

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Wednesday, 9:00 A.M.
April 11, 2018**

**Hearing Room No. 3
Churchill Building,
10019 - 103 Avenue NW,
Edmonton, AB**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING ROOM NO. 3**

I	9:00 A.M.	SDAB-D-18-049	Change the Use from a Single Family House to a Group Home (14 residents) (People Support Services) 9910 - 213 Street NW Project No.: 267178487-001
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NOTE: ***Unless otherwise stated, all references to “section numbers” in this Agenda refer to the authority under the Edmonton Zoning Bylaw 12800.***

ITEM I: 9:00 A.M.

FILE: SDAB-D-18-049

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 267178487-001

APPLICATION TO: Change the Use from a Single Family House to a Group Home (14 residents) (People Support Services)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: March 16, 2018

DATE OF APPEAL: March 16, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 9910 - 213 Street NW

LEGAL DESCRIPTION: Plan 4799TR Lot 18B

ZONE: (RR) Rural Residential Zone

OVERLAY: N/A

STATUTORY PLAN: Lewis Farms Area Structure Plan

Grounds for Appeal

The Appellant provided the following reasons for appealing the decision of the Development Authority:

- 1) The decision discriminates against individuals with disabilities and is therefore contrary to Section 15(1) of the Canadian Charter of Rights and Freedoms,
- 2) The Zoning Bylaw 12800 pursuant to which the decision was made discriminates against individuals with disabilities and is therefore contrary to Section 15(1) of the Canadian Charter of Rights and Freedoms,

3) The decision was made outside the statutory 40 day limit and is therefore contrary to the Zoning Bylaw 12800 pursuant to which the decision was made or Section 684(1) of the MUNICIPAL GOVERNMENT ACT,

4) The Development Officer who made the decision was not lawfully designated or empowered as mandated by the Zoning Bylaw 12800 or Section 624 of the MUNICIPAL GOVERNMENT ACT such that the decision is therefore without jurisdiction,

5) The Development Officer erred in not exercising his discretion in favor of approving, with or without conditions as a Class B Discretionary Development, the application for development given that the proposed development would not have unduly interfered with the amenities of the neighborhood, nor materially interfered with or affected the use, enjoyment or value of neighboring properties,

6) The decision was made in whole or in part based on institutional or personal bias against the property itself or its owners or unduly influenced by comments made or opinions expressed to the Development Officer by employees or contractors or agents of the City of Edmonton or EPCOR, and as such the decision is contrary to even basic principles of fairness or fundamental justice, or otherwise made in bad faith,

7) The development Officer failed, contrary to law, to consider all relevant information or ignored information likely to have impacted his decision,

8) No notice of the application was given to neighboring land owners as required by law and as such the input of the community was not considered as required by law,

9) The decision failed to take into account the impact or benefit to the neighborhood as required by law,

10) The decision is inconsistent with other decisions made by Development Officers in similar applications or circumstances or involving similar principles and as such violates the spirit and intent of the MUNICIPAL GOVERNMENT ACT or is contrary to principles of fairness or fundamental justice,

11) The reasons for the decision to not address why the discretion was exercised against granting the application as a Discretionary Development and as such the decision is contrary to section 683.1(11) of the MUNICIPAL GOVERNMENT ACT,

12) The decision is contrary to the municipal development plan mandated by Section 632 of the MUNICIPAL GOVERNMENT ACT and as such is unlawful or without jurisdiction,

13) The decision is inconsistent with other decisions made in similar circumstances or involving similar principles and decided by Appeal Board or the Courts and as such the decision is unlawful or without jurisdiction,

14) The discretionary nature of the authority granted to Development Officers pursuant to Section 11 of the Zoning Bylaw 12800, as well as the lack of oversight of the exercise of that discretion renders any exercises of that discretion or decisions made by those officers so capricious or arbitrary as to violate even basic principles of fairness or fundamental justice,

15) The decision violates the Threshold Purpose stated in Section 96.2.b of the Zoning Bylaw 12800 with regard to ensuring that Special Residential Facilities are available in all neighborhoods,

16) Such further or other grounds as the Appellant may advise and the Honorable Board allow.

