



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: September 11, 2018
Project Number: 287406357-001
File Number: SDAB-D-18-127

Notice of Decision

- [1] On August 29, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 3, 2018**. The appeal concerned the decision of the Development Authority, issued on July 31, 2018, to approve the following development:

Convert a Single Detached House to a Child Care Service (maximum 36 children) and to construct interior alterations.

- [2] The subject property is on Plan 4786TR Blk 4 Lot 1, located at 3226 - 108 Street NW, within the (RF1) Single Detached Residential Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
 - The Development Officer’s written submission and a community consultation provided by the Respondent;
 - The Appellant’s written submissions;
 - The Respondent’s submissions;
 - On-line responses and e-mails from property owners; and
 - An additional submission by an adjacent property owner.
- [4] The following exhibit was presented during the hearing and form part of the record:
- Exhibit A – A written submission read by the Respondent.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, Ms. R. Milner

- [8] Ms. Milner indicated that she is representing the neighbouring property owners.
- [9] She was approached by the Respondent regarding the daycare but did not sign the petition as she required more information. Her address was listed on the community consultation in support of the proposed development even though she did not sign the petition. In her opinion, the petition submitted by the Respondent is incorrect.
- [10] Some of the neighbours that signed the petition in support were told that the proposed development was for a dayhome and not a daycare. She felt the information provided on the development permit is not clear.
- [11] Seven of the eight closest neighbours to the subject site are not in support of the proposed development.
- [12] In her opinion, the proposed development will not be suitable for the size of the subject site.
- [13] There are four other daycares on commercial properties within a seven block radius that have the required number of parking spaces.
- [14] Ms. Milner provided the following information in response to questions by the Board:
- a. She feels that a dayhome does not have as many children as a daycare and will have less of an impact on the neighbourhood.
 - b. The Presiding Officer confirmed that the proposed development is for 36 children and not 50 children.
 - c. Ms. Milner did not receive any information from the Respondent before she spoke to him or after regarding the proposed development.

ii) Position of Affected Property Owners in Support of the Appellant

Ms. S. den Besten

- [15] Ms. den Besten is representing the Ermineskin Community League in her capacity as Vice-President.
- [16] She is aware of the *Edmonton Zoning Bylaw* community consultation process, but feels that the required 60-metre notification area should have been expanded. In her opinion, sufficient community consultation was not done with the community.
- [17] In her opinion, an assessment should have been done to determine if there was demand for a daycare in this neighbourhood.
- [18] She sits on the school council and feels that there will be an increase in traffic to the neighbourhood, which is already busy.
- [19] This is a bus route area and new bus drivers are often trained in this area. Adding traffic to the area is a concern.
- [20] In her opinion, consultation should have been done with the other daycares in the area. In her opinion, the use of a dayhome is different than a daycare.

Ms. C. Nistor

- [21] Ms. Nistor read from her submission that was provided to the Board.
- [22] Her main concern is that there will be additional pedestrian and vehicular traffic in the neighbourhood.
- [23] Several vehicles park along 32A Avenue because of the limited parking at the Century Park LRT station.
- [24] Vehicles cut through 32A Avenue which increases the traffic making it difficult to get in and out of the neighbourhood.
- [25] Dropping off and picking up children at the daycare will create a safety issue in the neighbourhood.
- [26] Children attending the school have to cross 32A Avenue and 108 Street, which will be a safety concern.
- [27] It can be dangerous for vehicles exiting 108 Street onto 32A Avenue in either direction when cars are parked along 32 Avenue at the end of the street.

- [28] Vehicles regularly make unsafe u-turns on the street to regain access to 32A Avenue. All of this traffic and congestion will increase the risk of accidents to the neighbourhood.
- [29] There are several daycares operating in the area, as well as a dayhome one block from the subject site.
- [30] In her opinion, the proposed daycare will be the size of a small school operating out of a residential property.
- [31] In her opinion, ten properties on the block will be negatively impacted by vehicles blocking their driveways and parking in front of their properties if the proposed daycare is approved.
- [32] There will be an increase in noise with 36 children at the subject site.
- [33] She spoke to a realtor who indicated that the daycare will decrease the property value of their homes.
- [34] In her opinion, the proposed daycare will interfere with the enjoyment and value of the houses in the neighbourhood.
- [35] Ms. Nistor provided the following information in response to questions by the Board:
- a. There is a school bus stop across from the subject site but she could not confirm how many children use the bus stop. Several school buses come to the neighbourhood.
 - b. She referred to the aerial map from the Respondent and pointed out the school bus stops in the area.
 - c. She stated that there are at least three buses that serve the school, which is along a bus route where children are picked up.
 - d. Individuals can cross the street safely at the cross walk at 107A Street but children also cross at 108 Street.
- [36] All of the houses along 107A Street do not have rear lanes.
- [37] The busiest times for school traffic are 7:30 a.m. to 8:30 a.m. and 3:30 p.m. to 4:30 p.m.

