

This Issue

DEVELOPER RIGHTS
TRUMPED BY LANDOWNER
RIGHTS: LATE NOTICE OF
DEVELOPMENT PERMIT
FOUND LEGALLY
EFFECTIVE

BREAKING CASE LAW

*1694192 Alberta
Ltd. v. Lac La
Biche (Subdivision
and Development
Appeal Board),
2014 ABCA 319*



*1694192 Alberta Ltd. v. Lac La Biche (Subdivision and Development Appeal Board),
2014 ABCA 319*

The Lac La Biche County development authority granted a development permit to construct a campground, but failed to provide notice as required by the County's Land Use Bylaw ("LUB") to two adjacent landowners. County Administration did not realize its noncompliance with the LUB until after the developer began construction.

After receiving notice from the County, one of the adjacent landowners, Mr. Leibel, appealed the development permit. The County issued a stop order. At the Subdivision and Development Appeal Board hearing, the developer was not able to establish that Mr. Leibel had received any notice, including constructive notice, of the development. The SDAB revoked the permit.

The developer appealed to the Court of Appeal. The Court attempted to balance the rights of the developer (certainty and finality of a development permit), with the rights of adjacent landowners (fair chance to be heard). The Court found in favour of the adjacent landowners for the following reasons:

1. The language in the LUB provided that adjacent landowners had the right to object to development. That right is not to be "swept aside" when they had not received any notice whatsoever.
2. The notice provided to the adjacent landowner was the first and only notice provided to them: "Mr. Leibel's rights were not stymied or cancelled merely because the Authority breached the limitation period imposed on it to give such notice."

In short, notice after "5 working days" (as contained in the LUB) can be legally effective. The time period to appeal, however, is not unlimited. The Court of Appeal stated that "appeal periods cannot remain dormant [...] until personal awareness as that would inject 'incalculable uncertainty into a planning process otherwise designed to achieve both certainty and finality'". The time for an affected person to appeal will start "to run when the affected party has actual or constructive notice of the issuance of the development permit".

Suite 2250
10104 – 103 Avenue
Edmonton, Alberta
T5J 0H8

Tel 780.448.9275
Fax 780.423.0163
shoresjardine.com

BREAKING CASE LAW

*1694192 Alberta
Ltd. v. Lac La Biche
(Subdivision and
Development
Appeal Board),
2014 ABCA 319*

Finally, the Court provided a suggestion to developers and to Municipalities: developers should “consider taking additional steps to protect and re-assure your interests before commencing work” and “[m]unicipalities with similar language in their LUB could consider clarification of that language.”

The important lesson from this case for developers is that appeal periods are not absolute in that the developer is not free and clear of all development appeals once the appeal period has passed. As such, developers should inquire with the municipality as to who has been notified of the development permit and take steps to assure themselves that adequate notice has been provided. For municipalities, the important lesson is that land use bylaws, and more broadly, municipal instruments should be clear and easy for development authority to apply. Municipalities should consider revising their land use bylaws if they are not clear and easy to apply.

Suite 2250
10104 – 103 Avenue
Edmonton, Alberta
T5J 0H8

Tel 780.448.9275
Fax 780.423.0163
shoresjardine.com