Edmonton Subdivision and Development Appeal Board

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Date: December 24, 2015
Project Number: 180707910-001
File Number: SDAB-D-15-304

Notice of Decision

[1] On December 16, 2015, the Subdivision and Development Appeal Board heard an appeal that was filed on November 18 and 23, 2015 by two separate Appellants, Mr. V. Labrie ("Appellant 1") and a collective of neighbours adjacent to the property ("Appellant 2"), respectively. Appellant 2 was represented by legal counsel, Mr. K. Wakefield.

[2] The appeal concerned the decision of the Development Authority, issued on November 10, 2015, to approve the following development:

> convert a Single Detached House to a Limited Group Home for 4 residents. [unedited from the Development Permit]

[3] The development was granted with two variances: the loading space requirement was waived, and a variance for tandem parking of one vehicle was granted. The decision was appealed by adjacent property owners. The subject property is located on Plan 0740386 Blk 4 Lot 42, municipal description 664 - 173A Street SW, within the RSL Residential Small Lot Zone.

[4] The Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

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

- Notice of Appeal, filed by Appellant 1 on November 18, 2015;
- Notice of Appeal Letter from legal counsel for Appellant 2, dated Nov 19, 2015, with attachments;
- Written submissions and documents filed by Appellant 2, dated Dec 11, 2015;
- Photos from the Respondent, received on December 16, 2015
- Copy of the permit application and development permit decision;
- Copies of receipts from a registry, showing a corporate name search and incorporation request from Maple Heart Residential Services Ltd.;
- Description of the business, copies of the Floor plans and site plan;
- Written submissions of the Development Officer, dated Dec 1, 2015; and
- Copies of the Windermere Neighbourhood Structure Plan and the Windermere Area Structure Plan.

Preliminary Matters:

[6] Prior to opening the hearing, the Presiding Officer identified two preliminary issues:

1) Did the appellants file their appeals within the statutory time limit prescribed under Section 686(1)(b) of the *Municipal Government Act* (the "MGA"), RSA 2000, c M-26?

2) Due to recent amendments to the *Edmonton Zoning Bylaw,* variances to loading space and tandem parking requirements are no longer required for the proposed development. Are the appellants therefore barred from appealing the decision of the Development Officer, pursuant to the limitations set out in Section 685(3) of the MGA?

Time Limit to Appeal

[7] The Presiding Officer referenced Section 686(1)(b) of the MGA, which states:

> 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 within 14 days,
>
> …
>
> (b) in the case of an appeal made by a person referred to in section 685(2), after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

[8] The Presiding Officer noted that the Board's jurisdiction to hear appeals is derived, in part, from Section 686(1)(b) of the *Municipal Government Act,* therefore, the Board must determine whether the appellants filed their appeals within the 14 days limitation period. If the appeals were filed late, the Board has no authority to hear the matter.

[9] The Presiding Officer invited the parties to provide submissions in this regard.

[10] Appellant 1, Mr. V. Labrie, indicated that he was unclear as to the precise date he received notice of the Development Authority's decision.

[11] Appellant 2's legal counsel, Mr. K. Wakefield, referenced the approved Development Permit which states that the appeal period begins on November 10, 2015 and expires on November 23, 2015. Although the hearing agenda states that the appeal was filed on November 23, 2015, the Notice of Appeal letter that he had mailed with his firm cheque were both dated November 19, 2015, delivered via courier.

[12] The Development Officer, Mr. J. Angeles, submitted Exhibit "A", a screenshot of an internal City of Edmonton workflow management program indicating that the decision notices were to be sent to Mail Services on November 5, 2015, and that the task was actually completed on November 4, 2015. He stated that the Notice Period as shown on the Development Permit is generated automatically by the program.

[13] In rebuttal, Mr. Wakefield pointed out that although the screenshot indicates that the decision was to be mailed on November 5, 2015, does not mean that it was actually mailed on that date.

Decision

[14] Both appeals were filed within the statutory time limit under Section 686(1)(b) of the MGA.

Reasons

[15] Based on the presentations, the Board concluded that the parties provided no date that could be relied upon. Therefore, the Board applied Section 23(1)(a) of the *Interpretation Act*, RSA 20000, c I-8, which states:

> If an enactment authorizes or requires a document to be sent, given or served by mail and the document is properly addressed and sent by prepaid mail other than double registered or certified mail, unless the contrary is proved the service shall be presumed to be effected 7 days from the date of mailing if the document is mailed in Alberta to an address in Alberta.

