Edmonton Subdivision and Development Appeal Board

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-577-3537
Email: sdab@edmonton.ca
Web: www.edmontonsdab.ca

Date: February 19, 2016
Project Number: 156704720-005
File Number: SDAB-D-16-001

Notice of Decision

[1] This appeal concerns the decision of the Development Authority, issued on November 25, 2015, to refuse the following development:

> Develop a Secondary Suite in the Basement of a Single Detached House, existing without permits [unedited from the Development Permit]

[2] The subject property is located on Plan 9723920 Blk 4 Lot 87, municipal description 14848 - 47 Street NW, within the RPL Planned Lot Residential Zone. The Miller Neighbourhood Area Structure Plan applies to the subject property.

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

- Copy of the Development Permit Application;
- Development Officer's written submissions, dated January 44, 2016; and
- Copy of the Miller Neighbourhood Area Structure Plan.

January 6, 2016 Hearing

Decision:

[4] The Subdivision and Development Appeal Board ("SDAB") at a hearing on January 6, 2016, made and passed the following motion:

> That the hearing for SDAB-D-16-001 be tabled to February 4, 2016, at the request of the Respondent and with the consent of the Development Authority.

Reasons for Decision:

[5] The Board received an email request from the Appellant seeking an adjournment to February 4, 2016 or February 11, 2016.

[6] The Development Authority was not opposed to the tabling request.

[7] The SDAB office was closed over the Christmas break and this was the first tabling request from the Appellant, (and this was the Appellant's first opportunity to request an adjournment).

[8] As a result, the Board tabled the hearing to February 4, 2016.

February 4, 2016 Hearing

[9] On February 4, 2016, the Subdivision and Development Appeal Board made and passed the following motion:

> That the hearing of SDAB-D-16-001 be raised from the table.

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

[11] The appeal was filed on December 7, 2015, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing:

i. Position of the Appellant, Mr. J. D'Andrea.

[12] Mr. J. D'Andrea appeared at the hearing, and was represented by his son, Mr. V. D'Andrea, who spoke on the Appellant's behalf.

[13] Mr. V. D'Andrea reiterated the arguments made in the Grounds for Appeal that were filed with the Notice of Appeal.

[14] He emphasized that the initial inspection team could have been clearer about how the property is not suited for a Secondary Suite development. Had the Appellant known, he would have considered decommissioning the Secondary Suite altogether, rather than investing financial resources into making the development legal.

[15] He submitted Exhibit "A", a copy of the Notice of Inspection letter dated February 25, 2015, which stated that the inspection was to ensure compliance with the Fire Code, and made no mention of deficiencies. Following the inspection, the Appellant committed financial resources to make the Secondary Suite compliant, including drywalling the ceiling and insulation.

[16] Mr. V. D'Andrea clarified that the Appellant purchased the property in 2007, and the Secondary Suite has existed for about two years.

[17] The most recent Secondary Suite tenants consisted of a family of four – two adults and two children – who owned one vehicle which they parked on the street. The Appellant himself owns one vehicle, which is parked in the rear double detached garage. The remainder of the garage is used to store mechanic equipment which the Appellant owned prior to his retirement.

[18] The subject property is located just off of Matheson Way, which is a bus route. With the exception of seasonal parking bans, there are no parking restrictions along Matheson Way, and parking is available on both sides of the roadway. Traffic along Matheson Way is strictly residential. The property is also located about five minutes from Clareview LRT Station by car.

[19] The Appellant reviewed submitted pictures showing two different vehicles parked up against the wall of the rear detached garage. The pictures demonstrated that a third on-site parking space is possible at the south east corner of the subject Site.

[20] Upon questioning, the Appellant acknowledged that the proposed parking space is narrow, and that it is limited on both sides by a wall and a fence. However, he is prepared to hardsurface the grass area directly adjacent to the fence.

[21] Alternatively, if the proposed parking space simply is not viable, he would request that the Board consider a variance to the required number of on-site parking spaces.

[22] The Appellant was not aware of any neighbours objecting to the proposed development, but also acknowledged that he had not spoken with any neighbours.

ii. Position of the Development Officer, Ms. E. Lai.

[23] Ms. Lai was accompanied by her colleague, Mr. G. Robinson, also a Development Officer from the Sustainable Development Department.

[24] A neighbour registered a complaint with the City, which resulted in an inspection. The complaint related to a messy yard and dirt tracks on the subject property, which impacted the affected neighbour.

[25] Upon questioning, Mr. Robinson stated that there is no record of the conversation between the inspector and the Appellant, wherein the inspector allegedly assured the Appellant that a variance would be granted. He clarified that the role of the residential compliance team is to determine whether there is an illegal suite, not to review the development itself, which is the role of the Development Officer.