Mr. K. McMullin

- [38] Mr. McMullin indicated that he is the President of the Ermineskin Community League and is a resident on the same street of the subject site.
- [39] He referred to the aerial map submitted by the Respondent and pointed out the entrances to the school.

- [40] School buses and ETS stop along 32A Avenue. Parents drop off children along the fence line by the bus stop across from the subject site.
- [41] He has had to wait for vehicles to clear the road as people often make U-turns in front of the school.
- [42] During school hours, 32A Avenue is busy until 5:00 p.m. when parents pick up their children at the YMCA daycare at the back of the school.
- [43] The road becomes narrow when vehicles are travelling slowly in the playground area.
- [44] He stated that 32A Avenue is a collector road and 108 Street is not regularly plowed.
- [45] In his opinion, additional vehicles coming to the area will have an impact on the condition of the roads.

iii) Position of Ms. R. Lee, on behalf of the Development Officer, Mr. N. Shah

- [46] The Development Authority provided a written submission and did not attend the hearing.

iv) Position of the Respondent, Mr. S. Borno

- [47] Mr. Borno indicated that one of the letters in support of the appeal was from a property owner outside the 60-metre notification area and is not an affected party. The Presiding Officer agreed with this information.
- [48] Mr. Borno referred to his notes, marked *Exhibit A*.
- [49] He and his wife are residents of Edmonton and own the subject property. Ms. Borno is an experienced Child Care Educator, licensed as a child care provider by the Province of Alberta.
- [50] After meeting the City with a long check list of requirements, and after rigorous review and several back and forth changes/amendments, the City concluded that the application and plans for a child care service were in compliance with the related Bylaws and guidelines and therefore granted a development permit for a child care service for a maximum of 36 children.
- [51] They are putting their life savings into this development and were very excited to go ahead with this investment but were sorry to learn later that there was an appeal against their child care service.

- [52] Although community consultation was not required, he and his wife thought talking to their neighbours about the development was courteous and believed it was the right thing to do. They were not provided any guidelines by the City on how to conduct a community consultation, so they went door to door on weekends as they work during the weekdays.
- [53] They had friendly talks with their neighbours, answered their questions and showed their proposed plans.
- [54] Mr. Borno provided the following points related to traffic concerns:
1. The subject house is located on a corner lot on a T-intersection of 108 Street and 32A Avenue overlooking Steinhauer Park (a green open area with no houses) as shown on the aerial photograph.
 2. The T-intersection is exactly 135 metres away from the Steinhauer School main entrance; therefore the parked cars along 32A Avenue dropping off children to the School reaching all the way to their T-intersection would be minimal. If the cars do reach their intersection, the drop-off and pick-up times would be for a brief 5 to 10 minutes, which is normal around schools.
 3. The subject site is located 1.1 kilometres away from the Century Park LRT station. In his view, no one would park on their street to walk that distance to the LRT station.
 4. The photographs provided with the appeal documents of congested parking at the intersection of 108 Street and 32A Avenue were taken on a Tuesday evening on August 22. The vehicle congestion was due to their next-door neighbour having a dinner party that particular evening.
 5. Mr. Borno referred to his photographs to show the available street parking during a normal day.
 6. The daycare hours of operation will be from 6:30 am to 6:00 pm from Monday to Friday. He indicated that daycares operate differently from schools and children are not required to be at the daycare at a certain time in the morning. Some children are dropped off as early as 6:30am or 7:00am, some at 8:15am to 8:30am during the Steinhauer School drop-off time, and others would be dropped off later, depending on when their parents go to work.
 7. In conclusion, children will be dropped off and picked up at different times and not necessarily at the same time as Steinhauer School. In his opinion, the proposed daycare will not cause an increase in traffic around the School or the subject site.

[55] They will adhere to the City's instructions and the Traffic Department's instructions regarding drop off areas and safety signage, and they will always cooperate with the neighbours.