[16] Assuming that the decision was mailed the same day that it was issued, that being November 2, 2015, and presuming service within 7 days of mailing pursuant to Section 23(1)(a) of the *Interpretation Act*, the notification period would run from November 10 to November 23, 2015.

[17] The Board therefore finds that both appeals were filed within the prescribed time limits pursuant to Section 686(1)(b) of the MGA.

Right to Appeal Under Section 685(3) of the *MGA*

[18] Mr. Labrie confirmed that he had no submissions with respect to this preliminary issue, and deferred to Mr. Wakefield.

i. Position of Appellant 2

[19] Mr. Wakefield stated that the afternoon before the hearing, he attempted to access the hearing agenda from the SDAB website. The hearing agenda was not available, so he had

to contact Ms. I. Russell from the administrative offices of the SDAB, who emailed him a copy of the hearing agenda.

[20] The agenda noted recent amendments to the *Edmonton Zoning Bylaw*, specifically the regulations governing tandem parking and loading spaces for Limited Group Homes. The amendments meant that the proposed development would no longer require the variances granted, and that the Development Permit could be issued as a Class A Development, with no right to appeal pursuant to Section 685(3) of the MGA.

[21] Mr. Wakefield submitted that if there is a change to the Bylaw, there should be prior notification to the parties. The information in the agenda was provided the day before the hearing, which is insufficient time. He then requested a brief recess so that he might consult with his clients, who were not aware of the Bylaw changes. The Board granted his request.

[22] Upon resuming the hearing, the Board heard from Mr. Wakefield that his clients would like to proceed with the appeal. He stated that he would limit his submissions to the jurisdiction issue.

[23] He referred the Board to Section 96(1) and (2) of the *Edmonton Zoning Bylaw*, which states:

> 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:
>
> 1. *ensure that the capacity of any neighbourhood to accommodate Special Residential Facilities is not exceeded;* [emphasis added]
> 2. ensure that Special Residential Facilities are available in all neighbourhoods; and
> 3. protect existing Special Residential Facilities from concentration that could impair their proper functioning.

[24] The Board must have regard not only to the RSL Residential Small Lot Zone regulations and recent amendments to the loading space and tandem parking requirements, but also to

the Threshold Purpose of Special Residential Facilities such as Limited Group Homes, specifically Section 96(2)(a), regarding neighbourhood capacity to accommodate Limited Group Homes.

[25] He referred the Board to Section 79(1)(b), which states:

> In addition to the regulations in Section 96 of this Bylaw, Limited Group Homes shall comply with the following regulations… *the Development Officer may restrict the occupancy of a Limited Group Home to less than the maximum of 6 residents having regard for the [facility's] operational needs and Site context;* [emphasis added]

[26] He submitted that the Development Officer made a reviewable error not only by failing to consider the neighbourhood capacity to accommodate the proposed development, but also by failing to properly consider the operational needs and Site context of the proposed development.

[27] He acknowledged his understanding that following the recent Bylaw amendments, the proposed development is effectively a Permitted Use with no variances or relaxations. However, the wording of Section 685(3) of the MGA permits an appeal not only when variances or relaxations are granted, but also when a provision of the land use bylaw has been misinterpreted:

> 685(3) Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or *misinterpreted.* [emphasis added]

[28] He submitted that Bylaw provisions must be interpreted by considering the entire Bylaw. The development regulations within the RSL Zone must be read in context with the entirety of the Bylaw, including Sections 96(2)(a) and 79(1)(b), which provide directives with respect to Limited Group Homes.

ii. Position of the Development Officer, Mr. J. Angeles

[29] He confirmed that following the recent Bylaw amendments, the proposed development would be a Class A Development.

[30] When reviewing the application, he did consider Sections 79(2)(c) and 96(2)(a), and he would not change his decision because the proposed development meets the Threshold Purpose.

[31] In his opinion, the provisions cited by Mr. Wakefield do not operate to shift a Permitted Use to a Discretionary Use. Other Provisions within the *Edmonton Zoning Bylaw* which authorize the Development Officer to impose a restriction explicitly provide a direction that the development "should be issued as a discretionary permit." Sections 79(2)(c) and

96(2) do not contain this wording. In the absence of such a direction, the proposed development proceeds as a Permitted Use.

