

SUMMER VILLAGE OF SOUTH VIEW
SUBDIVISION AND DEVELOPMENT APPEAL BOARD
APPEAL HEARING NO. 24SDAB001

Board Order No.

File No. 24SDAB001

Appellant James Woslyng

Respondent Summer Village of South View

Hearing Date May 28, 2024

Board Members: Denis Meier, Chair
Jason Shewchuk
Jamie Kraley

Parties/Persons Present: Emily House, SDAB Clerk
Mitchell R. Hayward, Independent Legal Counsel to the SDAB.
James Woslyng, the Appellant
Ivon Chauhan, Legal Counsel for the Appellant
Michelle Gallagher, Legal Counsel for the Respondent

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD (SDAB)

INTRODUCTION

1. On May 28, 2024, the Subdivision and Appeal Board (the "Board" or the "SDAB") heard an appeal that was filed on February 16, 2024, by James Woslyng, the Appellant.
2. The appeal concerned the following:
 - a. an alleged Development Permit dated March 13, 2018 with the permit number #18-01SV, issued by the Development Authority for the Summer Village of South View which permitted Mr. Woslyng to complete the exterior of existing buildings with respect to the lands described as Plan 1720210, Block 1, Lot 12A, and municipally located at 42 Hillside Street, Summer Village (the "Property") of South View Alberta;

- b. an alleged Development Permit dated March 13, 2018 with the permit number #18-01SV, issued by the Development Authority for the Summer Village of South View, which permitted Mr. Woslyng to complete the construction of an existing building on the Property (the two aforesaid permits are referred to herein as the “Development Permits”); and
 - c. an Order to Remedy a Contravention issued September 4, 2019, with respect to the Property (the “Order to Remedy a Contravention”).
3. In the Notice to Appeal, the Appellant requested that:
 - a. The SDAB review a document purporting to be a Development Permit issued to him, dated March 13, 2018, by the development authority of the Summer Village of South View, with the permit #18-01SV.
 - b. The SDAB review a document purporting to be a Development Permit issued to him, after the aforesaid purported Development Permit, by the development authority of the Summer Village of South View with the permit #18-01SV.
 - c. The SDAB review an Order to Remedy Contravention sent to the Appellant on September 4, 2019.
 - d. The SDAB determine whether the purported Development Permit and Order to Remedy Contravention are valid.
4. The Appeal was initially scheduled for March 14, 2024. However, legal counsel for the Summer Village of South View was unavailable that date, and as such the Appeal was adjourned to April 29, 2024.
5. On April 24, 2024, Mr. Woslyng retained legal counsel. Legal counsel for Mr. Woslyng advised he was unavailable on April 29, 2024, and requested an adjournment of the Appeal. On April 29, 2024, the Board adjourned the Appeal to a date mutually agreeable between all the parties – May 28, 2024.
6. The following documents were received prior to the hearing and form part of the record:
 - a. Exhibit 1: Notice of Appeal dated February 16, 2024, submitted by James Woslyng, the Appellant.
 - b. Exhibit 2: A request to postpone the hearing submitted by Michelle Gallagher, legal counsel for the Summer Village, dated March 1, 2024 and March 13, 2024.
 - c. Exhibit 3: A request to postpone the hearing, submitted by Ivon Chauhan, legal counsel for the Appellant, dated April 24, 2024.

- d. Exhibit 4: The written submissions of the Summer Village, submitted by legal counsel for the Summer Village.
 - e. Exhibit 5: The written submissions of the Appellant, submitted by legal counsel for the Appellant.
 - f. Exhibit 6: The written submission of the Appellant, submitted by the Appellant.
7. The following documents were received at the hearing and form part of the record:
- a. Exhibit 7: *Coventry Homes Inc v Beaumont (Town of) Subdivision and Development Appeal Board*, 2001 ABCA 49.
 - b. Exhibit 8: Excerpt of the Summer Village Land Use Bylaw No. 179.
 - c. Exhibit 9: *Edmonton (City of) Library Board v Edmonton (City of)*, 2021 ABCA 355.
 - d. Exhibit 10: *Grande Prairie (City) v Grande Prairie (County No 1)*, 2022 ABCA 191.

