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Subdivision & Development Appeal Board

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Date: August 18, 2016
Project Number: 154924225-001
File Number: SDAB-D-16-120

Notice of Decision

[1] On August 21, 2014, the Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on July 28, 2014. The appeal concerned the decision of the Development Authority, issued on July 26, 2014, to refuse the following development:

> **Construct a Single Detached House with attached Garage, veranda, fireplace, rear balcony (irregular shape, 4.25 metres by 2.22 metres) and Basement development (NOT to be used as an additional dwelling)**

[2] On September 5, 2014, the Board allowed the appeal and revoked the decision of the Development Authority. The development was GRANTED, subject to conditions and variances. This Board decision was appealed to the Alberta Court of Appeal.

[3] On March 22, 2016, the Alberta Court of Appeal in *Thomas* v. *Edmonton (City)*, 2016 ABCA 57 (the "*Thomas*" decision), allowed the appeal and quashed the Development Permit. The matter was remitted to the Board to be dealt with in accordance with that decision.

[4] The subject property is on Plan 1222257 Unit 7, located at 70 - Sylvancroft Lane NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies to the subject property.

May 11, 2016 Hearing

Summary of Hearing:

i) Position of the Appellant, Mr. Jamie Thompson

[5] Mr. Thompson requested an adjournment to ensure there is no technicality regarding community consultation and the requisite 21 days as prescribed under the *Mature Neighbourhood Overlay* provision of the *Edmonton Zoning Bylaw*.

ii) Position of Affected Property Owners in Support of the Development Officer Decision, Mr. Kim Wakefield

[6] Mr. Wakefield is representing Mr. and Mrs. Thomas, Mr. and Mrs. Hole, and Dr. and Mrs. Fields. Mr. Wakefield is asking for an adjournment for two reasons. There has been some disagreement on the wording of formal judgment to be entered at the Court of Appeal. He hopes that parties will be able to come to agreement on this during the adjourned period. Further, he was just retained. He thinks the timing of the community consultation is relevant. He noted the Board's file is confusing, specifically the Notice of Appeal.

Motion:

"That the hearing for SDAB-D-16-120 be tabled to June 9, 2016."

Reason for Decision:

[7] All parties consented to the adjournment.

June 9, 2016 Hearing

Motion:

"SDAB-D-16-120 shall be raised from the table."

[8] The following documents, which were received prior to the hearing and are on file, were read into the record:

- A Development Permit Application, including the plans of the proposed Development;
- The refused Development Permit;
- The Development Officer's written submissions;
- The Appellant's written submission, including community consultation documentation;
- A letter in opposition to the proposed development.

[9] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Previous community consultation letter

Preliminary Matters

[10] At the outset of the appeal hearing, the Presiding Officer asked the parties in attendance if there was any opposition to the composition of the panel. Specifically, the Presiding Officer asked Mr. Wakefield to address correspondence to the Board he sent in on June 8, 2016 requesting "that the Board that hears this matter not include members who previously heard appeals with respect to developments on the Sylvancroft properties."

[11] Mr. Wakefield advised that a key aspect in the *Thomas* decision was fairness. All the decisions from the Sylvancroft properties have been in favour of the developer. To ensure a fair hearing, no one connected with any previous hearings on the properties should be allowed to sit.

[12] Mr. Thompson confirmed that no one sitting on the Board was a close personal friend or acquaintance of any of the parties involved.

[13] Mr. Booth had no submission on this issue.

[14] Mr. Gibson recused himself from the panel as he previously sat on another Sylvancroft appeal. Mr. Somerville replaced Mr. Gibson as Presiding Officer.

[15] Mr. Wakefield asked the Presiding Officer if he would consider conducting the hearing in two parts. In the first part of the hearing, the Board should consider whether there was appropriate community consultation. This is as per the *Thomas* decision which held that proper community consultation is mandatory and made it a condition precedent to the Development Permit being issued and the Board embarking on the merits of the appeal. Community Consultation is also required under the Groat Estate Implementation Plan. If the Board finds there was appropriate consultation, then the merits can be considered in the second part of the hearing. It was Mr. Wakefield's position that the community consultation conducted thus far was not remotely adequate and asks the Board to direct the Appellant to conduct it appropriately.