[32] He recognized that the wording of Section 79(1)(b) includes the words, "may restrict... to less than the maximum of 6 residents", but his decision was not an exercise of this discretion. The application was for a development for 4 residents, and he simply approved the development as-is.

iii. Position of the Respondent

[33] The Respondent, Ms. J. Russell, was represented by Mr. C. Russell. He stated that he was not aware of the recent Bylaw amendments, and had no further submissions in this regard.

iv. Rebuttal of Appellant 2

[34] Mr. Wakefield emphasized the wording of Section 685(3) of the MGA, and submitted that the Development Officer misinterpreted the *Edmonton Zoning Bylaw*, specifically the applicability of Sections 79(1)(b) and 96(2), and the Board should hear evidence in this regard.

Decision

[35] The Board will proceed with hearing evidence with respect to how the Development Officer may have misinterpreted Sections 79(1)(b) and 96(2) of the *Edmonton Zoning Bylaw.*

Reasons

[36] After a brief recess, the Board informed the parties that there is a right to appeal if an affected person believes that the provisions of the land use bylaw have been misinterpreted. The Board was therefore prepared to hear the Appellants' evidence with respect to the submission that the Development Officer had misinterpreted Sections 79(1)(b) and 96(2) of the *Edmonton Zoning Bylaw*.

Interpretation of Sections 79(1)(b) and 96(2) of the *Edmonton Zoning Bylaw*

i. Appellants' Testimonies

[37] The Board heard the evidence of the following Appellants who were in attendance at the hearing:

1. Mr. M. Motut;
2. Ms. K. Rosborough;
3. Ms. M. Bryson;

4. Ms. K. Facey;
5. Mr. D. Forgan;
6. Ms. J. Vertucio; and
7. Mr. V. Labrie.

[38] Collectively, the Appellants identified the following concerns with respect to the proposed development:

a. Uniqueness of the cul de sac and its capacity to accommodate additional traffic flow and parking strain resulting from the proposed development, particularly in the winter time.

i. Unlike surrounding cul de sacs, the properties on this particular cul de sac all back onto an expansive green space, making it unique in both design and in the privacy afforded.
ii. Limited Group Homes located in the cul de sacs of older neighbourhoods have larger frontage, which allows for more parking at the front.
iii. Newer cul de sacs with smaller lot sizes and smaller homes have changed this dynamic, such that parking and traffic flow are a concern.
iv. The subject cul de sac is an example of a newer, smaller cul de sac. It currently experiences limited traffic flow due to only having one entry and exit, which services only the residents of the cul de sac and occasional visits from friends and families.
v. The occasional pressures on parking and traffic flow from family gatherings and visits from friends differ from the constant strains that will be caused by the Limited Group Home, which will have four residents with four separate groups of families and friends who could visit at anytime or at the same time.
vi. Since adults with complex needs will be residing in the proposed development, it is not possible to anticipate additional traffic from ambulances and other emergency vehicles.
vii. Traffic flow is an increased concern during the winter months when the City of Edmonton ploughs the cul de sac. Residents are unable to park their vehicles at the end of their driveways. Instead, they must park next to the snow pile in the middle of the cul de sac, resulting in limited access for entry and egress as vehicles have to navigate around both the snow pile and the cars parked next to it.
viii. To illustrate the extent of the parking strains, Mr. Motut referenced two pictures from Tab 11 of the written documents provided by his legal counsel.
ix. Shift changes at the Limited Group Home will result in the vehicles of the incoming staff members having to navigate around staff who are completing their shifts and exiting from the garage.

b. Operation of the proposed business

i. The Appellants noted that the operator of the Limited Group Home, Maple Heart Residential Services Ltd., is newly incorporated and may not have the expertise to properly run its first privately owned care centre.
ii. Should the operators of the Limited Group Home fail to provide general upkeep and maintenance of the subject property, the value of the neighbouring properties may diminish.
iii. There is nothing to prevent the home from taking in violent individuals who pose risks to the neighbourhood. In this regard, Ms. Bryson stated that after speaking with the Development Officer, she learned that Limited Group Homes that take in individuals from the criminal justice system are required to obtain separate approval from the province.
iv. Ms. K. Rosborough referenced Parkland Institute's study, "From Bad to Worse", emphasizing the lack of transparency and government regulations in privately funded care homes.

