
Appeal File Numbers:	024-STU-016
Application Number:	305305-24-D0242
Appeal Against:	Development Authority of Sturgeon County
Appellant:	Fred Fibi
Date and Location of Hearing:	November 5, 2024 Council Chambers and Through Electronic Communications
Date of Decision:	November 20, 2024
SDAB Members:	Julius Buski, (Chair), Lee Danchuk, Amanda Papadopoulos, and Don Rigney

NOTICE OF DECISION

IN THE MATTER OF an appeal by Fredi Fibi against the Development Authority’s issuance of a development permit to operate an agritourism operation including a garden centre, farm market, agricultural educational tours and workshops, agricultural culinary experiences, experimental agritourism, agricultural festivals, small scale food processing, petting farm and house, pony and hayrides at Plan 2986KS;; A, 56311 Lily Lake Road within Sturgeon County.

- [1] This is the decision of the Sturgeon County Subdivision and Development Appeal Board (the “SDAB” or “Board”) on an appeal filed with the SDAB pursuant to section 686 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the “MGA” or “Act”).
- [2] In making this decision, the Board reviewed all the evidence presented and considered provisions of the *Municipal Government Act*.
- [3] The following documents were received and form part of the record:
 - a. The Notice of Appeal;
 - b. A copy of the development permit with attachments;
 - c. The Development Authority’s written decision;
 - d. Planning & Development Services Report;
 - e. The Appellant’s submission; and
 - f. The Applicant’s submission.

PROCEDURAL MATTERS

- [4] There were no objections to the proposed hearing process as outlined by the Chair.
- [5] There were no objections to the composition of the Board hearing the appeal.

PRELIMINARY MATTER

- [6] The Board noted that the Development Permit subject to this appeal expired on October 31, 2024. The Board requested submissions from the parties with respect to the issue of the Board proceeding with a merit hearing.

DEVELOPMENT AUTHORITY'S SUBMISSION ON THE PRELIMINARY MATTER

- [7] Tyler McNab, Acting Manager, Planning & Development Services, indicated that the Development Authority has no position on the preliminary matter.

APPELLANT'S SUBMISSION ON THE PRELIMINARY MATTER

- [8] The Appellant, Fred Fibi, submitted that the Board should hold a merit hearing as the Development Authority has issued a development permit inconsistent with the maximum allowable traffic volume to the site according to Sturgeon County's General Municipal Servicing Standards (GMSS), which forms part of a statutory plan, being the Municipal Development Plan (MDP). Mr. Fibi cited SDAB file numbers 305305-23-D0214 and 305305-23-D0212 and submitted that the County should apply the land use regulations consistently, which in this case would result in refusal of the development permit.

APPLICANT'S SUBMISSION ON THE PRELIMINARY MATTER

- [9] The Applicant's counsel, Kim Wakefield, cited *Nascho Enterprises Ltd. v. Edmonton (City)*, 2014 ABQB 569, and submitted that, consistent with guidance from the courts, the Board should not proceed to a merit hearing as the issue is moot.

DECISION OF THE BOARD

- [10] **The Board determined that it will not hear the merits of the appeal as the matter is moot.**

REASONS FOR THE DECISION

- [11] Section 686(1)(a) of the *Municipal Government Act* (MGA) states that an appeal of a development permit may be commenced by filing a notice of appeal within 21 days after an order is made. The development permit was issued on September 19, 2024 and the appeal was received on October 10, 2024.
- [12] In accordance with section 686(2) of the MGA, the Board has 30 days to hear an appeal of a development permit. This ensures a timely hearing while allowing sufficient time to notify affected parties of the hearing and to allow them to prepare submissions to the Board.
- [13] In accordance with section 2.11.2 of the Land Use Bylaw, a development permit that is under appeal is not considered issued or approved until a decision is made by the Subdivision and Development Appeal Board. With the expiration date of the permit being October 31, 2024 and the hearing not scheduled until November 5, 2024, the development permit has not and will never come into effect.
- [14] The Board relied upon the Applicant's submission, specifically paragraphs 24, 25, 35, 37, and 53 of *Nascho Enterprises Ltd. v. Edmonton, (City)*, 2014 ABQB 569. This case, from the Court of King's Bench of Alberta, and referencing other cases from the Supreme Court of Canada and the Alberta Court of Appeal, provides that, generally, Courts will not adjudicate upon a case without

a live controversy affecting the parties' rights. This extends to a hypothetical, or even likely situation, of the event recurring, in which case the preferred approach is to wait and determine the point in a genuine adversarial context. The desire to set a precedent for others is not a special circumstance warranting deviation from this principle.

- [15] In his submission, the Appellant alluded to this matter being a recurring one, referencing decisions from the Board issued in 2023 regarding the subject property. The Board finds that, as the development permit has and will never come into effect, the matter is moot. In accordance with the case law, even though the matter has and could come again before this Board, there is no live issue for the Board to adjudicate, and therefore the appeal will not proceed to a merit hearing.

Dated at the Town of Morinville, in the Province of Alberta, this 20th day of November, 2024.



Julius Buski, Chair

Pursuant to Section 688(1)(a) of the Municipal Government Act (MGA), an appeal of a decision of the Subdivision and Development Appeal Board lies with the Alberta Court of Appeal on a matter of law or jurisdiction. In accordance with Section 688(2)(a), if a decision is being considered, an application for permission to appeal must be filed and served within 30 days after the issuance of the decision and, notice of the application for permission must be provided to the Subdivision and Development Appeal Board and in accordance with Section 688(2)(b), any other persons that the judge directs.

APPENDIX "A"
List of Submissions

- The Notice of Appeal;
- A copy of the development permit with attachments;
- The Development Authority's written decision;
- Planning & Development Services Report;
- The Appellant's submission; and
- The Applicant's submission.