[16] The Board decided to proceed as Mr. Wakefield requested.

Summary of Hearing

i) Position of the Appellant, Jamie Thompson

[17] Mr. Thompson asked the Board to refer to his submitted documents. He reviewed how in his opinion he satisfied Section 814.3(24) of the *Edmonton Zoning Bylaw* which provides:

> When a Development Permit application is made and the Development Officer determines that the proposed development does not comply with the regulations contained in this Overlay:
>
> a) the applicant shall contact the affected parties, being each assessed owner of land wholly or partly located within a distance of 60.0 metres of the Site of the proposed development and the President of each affected Community League;
> b) the applicant shall outline, to the affected parties, any requested variances to the Overlay and solicit their comments on the application;
> c) the applicant shall document any opinions or concerns, expressed by the affected parties, and what modifications were made to address their concerns; and
> d) the applicant shall submit this documentation to the Development Officer no sooner than twenty-one calendar days after giving the information to all affected parties.

[18] The Appellant started his most recent community consultation on April 29, 2016. Every house within the 60 metres notification radius was canvassed, either in person or by way of a mailbox drop-off of an information package.

[19] For individuals that were home, the Appellant reviewed variances and plans and gave them the opportunity to comment or provide comments later. The comments of those individuals contacted in person are provided in the report sheet.

[20] For those individuals not home, the Appellant left an information package, which included a consult letter explaining the two variances, a consult form to provide feedback, site plans and elevations drawings. Individuals were invited to call the Appellant with any questions or further comments. He did not get any responses except as shown on the one letter provided.

[21] In an effort to mitigate any concerns expressed by the neighbours, the Appellant lowered the house by a meter and eliminated the Front Setback variance. It was his understanding that the Development Officer thought the Front Setback variance was more critical and he was not as concerned with the rear variance, given the lot size and shape.

[22] The Appellant submitted all this information to the Board, in lieu of submitting it to the Development Officer, as the Board is charged with making the decision.

[23] The Appellant was copied on a letter sent to his client dated May 10, 2016 from a group of neighbours east of the subject site. They were asking to meet to discuss "possible mitigation measures."

[24] The Appellant stated that his client had no desire for a meeting after all the delays he had endured. He, as Appellant, was only copied on the letter and was of the opinion he was never formally asked to meet. If they had called him directly, he would have met with them. The Appellant gave no opinion to his client whether his client should meet with them.

[25] The Appellant was then copied on a letter sent to the Development Officer dated June 2, 2016 from that same group of neighbours east of the subject site. They disputed the claim that the lot met the "hardship" test which warranted a variance. It is the Appellant's opinion, however, that it is impossible to build an appropriate house on the lot without a variance. Further, the neighbours in this letter have asked for a binding commitment for screening, stating "…the details of such vegetative screening should be including in a landscaping plan, as a condition in any approval, along with the posting of security." However, this is a not a requirement of community consultation or the *Edmonton Zoning Bylaw*.

[26] The Appellant stated the neighbours are further frustrated that the Board is not hearing individual cases in the context of the whole development and the cumulative effect of all these proposals. The neighbours in this letter cited page 27 of the Groat Estate Implementation Plan as support for community consultation, specifically that "it is desirable to obtain the opinions, concerns, and detailed local information from residents about the effect of development proposals on their area. This additional information, together with the developer's application and the input of the civic administration, will be taken into account by the Development Officer and the Development Appeal Board in making their decisions."

[27] The Appellant also reviewed the Groat Estate Implementation Plan. Page 5 of that Plan sets out the Existing Land Use, which consists of Low Density Residential. Page 11 of the Plan sets out the Approved Land Use, which now consists of Medium Density Residential (in-fill housing). Further, the Appellant referred the Board to page 30, point 1 of the Plan which states that Groat Estate is excluded. In his opinion, the subject site is not subject to the Groat Estate Implementation Plan.

[28] The Appellant stated that he has never required a Side Setback variance.

[29] The Appellant also conducted a previous community consultation in January 2015 (on a different plan), utilizing a similar procedure as the April 2016 consultation. He did visit every property within the 60 metres twice. Some neighbours chose not to respond because of the pending Court case.