[39] In the course of their testimonies, Appellant 2 submitted Exhibit "B", an aerial photograph of the subject cul de sac sourced from Google Maps. During questioning, the Appellants also confirmed that each house on the cul de sac includes a double attached garage with two additional parking spots on the driveway. Each family averages about two vehicles, and there is a public transit bus route along Washburn Drive SW, the main thoroughfare leading into the cul de sac.

[40] Mr. Labrie also testified that he filed an appeal separate from the other appellants because one of his relatives who had previously lived in a group home had a negative experience. He also noted that the neighbour to the right of the adjacent property did not participate in the appeal because he had only found out about the development late the previous week. Mr. Labrie stated that since the area is so new and constantly under development, they receive many zoning related letters, and it is very easy to miss things.

ii. Submissions of Legal Counsel for Appellant 2

Section 79(1)(b) Operational Needs and Site Context

[41] Mr. Wakefield distinguished the subject cul de sac from surrounding cul de sacs, including the one located on 6A Avenue SW, just west of the subject property.

[42] He noted that the properties on the 6A Avenue SW cul de sac are zoned RF4 Semi-detached Residential Zone instead of RSL Residential Small Lot Zone. The properties on the other cul de sac are also duplexes instead of single detached houses. Unlike Washburn Drive SW, which is located along a seasonal parking ban route, the main

thoroughfare into the 6A Avenue NW cul de sac is not along a seasonal parking ban route.

[43] He noted that the subject cul de sac has 13 residential families compared to cul de sacs in older neighbourhoods which have half that number. There are also no legal parking spots on the subject cul de sac. He referenced Section 620 of the City of Edmonton Bylaw 13381 Traffic Bylaw Amendment No. 130 to illustrate how the uniqueness of the cul de sac and the resultant parking strains do not permit any legal parking spots on the street.

[44] He submitted that the Limited Group Home would have a large impact upon the parking situation along the subject cul de sac. Currently, there are two vehicles parked on the subject property. However, if the development is approved, shift changes at the care centre could cause traffic flow and parking issues. For example, the two cars parked in the garage would need to be able to back out of the driveway, which means that the incoming shift workers would have to park elsewhere. However, as noted, there is no legal parking on the cul de sac.

[45] The proposed development is effectively an institutional use, with the expectation that emergency and maintenance vehicles will be entering and exiting the cul de sac in an unpredictable volume.

[46] The above factors, in addition to the concerns expressed by the Appellants, form a part of the "operational needs and Site context" contemplated under Section 79(1)(b) of the *Edmonton Zoning Bylaw*. Although Section 79(1)(b) permits a maximum of six residents in a Limited Group Home, the Development Officer has the discretion to restrict the occupancy to a lesser number. Had the Development Officer turned his mind to the unique context presented by the subject Site, he would have allowed a maximum of zero residents rather than allowing a maximum of four. For this reason, the Development Officer misinterpreted Section 79(1)(b) and exercised his discretion incorrectly.

Section 96(2)(a) Threshold Purpose: Capacity

[47] Mr. Wakefield submitted that he did not have evidence that the capacity of the Windermere neighbourhood to accommodate Special Residential Facilities, including Limited Group Homes, had been exceeded contrary to the mandate under Section 96(2)(a), because the City of Edmonton's neighbourhood registries are not made available to the public.

[48] He acknowledged that Council has regulated the number of Special Residential Facilities in a neighbourhood under Section 96(3)(b), which states:

> 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 Class 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.

[49] However, Section 96(3)(b) presents its own difficulties, including the ambiguity with respect to the definition of a "block", which is not defined in the *Edmonton Zoning Bylaw*. He disagreed that the meaning is always derived from the same "Block" found in legal descriptions of land, as one block could also encompass the entire area between one street and another.

[50] Mr. Wakefield submitted that since the thresholds contemplated under Section 96(3)(a) and (b) are unclear, owing to the ambiguity of the definition of "block", the Board must then turn to the Threshold Purpose under Section 96(2).

