

**City of Airdrie
Subdivision and Development Appeal Board**

Notice of Appeal Form

A notice of appeal for a development matter must be filed within 21 days of the development authority's written decision.
A notice of appeal for a subdivision matter must be filed within 14 days after the receipt of the subdivision authority's written decision.

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|--|--|--|-------------|
| Appellant (Landowner, applicant, or affected party filing the appeal) | | | |
| Name of Appellant(s) | | Telephone # | |
| Mailing Address | Municipality | Province | Postal Code |
| E-mail Address <i>(By providing an e-mail address I consent to receive documents by e-mail)</i> | | | |
| Property under appeal | | | |
| Municipal Address | | Legal Land Description (Lot, Block, Plan) | |
| Development Permit #, Subdivision Application #, or Enforcement Order # | | Date of decision | |
| Matter being appealed (check one box only) | | | |
| Development authority decision <input type="checkbox"/> Approval or the conditions of approval <input type="checkbox"/> Refusal | Subdivision authority decision <input type="checkbox"/> Approval or the conditions of approval <input type="checkbox"/> Refusal | Enforcement decision <input type="checkbox"/> Stop Order | |
| Reasons for appeal (attach separate page if required) - All appeals must contain reasons | | | |
| | | | |

| | |
|--|-------------|
| Signature of Appellant <div style="text-align: center; font-family: cursive; font-size: 1.2em; margin-top: 10px;">Brendan Miller</div> | Date |
|--|-------------|

The personal information on this form is collected for the purpose of administering the Subdivision and Development Appeal Board appeal process and becomes a public document which may be provided to those who may be affected by your appeal. This personal information is collected under the authority of section 33(c) of the *Freedom of Information and Protection of Privacy Act*. Questions concerning the collection of this information can be directed to the FOIP Coordinator at (403) 948-8816 or by e-mail to foip@airdrie.ca.

City of Airdrie
Subdivision and Development Appeal Board

Notice of Appeal Form

Notice of Appeal Information

How do I file my appeal?

- Your Notice of Appeal and the required fee must be received by the Subdivision and Development Appeal Board (SDAB) no later than the final date for appeal as specified in the *Municipal Government Act*. Notice of Appeal sent by mail must be received by the SDAB (not post-marked) on or before the final date for appeal.
- A non-refundable \$250 (Development Appeal or Stop Order) or \$350 (Subdivision Appeal) filing fee is required on or before the final date for appeal.
- You can submit your Notice of Appeal and the fee in the following ways:

| | |
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| By mail to: | Subdivision and Development Appeal Board 400 Main Street SE, Airdrie, AB T4B 3C3 Attention: Clerk of the Subdivision and Development Appeal Board Pay by cheque payable to “City of Airdrie”. |
| Deliver in person to: | Subdivision and Development Appeal Board 400 Main Street SE, Airdrie, AB T4B 3C3 Attention: Clerk of the Subdivision and Development Appeal Board Pay by cheque payable to “City of Airdrie”, cash, debit card, Visa, or Mastercard. |
| By e-mail to: | Appeals@airdrie.ca Pay with Visa or Mastercard by phoning 403-948-8816 between 8:30 am 4:30 pm, Monday to Friday. |

What happens after my appeal is submitted?

The SDAB clerk schedules an appeal hearing within 30 days of receiving the appeal form and fee. You and any other party required to be notified under the *Municipal Government Act* or the City of Airdrie’s *Land Use Bylaw* will receive a written Notice of Hearing.

Please note, the SDAB hearing is considered a hearing *de novo* (to hear anew). The Board can confirm, revoke, or vary the order, decision, or development permit, or any attached condition. The Board may also replace an order, decision, or permit with its own. For example, if conditions of a development permit are appealed, the Board may deny the development permit in its entirety. In these circumstances, there may be legislated re-application waiting periods.

Where can I get more information?

- For information about filing an appeal or SDAB procedures, contact the SDAB Clerk at 403-948-8816 or appeals@airdrie.ca.
- For information about land development applications or the City of Airdrie’s Municipal Development Plan or *Land Use Bylaw*, contact the City of Airdrie’s Planning Department at 403-948-8848 or planning@airdrie.ca.
- For information about the enforcement of municipal bylaws, contact the City of Airdrie’s Municipal Enforcement at 403-948-8892.