[30] Upon questioning from the Board, the Appellant estimated he spent approximately 30 hours plus in performing the community consultation.

[31] The Appellant asked for the postponement at the May 11, 2016 hearing to make sure he complied with the 21 day requirement of Section 814.3(24)(d) of the *Edmonton Zoning Bylaw*.

[32] Upon questioning from the Board, the Appellant clarified he normally would work with the Development Officer regarding the community consultation because the Development Officer determines if a variance is required, prepares the 60 metres map and consultation forms. In this circumstance, the Appellant did it on his own as he is very familiar with the process and because originally the Development Officer did not require it pursuant to Section 13.1(2) of the *Edmonton Zoning Bylaw*. As stated previously, the Appellant submitted all this information to the Board, in lieu of submitting it to the Development Officer, as the Board is charged with making the decision.

[33] Upon questioning from the Board, the Appellant believed most people he spoke to in the 60 metres notification radius were owners.

[34] In summary, the Appellant consulted 21 properties. He spoke to 12 owners who had no concerns. In his opinion, he thought the several individuals who chose not to comment should be treated as non-opposition. He believed one neighbour retracted his opposition. Originally on the 2015 consultation, the Community League took no position and this time stated it did not have sufficient time to have any meaningful engagement with the neighbours so would make no comment. The individuals listed on the correspondence previously discussed were in opposition. The Appellant is still willing to meet with these neighbours.

ii) Position of the Development Officer, Jeff Booth

[35] The Development Officer indicated that the Court of Appeal left it up to the Board to determine if there was compliance with community consultation provision and he would prefer not to comment.

iii) Position of Affected Property Owners in Support of the Development Officer Decision, Mr. Kim Wakefield

[36] Mr. Wakefield states that community consultation is supported in the Groat Estate Implementation Plan at page 27, which states:

> It is desirable to obtain the opinions, concerns, and detailed local information from residents about the effect of development proposals on their area. This additional information, together with the developer's application and the input of the civic administration, will be taken into account by the Development Officer and the Development Appeal Board in making their decisions

[37] Further, at page 25, it states:

> 2. The project should be designed to blend into the surrounding community as much as possible. This would entail maintaining similar setbacks, height, and roof lines. Mature vegetation on the site should also be retained.

[38] Mr. Wakefield referred the Board to paragraphs 40 – 44 of the *Thomas* decision, which provides compelling public policy justifications for community consultation.

> [40] This conclusion is also supported in light of the compelling public policy justifications for community consultation. Community consultations exist for a reason. Process matters. Why? Because a fair process is the basis for public confidence in the legitimacy of all democratic processes, including those relating to planning and development of land.
>
> [41] Amongst other things, having an applicant consult the community where the applicant wants a variance in its favour provides a development authority (and a subdivision and development appeal board) with information needed to determine whether non-compliance with a bylaw development standard requirement would in fact interfere with the "neighbouring parcels of land" or the "amenities of the neighbourhood". It may sometimes be difficult to answer the question posed in s 640(6) or s 687(3)(d) without a community consultation. At the very least, obtaining the concerns of affected members of the community helps a decision-maker determine whether a variance should be granted. It therefore makes little sense to waive a step that would help determine whether a proposed development's non-compliance should be waived in the first place. The democratic objectives of the *Zoning Bylaw* should not be undermined. And yet, that is precisely what would happen if the SDAB's authority extended to waiving the due process requirement of community consultation.
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> [42] This is especially so where, as here, the requirement for community consultation is held out to members of mature neighbourhoods as being a valid method of ensuring a proper balance between existing and new development. The City passed the community consultation requirement to ensure that the express purposes of the Overlay – providing an opportunity for discussions between applicant and affected neighbours, ensuring new development is sensitive in scale to existing development and ensuring privacy and sunlight penetration on adjacent properties – would be met. The requirement for community consultation is not mere window dressing nor a false promise to taxpayers in mature neighbourhoods. Consequently, enforcement of the community consultation requirement ought not to be contingent on whether individual developers choose to comply with it. Nor should it be reduced to the SDAB's exhorting developers to *try to comply* with the requirement *in the future*, as happened here. Put simply, the City's comparatively soft nod to the purpose of community consultation ought not to be diminished to a plea to try to comply with the law. This would make a mockery of the requirement in the *Zoning Bylaw* for community consultation.

