



## LAND AND PROPERTY RIGHTS TRIBUNAL

**Citation:** Park v Town of Bruderheim (Development Authority), 2025 ABLPRT 21

**Date:** 2025-01-10

**File No.** S24/BRUD/T-021

**Decision No.** LPRT2025/MG0021

**Municipality:** Town of Bruderheim

**In the matter of** an appeal from a decision of Lamont County Intermunicipal Subdivision and Development Appeal Board (ISDAB) respecting the proposed development of Lot 4, Block 1, Plan 4806U under Part 17 of the *Municipal Government Act*, Chapter M-26 RSA 2000, (*Act*).

BETWEEN:

H. Park  
and  
M. Park

Appellants

- and -

Town of Bruderheim Development Authority

Respondent Authority

BEFORE: G. Sokolan, Presiding Officer  
G. Newcombe, Member  
D. Woolsey, Member

(Panel)

K. Lau, Case Manager

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## DECISION

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### APPEARANCES

See Appendix A

This is an appeal to the Land and Property Rights Tribunal (LPRT or Tribunal). The hearing was held via videoconference, on November 1, 2024 after notifying interested parties.

## OVERVIEW

[1] This preliminary hearing addresses whether the LPRT has jurisdiction to hear an appeal of a decision of the Lamont County Intermunicipal Subdivision and Development Appeal Board (ISDAB) concerning a decision of the Development Authority (DA) for the Town of Bruderheim (Town).

[2] The LPRT's jurisdiction over land use planning matters is established under the *Act*, which directs appeals of ISDAB decisions to the Alberta Court of Appeal – not the LPRT. Even if the matter had been filed with the LPRT at first instance, the LPRT could not have heard it. The *Act* and *Matters Related to Subdivision and Development Regulation (Regulation)* only direct appeals of DA decisions to the LPRT if the land is affected by an approval from a listed Provincial agency, and no such approval exists in this case.

## BACKGROUND

[3] This appeal was filed with the LPRT September 3, 2024. While the appeal form was marked as an appeal of a Subdivision Authority Decision, it is an appeal of an approved Development Permit, which the ISDAB approved on appeal on August 22, 2024. Its decision identified that an application to appeal could be made to the Court of Appeal on questions of jurisdiction or law.

[4] On receipt of the appeal form, LPRT administration issued a case management letter to the Appellants noting that the LPRT's enabling legislation (section 488(1)) of the *Act* does not list appeals of ISDAB decisions as matters the LPRT can hear. This letter also stated that the Appellants may request a preliminary hearing to make a final determination on the LPRT's ability to hear their appeal. The Appellants filed such a request on October 10, 2024, and this decision arises from that preliminary hearing.

## ISSUE

[5] Does the LPRT have jurisdiction to hear this appeal of a decision of the Lamont County ISDAB?

## SUMMARY OF THE DA'S POSITION

[6] The DA stated the approval in question has no land use impact as it is for internal redevelopment of an existing building for use as a liquor store. The proposed liquor store is a discretionary use under the Land Use Bylaw (LUB) and must not be within "reasonable proximity" to schools, churches, or parks. Reasonable proximity is not defined in the LUB. There is a church and a public park in the vicinity. The church is located in a commercial area that contained liquor stores and licensed businesses prior to the church's establishment. The park is a municipal facility that is not under the purview of Alberta Forestry and Parks.

[7] There is no provincial interest that would give the LPRT jurisdiction. The only provincial approval required is from Alberta Gaming, Liquor and Cannabis (AGLC) should the development proceed. Further, the DA submitted that a decision had already been made by the ISDAB.

## SUMMARY OF APPELLANTS' POSITION

[8] The Appellants view the proposed development as too close to a church and a park, which may violate of the Town's current LUB.

[9] The Appellants had understood that an application to appeal the decision of the ISDAB to the Court of Appeal must be made through the LPRT, which could then rule on whether the appeal would be heard by the Court.

## FINDING and DECISION

[10] The appeal is dismissed, since the LPRT has no legal ability to hear it.