[51] Mr. Wakefield also reviewed a letter provided by one of the neighbours opposed to the development as evidence that the proposed development will reduce property values in the cul de sac. The letter was from Mr. Doug Cameron, an individual who works in real estate appraisal. The letter provides, in part:

> In regard to my absentee, if you could mention one of the neighbours (use my name) has owned and operated a real estate appraisal company in Edmonton for 35 years.
> He has been involved in property tax assessment appeals for this type of property and there have been proven deleterious effects on adjoining property values from this type of use.
> (This is a fact, but I do not have supporting evidence at this time.)

iii. Submissions of the Development Officer, Mr. J. Angeles

Section 79(1)(b) Operational Needs and Site Context

[52] He stated that when reviewing the application, he did consider the Site context, which includes the whole site consisting of the driveway, attached garage and the four available parking spaces. He did not consider the entire cul de sac as part of the Site context.

[53] He clarified that when he approved the Development Permit, he was not exercising a discretion pursuant to Section 79(1)(b). He reiterated his previous point that since the application was for a development for four residents, he was simply approving the development as applied for, without any variances to the maximum number of residents.

Section 96(2)(a) Threshold Purpose: Capacity

[54] He clarified that the Development Authority is required to consider the thresholds under Section 96(3) when reviewing applications. The proposed development complies with the Threshold Purpose under Section 96(3)(a). In support, he submitted Exhibit "C", a printout of the Windermere neighbourhood registry.

[55] The City of Edmonton registry records the threshold requirements in each neighbourhood, as required under Section 96(5) of the *Edmonton Zoning Bylaw*. For the neighbourhood of Windermere, there are two existing Congregate Living facilities, and the proposed development will make up the third facility (listed under "Accepted RCT Applications"). A total of six are permitted. Upon questioning, he confirmed that the information in the registry can be made available to the public.

[56] When questioned, he was unable to clarify how the City determines a "neighbourhood." However, he stated that the proposed development meets the neighbourhood threshold requirements under Section 96(3) as well as the Threshold Purpose under Section 96(2). In support, he submitted Exhibit "D", a printout of a map for a significant portion of the Windermere neighbourhood area west of 170 Street and east of Windermere Drive SW. The map showed the location of the two existing Congregate Living facilities, and the proposed development.

[57] During the course of Mr. Angeles's presentation, Mr. Wakefield requested to ask Mr. Angeles a question through the Presiding Officer. Mr. Wakefield wished to clarify how the Development Authority defines a neighbourhood or the size of a neighbourhood. The Presiding Officer considered the question, but declined to grant Mr. Wakefield's request.

[58] In response, Mr. Wakefield stated for the record that there is case law supporting the right to cross-examine or to ask questions through the chair when there is no other way for counsel to obtain information. Mr. Wakefield submitted that outside of the hearing, there was no other way for him to obtain the information he needed, particularly when it is a question pertaining to entirely new information received at the time of the hearing.

[59] The Presiding Officer acknowledged his submission, but clarified that as a quasi-judicial tribunal, the Subdivision and Development Appeal Board is not required to provide an opportunity for cross-examination. To expand on this point, the Board takes this opportunity to note that the general practice of this Board is to permit an Appellant the first opportunity to make out the entirety of his or her case, after which other parties to the appeal will provide submissions. The Appellant then has a final opportunity to rebut the information presented by those parties.

[60] The Subdivision and Development Appeal Board may, at times and if warranted, consider a variation from its usual practice.

[61] In this particular instance, the Board considered the question which legal counsel wished to pose to the Development Officer. The Board notes that the Development Officer previously responded to a similar question from the Board, wherein he stated that he did not know how the City of Edmonton determines "neighbourhood". Since Mr. Wakefield's question would have resulted in the same response, and in the interests of holding a fair and efficient hearing, the Presiding Officer chose to refuse counsel's request.

iv. Submissions of the Respondent

[62] Mr. C. Russell clarified that the Limited Group Home is intended for four individuals with mild to moderate disabilities, and that the development will be the first one he has ever operated. He has "cut his teeth" working with violent individuals, and neither he nor his partner is interested in taking in violent individuals, nor is he looking to cause disruption within the neighbourhood or to create risk for surrounding residents.

[63] The clientele will be high-functioning individuals who can contribute back to the community. They simply need some assistance with household maintenance.

[64] He acknowledged the Appellants' concerns about parking. However, if vehicle maneuvering during shift changes is indeed a challenge, one possible solution would be tandem parking: one vehicle parks in the garage, and the other behind on the driveway. In this way, there will always be a staff member in the house, and incoming shift workers can park adjacent to the staff vehicles already on the property.

