if everyone in attendance had the hearing package prepared for the hearing. All parties confirmed that they had received the materials previously received by the Board and marked as part of the Agenda Package.

[7] In response to a question by the Board if there was any further information to be submitted to the Board, both the Subdivision Authority and the Appellant advised that they wished

to submit further information. The Appellant stated it wished to submit an October 12, 2022 letter, which clarified information contained within its original submissions. The Subdivision Authority stated that it wished to submit information to the Board dated October 14, 2022, being an email of extension refusal and letter of extension refusal dated March 10, 2022 to Teckera, received by the Board after the submission deadline. Following distribution of the 2 additional documents, none of the parties in attendance had any objection to the documents and the Board marked them as exhibits 8 and 9.

[8] There was no request for an adjournment of the hearing.

C. Miscellaneous

[9] There were no objections to the proposed hearing process outlined at the beginning of the hearing.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[10] The Board denies the appeal as the appeal was filed out of time.

SUMMARY OF HEARING

[11] The following is a brief summary of the oral and written evidence submitted to the Board. At the beginning of the hearing, the Board indicated that it had reviewed all the written submissions filed in advance of the hearing.

Subdivision Authority

[12] The Appellant are appealing the refusal by the Subdivision Authority to extend the subdivision approval of lands located at 12-S-052, Parkland County.

[13] The Subdivision Authority issued conditional approval for 49 country residential lots on February 25, 2013. Phase 1 of the subdivision was completed and 15 of the 49 lots were endorsed and registered in 2014. No other phases of the subdivision were pursued. There have been 8 extensions sought and granted. The last extension expired on May 17, 2016. On February 24, 2022, the Applicant requested a 9th extension. Under the provisions of the Subdivision Bylaw, Bylaw 2017/16 and s. 657 of the *Municipal Government Act*, RSA 2000, c. M-26 (the "MGA"), the Subdivision Authority refused to grant the extension. There has been new development in the area and over the 9 years since the initial subdivision approval, there have been changes in County bylaws and standards. The technical studies that were submitted as part of the original subdivision application are now about 10 years old, and need to be updated.

[14] The application for the extension was made by the agent of the landowner, who is Teckera Engineering. A copy of the application for the extension is found at page 12/24 of the Agenda package. On March 10, 2022, the Subdivision Authority notified the agent by email. The landowner had signed off on the extension request and a digital copy of that consent was forwarded by Teckera Engineering to the Subdivision Authority.

[15] Section 678(2) of the MGA states that a decision of the Subdivision Authority regarding a subdivision application may be appealed by filing appeal within 14 days of the date of the subdivision decision. The MGA does not capture extensions of subdivision approvals. In this case, the extension of the subdivision approval is not appealable by Appellant. If the Board does wish to consider the appeal, the position of the Subdivision Authority is that the appeal was not submitted within the time set out in s. 678, which deadline was in 2013, 14 days after the original approval.

[16] In response to Board questions, the Subdivision Authority indicated that:

- a. The specific reference to the infractions is at page 13 of the Agenda Package.
- b. Since the request was for the extension of a subdivision, the landowner signs the form, but there was no contact details for the landowner provided. The Subdivision Authority dealt with the applicant for the landowner as the applicant (Teckera) was acting on behalf of the landowner. Teckera filed the application by email and the inclusion of the authorization signed by Ms. Lavasseur indicated that Teckera had the approval of the landowner to file the application.
- c. Following the sending of the email, the Subdivision Authority spoke with Teckera to confirm receipt. On March 7, the Subdivision Authority spoke with Teckera about a potential refusal and stated that she would be preparing the requirements letter.
- d. The applicant Teckera did not provide the contact information for the landowner. The Subdivision Authority's standard practice is that if a consultant is acting on behalf of a landowner, then the consultant has a duty to keep the landowner advised. The consultant is the point of contact and the Subdivision Authority relies upon the consultant to update the landowner.
- e. The form (page 12/24 of the Agenda package) was submitted by email. It is the only form the County requires for an extension.