## REASONS

[11] The LPRT is an administrative tribunal established under the *Act*. As such, its jurisdiction flows from the *Act* and it has no more power than the Legislature has conferred on it, either expressly or implicitly. Section 488(1) of the *Act* sets out what land use planning matters the Tribunal has jurisdiction to hear. The *Act* states:

### Jurisdiction of the Tribunal

488(1) The Tribunal has jurisdiction

- (a) to hear complaints about assessments for designated industrial property,
- (b) to hear any complaint relating to the amount set by the Minister under Part 9 as the equalized assessment for a municipality,
- (c) repealed 2009 c29 s34,
- (d) to decide disputes between a management body and a municipality or between 2 or more management bodies, referred to it by the Minister under the Alberta Housing Act,
- (e) to inquire into and make recommendations about any matter referred to it by the Lieutenant Governor in Council or the Minister,
- (e.1) to perform any duties assigned to it by the Minister or the Lieutenant Governor in Council,
- (f) to deal with annexations in accordance with Part 4,
- (g) to decide disputes involving regional services commissions under section 602.2,
- (h) to hear appeals pursuant to section 619,
- (i) to hear appeals from subdivision decisions pursuant to section 678(2)(a),
- (i.1) to hear appeals from development permit decisions pursuant to section 685(2.1)(a)
- (j) to decide intermunicipal disputes pursuant to section 690, and
- (k) to hear appeals pursuant to section 648.1, and
- (l) to hear appeals from decisions made under an appeal mechanism or dispute resolution mechanism established by a growth management board under section 708.08.

[12] Section 488 neither states explicitly nor implies that the LPRT has jurisdiction over appeals of SDAB or ISDAB decisions. Further, s. 688(1) of the *Act* directs appeals of such decisions to the Alberta Court of Appeal, subject to an application for leave to appeal

**688(1)** An appeal lies to the Court of Appeal on a question of law or jurisdiction with respect to

- (a) a decision of the subdivision and development appeal board, and
- (b) a decision made by the Land and Property Rights Tribunal ...

**(2)** An application for permission to appeal must be filed and served within 30 days after the issue of the decision sought to be appealed, and notice of the application for permission to appeal must be given to

- (a) the Land and Property Rights Tribunal or the subdivision and development appeal board, as the case may be, and
- (b) any other persons that the judge directs.

[13] It is possible the Appellant took the requirement to notify the LPRT of an application for permission to appeal as an indication that the LPRT could hear it; however, when read in context, there is no doubt that this responsibility falls to a judge of the Court of Appeal – not the LPRT.

[14] Given that the ISDAB heard the initial appeal and rendered its decision, the only appropriate appeal route from that point was to the Court of Appeal under s. 688. However, even if the Appellant had filed its initial appeal of the DA's decision with the LPRT, the LPRT could not have heard it. While s. 685(2.1) of the *Act* allows the LPRT to hear appeals of some DA decisions, it limits this jurisdiction (together with s. 27 of the *Regulation*) to circumstances where the land is also the subject of a license, approval, permit or authorization from certain provincial agencies (such as Alberta Environment and Parks). In this case, there is no evidence any such authorization exists; therefore, even if the Appellant had appealed the DA's decision to the LPRT, the LPRT would have referred it to the ISDAB, which was the appropriate board to hear it.

[15] The LPRT understands the Appellants are frustrated with the process and the outcome of the DA and ISDAB decisions. However, the only possible conclusion is that the LPRT has no jurisdiction to hear this matter.

Dated at the City of Calgary in the Province of Alberta this 10th day of January, 2025.

**LAND AND PROPERTY RIGHTS TRIBUNAL**

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(SGD) G. Sokolan, Member

## **APPENDIX A**

### **PARTIES WHO ATTENDED, MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING**

| <b>NAME</b> | <b>CAPACITY</b>                             |
|-------------|---|
| S. Park     | Appellant                                   |
| M. Park     | Appellant                                   |
| P. Forsyth  | Town of Bruderheim DA                       |
| D. Irving   | Lamont County ISDAB, Observer               |
| J. McIsaac  | Lamont County ISDAB, Observer               |
| C. Benoit   | Lamont County ISDAB, Observer               |
| A. Styles   | Observer, language assistant for Appellants |
| J. Semeniuk | Observer                                    |