[56] Mr. Borno provided the following information in response to questions by the Board:

- a. Ms. Milner initially supported the daycare, but after she learned there would be a maximum of 36 children, she changed her mind.
- b. The subject site has a rear lane and there are two on-site parking spaces at the rear and three parking spaces at the side of the house abutting 108 Street. The two spaces in the rear are not yet paved, but will be hardsurfaced as part of their approval conditions.
- c. Most of the children at their daycare will come from the neighbourhood and will be given priority for registering, but they will also allow children from outside the neighbourhood.
- d. The daycare will have children from all ages but the majority will be under school age. Any child that goes to school will be accompanied by a daycare worker.
- e. They purchased the house in May 2018. They do not live at the subject house.
- f. Their photographs were taken in the summer and not during school hours.
- g. With regard to the number of workers on-site, Mr. Borno explained that the Province will establish the number of workers based on a staff to children ratio. He expects there will be two staff members and his wife.
- h. With regard to the community consultation, some neighbours asked to see the plans, some had questions and some did not have any questions.

v) *Rebuttal of the Appellant, Ms. R. Milner*

[57] In her opinion, the proposed development does not meet the requirements of the *Edmonton Zoning Bylaw*.

[58] She stated that there are no parking spaces at the back of the subject site.

[59] The Respondent does not live in the house or in the neighbourhood.

[60] The Respondent indicated that the daycare would be serving the Steinhauer community but that could not be confirmed. There are other daycares in the area that serve the community and are easily accessible.

- [61] She confirmed that people park along the streets in their neighbourhood and walk to the Century Park LRT Station.
- [62] In her opinion, a more comprehensive community consultation should have been done.
- [63] She stated that the Respondent does not know how busy the neighbourhood is as he has never been in the community during school hours.
- [64] There is no justification or benefit to the community to approve the proposed daycare.
- [65] In her opinion, the proposed development will unduly interfere with the amenities of the neighbourhood, and materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.

Decision

- [66] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **REFUSED**.

Reasons for Decision

- [67] The proposed development, a Child Care Service, is a Discretionary Use in the (RF1) Single Detached Residential Zone.
- [68] The Board finds that a Child Care Service for 36 children is a significant overdevelopment for this location and is more compatible in a commercial location for the reasons that follow.
- [69] As part of the Development Officer's initial review, there was no evidence that he visited the Site, irrespective that he was not required to attend and having heard adjacent property owners, there was strong neighbourhood opposition at the hearing and in writing.
- [70] With respect to safety, the Board accepts the submission of the Appellant, confirmed by photographs supplied by the Respondent that there is no crosswalk from the subject Site across 32A Avenue and agrees that this is a logical place for students to cross.
- [71] The Board accepts the photographic evidence and verbal verification from the neighbours that there is already traffic congestion. Consequently, the Board does not accept that a Child Care Service for 36 children will not create more congestion in an already busy area.

In arriving at its decision, the Board does not give significant weight to the photographs from the Respondent demonstrating that there are no vehicles on the street, because they were taken in the summer outside school hours and in the evening when the school is not in use.

- [72] Taken into totality, the Board is of the view that the proposed development is better suited in a commercial space given the size. The Board notes that it may have made a different conclusion if there was a significant reduction in traffic intensity or the number of children.
- [73] The Board finds the submissions of the President of the Ermineskin Community League were helpful respecting traffic safety at the Site and the neighbourhood and accepts the feedback from adjacent neighbours that the proposed development will have a material impact on the neighbourhood.
- [74] The Board heard evidence of four other Child Care Services in the area, and although commercial viability is not under the Board's purview, the number of Child Care Services operating in the vicinity lends the Board to conclude that by adding another Child Care Service may have an impact on traffic flow and parking in the already congested area.
- [75] The Board finds that it is not unreasonable to presume that, given the proximity of the LRT station, individual families from outside the neighbourhood would use the proposed development and the LRT station.
- [76] Based on the foregoing, it is the opinion of the Board that the proposed development is not reasonably compatible with the neighbourhood.



Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. V. Laberge; Mr. A. Nagy; Mr. D. Fleming; Mr. J. Wall

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.



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Date: September 11, 2018
Project Number: 241839966-009
File Number: SDAB-D-18-128

Notice of Decision

- [1] On August 29, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 7, 2018**. The appeal concerned the decision of the Development Authority, issued on July 24, 2018, to approve the following development:

Amend the design of an approved Recycling Depot.