[65] With respect to concerns about increased traffic flow and parking strains caused by visiting families and friends, he stated that they anticipate once a month visits which can be scheduled. In addition, their clients are more likely to go home to their families. He reiterated that the individuals are high-functioning with mild to moderate disabilities, who oftentimes miss their families and wish to return home.

[66] The traffic generated by the Limited Group Home will be exactly the same as that which is generated by residents heading to, and returning from, work. He does anticipate that once every three to six months, emergency vehicles may be needed.

[67] He stated that he has a background in finance, working with mortgages and property valuation. In his opinion, it is nearly impossible to prove that an adjacent Limited Group Home has caused the devaluation of one's property. In addition, he observed that across Alberta, property values are anticipated to decrease by 2.5%.

[68] He acknowledged the concerns of Mr. Labrie with respect to his family member's negative experience living in a home, but his goal is to avoid those types of experiences.

v. Rebuttal of Appellant 2

[69] Appellant 1, Mr. Labrie, made no submissions in rebuttal.

[70] Mr. Wakefield disagreed with the Development Officer's contention that he did consider the Site context during his review. Section 6.1(92) states: "Site means an area of land consisting of one or more abutting Lots". If the Development Officer considered only the proposed home, then he failed to consider the abutting Lots and therefore failed to fully consider the Site context. In addition, he did not turn his mind to the operational needs of the proposed facility as required under Section 79(1)(b).

[71] In light of the fact that "neighbourhood" is not defined, the neighbourhood registry is effectively meaningless.

[72] He reiterated that the proposed use is not characteristic of a residential neighbourhood.

[73] As the corporate name search and land title certificate indicate, the operator is newly registered and has no track record, so the Respondent's submissions about parking, visitation, traffic flow, and emergency vehicles are simply assumptions.

[74] He further noted that as indicated on the land title certificate, the face value of the mortgage exceeds the purchase price, which should call into question the Respondent's statements with respect to property valuation.

[75] He concluded that the Development Officer failed to consider the excessive demands upon the cul de sac posed by the Limited Group Home, and on this basis, the appeal should be allowed.

Decision:

[76] Following the amendments to the *Edmonton Zoning Bylaw*, the proposed development is a Permitted Use with no variances or relaxations, and therefore a Class A Development. The Board finds that the Development Officer did not misinterpret provisions of the land use bylaw.

[77] The appeal is **DENIED** and the Development Authority's decision is **CONFIRMED**. The development is **APPROVED** as applied for to the Development Authority, with the exception that the previously granted variances are no longer required, pursuant to Bylaw 17422 and the subsequent amendments to the *Edmonton Zoning Bylaw*.

Reasons for Decision:

[78] Limited Group Homes are a Permitted Use in the RSL Residential Small Lot Zone.

[79] At the time that the original application was reviewed, the development was deemed to be a Class B development with two variances: one to the tandem parking requirement under Schedule 1(A)(6) to Section 54.2, and the other to the loading space requirement under Schedule 3 to Section 54.4.

[80] Both the Appellants and the Development Officer acknowledged that following the amendments to the *Edmonton Zoning Bylaw* which were effected by Bylaw 17422 (signed and passed on November 16, 2015 and effective December 1, 2015), the two variances previously granted are no longer required, and the proposed development would be deemed a Class A Development.

[81] The Board is also bound by Section 687(3)(a.1), which states that "In determining an appeal, the subdivision and development appeal board must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect". In this particular instance, the land use bylaw in effect includes the recent amendments to the *Edmonton Zoning Bylaw* with respect to tandem parking and loading space requirements for Limited Group Homes. Consequently, the Board must consider the proposed development as a Class A Development.

[82] The powers of the Board with respect to appeals mechanisms for Class A Developments are defined under Section 685(3), which states that "no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted."

[83] As a Class A Development, the proposed development has no relaxations or variances, so the only avenue through which an appeal might be lodged is if there was a misinterpretation of the Land Use Bylaw. In this regard, the Board asked for specific submissions from all parties.

[84] The Appellants identified two specific provisions which the Development Officer may have misinterpreted: Sections 79(1)(b) and 96(2)(a).