> [43] Further, the public must have confidence that the rules governing land use will be applied fairly and equally: *Love v Flagstaff (County of) Subdivision and Development Appeal Board*, 2002 ABCA 292 (CanLII) at paras 28-29, 317 AR 261. If the SDAB could waive the community consultation requirement, that would create the potential for discriminatory application of the *Zoning Bylaw*. Some landowners would receive the benefits of community consultation; others not. An interpretation of the legislation that would lead to this result should be rejected.
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> [44] The community consultation requirement in the *Zoning Bylaw* is intended to foster discussion, identify legitimate concerns and, if possible, achieve a reasonable accommodation as between an applicant and adjoining neighbours in mature neighbourhoods. Viewed from this perspective, a community consultation is designed to minimize conflict amongst citizens. This is in accord with one of the underlying rationales of planning law, namely to avoid pitting neighbour against neighbour by imposing on all parties clearly defined reciprocal rights and obligations. There is nothing in the *Act* that suggests that the Alberta Legislature intended to prevent municipalities from requiring a community consultation as a condition precedent to the issuance of a development permit in certain circumstances.

[39] In 2014, when this matter first arose, the Appellant did not conduct community consultation because he was of the view it was a waste of time. Neither the Development Officer nor Board required it. The Court of Appeal disagreed with this approach.

[40] Mr. Wakefield cautioned the Board on the use of the January 2015 consultation as those were different plans than before the Board today.

[41] Mr. Wakefield reviewed in detail the series of correspondence that transpired between the Appellant and his clients set out in Tab 15 of his submission. Numerous attempts have been made to meet with the Appellant with no success.

[42] Mr. Wakefield reminded the Board the Court of Appeal stressed the community consultation is not a bureaucratic process that should be ignored.

[43] Upon questioning from the Board, Mr. Wakefield said it is not normally incumbent to meet face to face and a mailbox drop off could be sufficient. However, in this case, where neighbours are asking for meeting, and the Appellant does not respond, the community consultation provisions are not satisfied. The logistics are not necessarily important other than a wide range of representatives from the community should be present because of different interests.

[44] As set out in his client's May 18 letter, the neighbours are concerned that there are three sets of plans being contemplated, why variances are required, the massing effect, privacy concerns, new fencing, a landscaping plan and drainage issues. Unlike other infill developments where the builder is forced to deal with lot issues, this was a purpose

designed subdivision, meaning new lots were created and the builder is then asking for variances because the lot they created does not allow for a certain style of house.

[45] The Appellant responded to the neighbours with a letter dated May 25, 2016. In this letter, the owner committed to planting a solid wall of trees. However, no one has seen this commitment. The Appellant stated he does not have to disclose a landscaping plan nor will drainage be an issue. However, the Appellant never mentioned anything about meeting.

[46] Further, the Appellant did not acknowledge the June 2 letter to the Development Officer. This letter mentioned that several of the residents of 127th Street were involved in the formulation of the Groat Estate Implementation Plan.

[47] Mr. Wakefield referenced paragraphs 57 and 58 of the *Thomas* decision.

> In any event, a hearing before the SDAB is not the equivalent of, nor a replacement for, a community consultation. SDAB hearings are not designed for this purpose. In exercising its variance authority, the SDAB typically evaluates each request for a variance based on the community as it is at the time of the hearing. This approach minimizes the cumulative impact that a series of variances may have on a mature neighbourhood. The community consultation process is one way of mitigating this risk and ensuring that the cumulative impact of a number of variances is in fact taken into account in assessing the rationale for a new variance. That will occur when members of the community, who are familiar with the way in which their community has been affected by continuing relaxation of planning requirements, are given the opportunity to express their concerns to the developer. Community consultation minimizes the risks inherent in assessing each proposed variance individually without due regard to the cumulative impact on a community of a number of variances. It also militates in favour of a developer's being willing to make reasonable accommodations in favour of affected neighbours in an attempt to reduce opposition to a variance application.
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> In fact, a community consultation would have been particularly important in the present case. The House Company candidly stated that it considered community consultation a "waste of time" in light of its past dealings with the appellants. It is difficult to imagine a more blatant affront to the community consultation requirement than saying in effect: "We don't want to listen to you because you may impede what we want to do". However, it was precisely because of the House Company's history of receiving variances for Sylvancroft that a community consultation was needed most. As long-time residents in the neighbourhood, the appellants were well-positioned to gauge how successive variances obtained by developments of the House Company were impacting the surrounding lands. The courts should be supporting this vehicle for consultation, not undermining it.