General Matters

Appeal Information:

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

Grounds for Appeal

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 to the subdivision and development appeal board.

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,

- (a) in the case of an appeal made by a person referred to in section 685(1)
 - (i) with respect to an application for a development permit,

- (A) within 21 days after the date on which the decision is made under section 642, [...]

Hearing and Decision

687(3) In determining an appeal, the subdivision and development appeal board

...

- (a.1) must comply with the land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;
- (a.3) subject to clause (d), must comply with any land use bylaw in effect;

...

- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

- (i) the proposed development would not

- (A) unduly interfere with the amenities of the neighbourhood, or

- (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

- (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

Non-conforming use and non-conforming buildings

643(1) If a development permit has been issued on or before the day on which a land use bylaw or a land use amendment bylaw comes into force in a municipality and the bylaw would make the development in respect of which the permit was issued a non-conforming use or non-conforming building, the development permit continues in effect in spite of the coming into force of the bylaw.

(2) A non-conforming use of land or a building may be continued but if that use is discontinued for a period of 6 consecutive months or more, any future use of the land or building must conform with the land use bylaw then in effect.

(3) A non-conforming use of part of a building may be extended throughout the building but the building, whether or not it is a non-conforming building, may not be enlarged or added to and no structural alterations may be made to it or in it.

(4) A non-conforming use of part of a lot may not be extended or transferred in whole or in part to any other part of the lot and no additional buildings may be constructed on the lot while the non-conforming use continues.

(5) A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except

- (a) **to make it a conforming building,**
- (b) **for routine maintenance of the building, if the development authority considers it necessary, or**
- (c) **in accordance with a land use bylaw that provides minor variance powers to the development authority for the purposes of this section.**

(6) If a non-conforming building is damaged or destroyed to the extent of more than 75percent of the value of the building above its foundation, the building may not be repaired or rebuilt except in accordance with the land use bylaw.

(7) The land use or the use of a building is not affected by a change of ownership or tenancy of the land or building.

General Provisions from the *Edmonton Zoning Bylaw*:

Under section 240.3(2), a **Group Home** is a **Discretionary Use** in the **(RR) Rural Residential Zone**.

Under section 7.3(3), **Group Home** means:

a building or part of a building used for Congregate Living for residents who have moderate and non-severe physical, cognitive or behavioral health issues and who require daily or frequent professional care and supervision to perform daily living tasks, improve wellness, achieve stable and harmonious tenancy, or to exit safely in case of an emergency event.

This Use does not include Extended Medical Treatment Services, Detention and Correction Facilities, Fraternity and Sorority Housing, Limited Group Homes, and Lodging Houses.

Under section 6.1(19), **Congregate Living** means:

four or more individuals occupying Sleeping Units in a building where the occupants share access to facilities such as cooking, dining, laundry, or sanitary facilities. Typical Uses where Congregate Living is found include Fraternity and Sorority Housing, Group Homes, Limited Group Homes, and Lodging Houses.

Under section 6.1(26), **Density** means “when used in reference to Residential and Residential-Related development, the number of Dwellings on a Site expressed as Dwellings per hectare.”

Under section 6.1(32), **Dwelling** means:

a self contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household.

Under section 6.1(107), **Sleeping Unit** means:

a Habitable Room in a building used for Congregate Living in which the room is occupied by a person under any form of accommodation agreement providing remuneration for the room, and the room:

1. does not include provision for cooking or food preparation except as provided for in Section 76 and 79 of this Bylaw;
2. may or may not be equipped with sanitary facilities; and
3. provides accommodation for a maximum of two persons.