[17] The Subdivision Authority stated that the original subdivision decision was dated in 2013, and the appeal under the MGA is valid only for the original decision. The decision to extend the subdivision cannot be appealed. This is a decision made at the discretion of the Subdivision Authority. The extension is not appealable to the Board. The Subdivision Authority followed its practice of contacting the consultant.

Submissions Of the Appellant

[18] Mr. Marchen and Ms. Lavasseur spoke on behalf of the Appellant. The March 10, 2022 email refusing the extension was sent only to Teckera, and was not sent to the landowner. The Appellant's position is that as the representative of the landowner, she did not get the email until after the appeal period had elapsed and this is the reason for the late filing. Once it was clear what the consequences of the refusal were and that the Appellant would need to start the subdivision process again, the Appellant wanted to appeal the reasonableness of the refusal. The

Appellant acknowledged that the only question before the Board is the question of whether the appeal has been filed in time.

[19] The MGA states that an appellant may, but is not required to, file an appeal. The MGA does not say that an appeal may be brought in a set number of days or there is no jurisdiction. If one looks at the Limitations Act, Courts do not lose jurisdiction if a matter is not filed in time, the statute says that the action is barred. At the Court of Appeal, there are deadlines, and there is specific discretion to permit late filing. The Appellant acknowledges that an email was sent by the Subdivision Authority, but the Appellant's position is that it was not delivered and was not effective notice to the Appellant until the end of July 2022. The facts supporting this are found in the October 11, 2022 correspondence of the Appellant.

[20] In response to Board questions, the Appellant advised:

- a. Ms. Lavasseur is the principal/director for the corporate landowner and developer;
- b. Ms. Lavasseur hired Teckera as a consultant and relied on Teckera for communication with the County.
- c. Ms. Lavasseur expected to be included in emails with communications to the County.
- d. Ms. Lavasseur signed the extension request on February 24, 2022 and had numerous emails with Teckera. She assumed that the extension was approved because Teckera continued to work on the project plan and she has emails to that effect. She had been told she would get a permit by June, 2022. When she did not receive the permit by June, she asked Teckera. Only July 25, 2022, she met with Teckera and received the refusal (March 10, 2022 email). Only July 28, 2022, she met with the Subdivision Authority and fully understood the impacts of the March 10, 2022 refusal.
- e. Ms. Lavasseur had been consulting with the County before she bought the property in September 2021. Previously she had been copied on all correspondence with the County. Her name was on the application and this lead her to believe she would be included on correspondence from the Subdivision Authority.
- f. Ms. Lavasseur paid the fee. She was contacted for payment and gave her credit card number for payment over the phone.

[21] The Appellant's position is that the first time effective notice to the landowner was given was July 28, 2022 when she met with the County.

[22] In closing the Appellant stated that the whole purpose of the SDAB is to hear appeals from decisions, which is what is stated in the MGA. The Board has jurisdiction to extend the time to appeal, within reason and it has jurisdiction to hear an appeal properly constituted from any decision made by the County. The decision was the Subdivision Authority's and not councils. That aligns with the purpose of the Board under the MGA. The reference to 14 days is not the

same as the 21 days found on the Board's own information guide. There is no provision in the MGA that deals specifically with an appeal from the refusal of an extension. In those circumstances, the general provision of 21 days is set out, comprised of 14 days plus 7 due to the mailing. The Appellant's position is that 21 days is reasonable to bring an appeal in respect of the new area. The Board can allow late filing to permit a consideration on the merits.

FINDINGS OF FACT

[23] In addition to the specific facts set out under the Board's reasons, the Board finds the following as facts.

[24] The Lands are located at NW-22-52-1-W5M, Parkland County.

[25] The original subdivision application is dated February 25, 2013.

[26] The refusal of the extension request was issued by the Subdivision Authority on March 10, 2022 and was issued to the applicant for the extension, Teckera Engineering.

[27] The applicant for the extension was acting as the agent for the landowner, Excella Equine Park Inc.

[28] Ms. Lavasseur, as principal and director of the landowner obtained a copy of the March 10, 2022 refusal on July 25, 2022.

[29] Ms. Lavasseur met with the Subdivision Authority on July 28, 2022.

