



THE COMMUNICATOR

Alberta Development Officers Association (ADOA)

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Winter Issue

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Photo Kathy Arigan

Words from the Editor

Your ADOA executive committee has been meeting frequently and working very hard towards bringing the best speakers, entertainment and venue for the 40th anniversary ADOA conference. We are finalizing the agenda which will be available soon with the registration forms. You can start booking rooms whenever you're ready at the Premier Best Western Calgary Plaza Hotel and Conference Centre, 1316-33 Street NE, 1-800-780-7234. Reminding you of the date, September 25, 26 and 27 in Calgary with the meet and greet on the evening of September 24, 2024.

The theme of this year's conference is 80's theme so please plan your outfits for the banquet, there may be prizes for best outfit! We would love to see some MC Hammer pants, leg warmers, neon colors and for the sophisticated ladies and gentleman some serious shoulder pads.

The charity we have chosen for the 40th anniversary conference is Alberta Dreams. The Alberta Dreams organization gives the

gift of fulfilling dreams for children in Alberta diagnosed with severe or life-threatening medical illness. Alberta Dreams has served the community for almost 40 years and is the only organization of its kind dedicated solely to Alberta children. I'm really excited about what our organization can do for our children. Please set aside something awesome from your organization for the silent auction as 100 percent of the money we bring in will be donated to Alberta Dreams. I have included a few great stories further on in the newsletter from the organization.



The County of Newell didn't see any huge developments in 2023 but we did approve another Solar Facility and another landfill.

It is exciting news that last year Alberta hit a high in crude oil production and that our province is the leader in economic growth in 2023. Apparently people are moving to Alberta in droves right now so we should hopefully see lots of action in development which is very awesome.

As always, if you have something extraordinary going on in your municipality, please share with the rest of us.

Knowledge is embodied in people gathered in communities and networks. The road to knowledge is via people, conversations, connections and relationships. Knowledge surfaces through dialog, all knowledge is socially mediated and access to knowledge is by connecting to people that know or know who to contact. Denham Grey





Farah's Dream

Farah is a very social little girl who loves to go outside for walks, car rides, and to play with her toys. Though Farah suffers from epilepsy and is deaf and non-verbal, she is learning new communication skills at school where she has also discovered a love for bike riding. She and her family are relatively new to Canada, and we were so excited to be able to fulfil her wish of an adapted bicycle of her own to help Farah explore all her new home has to offer.



Reeghan's Dream



Reeghan was born with Cerebral Palsy, is legally blind and deaf, and has a paralyzed vocal cord. Despite her physical challenges, she is an extremely athletic teen who loves Power Soccer and is currently a member of Team Alberta, with aspirations of making it to Team Canada before too long. Reeghan is an honour student preparing for university who also enjoys swimming, horse-back riding, skiing, sledding, ice fishing, and bike riding. Her wish was to attend USPSA Power Soccer Camp at True Friends-Camp Courage this past summer where she honed her many soccer skills and enjoyed her down time swimming, zip lining, hanging out and creating lifelong memories with her parents and new friends around the campfire.

ADOA LEGAL CORNER with:



BROWNLEE LLP
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**When They Think You Got It Wrong:
Appeals Related to Development Permit Applications**

Article 10 of Brownlee LLP's Processing Development Permit Applications Series

A development permit, its refusal, or a related stop order can each have significant impacts on both people and property within a municipality. Because of this, it should be no surprise that these decisions by a development authority are subject to a right of appeal.

In this tenth article in a series of articles by Brownlee LLP, we will provide an overview of the development appeal process within the *Municipal Government Act*, RSA 2000, c M-26 ("MGA") and in particular, we will focus on:

- What can be appealed?
- Who hears the appeal?

What can be appealed?

There can be an appeal of certain decisions of the development authority, namely where (MGA s 685(1)):

- the development authority fails or refuses to issue a development permit;
- the development authority issues a development permit, but subject to conditions; or
- the development authority issues a stop order under s. 645 of the MGA, as a result of the applicant's failure to comply with the permit or its conditions. A "person affected by" the stop order can also appeal as well (MGA, s 685(1)).

In addition to the applicant for a development permit, any person affected by a decision, order, or development permit made or issued by a development authority can file an appeal as well (MGA, s 685(2)). A common example will be an adjacent or nearby landowner who is concerned about the development being approved, but this can include other categories of persons as well.

The foregoing means that there are a wide variety of actions taken by a development authority in relation to a development permit that can potentially be appealed, and by a wide variety of persons.