[48] Mr. Wakefield stated in this case there was no consultation, then consultation on another plan, and a paper-only consultation that began only in April 2016. Further, many individuals who responded were not people backing onto the unit 7 or generally on Sylvancroft. There were no attempts to schedule a meeting with those neighbours who asked for one. Mr. Wakefield questioned the retraction of opposition from the one neighbour.

[49] Mr. Wakefield stated that the Development Officer's current practice regarding community consultation is an internal practice and does not necessarily fulfill the requirements of Section 814.3(24) of the *Edmonton Zoning Bylaw*.

[50] Mr. Wakefield referred the Board to the front of the *Thomas* decision which stated "Reasons for Judgment Reserved of The Honourable Chief Justice Fraser". This means this judgment was circulated to the entire judiciary as a key piece of jurisprudence.

[51] Mr. Wakefield stated his clients would like the Board to grant an adjournment so that all the parties can properly meet and conduct a proper community consultation as contemplated by the Court of Appeal.

iv) Rebuttal of the Appellant

[52] The Appellant clarified he did not develop the subdivision nor create the lot. He is the designer and partners with a builder and contractors.

[53] In January 2015, the neighbours chose to not respond to the community consultation but continue with their Court of Appeal action.

[54] The Appellant stressed that the May 10 letter was addressed to his client and did not directly ask for a meeting with him. The May 18 letter was a response to the door-to-door canvassing. The May 25 letter was intended to invite further comments from the neighbours. His client was not prepared to meet and left any decisions up to the Appellant.

[55] The Appellant believes he satisfied the community consultation requirements of Section 814.3(24) of the *Edmonton Zoning Bylaw*. Nowhere does that section provide that parties must negotiate. Further, the section does not provide that variances can only be allowed where the surrounding neighbours agree. This is because there would be no purpose to the *Edmonton Zoning Bylaw* and developers would need to just ask neighbours for permits.

[56] The Appellant does not believe the parties will ever be able to come to a resolution and thinks this adjournment request is another stall tactic. The proposed house is only 2200 square feet in size, well under the average for new developments. To completely comply, the house could only be 1600 square feet and make no sense given current housing conditions and lot prices.

[57] As per paragraph 41 of the *Thomas* decision, community consultation helps the Board determine what effect a variance will have. The Appellant had no representations at the Court of Appeal, who did not necessarily speak to the actual variances of the development, but solely to the power of the Board.

[58] The Appellant's response at the original hearing that community consultation was a waste of time was misconstrued and he was only responding to a question of the panel. He submitted Exhibit A, which showed neighbours in objection did not object to the development at 80 Sylvancroft Lane.

[59] The Appellant agreed to a further adjournment for one last attempt at community consultation.

Motion:

"That the hearing for SDAB-D-16-120 be tabled to August 3, 2016.

Reason for Decision:

[60] All parties consented to the adjournment.

August 3, 2016 Hearing

Motion:

"SDAB-D-16-120 shall be raised from the table."

[61] The following exhibits were presented during the hearing and form part of the record:

- Exhibit B – Revised Site Plan with landscaping
- Exhibit C – List of proposed conditions

[62] The Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the three-member panel, all of whom had been in attendance at the June 9, 2016 hearing.