Section 240.1 states that the **General Purpose** of the **(RR) Rural Residential Zone** is:

to provide for Single Detached Residential development of a permanent nature in a rural setting, generally without the provision of the full range of urban utility services. The RR Zone is intended to regulate rural residential development within existing rural residential subdivisions that existed prior to the passage of this Bylaw, and is not intended to facilitate future rural residential development and subdivision, which is contrary to the Municipal Development Plan.

Dwellings / Thresholds

Section 240.4(9) states:

The maximum number of Dwellings per Site shall be one Single Detached Dwelling, and, where the provisions of this Bylaw are met, up to one of either a Secondary Suite or Garden Suite per Site shall be allowed.

Section 240.5(2) states “Limited Group Homes, Group Homes, and Lodging Houses shall comply with Section 96 of this Bylaw.”

Section 96 provides the following with respect to *Group Homes Thresholds*:

1. Special Residential Facilities

For the purpose of this section, Fraternity and Sorority Housing, Group Homes, Limited Group Homes, and Lodging Houses shall be collectively referred to as Special Residential Facilities. Group Homes developed in combination with Apartment Housing either in one building or on one Site, and which meet the criteria of Section 94, Supportive Community Provisions, shall be exempt from the requirements of subsection 96(3)(b) and (c) of this Bylaw.

2. Threshold Purpose

The purpose of the Fraternity and Sorority Housing, Limited Group Homes, Group Homes, and Lodging Houses Thresholds is to:

- a. ensure that the capacity of any neighbourhood to accommodate Special Residential Facilities is not exceeded;
- b. ensure that Special Residential Facilities are available in all neighbourhoods; and
- c. protect existing Special Residential Facilities from concentration that could impair their proper functioning.

3. General Regulations

Special Residential Facilities shall comply with all thresholds contained in this Section in addition to any other regulations in this Bylaw including any relevant Special Land Use Provisions that apply. In all cases, the most restrictive threshold shall apply.

- a. **When determining the threshold for the number of Special Residential Facilities per neighbourhood, a maximum of 3 facilities per 1000 persons shall be allowed in any neighbourhood.**

- b. When determining the threshold for the number of Special Residential Facilities by Use per block.
 - i. a maximum of 2 Special Residential Facilities shall be allowed on a single block in a residential Zone;
 - ii. a maximum block length of 150 m measured from the nearest intersection shall be used to determine this threshold.
- c. When determining the threshold for the number of residents of Special Residential Facilities per opposing block face;
 - i. accommodation for a maximum of 12 residents shall be allowed on an opposing block face in Special Residential Facilities in any residential Zone where either Group Homes or Lodging Houses are a Discretionary Use;
 - ii. accommodation for a maximum of 30 residents shall be allowed on an opposing block face in Special Residential Facilities in any residential Zone where either Group Homes or Lodging Houses are a Permitted Use; and
 - iii. a maximum block face length of 150 m measured from the nearest intersection shall be used to determine this threshold.

4. Density

For the purposes of calculating Density for a Group Home or Lodging House each Sleeping Unit shall be considered a Dwelling when a development contains seven or more Sleeping Units.

5. Register

For the purpose of applying these regulations the Development Officer shall maintain a register of all approved Special Residential Facilities. The register shall include the address of the facility, maximum occupancy of the facility, and any other necessary information.

Development Officer's Determination

1. The maximum number of Dwellings per Site shall be one Dwelling (Section 240.4.9).

This Group Home has 14 sleeping units. In accordance to the Congregate Living Density regulation (Section 96.4), the Group Home contains 14 Dwellings. [unedited]

...