Note that it is beyond the scope of this article for us to comprehensively address either who has standing to launch an appeal, or what decisions of a development authority are subject to an appeal

(i.e. within the scope of a “decision” within the context of the MGA, ss 685(1) and (2)). However, not all persons will necessarily have standing, and not all decisions of the development authority can be appealed. For example, if a compliance certificate were issued by a person who also exercises the powers of a development authority, the compliance certificate would not be subject to an appeal under the MGA s. 685.

Where does an appeal go?

Development appeals, whether relating to an appeal of a permit refusal, conditions of a permit, or a stop order, are heard by one of two bodies: a local Subdivision and Development Appeal Board (a “SDAB”) or the province-wide Land and Property Rights Tribunal (the “LPRT”). The appeal jurisdiction of these bodies is intended to be mutually exclusive (MGA, s 686(1.1)); in other words, the appeal will go to either the SDAB or the LPRT and there is no overlap. That said, if the appeal is filed before the wrong board, that board can refer the appeal to the other (MGA, s 686(1.1)).

A decision of a development authority must state whether an appeal lies to a SDAB or the LPRT (MGA, s 685(1.1)). Thus, it is the development authority’s responsibility to inform affected parties where they should bring an appeal. Of course, in any given case, the development authority’s responsibility may be exercised by a development officer or by another body, such as a municipal planning commission (“MPC”). Even in the latter situation, the development officer is often preparing the notice respecting the MPC’s decision, and will need to advise the MPC of the appropriate reference as to where the appeal goes (LPRT or SDAB).

Broadly speaking, development appeals are intended to be heard by the LPRT where there is a provincial interest connected to the lands at issue. However, despite that general objective, determining where the appeal must go in a particular situation can be a very complex exercise. It requires reading both section 685(2.1) of the MGA, and sections 27-29 of the *Matters Relating to Subdivision and Development Regulation*, Alta Reg 84/2022 (the “Regulation”).

The default is that the SDAB will hear appeals. However, the exceptions are that the LPRT must hear the appeal where the lands subject to the development application:

- are the subject of a licence, permit, approval or other authorization granted by the Minister of Forestry, Parks and Tourism, by the Minister of Environment and Protected Areas, or under any Act the Minister of Environment and Protected Areas is responsible for under section 16 of the *Government Organization Act*; or
- are 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.

(MGA s. 685(2.1)(a)(i)(A), as altered by Regulation, ss 27, 29)

A number of important points arise from this.

First, you may notice that this list of criteria that triggers LPRT jurisdiction appears shorter than what is listed in section 685(2.1)(a)(i) of the MGA – that section, and particularly subsections (A) and (B), suggests that LPRT is triggered if the land is within the Green Area of the Province, or if the land is sufficiently close to a highway, body of water, sewage treatment or waste management facility, or historical site.

However, these criteria have effectively been repealed by section 27 of the Regulation, which specifies that these criteria no longer apply. The result is that sections 685(2.1)(a)(i)(A) and (B) of the MGA are essentially dead letter – matters cannot be referred to the LPRT simply because the underlying lands are within the Green Area, or based on proximity to a highway, body of water, etc.

Second, note that the reference in s. 685(2.1)(i) is to “where the land that is the subject of the application” is subject to the particular approval. What you need to do here is consider the land, and whether there is a “licence, permit, approval or other authorization” applying to it – not to the development being applied for. A historical provincial approval falling within the categories listed above is enough to trigger LPRT jurisdiction even if the approval is unrelated to the proposed development.

For example, in *Jonk v. Westlock County*, 2023 ABLPRT 484, the LPRT considered whether it had jurisdiction over the appeal of a stop order, which had been issued due to a failure to place a shop building in the location specified in the development approval. The LPRT concluded that it did, because there was a pipeline – and the applicable pipeline licence issued by the AER – crossing the same parcel of land where the shop building was located. It did not matter that the pipeline had nothing to do with the shop building, and it did not even matter that the pipeline itself was abandoned. Because there was a subsisting AER licence in place that the lands were subject to, that was enough to trigger the LPRT’s jurisdiction.

Third, when considering whether there is an approval in place sufficient to trigger the LPRT’s jurisdiction as set out in MGA s. 685(2.1) (as modified by the Regulation, ss. 27-29), in our view, you must look at whether there are existing provincial approvals relating to the land, NOT whether the pending development application will also require one of the prescribed provincial approvals in the future. This is somewhat similar to the previous point in that the focus must be on the lands, and what approvals currently apply to it – not to the development being applied for, and what approvals might eventually apply to it.