Summary of Hearing

[63] The Presiding Officer asked Mr. Wakefield to address whether there were any further developments between the parties since the June 9th adjournment. Mr. Wakefield indicated his clients and the Appellant had a meeting and exchanged several telephone calls and they reached an agreement in principle. Specifically, the Appellant met with Mr. Hole, a certified arborist, who was able to provide some advice to mitigate some of the effects of the proposed development. A revised plan was prepared showing fencing along property line to be installed and paid for by the House Company. The size of fence is specified in the plan and duplicates the fence that runs along Lot 8. There will also be cedars planted on both sides of the fence in groups of 3, with the cost being split between

the two home owners. The size of the cedars is also specified. The parties agreed that the planting and fence is to be completed by September 15, 2016, which allows for the roots to spread before winter. Mr. Wakefield indicated the plan does not indicate the large number of trees that need to be removed because of their poor condition and because their existences would cast too much shade on the new planting. A certified arborist should review the existing plantation to determine which vegetation should stay and which should be removed. Mr. Hole has volunteered to do this.

[64] Mr. Thompson submitted there are two options of cedars, a 10 gallon pot (which is 2 metres high) or a 15 gallon pot (which is 2.5-3 metres high). Their choice is a 10 gallon pot. Mr. Thompson submitted the revised plan, which was marked Exhibit B. As shown on the plan, there are groups of three green circles on each side of the common property line, which depicts the proposed cedars spaced 1 meter apart. When mature, they will constitute a complete visual barrier on both sides. The fence is a 6 feet high solid cedar fence.

[65] Upon questioning from the Board, Mr. Hole indicated that the cedars once mature will be approximately 8 metres high (25 feet).

[66] Mr. Wakefield confirmed his clients would have no objection if the Board approved the proposed development along with appropriate conditions. Mr. Wakefield further confirmed that is his opinion the community consultation provision in Section 814.3(24) of the *Mature Neighbourhood Overlay* have been complied with. The Applicant has contacted affected parties, outlined requested variances, solicited their concerns, documented any opinions and made modifications. This information was not submitted to the Development Officer, but to the Board and he is satisfied that the substance of community consultation has been achieved.

[67] The Development Officer had no submissions on this issue.

[68] The Presiding Officer asked the Appellant to confirm if the plans the Board currently has are the correct plans which has the reduction of Height and elimination of all other variances except the Rear Setback. The parties briefly adjourned to review the plans.

[69] After a brief adjournment, the Presiding Officer asked the Appellant to submit a complete set of revised plans to the Board office. These plans will be distributed to both the Development Officer and Mr. Wakefield and his clients for confirmation. Mr. Wakefield asked for 1 week from receipt of plans for a review.

[70] Mr. Thompson was under the impression that during his consultation meeting, the fence and cedar planting was sufficient to satisfy the neighbours' concerns. He cannot comment whether his client would agree to a condition as to which current vegetation was removed or not because that is his private land.

[71] Mr. Wakefield submitted the existing vegetation is part of the landscape plan. The state of existing vegetation is a key issue. Mr. Hole is a certified arborist whose expertise should be utilized. It was his opinion that nearly 80 percent of the existing vegetation should be removed. Mr. Wakefield was under the impression Mr. Thompson was in agreement.

[72] Mr. Hole submitted that the new cedars need sufficient light penetration or they will die. Plants are dynamic. If plants are taken out, other plants will spread so there are a few things to consider in the future.

[73] Mr. Thompson indicated his client probably has a vision of his rear yard. There is a bylaw for landscaping and a certain number of trees are planted according to the Setbacks.

[74] The Board suggested a condition that the landscape plan was implemented to allow survival of new planting.

[75] The parties briefly adjourned to review the conditions.

[76] After a brief adjournment, Mr. Wakefield reviewed the suggested conditions, marked Exhibit C. He modified the Board's suggested condition to include a review by a certified arborist. Mr. Wakefield submitted that on the July 26 meeting, the parties discussed a number of options. According to Mr. Hole's notes, the property owner liked privacy screening and was in favour of some tree removal. It was Mr. Wakefield's belief the conditions in principal would be acceptable to the owner of the subject property.

[77] Mr. Thompson agreed with all the conditions proposed by Mr. Wakefield.

[78] The Development Officer had no submissions on this issue.

Decision

[79] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:

1. This approval is based on the revised plans submitted and reviewed by the Board on August 12, 2016.
2. The fence and landscaping to be constructed in accordance with the approved landscaping plan submitted and reviewed by the Board on August 12, 2016.
3. The fence to be in same style as fence built along the east boundary of 80 Sylvancroft Lane NW (the cost to be the responsibility of the House Company as agreed to at the hearing).