3. A maximum of 3 Congregate Living facilities per 1000 persons shall be allowed in any neighbourhood (Section 96.3.a).

A maximum of 0.2 Congregate Living facilities is allowed within the Lewis Farms Industrial Neighbourhood. [unedited]

<i>Occupancy</i>

Section 79.2 provides the following with respect to *Group Homes*:

In addition to the regulations in Section 96 of this Bylaw, Group Homes shall comply with the following regulations:

- a. **the maximum occupancy of a Group Home in a Zone where Group Homes are a Discretionary Use shall be a maximum of 6 residents;**
- b. ...
- c. the Development Officer may restrict the occupancy of a Group Home to fewer than the maximum number of residents allowed having regard for the threshold purpose identified in Section 96 of this Bylaw, the level of traffic generation, parking demand, and frequency of visits by emergency vehicles relative to that which is characteristic of the Zone in which the Group Home is located;
- d. a Group Home shall be developed as a purpose-built freestanding structure, or Single Detached Housing converted for the purpose, or part of an Apartment Housing development;
- e. ...
- f. ...
- g. no Major Home Based Business, Secondary Suite, Garden Suite or Garage Suite shall be permitted as part of a Group Home development or on the Site of such development;
- h. where a Group Home is designed as a freestanding structure it shall be of a size, scale, and outward appearance that is typical of surrounding residential development; and
- i. increases in vehicular traffic generation and parking demand must be to the satisfaction of the Development Officer and/or Transportation Services.

Development Officer’s Determination

2. The maximum occupancy of a Group Home in a Zone where Group Homes are a Discretionary Use shall be a maximum of 6 residents (Section 79.2.a).


The proposed occupancy of the Group Home is 14 residents.
[unedited]

Previous Subdivision and Development Appeal Board Decisions

Application Number	Description	Decision
SDAB-D-06-065	Operate a Major Home Occupation (Bed & Breakfast - 2 bedrooms)	April 13, 2006; that the appeal be ALLOWED and the DEVELOPMENT GRANTED with a variance being granted to Section 75(7) to allow a maximum number of eight sleeping units subject to conditions.
SDAB-D-01-048	Construct a single detached house with accessory building (detached garage).	May 23, 2001; that the appeal be ALLOWED and the development GRANTED subject to conditions.

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing. Bylaw No. 11136 requires that a verbal announcement of the Board’s decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.

	Project Number: 267178487-001 Application Date: NOV 15, 2017 Printed: March 19, 2018 at 11:13 AM Page: 1 of 2	
<h2 style="margin: 0;">Application for Major Development Permit</h2>		
This document is a Development Permit Decision for the development application described below.		
Applicant	Property Address(es) and Legal Description(s) 9910 - 213 STREET NW Plan 4799TR Lot 18B	
	Specific Address(es) Entryway: 9910 - 213 STREET NW Building: 9910 - 213 STREET NW	
Scope of Application To change the Use from a Single Family House to a Group Home (14 residents). (People Support Services)		
Permit Details		
Class of Permit: Class B Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.):	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none)	
I/We certify that the above noted details are correct. Applicant signature: _____		
Development Application Decision Refused		
Reason for Refusal		
1. The maximum number of Dwellings per Site shall be one Dwelling (Section 240.4.9). This Group Home has 14 sleeping units. In accordance to the Congregate Living Density regulation (Section 96.4), the Group Home contains 14 Dwellings.		
2. The maximum occupancy of a Group Home in a Zone where Group Homes are a Discretionary Use shall be a maximum of 6 residents (Section 79.2.a). The proposed occupancy of the Group Home is 14 residents.		
3. A maximum of 3 Congregate Living facilities per 1000 persons shall be allowed in any neighbourhood (Section 96.3.a). A maximum of 0.2 Congregate Living facilities is allowed within the Lewis Farms Industrial Neighbourhood.		
Rights of Appeal The Applicant has the right of appeal within 14 days of receiving notice of the Development Application Decision, as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.		
Issue Date: Mar 16, 2018	Development Authority: LIANG, BENNY	Signature: _____
THIS IS NOT A PERMIT		