[30] The appeal was filed August 16, 2022.

REASONS

Jurisdiction and Issues to be decided

[31] For subdivision matters, the Board's jurisdiction is found in section 680(2) of the MGA.

[32] This hearing was convened to determine whether the appeal was filed in time.

[33] In making this decision, the Board has examined the provisions of the MGA and has considered the oral and written submissions made by and on behalf of those who provided evidence: the Subdivision Authority and the Appellant.

a. Was the appeal filed in time issued?

[34] The position of the Subdivision Authority was that only the original subdivision application (issued in 2013) could be appealed. As a result, the appeal timeline was 14 days from the original decision and expired in 2013, so this appeal is out of time. Further, the Subdivision Authority argued that the decision regarding the extension is not capable of being appealed. The

Subdivision Authority also noted that the communication of the refusal occurred on March 10, 2022. The Subdivision Authority advised the landowner's consultant, who made the application. It is the responsibility of the consultant to advise the landowner.

[35] The Appellant confirmed that it retained the consultant to act on its behalf, but that it expected that it would get direct notice of communications from the Subdivision Authority. It stated that it only received the March 10, 2022 refusal on July 25, 2022 and only understood its significance on July 28, 2022. It argued that the Board has the authority to waive the statutory timelines for appeal.

[36] The Board has reviewed the provisions of s. 678, which speaks of appeals in relation to subdivisions. S. 678(1) states:

Appeals

678(1) The decision of a subdivision authority on an application for subdivision approval may be appealed

(a) by the applicant for the approval,

...

(2) An appeal under subsection (1) may be commenced by filing a notice of appeal within 14 days after receipt of the written decision of the subdivision authority or deemed refusal by the subdivision authority in accordance with section 681

....

(b) in all other cases, with the subdivision and development appeal board.

(emphasis added)

[37] The Board has reviewed s. 678 due to the Subdivision Authority's submission that an appeal can only be filed against the original approval and the time for that appeal is in 2013. In reviewing s. 678(1), it is clear that the applicant for subdivision approval can file an appeal in relation to the *application for subdivision approval*. The Board notes that the Board's authority under s. 678 deals only with an application for subdivision. The subdivision decision was issued in 2013, and based upon s. 678(1), the appeal period for that decision expired sometime in 2013 – 9 years ago. The current appeal, filed in 2022, is well beyond the appeal period of s. 678. On this basis, the appeal is out of time.

[38] The Board notes that the position of the Appellant is that it is entitled to file an appeal against the decision of the Subdivision Authority to not grant an extension (the 9th) from the subdivision approval. The MGA provides for this extension in s. 657.

Subdivision registration

657(1) An applicant for subdivision approval must submit to the subdivision authority the plan of subdivision or other instrument that effects the subdivision within one year from the latest of the following dates:

(a) the date on which the subdivision approval is given to the application;

- (b) if there is an appeal to the subdivision and development appeal board or the Land and Property Rights Tribunal, the date of the decision of the appeal board or the Tribunal, as the case may be, or the date on which the appeal is discontinued;
 - (c) if there is an appeal to the Court of Appeal under section 688, the date on which the judgment of the Court is entered or the date on which the appeal is discontinued.
- (2) On being satisfied that a plan of subdivision or other instrument complies with a subdivision approval and that any conditions imposed have been met, the subdivision authority must endorse the plan or other instrument in accordance with the subdivision and development regulations.
- (3) On being satisfied that a plan of subdivision or other instrument complies with a subdivision approval but conditions to which the approval is subject have not been met, a subdivision authority may endorse the plan or other instrument in accordance with the subdivision and development regulations if the subdivision authority is satisfied that the conditions will be met.
- (4) If the plan of subdivision or other instrument is not submitted to the subdivision authority within the time prescribed by subsection (1) or any longer period authorized by the council, the subdivision approval is void.
- (5) If the plan of subdivision or other instrument is not registered in a land titles office within one year after the date on which it is endorsed pursuant to this section or within the extended period prescribed under subsection (6), the subdivision approval of the plan or instrument and the endorsement are void and the plan or instrument may not be accepted by a Registrar for registration.