[26] The proposed parking space is limited on one side by a retaining wall and on the other by the wall of the rear detached garage. Since the proposed parking space is limited on both sides, Section 54.2(4)(a)(iv) of the *Edmonton Zoning Bylaw* applies, and the minimum parking space width must be 3.0 metres.

[27] The Board drew Ms. Lai's attention to the Real Property Report, which suggests a parking space width of 1.98 metres, while the Development Permit Refusal states that the width is 2.6 metres.

[28] Ms. Lai clarified that due to the trapezoid shape of the proposed parking space, it is 1.98 metres at the narrowest point, and 2.66 metres at the widest. In her opinion, the proposed parking space is not feasible, even if the hardsurfacing condition is met. The existence of the retaining wall on one side, and the detached garage's wall on the other, would not allow car doors to be opened properly.

[29] The position of the Development Authority was that the majority of RPL lots are not designed to meet the development regulations for Secondary Suites. Notwithstanding the fact that Secondary Suites are a Permitted Use in the RPL Zone, they must still comply with the development regulations. In rare instances, such as on larger corner lots, compliance may be possible. However, in Mr. Robinson's opinion, Secondary Suite developments for narrower RPL lots do not present a hardship so much as a design choice.

[30] With respect to public transit, Mr. Robinson clarified that the nearest bus stop is approximately 72 metres from the subject property, heading northwest on Matheson Way. A second bus stop is located approximately 200 metres away, heading southeast on Matheson Way. The nearest LRT station is located outside the subject property's 400 metres radius.

[31] In his view, the presence of nearby bus stops, the location of the nearest LRT station, and the availability of outdoor amenity areas such as parks, are factors to consider when determining whether to grant a variance to the required minimum Site area under Section 86(1).

iii. Rebuttal of the Appellant, Mr. J. D'Andrea.

[32] Regarding the complaint lodged by a neighbour, he believes it may have been from the owner of the property immediately to the right of the subject site. The complaint may have stemmed from an incident approximately two summers ago, when the Appellant was completing some landscaping work in his yard. The matter has since been resolved.

[33] The Appellant stated that although he has never tried, it should be possible to park a vehicle in the middle of the proposed parking space and still have space to open the vehicle's doors on both sides. However, he acknowledged that he has not made such an attempt yet, as he did not want to run over the grass.

Decision:

[34] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The Development is GRANTED.

[35] In granting the development, the Subdivision and Development Appeal Board allows the following variances:

1) Section 86(1) is varied to permit a minimum Site Area of 340.05 square metres; and

2) Section 54.2 Schedule 1(A)(2) is varied to reduce the required number of on-Site parking spaces to two.

Reasons for Decision:

[36] Under Section 130.2(3), Secondary Suites are a Permitted Use in the RPL Planned Lot Residential Zone.

[37] The variances to the Site Area and required on-Site parking are granted for the following reasons:

1) Lots in the RPL Zone are typically smaller than in other residential zones. Based on the evidence before the Board, a significant portion of such lots would not meet the minimum required Site Area for Secondary Suites, despite the fact that Secondary Suites are a Permitted Use within the RPL Zone.

2) There is an abundance of on-street parking. The roadway directly in front of the subject property permits on-street parking on both sides. In addition, the subject site is one lot down from the flanking roadway Matheson Way, which except for seasonal parking bans, also has unrestricted parking on both sides of the street.

3) The subject-property is well-serviced by public transit, and is located within walking distance to two bus stops, the closest being approximately 72 metres away on Matheson heading northbound, and the other being approximately 200 metres away heading southbound.

4) The Secondary Suite will not change the exterior footprint of the Single Detached House.

[38] The Board notes that two parking spaces are already located within the detached rear Garage, and the proposed third on-Site parking is impractical and deficient for parking purposes.

[39] The Board also notes that no letters of opposition were received, and that no neighbours within the notification area attended the hearing to oppose the development.

[40] Based on the submissions of the Development Officer and the Appellant, the Board finds that the complaint from a neighbouring property owner which brought the existence of the Secondary Suite to the City's attention related to an unsightly yard and muddy tracks caused by a landscaping job unrelated to the Secondary Suite Use.

[41] Based on the above, the Board does not believe that granting the development and the necessary variances will unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. As such, the appeal is allowed and the development is granted.

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

c.c.

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.

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Date: February 19, 2016
Project Number: 176844860-002
File Number: SDAB-D-16-045

Notice of Decision

[1] On February 4, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on January 11, 2016.