PRELIMINARY MATTERS

8. At the outset of the appeal hearing, the Board confirmed with the parties in attendance that there was no opposition to the composition of the panel.
9. The Board outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
10. Legal counsel for the development authority of the Village of South View raised a jurisdictional issue with respect to the appeal of the Development Permits and Order to Remedy Contravention.
11. With respect to the Development Permits, legal counsel for the development authority for the Village of South View submitted that the Board is constrained by the 21-day limitation period outlined in section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the "MGA" or the "*Municipal Government Act*"), which provides that an appeal of a development permit must be heard within 21 days on which the written decision is given.
12. With respect to the Order to Remedy Contravention, legal counsel for the development authority for the Village of the South View submitted that the SDAB does not have authority to hear appeals for Orders to Remedy Contraventions, rather, municipal council must hear these appeals pursuant to section 547 of the MGA.
13. The Board must therefore determine whether:
 - a. the Appellant filed the appeal within the 21-day limitation period. If the appeal was filed late, the Board has no authority to hear the appeal.

- b. the Board has jurisdiction to hear an appeal of an Order to Remedy Contravention.

SUMMARY OF HEARING ON PRELIMINARY MATTER

14. Both parties were provided an opportunity to submit written submissions with respect to the pre-liminary objection. Further, both of the parties were provided an opportunity to make oral submissions on May 28, 2024, at the appeal hearing date. The Board has considered the written and oral submissions of both parties.

A. POSITION OF THE APPELLANT

i. The Development Permit Appeal

15. The Appellant has made submissions via himself, as well as through his legal counsel, Mr. Chauhan.
16. The Appellant states that he received a letter dated March 13, 2018, which “purports” to be a development permit for the completion of an existing building. He further states he received another letter dated March 13, 2018, for the completion of the exterior of existing unfinished buildings.
17. The Appellant contends that he never made an application for the “completion of an existing building” or an application for the “completion of the exterior existing unfinished buildings.” As such, he argues he cannot be penalized for failing to comply with either “supposed” development permits. Additionally, he argues that the Development Permits lacked the formalities of a standard development permit, including the appeal information and an “in-effect” date.
18. The Appellant compares the Development Permits with other development permits, not subject to this appeal, that he has received which do outline the required appeal information.
19. During the hearing, the Appellant confirmed that he was aware of the Development Permits as early as 2021. The Appellant did not explain or provide any evidence as to why, even if he only received the Permit in 2021, it has taken him several years to commence an appeal.

ii. Appeal of Orders to Remedy Contravention

20. With respect to the Order to Remedy Contravention, the Appellant argues that the Order to Remedy Contravention was non-compliant with section 3.9(3)(d) the Summer Village’s Land Use Bylaw because it failed to outline the appeal process of the order.
21. Section 3.9(3)(d) of the Land Use Bylaw provides as follows:

3. Where a notice is issued under Subsection (1), the notice shall state the following and any other information considered necessary by the Development Authority:

- a) An explanation of the contravention, and a statement indicating under which provisions of this Bylaw or the Act the order is being carried out; and
- b) The alternatives and processes which the person responsible for the contravention may pursue in order to correct the contravention; and
- c) A time frame in which the contravention must be corrected prior to the Summer Village pursuing action; and
- d) Advise the person of his right to appeal the notice to the Subdivision and Development Appeal Board.

22. Section 3.9(1), which is referred to in section 3.9(3)(d) of the Land Use Bylaw, provides that:

1. Where the Development Authority finds that a development or use of land or buildings is not in accordance with:

- a) the Municipal Government Act or the regulations; or
- b) a development permit or subdivision approval; or
- c) the Land Use Bylaw; the Development Authority may, by notice in writing, order the registered owner, the person in possession of the land or buildings, or the person responsible for the contravention or all of them to,
 - a) stop the development or use of the land or buildings in whole or in part as directed by the notice; or
 - b) demolish, remove or replace the development; or
 - c) take such other measures as are specified in the notice so that the development or use of the land or buildings is in accordance with the Municipal Government Act, the regulations, a development permit, subdivision approval or this Bylaw, as the case may be.

23. The Appellant contends that an Order to Remedy a Contravention, although not expressly mentioned in section 3.9(1), falls within the scope of the types of orders contemplated by this provision of the Land Use Bylaw.

24. The Appellant contends that since the Order to Remedy a Contravention did not contain the appropriate appeal information pursuant to section 3.9(3)(d), the SDAB should not prevent the Appellant from his right to appeal because of this deficiency.

25. The Appellant did not reconcile its position with the fact that on the second page of the Order to Remedy Contravention, the information to appeal is outlined. Specifically, the Order to Remedy Contravention states:

You are hereby advised that you may, by written notice, request the Municipal Council of the Summer Village of South View review this Order within fourteen (14) days after the date the Order is received, in which case, Council may confirm, vary, substitute or cancel the Order.

26. Further, the Appellant did not explain why it has taken him approximately five (5) years to appeal the Order to Remedy Contravention since receiving it.
27. Further, the Appellant did not address how or why the SDAB would have the statutory authority to review an Order to Remedy a Contravention.