- [2] The subject property is on NW-31-53-23-4, located at 16035 – Fort Road NW and Plan 1820101 Blk C Lot 3, located at 16035 – Fort Road NW, within the (IB) Industrial Business Zone. The Pilot Sound Area Structure Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
 - The Development Officer’s written submission;
 - The Respondent’s written submissions; and
 - The Appellant’s written submission.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – A petition in support of the original Recycling Depot application submitted by the Respondent.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[7] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, Mr. W. Green

[8] Mr. Green's main concern is the lack of details related to water and sewage drainage. He does not believe there is a plan in place.

[9] In his opinion, crime in the area will increase with additional traffic coming to the subject site. The additional traffic will also cause congestion and will worsen the already poor roadway conditions.

[10] He is concerned that there will be an excess of garbage on the subject site and people loitering on the site, which will flow into his property. He is also concerned that his property will be damaged.

[11] In his opinion, the proposed development would be better situated in a different location.

[12] He is aware that the zoning of the subject site is different than his property.

[13] The Presiding Officer pointed out that the proposed design amendment is a reduction in size to the current approved development.

Mr. Green stated that he was not aware of the reduction in the size of the development.

[14] Mr. Green provided the following information in response to questions by the Board:

a. He is not concerned of what is currently happening at the subject site but what may happen in the future.

b. He lives on an acreage and is aware of how sewage drains on large properties.

ii) Position of the Development Officer, Mr. I. Welch

[15] The Development Authority provided a written submission and did not attend the hearing.

iii) Position of Mr. B. Gardner, representing Gardner Architecture Incorporated, who was accompanied by Mr. K. Pannu, representing the Respondent, Southwark Developments Ltd.

- [16] The sewage system was designed to hold a large capacity and is pumped out once a week.
- [17] There are plans to service the area in the future but they could not confirm when this would take place.
- [18] The facility is new and landscaping will be done to make the site aesthetically pleasing.
- [19] Individuals using the property will not be generating crime in the area.
- [20] The road accessing the subject site is already busy regardless of what is on the subject site.
- [21] Mr. Gardner and Mr. Pannu provided the following information in response to a question by the Board:
- a. They confirmed that subject site will only be fenced along the Appellant's property line.
- [22] Mr. Pannu is the co-owner of the subject site with his parents.
- [23] They have 15 years of experience in the recycling depot industry.
- [24] Each of the recycling depots they their own have security cameras on the site and are monitored. There will be 16 security cameras on the subject site.
- [25] They had to bid for the recycling depot license and were chosen as they have a good reputation running their other recycling depot locations.
- [26] The subject site complies with the Pilot Sound Area Structure Plan.
- [27] Mr. Pannu provided the Board with a copy of a petition with 11 signatures from neighbouring property owners in support of the original approved Recycling Depot, including the Appellant. (*Exhibit A*).

iv) Rebuttal of the Appellant, Mr. W. Green

- [28] He was not aware the recycling depot would be adjacent to his property when he signed the petition in support and would like to have his name removed.

- [29] His main concern is that items and garbage from the subject site will blow onto his property.
- [30] In his opinion, there are enough recycling depots in the area.
- [31] Mr. Green provided the following information in response to questions by the Board:
- a. He does not have any statistics of crime in relation to the operation of recycling depots.
 - b. His property is zoned AG Agricultural but his house is rented out and there is no other development occurring on the land.

Decision

- [32] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority.

Reasons for Decision

- [33] The proposed development is to amend the design to an approved Recycling Depot that is a Discretionary Use in the (IB) Industrial Business Zone.
- [34] The Board first heard from Appellant, an immediate neighbour to the subject Site. He expanded on his written submission. His verbal presentation confirmed that he had concerns with sewage, increased crime, road traffic and the general appearance of the Recycling Depot.
- [35] While the Board appreciates the concerns of the Appellant, the Board finds no planning reason aligned with his submissions to revoke the amended design of the already approved Recycling Depot. The points made by the Appellant regarding crime and garbage are outside the purview of the Board and are matters related to Bylaw Enforcement and the Edmonton Police Service. Such comments respecting crime are speculative in nature.
- [36] The Respondent advised that water servicing was acceptable by the City and sewage was designed adequately for the subject Site and is picked up once a week.

- [37] The Respondent provided the Board with signatures of support from 11 adjacent properties in support of the original Recycling Depot application.
- [38] Based on the foregoing, the appeal is denied the decision of the Development Authority is confirmed.



Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. V. Laberge; Mr. A. Nagy; Mr. D. Fleming; Mr. J. Wall

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.