(6) The council may grant one or more extensions of

- (a) the one-year period referred to in subsection (1), or**
- (b) the one-year period referred to in subsection (5),**
whether or not the time period under those subsections has expired. (emphasis added)

[39] Under the Subdivision Authority Bylaw, 2017-16, Council has delegated its authority under s. 657(6) to the Subdivision Authority.

9. The **power to extend the periods for subdivision endorsement is delegated by Council to the Subdivision Authority** in accordance with Section 657(6) of the Act. Time extensions, up to a maximum of three one-year periods, will be considered based on:
 . . . [table not copied into decision]

10. Additional time extensions, beyond three one-year extensions, may be considered based on the criteria in Subsection B and if the developer can demonstrate, in the opinion of the County, extenuating circumstances. (emphasis added)

[40] The Appellant has not indicated what provision of the MGA authorizes the Board to hear appeals from s. 657(6) as delegated to the Subdivision Authority. As a creature of statute, the Board can exercise only the authority given to it. In the absence of such authority to hear an appeal from decisions made under s. 657(6), the Board is of the view that it does not have such authority.

[41] The Board has considered the Appellant's argument that the Board can consider "any decision" as the jurisdiction for the Board to hear an appeal from a decision made under s. 657(6). The Board notes that under s. 685(2) the Board may hear appeals in relation to orders, decisions or development permits made or issued by a *development authority*.

685(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).

[42] However, there is a difference in the language between s. 685(2) which applies to development authority decisions and the language of s. 678 which applies to subdivision applications. The Board notes that there is no equivalent provision to s. 685(2) applicable to decisions of the subdivision authorities. The difference in language denotes a different legislative intention. The Board finds that based upon the language of s. 678(1) and the absence of language in the MGA permitting the appeal of an order or decision of a subdivision authority, there is no legislative authority for the Board to consider the decision of the Subdivision Authority to refuse the extension.

[43] The Board's decision that decisions under s. 657(6) are not within the jurisdiction of the Board is bolstered by the language of s. 657(6) itself, which permits an applicant to apply for an extension, either within the year, or outside of that year. The ability to return to Council (or its delegate) suggests to the Board that there is no need for an appeal mechanism to the Board. Moreover, the absence of express language regarding an appeal of an extension decision, coupled with the language of s. 678(1) that an appeal lies for a subdivision application but not for an extension, indicates to the Board that there is no right of appeal from the extension decision and this Board has no jurisdiction to hear this appeal.

[44] However, should the Board be wrong in its decision regarding its jurisdiction to hear an appeal of an extension decision under s. 657(6), the Board has considered the question of whether the appeal has been filed in a timely manner, or whether the appeal has been filed out of time.

[45] In considering this question, the Board notes that as a creature of statute, the Board must follow the time limits set out in the MGA and has no ability to waive the statutory time limits for filing appeals. Although the Appellant argued that there was some form of plenary authority for the Board to extend the statutory time limits, the Appellant provided no case authority to support its argument, and the Board is not aware of such authority. Therefore, the Board finds that it is bound by the 14 day time limit for appeal set out in s. 678(2).

678(2) An appeal under subsection (1) may be commenced by filing a notice of appeal within 14 days after receipt of the written decision of the subdivision authority or deemed refusal by the subdivision authority in accordance with section 681

[46] The only evidence before the Board is that the notice of refusal of extension was sent via email to the consultant for the Appellant on March 10, 2022. The Appellant confirmed that the consultant was acting on the Appellant's behalf. The uncontradicted evidence of the Subdivision Authority was that its standard practice is to provide notice to the consultant when the consultant makes an application on behalf of the landowner. The Appellant did not argue that its consultant

did not have the authority to make the application or to receive the response of the Subdivision Authority. Based on the confirmation that the consultant did have the authority to make the application, the Board finds that the notice of March 10, 2022 to the consultant was an effective notice. The issue of the consultant not notifying the landowner falls outside the authority of this Board to address.