B. POSITION OF THE RESPONDENT

i. Appeal of Orders to Remedy Contravention

28. The Respondent made its submissions via legal counsel.
29. The Respondent argues that the Appellant has failed or neglected to appeal the Development Permit when it was issued in 2018. An SDAB cannot proceed with a hearing where the Appellant has failed to adhere to the strict timelines outlined in the *Municipal Government Act*.
30. Section 686 of the *Municipal Government Act* sets the deadlines to file development permit appeals, which is twenty-one (21) days from the date of the decision. As such, the Respondent submits that the Appellant is out of time.
31. Further the Respondent argues that the crux of the appeal is focused on the validity of the Development Permit. The Respondent argues that the SDAB does not have the statutory authority to determine if the Development Permit is valid.

ii. Appeal of Orders to Remedy Contravention

32. The Respondent states that section 547 of the *Municipal Government Act*, outlines the appeal procedure for Orders to Remedy Contraventions under section 545 of the *Municipal Government Act*. Section 547 provides that a party must request council for the municipality to review the Order, and then if unsatisfied, the party can appeal to the Court of King's Bench under section 548.
33. The Respondent notes that the Appellant requested the municipal council of South View Village to review the Order to Remedy Contravention in a letter dated September 17, 2019. Accordingly, if the Appellant was dissatisfied with the result of the review of Council, he should have pursued the appeal further under section 548. Further, as an aside, this suggests that the appellant was aware of the Order to Remedy Contravention and the Development Permits as early as September 2019.
34. Further, in response to the Appellant' submission that the Order to Remedy Contravention does not contain the requisite appeal information pursuant to section 3.9(3)(d) of the Land-Use Bylaw, the Respondent makes two arguments. First, the Respondent notes that the purpose of section 3.9(3)(d) of the Land-Use Bylaw is to address Stop Orders, as opposed to Orders to Remedy a Contravention. In support of this position, the Respondent points to the

fact that section 3.9(3)(d) only contemplates an appeal to the SDAB. Stop Orders can be appealed to the SDAB, whereas Orders to Remedy Contraventions cannot under the *MGA*.

35. Second, the Order to Remedy Contravention does in fact outline the appeal process – that being a review to municipal council.

DECISION

36. The Board does not have jurisdiction to hear the appeal. Specifically:

- a. with respect to the Development Permit, the appeal was not filed on time in accordance with the *Municipal Government Act*, RSA 2000, c M-26; and
- b. with respect to the Order to Remedy Contravention, the SDAB is not the appropriate body under the *Municipal Government Act* to address an appeal of an order of this nature.

REASONS FOR THE DECISION

37. The Board has considered the case law provided by counsel for the parties, namely:

- a. Exhibit 7: *Coventry Homes Inc v Beaumont (Town of) Subdivision and Development Appeal Board*, 2001 ABCA 49,
- b. Exhibit 9: *Edmonton (City of) Library Board v Edmonton (City of)*, 2021 ABCA 355, and
- c. Exhibit 10: *Grande Prairie (City) v Grande Prairie (County No 1)*, 2022 ABCA 191

and, the Board has determined while instructive, none of the cases address the express issue at bar in this case. Legal counsel for each of the parties conceded the same at the hearing.

A. The Development Permit Appeal

38. The Board has no jurisdiction to hear the appeal as it was filed outside the timelines set out in section 686 of the *Municipal Government Act*, RSA 2000, c M-26:

Appeals

686(1) A development appeal is commenced by filing a notice of the appeal, containing reasons, with the board hearing the appeal

(a) in the case of an appeal made by a person referred to in section 685(1)

(i) with respect to an application for a development permit,

(A) within 21 days after the date on which the written decision is given under section 642, or

(B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,

or

(ii) with respect to an order under section 645, within 21 days after the date on which the order is made,

or

(b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

39. The parties are in dispute as to when the Respondent received the Development Permit and further, are in dispute as to when the Respondent was notified about his right to appeal the Development Permit.

40. In Tab 2 of Exhibit 4, (the Respondent's written submissions) the Respondent provided an email from the Appellant dated September 17, 2019, where the Appellant acknowledged he received the Order to Remedy Contravention. He further expressly stated:

We have received the Order to Remedy Contravention with respect to the above-named property. I am requesting that the village council cancel this order because the garage on the property was completed in August, and the garage/garage suite has a current building permit issued until 2020. This is currently being worked on by myself, on weekends, as weather permits. Siding on the front of the building should start to go on by end of September. I was given to September 30, 2019 to comply with the order. This timeline is impossible for me to meet.

