

In the Court of Appeal of Alberta

Citation: Acheson v St Albert (City), 2026 ABCA 304

Date: 20260925

Docket: 2603-0124AC

Registry: Edmonton

Between:

Gary Acheson and Sarasota Homes Ltd.

Applicants

- and -

**City of St. Albert,
St. Albert Subdivision and Development Appeal Board and
Muslim Association of St. Albert**

Respondents

Corrected judgment: A corrigendum was issued on September 28, 2026; the correction has been made to the counsel appearances page, and the corrigendum is appended to this judgment.

**Reasons for Decision of
The Honourable Justice Anne Kirker**

Application for Permission to Appeal

Reasons for Decision of The Honourable Justice Anne Kirker

Introduction

[1] The applicants, Gary Acheson and Sarasota Homes Ltd., apply under section 688 of the *Municipal Government Act*, RSA 2000, c M-26 (*MGA*) for permission to appeal a decision of the St. Albert Subdivision and Development Appeal Board (SDAB).

Background

[2] In February 2026, the City of St. Albert issued a development permit authorizing the construction of a mosque in the Campbell Business Park. Under the City of St. Albert Land Use Bylaw 18/2024 (LUB), the proposed development is in the Business Park 2 (BP2) district, the purpose of which is:

... to provide an architecturally consistent working environment for a mixture of commercial and light industrial uses to achieve development in a park-like setting that is an economic asset to the owners, neighbours, and the community. This District encourages attractively designed buildings with limited outdoor storage, provides for an abundance of landscaping, and establishes land uses that do not create air, ground, noise, and water pollution.

The proposed development is a “religious assembly”, which is a discretionary use in the BP2 district. It is also subject to the City of St. Albert Municipal Development Plan Bylaw 20/2020 (MDP) and the Campbell Business Park North Area Structure Plan Bylaw 9/2003 (ASP).

[3] The applicants are owners and operators of a commercial property adjacent to the proposed development. They appealed the issuance of the development permit to the SDAB. They argued the proposed development was inconsistent with the planned commercial and light industrial purpose of the BP2 district and the land use purposes in the relevant bylaws, and that it would have a serious and detrimental impact on their property and business.

[4] In upholding the issuance of the development permit, the SDAB first addressed whether the proposed development was compatible with neighbouring uses and found that it was. The SDAB considered that the presence of three existing religious assemblies in the area, including a mosque, provided “strong grounds to suggest that the proposed development” was compatible with neighbouring uses. The SDAB also found the proposed development met the BP2 district’s purpose because it would be an attractively designed building with no outdoor storage or noise and because there were no specific safety impacts that would lead to a finding of incompatibility. In response to concerns that the proposed development would disadvantage neighbouring businesses

by creating an increase in traffic and parking demand, the SDAB noted that there were four daycare facilities in the area that had high traffic and parking demand for drop off and pick up five days a week, that the peak parking demand for the proposed development would be different and limited to one day a week, and that once the proposed development was operational many on-street parkers near the current mosque in the area would be accommodated in the new on-site lot.

[5] The SDAB next addressed the applicants' concern about the potential capacity of the proposed development and the associated need for increased parking. The SDAB noted that in a worst-case scenario during peak Friday afternoon prayers at the mosque, there would be a surplus of parking stalls in the Campbell Business Park based on the mosque's proposed occupancy capacity of 530 people and the availability of on-street stalls as described in the developer's Traffic Impact Assessment. The SDAB was of the view that the applicants' concern about the potential capacity of the proposed development being greater than 530 people was speculative, noting that any change in intensity of use above the mosque's proposed capacity of 530 people would require a new development permit.

[6] Finally, in concluding that the proposed development complied with the MDP and the ASP, the SDAB reasoned:

The appellant's counsel ... was candid in his observation that the MDP (Flourish) "is silent on large scale religious assemblies with significant unsupported parking." In the absence of any specific policies dealing with religious assemblies, the Board finds that the proposed development was consistent with the MDP.

With respect to the [ASP]; the Board notes that the ASP is out of date. The ASP was established by Bylaw 9/2003 in 2003 and relies on policies and Bylaws such as Bylaw 18/94 that are also out of date. The Board was not presented with any evidence or argument that indicated that the proposed development was inconsistent with the terms of the ASP, the Board finds that the proposed development complies.

Application for Permission to Appeal

[7] The applicants frame their application for permission to appeal the SDAB decision around three questions:

- (a) Can the SDAB expressly disregard applicable statutory plans as being outdated?
- (b) Can the SDAB ignore objectives and policy set out in applicable statutory plans and substitute its own criteria of neighbourhood compatibility to approve a development that, properly considered, is not compatible with the surrounding area?

- (c) Can the SDAB ignore relevant evidence as to the nature of the proposed development and its impact on the surrounding area?

[8] Permission to appeal a decision of the SDAB may be granted under section 688(3) of the *MGA* if “the appeal involves a question of law of sufficient importance to merit a further appeal and has a reasonable chance of success.”

[9] A proposed ground of appeal will generally be “of sufficient importance” if it is jurisprudentially significant or has implications that go beyond the dispute between the parties: *Borgel v Paintearth (Subdivision and Development Appeal Board)*, 2019 ABCA 25 at para 11, citing *Carleo Investments Ltd v Strathcona (County)*, 2014 ABCA 302 at para 10. A proposed appeal has a “reasonable chance of success” if it is arguable, and a question of law is arguable if it is not frivolous: *L’il Rock Enterprise Ltd v Black Diamond (Town)*, 2022 ABCA 371 at para 6, citing *Edmonton (City of) Library Board v Edmonton (City of)*, 2020 ABCA 170 at para 10 and *Osman Auction Inc v Edmonton (City)*, 2015 ABCA 135 at para 34.