Section 79(1)(b) Operational Needs and Site Context

[85] With respect to Section 79(1)(b), the Board is satisfied that the Development Officer gave proper regard to the facility's operational needs and Site context for the following reasons:

1. The Written Report of the Development Officer indicates that he gave consideration to the need for 24 hours supervision of the residents, which will require a rotation of two daytime staff, two evening staff, and one overnight staff. A maximum of two staff members will be on shift at any one time.
2. The Written Report also indicates that the Development Officer considered the space requirements for emergency services: "The loading and unloading space was relaxed, because the remaining parking space will only be used at

least 2 or fewer visits by emergency services per month" (page 2 of Development Officer's Written Report).

3. The development provides four parking spaces when only three are required, which exceeds the on-site parking requirements for a Limited Group Home.
4. Exhibit "C" demonstrates that the Development Officer considered the maximum allowable Congregate Living facilities within the Windermere neighbourhood, and determined that the proposed development would not exceed this threshold.
5. Exhibit "D" demonstrates that the Development Officer considered the concentration of Special Residential Facilities within the Windermere neighbourhood. The proposed development is situated southeast of the nearest existing Group Home at 4003 Westcliff Place SW, occupied by ten senior residents.
6. Several submissions were made speculating upon intensity of use, but the Board notes that material impact upon parking in any situation is not limited to Limited Group Homes, but could also apply in instances where a single family that owns various vehicles moves into an already strained parking situation. Therefore, the Board is not satisfied that the proposed use will have adverse impacts that are materially or significantly different than those associated with a Single Detached House Use.
7. The Board accepts the presentations of the Appellants that this specific cul de sac has a scarcity of on-street parking. However, the Board notes that all existing uses on the cul de sac, including the proposed use, meets the off-street parking requirements of this neighbourhood.
8. Both the Appellants and the Respondent made various submissions about the valuation of properties located adjacent to Limited Group Homes. Appellant 2 provided a letter from an individual who works in real estate appraisal. The letter stated that it is a "fact" that Limited Group Homes have a proven deleterious effect on adjacent property values. However, the letter-writer also stated that he did not have supporting evidence at that time.
9. The Respondent claimed that it is almost impossible to attribute the devaluation of one's home to the presence of an adjacent Limited Group Home, but he provided no further information in this regard for the Board to consider.
10. In the absence of substantiating evidence with respect to the property valuation claims put forward by both parties, the Board is not prepared to make any findings regarding the impact of a Limited Group Home upon adjacent property values.

[86] The Board also finds that the Development Officer did not vary the maximum allowable number of residents under Section 79(1)(b), and therefore did not exercise a discretion, for the following reasons:

1. Section 79(1)(b) states that "the Development Officer *may* restrict the occupancy of a Limited Group Home" [emphasis added], indicating that the

Development Officer has the power to exercise some discretion in determining the maximum occupancy of a Limited Group Home.

2. The Board agrees with the Development Officer that, in the absence of an explicit direction as found in other sections of the *Edmonton Zoning Bylaw*, that this discretion does not change the underlying nature of the development from a Permitted to a Discretionary Use.
3. Notwithstanding the above, the Board is not satisfied that the Development Officer did, in fact, exercise his discretion to reduce the maximum number of residents in this particular instance.
4. Page two of the Congregate Living Facility Combined Application Form for this development states: "Maximum number of occupants proposed for this site: 4".
5. The Board accepts the submissions of the Development Officer that he simply approved the development as applied for.

Section 96(2)(a) Threshold Purpose: Capacity

[87] With respect to Section 96(2)(a), the Board references points 4 through 5 in paragraph 85 (above), and accepts the Development Officer's submission that his review of the application considered the capacity of the Windermere neighbourhood to accommodate the additional Limited Group Home.

[88] In addition, the Board notes that the General Regulations under Section 96(3) have been met, and that the development does not result in an excess of the threshold requirements.

[89] Section 96(2) lists three Threshold Purposes, two of which are to "ensure that Special Residential Facilities are available in all neighbourhoods; and protect existing Special Residential Facilities from concentration that could impair their proper functioning." The wording of Section 96(2) does not give particular emphasis to any one of the Threshold Purposes over the other.

[90] For the above reasons, the Board is satisfied that the Development Officer properly reviewed the development application and correctly interpreted and applied the provisions of the land use bylaw. Pursuant to Section 685(3), no appeal lies, and the decision of the Development Authority is upheld.

Mr. Vince Laberge, 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*, RSA 2000, c S-1;
   c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
   d) the requirements of any other appropriate federal, provincial or municipal legislation; and
   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 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 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.