

**ROCKY VIEW COUNTY  
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

Board Order No.: 2019-SDAB-014

File No.: 04711031; PL20180049

Appeal by: Kevin Peterson

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2019 January 30  
2019 April 03

Decision Date: 2019 April 18

Board Members: D. Kochan, Chair  
I. Galbraith  
H. George

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**SUBDIVISION APPEAL DECISION**

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**INTRODUCTION**

[1] This is an appeal to the Rocky View County Subdivision and Development Appeal Board (the Board) from a decision of the Rocky View County Subdivision Authority issued December 19, 2018. In this decision the Subdivision Authority conditionally approved a subdivision application for 242008 Range Road 32 (the Lands).

[2] Upon notice being given, this appeal was heard on January 30, 2019 and April 3, 2019 in Council Chambers of Rocky View County's County Hall, located at 262075 Rocky View Point, Rocky View County, Alberta.

**DECISION**

[3] The appeal is struck.

**BACKGROUND**

[4] On October 27, 2017, Kevin Peterson (the Owner) submitted a subdivision application to subdivide a lot. The Lands are located at NW-11-24-03-W5M and are owned by Kevin and Jolene Peterson.

[5] On December 11, 2018, Council, acting as the Subdivision Authority, conditionally approved the Appellant's subdivision application.

[6] On December 19, 2018, the Subdivision Authority issued the decision transmittal decision to the Appellant.

[7] On January 11, 2019, the Appellant appealed the Subdivision Authority's decision.

[8] On January 30, 2019, the Board heard arguments on the preliminary matter of whether the appeal was filed out of time and if the Board had the authority to hear the appeal. The Board adjourned the hearing to obtain legal counsel.

[9] The hearing continued on April 3, 2019 and the Chair announced the Board's decision that the appeal was filed after the deadline and therefore the appeal was struck.

### **SUMMARY OF EVIDENCE**

[10] The Board heard verbal submissions from:

- (1) Sean MacLean, Supervisor, Planning and Development, for the Subdivision Authority; and
- (2) Kevin Peterson, the Appellant.

### **Preliminary Matter: Does the Board have jurisdiction?**

#### *Subdivision Authority's Submissions*

[11] The appeal was submitted past the appeal deadline and therefore the Board has no jurisdiction to hear the appeal.

[12] The Appellant therefore had constructive notice of Subdivision Authority's approval on December 11, 2018, making the deadline to appeal December 25, 2018. Constructive notice has been upheld by the Court of Appeal in *Coventry Home Inc v Beaumont*, 2001 ABCA 49 and *Masellis v Edmonton*, 2011 ABCA157.

[13] In the alternative, the Appellant was sent written notice of the Subdivision Authority's decision on December 19, 2018, making the appeal deadline January 9, 2019.

[14] The appeal was received on January 11, 2019 and therefore was not received by the appeal deadline. The Appellant is out of time to appeal the Subdivision Authority's decision as per section 678(2) of the *Municipal Government Act*.

#### *Appellants' Submissions*

[15] There were extraordinary circumstances that caused the late filing of the appeal.

[16] The Appellant's mother passed away. The Appellant and his family were away at her funeral. After returning from his mother's funeral, the Appellant's wife picked up the mail on January 10, 2019. The Appellant submitted the appeal the next day, on January 11, 2019.

[17] There was a backlog in mail service from the Canada Post strike and Christmas holidays.

*Subdivision Authority's Rebuttal*

[18] The Canada Post strike was reported to be cleared by December 25, 2019.

*Appellants' Submissions*

[19] If the mail was free and clear as of December 25, 2019 then the decision date should be December 25, 2019 and not December 19, 2019.

**FINDINGS & REASONS FOR DECISION**

[20] The Board reviewed all evidence and arguments, written and oral, submitted by the parties and will focus on key evidence and arguments in outlining its reasons.

[21] The Board derives its jurisdiction to hear a subdivision appeal from the *Municipal Government Act*, RSA 2000, c-26 [MGA]. The Board heard the exceptional circumstances faced by the Appellant. However, the MGA does not permit the Board to hear an appeal if the Board finds that appeal was filed past the appeal deadline.

[22] The appeal deadline is likewise determined by the MGA. Section 678 specifies the appeal time period for a Subdivision Authority decision. This section of the MGA does not give the Board the discretion to change the appeal period in light of exceptional circumstances, such as personal tragedy or a postal strike.

[23] Section 678(2) of the MGA states, "[a]n appeal under subsection (1) may be commenced by filing a notice of appeal within 14 days after receipt of the written decision of the subdivision authority or deemed refusal by the subdivision authority in accordance with section 681." In this case, based on the arguments of constructive notice, the deadline to appeal the decision was December 25, 2018.

[24] Further to this, section 678(3) of the MGA states, "[f]or the purpose of subsection (2), the date of receipt of the decision is deemed to be 7 days from the date the decision is mailed." The Board finds that the letter was mailed on December 19, 2018. In this case, the deadline to appeal based on the actual decision notice was January 10, 2019.

[25] The appeal was filed on January 11, 2019. The Board finds that, regardless of what type of notice the Appellant received, the appeal was filed outside the appeal time period under the MGA and therefore the Board has no jurisdiction to hear the appeal.

**CONCLUSION**

[26] For the reasons set out above, the appeal is struck.

Dated at Rocky View County, in the Province of Alberta on April 18, 2019.

" Don Kochan "

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Don Kochan, Chair  
Subdivision and Development Appeal Board

**EXHIBIT LIST**

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD

<b>NO.</b>	<b>ITEM</b>
1.	Subdivision Authority's Report to the Board (135 pages)