## **APPENDIX B**

### **DOCUMENTS RECEIVED PRIOR TO THE HEARING**

| <b>NO.</b> | <b>ITEM</b>   |
|------------|---|
| 1A         | Appellant's Notice of Appeal and Initial Submission |
| 2R         | LPRT Documents                                      |
| 3          | LPRT Case Management Letter                         |
| 4A         | Request for Hearing                                 |
| 5A         | Map   |
| 6AP        | Written Submission Lee                              |

## APPENDIX C

### LEGISLATION

The *Act* and associated regulations contain criteria that apply to appeals of subdivision and development decisions. While the following list may not be exhaustive, some key provisions are reproduced below.

#### ***Municipal Government Act***

##### Jurisdiction of the Tribunal

488(1) The Tribunal has jurisdiction

- (a) to hear complaints about assessments for designated industrial property,
- (b) to hear any complaint relating to the amount set by the Minister under Part 9 as the equalized assessment for a municipality,
- (c) repealed 2009 c29 s34,
- (d) to decide disputes between a management body and a municipality or between 2 or more management bodies, referred to it by the Minister under the *Alberta Housing Act*,
- (e) to inquire into and make recommendations about any matter referred to it by the Lieutenant Governor in Council or the Minister,
- (e.1) to perform any duties assigned to it by the Minister or the Lieutenant Governor in Council,
- (f) to deal with annexations in accordance with Part 4,
- (g) to decide disputes involving regional services commissions under section 602.2,
- (h) to hear appeals pursuant to section 619,
- (i) to hear appeals from subdivision decisions pursuant to section 678(2)(a),
- (i.1) to hear appeals from development permit decisions pursuant to section 685(2.1)(a)
- (j) to decide intermunicipal disputes pursuant to section 690, and
- (k) to hear appeals pursuant to section 648.1, and
- (l) to hear appeals from decisions made under an appeal mechanism or dispute resolution mechanism established by a growth management board under section 708.08.

##### Grounds for appeal

Section 685 addresses grounds for appeal of a decision by the Development Authority

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal the decision in accordance with subsection (2.1).

(1.1) A decision of a development authority must state whether an appeal lies to a subdivision and development appeal board or to the Land and Property Rights Tribunal.

(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal the

decision in accordance with subsection (2.1).

(2.1) An appeal referred to in subsection (1) or (2) may be made

(a) to the Land and Property Rights Tribunal

(i) unless otherwise provided in the regulations under section 694(1)(h.2)(i), where the land that is the subject of the application

(A) is within the Green Area as classified by the Minister responsible for the *Public Lands Act*,

(B) contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site,

(C) is the subject of a licence, permit, approval or other authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board or Alberta Utilities Commission,

or

(D) is the subject of a licence, permit, approval or other authorization granted by the Minister of Environment and Protected Areas or the Minister of Forestry, Parks, and Tourism,

or

(ii) in any other circumstances described in the regulations under section 694(1)(h.2)(ii),

or

(b) in all other cases, to the subdivision and development appeal board.

(3) Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under section 683.1(8).

(4) Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

(a) is made by a council, there is no appeal to the subdivision and development appeal board, or

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

## Law, jurisdiction appeals

688(1) An appeal lies to the Court of Appeal on a question of law or jurisdiction with respect to

(a) a decision of the subdivision and development appeal board, and

(b) a decision made by the Land and Property Rights Tribunal

(i) under section 619 respecting whether a proposed statutory plan or land use bylaw amendment is consistent with a licence, permit, approval or other authorization granted under that section,

(ii) under section 648.1 respecting the imposition of an off-site levy or the amount of the levy,

- (iii) under section 678(2)(a) respecting a decision of a subdivision authority, or
- (iv) under section 690 respecting an intermunicipal dispute.

(2) An application for permission to appeal must be filed and served within 30 days after the issue of the decision sought to be appealed, and notice of the application for permission to appeal must be given to

- (a) the Land and Property Rights Tribunal or the subdivision and development appeal board, as the case may be, and
- (b) any other persons that the judge directs.