4. The cedars to be 10 gallon pots, 2 metres tall, Skybound cultivar (the cost of the cedars on 70 Sylvancroft Lane NW to be the responsibility of the House Company as agreed to at the hearing).
5. Existing vegetation on 70 Sylvancroft Lane NW to be culled so as not to adversely affect the new landscaping as determined by a certified arborist.
6. The construction of fence, planting of cedars and cull of existing vegetation to be completed no later than September 15, 2016.

[80] In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:

a) The minimum allowable Rear Setback of 11.5 metres as per Section 814.3(5) is varied to allow a deficiency of 3.8 metres, thereby decreasing the minimum required to 7.7 metres.

Reasons for Decision

[81] The proposed development, a Single Detached House with attached, front-access garage is a Permitted Use in the RF3 Small Scale Infill Development Zone.

[82] The Board notes the proposed development, Single Detached Housing, is the lowest density of the developments permitted under the RF3 Small Scale Infill Development Zone which includes Semi-detached Housing while allowing small-scale conversion and infill redevelopment to buildings containing up to four Dwellings, and including Secondary Suites under certain conditions.

[83] The Board is satisfied that the community consultation conducted in April 2016 does comply with all requirements set forth in Section 814.3(24) of the *Mature Neighbourhood Overlay* of the *Edmonton Zoning Bylaw*. The Board makes this finding for the following reasons:

a) The Appellant did contact all of the affected parties within 60 metres of the proposed development and the Community League provided them with an information package, including plans.

b) This information package did solicit opinions and concerns and outlined the nature of the variance being sought and the rationale for that variance.

c) The Appellant did document the opinions and concerns expressed by affected parties.

d) The Appellant modified the original set of plans submitted to Sustainable Development Department and reduced the Height of the proposed development, eliminated the need for a Front Setback variance and the need for a projection variance into the Front Yard Setback.

e) The community consultation concluded with a joint submission to the Board from the Appellant and Respondents in agreement.

[84] The Board finds granting a variance in the Rear Setback is reasonable for the following reasons:

a) Section 814.3(5) was clearly developed to ensure adequate amenity space in the Rear Yard on typical rectangular lots, the Rear Yard of which may also accommodate a garage and accessory buildings. In this instance, the Rear Yard is not encumbered with any accessory buildings and the Rear Yard provides ample amenity space which is probably in the order of 40 percent of the Site Area.

b) Because the subject site is pie-shaped, the Board accepts the Appellant's submission that the percentage of the property behind the 40 percent Setback line, as measured under the requirements of the *Edmonton Zoning Bylaw*, actually constitutes 53 percent of the Site Area.

c) The Board notes the maximum allowable projection into the Rear Setback occurs only at the northeast corner of the proposed residence and is minimal at the southeast corner.

d) The agreement for screening between the parties eliminates any adverse effects from the encroachment into the Rear Yard and ensures privacy and sunlight penetration on adjacent properties in accordance with general purpose of Section 814.1 in the *Mature Neighbourhood Overlay*.

[85] The Board notes that during one of the hearings the applicability of the Groat Estate Implementation Plan was raised. The Board notes while this document is not a statutory plan as defined in the *Municipal Government Act*, RSA 2000, c M-26, it does meet the requirement of a statutory plan as set out in the *Edmonton Zoning Bylaw*. The Appellant referenced page 27 of the Groat Estate Implementation Plan, which refers to areas under development control and the subject property and houses on the west side of 127 Street are not included in that area as defined by this Plan. Further, the Board notes on page 24 of the Plan, Figure 6, identifies the site of the proposed development for medium density infill, which classification applies to the proposed development. Also, the Board finds no violation with regards clause number 2 on page 25 of the Plan. That section relates to roof styles and no one raised this issue. The Board has had regard to the Groat Estate Implementation Plan but finds it to be an aspirational document which does not impose strict regulations on the proposed development. Accordingly, the Board is satisfied that nothing in the Plan interferes with the proposed development.

[86] All parties were in agreement to the conditions imposed, which will mitigate any potential effects from the proposed development.

[87] For the above reasons, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Mr. N. Somerville, Presiding Officer
Subdivision and Development Appeal Board

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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*, R.S.A. 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 the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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.