Appendix "A" to Notice of Appeal

I. Preliminary Issue of Jurisdiction of the Subdivision and Development Appeal Board

1. The Applicant, 1818622 ALBERTA Ltd., maintains that the Subdivision and Development Appeal Board does not have jurisdiction over the herein appeal, and there jurisdiction of there herein matter rests with the Alberta Court of King's Bench via judicial review.
2. The Applicant has filed and served the Originating Application for Judicial Review of the decision of the Respondents, the City of Airdrie and Gail R. Gibeau being Airdrie's Team Leader of Current Planning, in the Court of King's Bench on August 8, 2024 (**Attached**).
3. The Respondents, the City of Airdrie and Gail R. Gibeau being Airdrie's Team Leader of Current Planning, as well as their legal counsel, has been maintain that the Subdivision and Development Appeal Board.
4. The Applicant states, and the fact is, the Subdivision and Development Appeal Board will have to rule on if it has jurisdiction over the herein appeal. The Applicant files the herein appeal only as a safeguard, so as to not miss the statutory limitation to appeal to this Subdivision and Development Appeal Board, which the Respondents, the City of Airdrie and Gail R. Gibeau being Airdrie's Team Leader of Current Planning, maintain expires today.

II. Parties and Actors

5. The Applicant, 1818622 ALBERTA Ltd. (hereinafter the "**Applicant**"), is a corporation incorporated under the laws of the Province of Alberta and is the owner of the land and building municipally described as 2, 69 East Lake Crescent, Airdrie, Alberta T4A 4H6 (hereinafter the "**Property**").
6. The Respondent, the City of Airdrie (hereinafter "**Airdrie**"), is a municipality under the *Municipal Government Act* RSA 2000, c M-26.
7. The Respondent, Gail R. Gibeau, is Airdrie's Team Leader of Current Planning (hereinafter "**Gibeau**").

(hereinafter Airdrie and Gibeau collectively will be referred to as the "**Respondents**")

III. Facts Giving Rise to Judicial Review

8. On September 17, 2012 Airdrie issued a Development Permit called Tenancy Permit 52-12 (**Attached**) for the Property as a "Kennel" under *Airdrie Land Use Bylaw* No. B-24/2008 (the "**Old LUB**").
9. In particular, the Development Permit states:

Your Tenancy Permit [a form of Development Permit] application for the [Property] was reviewed on September 17, 2012. At that time your application was approved and issued subject to the following conditions:

1. This approval applies to the site and uses as indicated on the application form and plans provided and approved. Any changes require a new application.

2. Five (5) parking stalls must be provided for this tenancy permit. These parking stalls must be marked (line painting) and maintained in accordance with the Land Use Bylaw.

(hereinafter the “**Property’s Development Permit**”).

10. The Applicant states, and the fact is, once a Development Permit is granted by a municipality and the appeal period to appeal its issuance has lapsed, unless the *Municipal Government Act* expressly grants municipalities the statutory jurisdiction to revoke or cancel a Development Permit, there is no jurisdiction for a municipality created under the *Municipal Government Act* to cancel or revoke a Development Permit. The Applicant states, and the fact is, the *Municipal Government Act* does not provide the statutory jurisdiction to revoke a Development Permit once it is issued and the appeal period for its issuance has expired.
11. In particular, the Property's Development Permit having been issued September 17, 2012 and the appeal period of its issuance long since expiring, the Respondents have no jurisdiction to cancel or revoke the Property's Development Permit.
12. On June 6, 2024, without notice to the Applicant that the Respondents were considering cancelation or revoking the Property's Development Permit, and without permitting the Applicant a right to be heard regarding the cancelation or revocation, the Respondents purported to cancel or revoke the Property’s Development Permit (the “**Decision to Revoke and Cancel**”) (**Attached**). The Applicant states, and the fact is, the Respondents purport to cancel or revoke the Property’s Development Permit under Part 2.8, titled Bylaw Enforcement, of *Airdrie Land Use Bylaw B-01/2016 (“Current LUB”)*, in particular s.2.8.7(5) therein for violating a condition of the Property’s Development Permit. The Applicant states, and the fact is, s.2.8.7 of the Current LUB states:

2.8.7 Other Remedies Bylaw

(1) Nothing in this Bylaw diminishes or in any way affects the powers of a Development Authority to issue orders for compliance or in any way affects any person’s rights to appeal a Development Authority's order.