Analysis

Proposed Grounds 1 and 2: The SDAB’s Consideration of Applicable Statutory Plans

[10] The applicants submit that by virtue of section 687(3) of the *MGA*, the SDAB was required to identify and interpret the provisions of the MDP, ASP and the LUB that were applicable to the proposed development and to assess whether the proposed development complied with them. The applicants argue the SDAB erred in law by failing to meaningfully engage with the applicable statutory plans and instead dismissing the ASP as outdated and deciding in a conclusory way that the MDP’s silence on religious assemblies meant the proposed development was consistent with the MDP’s objectives.

[11] The applicants are also concerned that the SDAB considered only whether comparable uses already existed and if past harm had materialized and did not undertake a prospective analysis, which they argue is required by *Rossdale Community League (1974) v Edmonton (Subdivision and Development Appeal Board)*, 2009 ABCA 261. They point to the SDAB’s statement that it “was not presented with any evidence or argument” about the proposed development’s inconsistency with the ASP, which the applicants contend is incorrect. The applicants say that the SDAB was required to consider whether the proposed development was compatible with the development concept as set out in the ASP, particularly because the Campbell Business Park is only partially developed and is zoned for commercial and industrial use.

[12] The developer’s opposition to the application for permission to appeal on the first two grounds focuses primarily on the strength, or lack thereof, of the applicants’ proposed arguments. The developer argues the SDAB correctly referenced section 687(3) of the *MGA* and examined

the provisions of the MDP, ASP and the LUB, and that its reasons for finding “that the proposed development complies” suffice when considered in the context of the record.

[13] I am satisfied that the applicants’ first and second proposed grounds of appeal warrant review by a panel of this Court. The issues about whether the SDAB correctly considered the applicable statutory plans and whether the proposed development complies with them raise questions of law that have implications beyond the dispute between the parties. They also meet the “reasonable chance of success” threshold in that they are arguable.

Proposed Ground 3: The SDAB’s Capacity Finding

[14] The applicants’ central concern under its third proposed ground of appeal is the SDAB’s conclusion respecting the occupancy of the proposed development. They contend that the SDAB disregarded the full design capacity of the proposed development as shown in the approved architectural plans and considered only the proposed occupancy capacity figure put forward by the developer. According to the applicants, the SDAB’s erroneous determination of the mosque’s capacity at 530 people, as opposed to the potential for more than 837 people when the basement worship space is considered, tainted the entirety of the compatibility and parking analysis. While framed as a question of law, this proposed ground of appeal involves a question of fact that cannot be appealed to this Court: *MGA*, s 688(3). “There is no appeal with respect to errors of fact or the treatment of evidence, and that type of error should not be artificially characterized as an error of law in support of a right of appeal”: *Mohr v Strathcona (County)*, 2018 ABCA 205 at para 3.

[15] The applicants also say the SDAB failed to provide sufficient reasons for why it rejected the applicants’ capacity evidence as “speculative” and that it did not adequately explain why it refused to rely on the architectural plans and evidence of the City of St. Albert engineer who recognized the additional basement prayer space. Section 687(2) of the *MGA* requires the SDAB to provide reasons. However, the adequacy or sufficiency of reasons is generally not a standalone ground of appeal given the contextual analysis involved in assessing reasons: *Stubicar v Calgary (Subdivision and Development Appeal Board)*, 2022 ABCA 299 at para 62; *Fraser v Edmonton (City)*, 2021 ABCA 195 at paras 35-36. It is well established that “[t]he sufficiency of the reasons provided by the Board must be addressed in the context of the issues advanced by the parties and the record of proceedings. They are addressed from the perspective of whether an informed reader could determine why the decision was made from the reasons provided”: *Pattison Outdoor Advertising Ltd v Edmonton (City)*, 2026 ABCA 262 at para 9. I agree with the developer that in this case, the reasons explain why the SDAB accepted the 530-occupant capacity figure. In confirming the development permit, the SDAB preserved the condition requiring a separate development permit application and approval for “any change of Use, or change in the intensity of Use”.

[16] In summary, with respect to the issue of the SDAB's acceptance of the 530-occupant capacity figure, I am not satisfied the applicants have identified a question of law of sufficient importance that has a reasonable chance of success on appeal.

Conclusion

[17] The application for permission to appeal is allowed on the first and second proposed grounds of appeal.

Application heard on August 27, 2026

Reasons filed at Edmonton, Alberta
this 25th day of September, 2026

Kirker J.A.

Appearances:

W.J. Kenny, KC

N.R.L. Kunysz

for the Applicants

D. Young

for the Respondent City of St. Albert

G. Stewart-Palmer, KC

for the Respondent St. Albert Subdivision and Development Appeal Board

Z. Al-Khatib

J.N. Tarrabain (no appearance)

for the Respondent Muslim Association of St. Albert

Corrigendum of the Reasons for Decision

Corrected Appearances page to read:

Z. Al-Khatib

J.N. Tarrabain (no appearance)

for the Respondent Muslim Association of St. Albert