

MINUTES of the **Subdivision & Development Appeal Board** held on **Thursday, February 28, 2013 at 4:00 p.m.** in Council Chambers with the following in attendance:

MEMBERS:	V. Chester	Member at Large
	W. Kalkan	Member at Larger
	R. Parker	Alderman
OTHERS:	G. Stevenson	Senior Development Officer
	D. Sarsfield	Secretary to the Board
	W. Petersen	Solicitor to the Board

An Acting Chair needed to be appointed for the meeting.

R. PARKER:

That Victoria Chester be appointed Acting Chairman of the Subdivision and Development Appeal Board for the February 28, 2013 Hearing.

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SDAB HEARING 2013-04

Appellants: James R. Farrington Professional Corporation
1213382 Alberta Ltd.
1613256 Alberta Ltd.
Condo Corp. 0711669
Lethbridge Denture Clinic Ltd.

To construct a 3 storey, twelve unit apartment building at 317 – 17 Street South.

Development Permit No. DEV02901
 Land Use District: C-G (General Commercial)

There were no objections when the Chairman asked if anyone present had a lawful reason why any particular member(s) of the Board should not hear this appeal.

Development Officer's Presentation:

Gepke Stevenson, Senior Development Officer, outlined the case. A development permit was issued for a twelve unit, 2.5 storey apartment building with a side setback waiver on February, 2011. The Subdivision and Development Appeal Board denied an appeal on April 8, 2011, finding that "the discretionary use did not materially interfere with the existing businesses in the neighbourhood".

The Applicant revised the plans to a three storey building so as to include an elevator. These drawings were approved by the Development Officer on October 20, 2011. No notification of the change was sent out. Once the appellant became aware of the change in September, 2012, an appeal was launched. The Subdivision and Development Appeal Board heard the appeal on October 4, 2012. The Board varied the permit in order to conform with the new Land Use Bylaw by adding the condition that "the ground floor shall be designated for commercial space." No other changes to the permit were made.

The Development Officer issued a revised development permit in accordance with the Subdivision and Development Appeal Board decision and approved revised plans showing ground floor commercial spaces on November 15, 2012.

Ms. Stevenson stated that the Subdivision and Development Appeal Board cannot reconsider its decision of October 12, 2012, and further, the Board does not have any subsequent oversight role. This is according to the Subdivision and Development Appeal Board Training Manual (2011), produced by Alberta Municipal Affairs.

Appellant's Presentation:

James R. Farrington, James R. Farrington Professional Corporation, outlined the grounds for the appeal. The following was stated:

- Appeal is the result of the refusal of the City of Lethbridge to properly calculate and review parking requirements at the subject site
- Subdivision and Development Appeal Board does have the jurisdiction to hear the subject appeal
- Development Officer approved the revised plans on November 15, 2012 without any notice to the Appellants
- Previous Subdivision and Development Appeal Board did not discuss the parking requirements
- Nothing in the previous decision suggested that the Board had looked at the parking stall requirements
- Appellant wrote to the City of Lethbridge on October 22, 2012 and October 26, 2012 alerting the City to the parking issue
- Appellant received a response from the City on January 30, 2013 that included the revised building plans
- Commercial development would require 29 parking stalls compared to the approved 18 stalls
- Article 6 of the Land Use Bylaw allows for an appeal if there is a modification of a development permit
- The Subdivision and Development Appeal Board Training Manual was not the law
- Section 685(2) of the *Municipal Government Act* states that "any person affected by an order, decision or development permit made or issued by a development authority may appeal to the subdivision and development appeal board"

Applicant's Presentation:

Stephen C. Mogdan, spoke on behalf of the Applicant. The following was stated:

- October 17, 2012 Subdivision and Development Appeal Board decision did include a condition requiring 18 parking stalls
- Applicant received approval from the Development Officer on November 15, 2012 for plans allowing for commercial development on the ground floor, in keeping with the Subdivision and Development Appeal Board decision
- Development Officer did not make any decision varying from the October 17, 2012 decision of the Board
- Appellant could have appealed to the Alberta Court of Appeal if it was believed the Board had made the decision in error

There were no other presentations either in support or in opposition to the appeal.

Discussion:

The Board addressed the following issues during question period:

- Role of Development Services after the Subdivision and Development Appeal Board decision of October 17, 2012
- Review of the changes that were made in the November 15, 2012 plans
- Compliance of the building plans with the October 17, 2012 decision
- Actions of the appellant within the thirty day time frame for appeal to the Alberta Court of Appeal
- Role of the Subdivision and Development Appeal Board Training Manual in terms of legislation
- Parking stall requirements outlined in the October 17, 2012 decision
- Process and timeline for filing the appeal

Applicant's Rebuttal:

Mr. Mogdan stated that the Subdivision and Development Appeal Board made provisions for parking stall requirements in the October 17, 2012 decision. It is not good enough for the Appellant to state that he would have appealed if he had understood that a decision on parking stall requirements had been made on October 17, 2012.

Appellant's Rebuttal:

Mr. Farrington stated that he did not receive a copy of the revised October 17, 2012 development permit until the Subdivision and Development Appeal Board agenda was sent out in February, 2013. He had only received a letter outlining the Subdivision and Development Appeal Board decision of October 17, 2012. Nothing in the decision stated that the parking stall requirement would remain the same.

Mr. Farrington had the expectation that the Land Use Bylaw requirements for parking would be followed and he had written Development Services and the City Solicitor several times about parking, anticipating there would be a response.

Decision:

IN THE MATTER OF the Municipal Government Act

AND IN THE MATTER OF an Appeal made to the Subdivision and Development Appeal Board with respect to:

Appellants: James R. Farrington Professional Corporation
1213382 Alberta Ltd.
1613256 Alberta Ltd.
Condo Corp. 0711669
Lethbridge Denture Clinic Ltd.

To construct 3 storey, twelve unit apartment building at 317 – 17 Street South.

AND UPON HEARING from the Development Officer, the Appellants, the Applicant, and other

interested parties,

AND UPON CONSIDERING the relevant provisions of the Municipal Government Act, the Municipal Development Plan, the Land Use By-law, any applicable Statutory Plans, and the circumstances and merits of this case, the decision of the Subdivision and Development Appeal Board is as follows and for the following reasons:

V.CHESTER/W.KALKAN/R.PARKER

DECISION: The Appeal is **NOT VALID** as the Subdivision and Development Appeal Board has determined that it has no jurisdiction to hear the appeal

REASONS FOR DECISION:

The Subdivision and Development Appeal Board decision of October 17, 2012 was final. The Board found that the Development Officer complied with that decision with their subsequent actions.

-----**CARRIED**

CHAIRMAN

SECRETARY TO THE BOARD