

## BREAKING CASE LAW

**Black Diamond  
(Town) v. 1058671  
Alberta Inc.**



## This Issue

When is a municipality's development authority "acting judicially" and when is it not?

Black Diamond (Town) v. 1058671 Alberta Inc.  
2015 ABCA 169

On May 22, 2015 the Court of Appeal found the Town of Black Diamond SDAB erred in applying the common law doctrine of issue estoppel and in setting aside the stop order issued by the Town to the Respondent, 1058671 Alberta Inc. ("1058671"). The development permit issued for the lands on November 19, 1985 allowed the permit holder to store vehicles being worked on by the automotive garage located on the adjoining lots and vehicles the RCMP seized as part of a contract. In 2004, 1058671 used the land to operate a commercial towing business without any permits or approvals from the Town.

The Town's development officer issued 2 letters to 1058671 one on November 4, 2004 and the other, 5 years later, on November 23, 2009. The November 4, 2004 letter expressed concerns about 1058671's use of the land, specifically the operation and expansion of the land as more of an "industrial use". The November 23, 2009 letter complained about the use of the lands – specifically noting that none of the new uses had been applied for or approved by the Town. On April 30, 2013 the Town issued a stop order to 1058671 and it appealed the stop order to the SDAB. The SDAB set the stop order aside. The Town appealed the SDAB's decision to the Court of Appeal, and leave to appeal was granted. This is the merit decision of the Court of Appeal.

The Court of Appeal found that, although the principle of issue estoppel applies to development decisions made under the MGA, issue estoppel was not applicable in this case because:

"[T]o successfully invoke issue estoppel, the respondent must establish that an earlier final decision of the Town's planning development officer or the Board, or both, when acting judicially, determined that the respondent was entitled to use the land for a specific purpose."

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Specifically, the Court found that the 2 letters from the development officer were not “judicial” decisions; the letters were not final decisions, not judicial acts and did not state that the Respondent was entitled to the use it was operating. Rather, they were letters expressing concerns with the use of the land and contained steps the owner should take. The Court of Appeal reversed the SDAB’s decision, resulting in the stop order being enforced.

If you plan to challenge a municipal act on the basis of issue estoppel, think carefully about whether the action taken or decision made by the development authority or the Board or both (1) was a final decision, (2) was a judicial act and (3) determined that the use, in this case, was allowed for a specific purpose. Not every action taken or decision made by a development authority will be a judicial act or a final decision; therefore, the principle of issue estoppel may or may not be available to you depending on the action that was taken – e.g. letters to the owner expressing concerns with the use of the land were not judicial acts, but a stop order is.

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