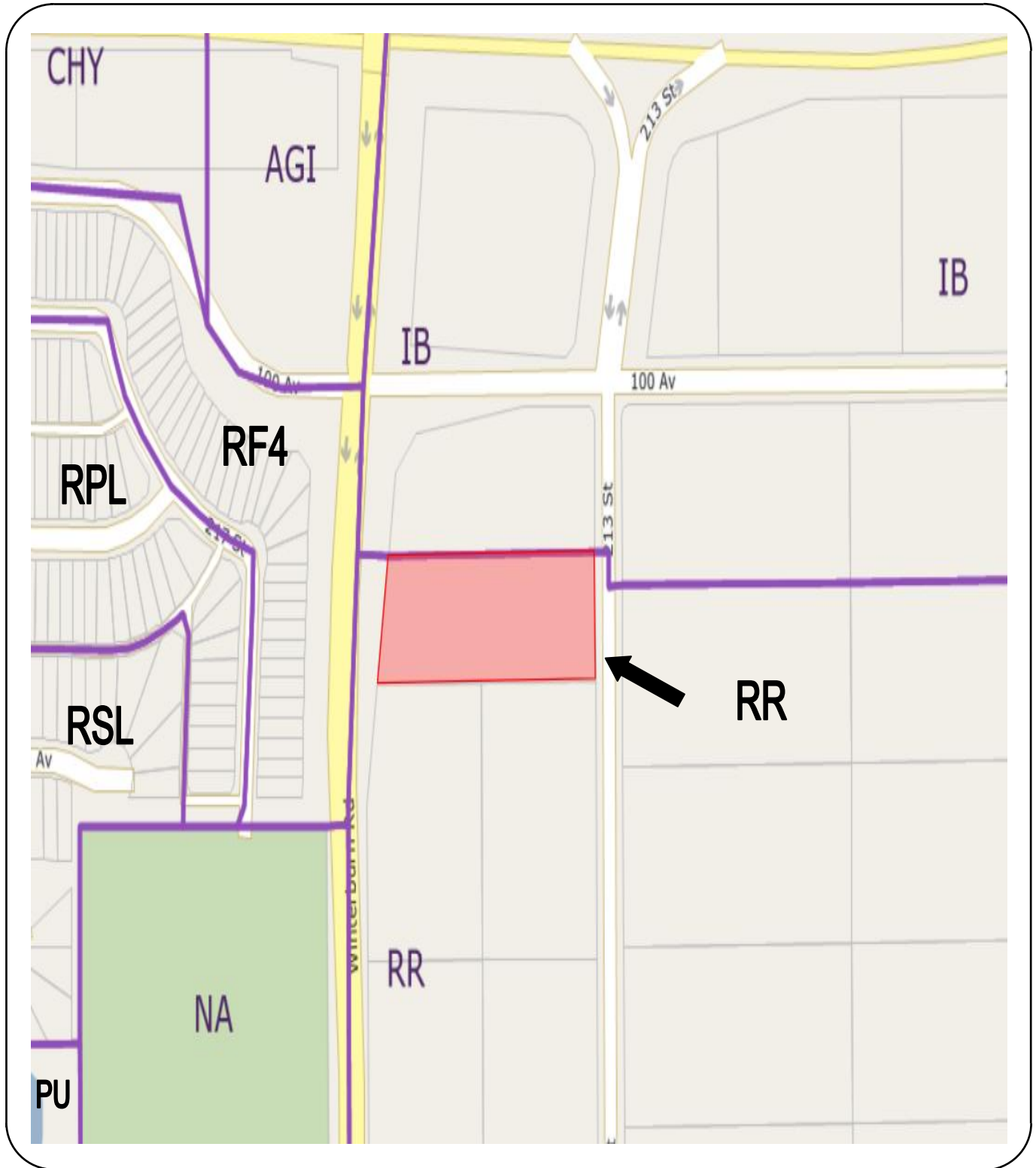
Project Number: **267178487-001**
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Application for Major Development Permit

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Development Permit Inspection Fee	\$0.00	\$500.00	04623224	Nov 15, 2017
Major Dev. Application Fee	\$500.00			
Total GST Amount:	<u>\$0.00</u>			
Totals for Permit:	\$500.00	<u>\$500.00</u>		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-18-049