We raise this because some recent decisions of the LPRT have suggested that LPRT jurisdiction applies even where no prescribed provincial approval is currently in place, simply because the applied-for development is expected to require such an approval eventually. For example, in *Riverside Recovery Inc. v. Mountain View County (Development Authority)*, 2022 ABLPRT 1394, the LPRT found that it had jurisdiction simply because the development would require approval under the *Water Act*, even though no such approval had been issued. The LPRT based this conclusion on a “purposive” reading of the MGA; however, there is a contrary argument, and this point has not been settled by the Alberta Courts. The contrary argument is that a plain reading of the text of MGA s 685(2.1) does not allow for this conclusion. Nowhere is it suggested in the MGA or in the Regulation that, to determine jurisdiction, one must look at the nature of the development

and what may be required in the future. Rather, the plain language of the MGA puts the focus on the lands and what provincial approvals are in place now. We look forward to the Alberta Court of Appeal settling this issue.

Fourth, it should be kept in mind that in some situations, the SDAB retains jurisdiction even if there is a prescribed provincial approval in place as set out in s. 685(2.1). If the appeal relates to a development permit application in respect of a direct control district, any appeal must go to the SDAB, and be limited to the question of whether the development authority followed the directions of council (MGA, s. 685(4)).

Fifth, at the present time, the legislation contains no “gatekeeper” function, i.e. allowing the LPRT to unilaterally refer a matter to the SDAB when the matter is in the LPRT’s jurisdiction.

In general, the most common types of situations that will result in the LPRT having jurisdiction will be an oil or gas pipeline crossing through the subject lands (since there will most likely be a pipeline licence issued by the Alberta Energy Regulator or its predecessor affecting the lands, even if the pipeline itself is abandoned). Another common example of LPRT jurisdiction occurs when the lands are subject to an approval under the *Water Act* or *Environmental Enhancement and Protection Act* (since these statutes are the responsibility of the Minister of Environment and Protected Areas, and so s. 29 of the Regulation would apply).

However, the mere fact that a physical feature like a pipeline or water well is present on the lands is not sufficient, in itself, to conclude that the LPRT has jurisdiction. For example, in *Garner-Tomas v. Strathcona County (Development Authority)*, 2023 ABLPRT 549, the LPRT concluded that it did not have jurisdiction, even though there was a residential water well on the lands – this was because the *Water Act* exempts wells for household purposes from the requirement to hold a provincial approval. As with the case of abandoned pipelines, the lesson here is that what matters is whether there is a prescribed provincial approval in place – not the physical state of the lands or improvements.

The foregoing should make it clear that appellate jurisdiction between the LPRT and SDAB is a complex issue and can be highly fact-specific as to whether the lands are truly subject to a sufficient approval or other authorization. Therefore, receiving assistance from legal counsel may be prudent when stating where the appeal lies.

However, as a general aid, we offer the following as a guide:

LPRT or SDAB? A Step-By-Step Questionnaire:

Question	Result
1. Are the lands designated land as defined in the <i>Canmore Undermining Review Regulation</i> , AR 34/2020?	If yes → SDAB

2. Does the appeal relate to a development permit application in respect of a direct control district?	If yes → SDAB
3. Is there an oil or gas pipeline crossing the lands, for which a licence has been issued? Is the status of the licence “issued”, even if the pipeline itself is abandoned?	If yes to both → LPRT
4. Is there a <i>Water Act</i> or <i>Environmental Enhancement and Protection Act</i> approval that has been issued in respect of the lands?	If yes → LPRT
5. Are the lands the subject of some other licence, permit, approval or authorization that has been granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board, or Alberta Utilities Commission?	If yes → LPRT
6. Are the lands the subject of some other licence, permit, approval or authorization granted by the Minister of Environment and Protected Areas or the Minister of Forestry, Parks and Tourism?	If yes → LPRT
7. Are the lands the subject of some other licence, permit, approval or other authorization granted under an Act the Minister of Environment and Protected Areas is responsible for under the <i>Designation and Transfer of Responsibility Regulation</i> , Alta Reg 11/2023?	If yes → LPRT
8. Do none of the above apply?	→ SDAB

Please note that this checklist is not a replacement for a detailed review of the particular facts of an appeal by legal counsel, but may provide initial assistance in many situations.

The Brownlee Municipal Law Team is pleased to offer our services in a number of planning and development areas, including processing development permit applications, addressing environmental or cross-jurisdictional issues, and passing or amending land use bylaws. **For more information, please contact a member of the Brownlee LLP Municipal Team on our Municipal Helpline at 1-800-661-9069 (Edmonton) or 1-877-232-8303 (Calgary).**

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