(2) Nothing in this Bylaw diminishes or in any way affects the provisions of the Municipal Government Act relating to offences and penalties.

(3) Nothing in this Bylaw diminishes or in any way affects the rights of the City pursuant to the Municipal Government Act, or at common law to seek an entry order, order for compliance, injunction or any other order to obtain compliance with this Bylaw.

(4) The levying and payment of any fine or the imprisonment for any period provided in this Bylaw does not relieve a person from the necessity of paying any fees, charges or costs for which that person is liable under the provisions of this Bylaw, any other Bylaw or other enactment.

(5) Where there is a violation for failure to comply with the Development Permit conditions of an approved Land Use, the Development Authority may suspend or cancel the Development Permit authorizing that use.

13. The Applicant states, and the fact is, the Respondents did not provide the Decision to Revoke and Cancel to the Applicant until July 24, 2024 via registered mail.

IV. Grounds to Appeal the Respondents' Decision to Revoke and Cancel

14. The Applicant states, and the fact is, the Respondents have no jurisdiction to cancel or revoke the Property's Development Permit under the *Municipal Government Act*, and in so far s.2.8.7(5) of the Current LUB authorizes such cancellation or revocation s.2.8.7(5) of the Current LUB is *ultra vires* the *Municipal Government Act*. In particular, the Applicant states, and the fact is, the Respondents were limited to issuing a Stop Order in regarding to the activities of the Applicant that purported to be beyond the scope of the Property's Development Permit.
15. Further, and in the alternative, the Property's Development Permit was issued under the Old LUB, the purported rights of the Respondent to cancel or revoke the Property Development Permit under the Current LUB do not apply to the Property Development Permit and only provisions of the Old LUB would so apply, and there is no ability to revoke or cancel the Property's Development Permit under the Old LUB, and as such, the Respondents have no jurisdiction to revoke or cancel the Property's Development Permit. In particular, the Applicant states, and the fact is, the Respondents were limited to issuing a Stop Order in regarding to the activities of the Applicant that purported to be beyond the scope of the Property's Development Permit.
16. Further, and in the alternative, the Respondents breached the requisites of procedural fairness by issuing the Decision to Revoke and Cancel without giving the Applicant notice said decision was being considered, thereby violating the principal of *audi alteram partem* which required the Applicant be given fair notice.
17. Further, and in the alternative, the Respondents breached the requisites of procedural fairness by issuing the Decision to Revoke and Cancel without giving the Applicant the right to be heard before issuing said decision thereby violating the principal *audi alteram partem* which required the Applicant be given a right to be heard before a decision regarding the Property's Development Permit was made.
18. Further, and in the alternative, the Applicant states, and the fact is, the Respondents' Decision to Revoke and Cancel is an abuse of process of the proceeding between the Applicant and Airdrie in Court of King's Bench Action 2301-16925 wherein on June 3, 2024 the Hon. Justice M.H. Bourque dismissed Airdrie's application against, *inter alia*, for an injunction on the basis of, *inter alia*, that the Property's Development Permit had unexpressed conditions beyond the two listed therein that were breached. Justice M.H. Bourque at paragraph 15 of his decision in Action 2301-16925 found by necessary implication of s.1-3(a) of the Old LUB all conditions of the Property's Development Permit approval had been previously fulfilled. **(Attached)**
19. Further, and in the alternative, the Decision to Revoke and Cancel was unreasonable. In particular, but not limited to:
 - a. There has not been a violation for failure to comply with Development Permit conditions of an approved Land Use. In particular, no violation ticket has been issued to the Applicant by the Respondents, ever, under s.2.8.6. of the Current LUB regarding violating a condition

of Property's Development Permit, nor a finding by the Court that said violation has occurred.

- b. The Applicant has not violated any of the two conditions in the Property Development Permit, and there are no other conditions in the Property Development Permit beyond the two conditions stated above herein the Applicant could violate. In particular, the Applicant states, and the fact is, the Respondents were limited to issuing a Stop Order in regards to the activities of the Applicant that the Respondents purported to be beyond the scope of the Property's Development Permit.
 - c. The reasons in the Decision to Revoke and Cancel do not meet the requisite rationale to support the outcome.
20. Further, and in the alternative, any other such ground the Applicant argues in their brief and orally.