[47] The Appellant argued that she expected that she would be copied on correspondence from the Subdivision Authority but provided no evidence that the Subdivision Authority had her contact details or any correspondence to the Subdivision Authority indicating the Appellant's expectation.

[48] In the face of the March 10, 2022 notice of refusal, the 14 days expired March 24, 2022. The Board notes that the evidence before it was that the appeal was filed August 16, 2022 and the Board finds so as a fact. In light of the August 16, 2022 appeal filing date, the Board finds that the appeal was filed out of time.

[49] The Board has also considered whether s. 678(3) affects its decision. The Board notes that s. 687(3) provides that the deemed date of receipt of the decision is 7 days from the day of mailing.

678(3) For the purpose of subsection (2), the date of receipt of the decision is deemed to be 7 days from the date the decision is mailed.

[50] The Board finds that s. 678(3) is not applicable because the decision was not mailed, but was emailed. The Board finds that the date of receipt was March 10, 2022 ousting the deeming provision of s. 678(3). The Board therefore concludes that the deeming provision of s. 678(3) does not apply because there is knowledge of the actual date. However, even if the Board were to include the 7 days to calculate the date of receipt, the appeal would have had to be filed by March 31, 2022 and the appeal being filed on August 16, 2022 was filed out of time and the Board finds so as a fact.

[51] Although it is not necessary to consider the Appellant's argument about the "effective date" of notice, for completeness, the Board has considered this argument. The Appellant stated that Ms. Lavasseur received the March 10, 2022 notice of refusal to extend on July 25, 2022. Using the 14 day appeal period from July 25, 2022, the appeal period expired on August 8, 2022. The Appellant's evidence was that there was actual receipt by Ms. Lavasseur on July 25, 2022, and the Board therefore concludes that the deeming provision of s. 678(3) does not apply because there is knowledge of the actual date of receipt. However, even using the additional 7 days for deemed receipt, the appeal period from July 25, 2022 expired August 15, 2022. The appealed filed August 16, 2022 was out of time.

[52] The Board notes that the Appellant argues that the appeal period did not start until July 28, 2022, the date that Ms. Lavasseur met with the Subdivision Authority and understood the impact of the refusal. The Board does not accept that the appeal period is triggered by the Appellant's understanding of the impact of the Subdivision Authority's decision. No authority was provided to the Board to indicate that the determination of an appeal period is triggered by someone's subjective understanding, rather than the objective date the notice is received,

particularly in light of the wording of s. 678(1) which speaks of filing an appeal from the date of receipt.

Conclusion

[53] For the above reasons, the Board denies the appeal.

[54] Issued this 28th day of October, 2022 for the Parkland County Subdivision and Development Appeal Board.



B. Williams, Clerk of the SDAB, on behalf of M. Chambers, Chair
SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This decision may be appealed to the Court of Appeal of Alberta on a question of law or jurisdiction, pursuant to Section 688 of the Municipal Government Act, RSA 2000, c M-26.

APPENDIX "A" REPRESENTATIONS

PERSON APPEARING

1. Nancy Domijan, Director of Planning & Development Services, Parkland County
2. Jessica Harnden, Senior Current Planner, Parkland County
3. Michael Marchen, Hladun & Co. LLP for the Appellant
4. Ms. Lavasseur, representative of Appellant

APPENDIX "B"
DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:

October 17, 2022 Agenda Package			
Exhibit	Description	Date	Pages
1.	Agenda Coversheet	October 13, 2022	1
2.	Table of Contents	October 13, 2022	2
3.	Notice of Appeal	August 16, 2022	3-5
4.	Subdivision and Development Appeal Board – Waiver Form	August 25, 2022	6
5.	Hearing Notification	September 8, 2022	7
6.	Submission of the Development Authority	October 11, 2022	9-22
7.	Submission of the Applicant	October 11, 2022	22-24
8.	October 12, 2022 Letter Hladun & Co.	October 12, 2022	n/a
9.	Submission of Subdivision Authority – email to Teckera dated March 10, 2022 for application extension refusal and letter dated March 10, 2022 to Teckera for application extension refusal	October 14, 2022	n/a