Therefore, I am requesting a time extension on my Development Permit #18-01 SV, or a new development permit, until the end of September 2020. This should remedy the situation.

41. Notably, the Appellant did not dispute the authenticity or accuracy of the contents of this email. This email from the Appellant casts doubts on the legitimacy of his argument that he was never aware of the development permits, and that the permits were not requested by him.

42. Further, this email establishes that the Appellant was aware of the Development Permit as early as September 17, 2019. Notwithstanding, the Appellant during the hearing indicated that he was aware of the Development Permit and the availability of an appeal as late as 2021.

43. The SDAB, being a body created by statute, does not have the authority or jurisdiction to extend appeal deadlines. As such, regardless of whether the Appellant received the Permits in 2018 or 2021, the appeal filed on February 16, 2024, is untimely and far exceeds the 21-days limit required under the *Municipal Government Act*.

B. Appeal of Orders to Remedy Contravention

44. The Board has no jurisdiction to hear the appeal of the Order to Remedy Contravention under the *Municipal Government Act*. Section 547 of the *Municipal Government Act*, RSA 2000, c M-26 outlines the appeal procedure for orders to remedy issues under section 545 of the *Municipal Government Act*.

45. A person who receives a written order under section 545 of the may by written notice, request the municipalities' council to review the order:

Review by council

547(1) A person who receives a written order under section 545 or 546 may by written notice request council to review the order within

- (a) 14 days after the date the order is received, in the case of an order under section 545, and
- (b) 7 days after the date the order is received, in the case of an order under section 546,

or any longer period as specified by bylaw.

(2) After reviewing the order, the council may confirm, vary, substitute or cancel the order.

46. If a person affected by the decision of council under section 547 of the *Municipal Government Act*, desires to appeal council's decision, they may appeal to the Court of King's Bench within thirty (30) days after the decision under section 547 is served on the person affected by the decision:

Appeal to Court of King's Bench

548(1) A person affected by the decision of a council under section 547 may appeal to the Court of King's Bench if

- (a) the procedure required to be followed by this Act is not followed, or
- (b) the decision is patently unreasonable.

(1.1) The appeal must be made,

- (a) in the case of an appeal of an order under section 545, within 30 days after the date the decision under section 547 is served on the person affected by the decision, and
- (b) in the case of an appeal of an order under section 546, within 15 days after the date the decision under section 547 is served on the person affected by the decision.

(2) The application for the appeal must state the reasons for the appeal.

(3) The Court may

- (a) confirm the decision, or
- (b) declare the decision invalid and send the matter back to the council with directions.

47. Accordingly, the Board lacks jurisdiction to hear the appeal of the Order to Remedy Contravention under the *Municipal Government Act*, as appeals must be directed to the municipality's council and, if necessary, further appealed to the Court of King's Bench.

48. Further, the SDAB notes that in the Order to Remedy Contravention, the proper appeal procedure was outlined in the Order to Remedy Contravention. The Order to Remedy Contravention provided that the Appellant may request the Municipal Council of the Summer Village of South View to review the Order to Remedy Contravention within fourteen (14) days after the date the Order is received.

CONCLUSION

49. The Board appreciates the time and efforts spent by both parties in this matter.

50. For the reasons set out above, the Board has determined it does not have jurisdiction to hear the Appellant's Appeal.

Dated at the Summer Village of South View, in the Province of Alberta on June 10, 2024

A handwritten signature in blue ink, appearing to read 'D Meier', is written over a horizontal line.

Denis Meier, Chair

Subdivision and Development Appeal Board

Exhibit List

1.	Notice of Appeal, Submitted by J. Woslyng on February 16, 2024
2.	A request to postpone the hearing submitted by Michelle Gallagher, legal counsel for the Summer Village, dated March 1, 2024 and March 13, 2024.
3.	A request to postpone the hearing, submitted by Ivon Chauhan, legal counsel for the Appellant, dated April 24, 2024.
4.	The written submissions of the Summer Village, submitted by legal counsel for the Summer Village.
5.	The written submissions of the Appellant, submitted by legal counsel for the Appellant.
6.	The written submission of the Appellant, submitted by the Appellant.
7.	<i>Coventry Homes Inc v Beaumont (Town of) Subdivision and Development Appeal Board</i> , 2001 ABCA 49.
8.	Excerpt of the Summer Village Land Use Bylaw No. 179.
9.	<i>Edmonton (City of) Library Board v Edmonton (City of)</i> , 2021 ABCA 355.
10.	<i>Grande Prairie (City) v Grande Prairie (County No 1)</i> , 2022 ABCA 191.

Important Information for the Appellant

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