[2] The appeal concerned the decision of the Development Authority, issued on December 25, 2015, to refuse the following development:

> Construct exterior alterations to a Semi-detached House (Driveway extension, 1.83m x 5.0m), existing without permit [unedited from the Development Permit]

[3] The subject property is located on Plan 1520589 Blk 13 Lot 5, municipal description 6521 - 172 Avenue NW, within the RF4 Semi-detached Residential Zone. The McConachie Neighbourhood Structure Plan and Pilot Sound Area Structure Plan apply to the subject property.

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

- 16 photographs of driveways in the area near the subject property, submitted by the Appellant;
- Copy of the Development Application;
- Copy of the Canada Post receipt confirming delivery of the Development Permit Decision;
- Copy of the Real Property Report;
- Written submissions of the Development Officer, dated January 28, 2016; and
- Copies of the McConachie Neighbourhood Structure Plan and Pilot Sound Area Structure Plan.

Summary of Hearing:

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

[6] Although the Development Officer's decision was issued on December 25, 2015, the Board observed that the Canada Post receipt confirmed delivery of the decision on January 7, 2016. The Appellant filed his appeal on January 11, 2016, and accordingly, the Board finds that the appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

i. Position of the Appellant, Mr. H. Gill

[7] The Appellant stated that he previously developed a Semi-Detached House with a similar Driveway extension and had not received any complaints. He therefore built the subject property with an extended Driveway, and was surprised to learn on filing a Real Property Report that the extension is not compliant with development regulations.

[8] The Appellant referred to the 16 photographs he had submitted. The photos depicted 11 properties located near the subject development, all of which had similar Driveway extensions.

[9] When questioned about the precise location of the comparable properties, Mr. Gill was unable to provide the exact addresses for some of the homes. However, he stated that all the properties were located either on 174 Avenue or 173 Avenue, or directly across from the subject property.

[10] He also estimated that approximately 40% of the surrounding lots are still vacant. Although the properties directly adjacent to the subject have been developed, their Driveways have not yet been poured.

[11] He acknowledged that the photographs depicted Single Detached Houses and that all homes, including the subject Semi-Detached House, are required to provide green space at the front of the property. With the extension there will still be four feet of green space at the western edge of the subject Site and four feet on the adjacent lot to the west.

[12] When questioned, Mr. Gill clarified that he developed both the subject Semi-Detached House at 6521 Street as well as the adjacent property at 6519. In both cases, he applied for separate Development Permits to construct Driveway extensions, and in both cases, the Development Authority refused the application.

[13] Mr. Gill also appealed the Development Authority's refusal for the adjacent property to the east, but the hearing for that appeal has not yet been held.

[14] The extension was completed in the Summer of 2015, and although he had not considered how the extension might be used, he acknowledged that it could be used for a second parking space beside the garage and/or as an extended walkway. He would also like the Board to approve the extension because the property has already been sold.

[15] The Board referred Mr. Gill to the Real Property Report and asked why he did not develop the Driveway according to the approved plans.

[16] Mr. Gill replied that he had used the same blueprints for a previous property he had developed. In that case, he developed an extended Driveway that was also not according to approved plans, but did not receive any notices from the City. Consequently, he followed the same process for the subject property. He was surprised to learn after-the-fact that the extension was not permitted.

ii. Position of the Development Officer, Ms. E. Lai

[17] The *Edmonton Zoning Bylaw* does not specify what portion or percentage of a Front Yard must be landscaped. However, there must at least be some landscaping such as trees or grass.

[18] In her view, a concrete extension – even if constructed of a thinner concrete material that would discourage parking – would not suffice as landscaping. On the other hand, if the extended portion was constructed of paving stones, it could be considered as part of the Front Yard landscaping.

[19] No landscaping plan was provided, nor is one always required when reviewing development applications. As part of her review process, she examined the approved plans, which did not show that a tree was required on the Front Yard; however, it did specify that landscaping would be required.

[20] To help explain her review process, Ms. Lai submitted Exhibit "A", a copy of the original approved plans. She pointed out that the original approval was for a 4.27 metres wide Driveway, which exceeded the maximum allowable width of 3.1 metres. A variance of 1.17 metres was therefore granted.

[21] Since the Appellant now proposes an extra 1.83 metres, she added 1.83 metres to the existing approved Driveway width of 4.27 metres to arrive at a total width of 6.1 metres.

[22] A Driveway width of 6.1 metres exceeds the 3.1 metres maximum permissible under Section 54.1(4)(b) of the *Edmonton Zoning Bylaw*.

[23] In Ms. Lai's opinion, the 1.83 metres wide extension cannot be considered a walkway, since a walkway is typically 1.0 metres in width. She clarified that the *Edmonton Zoning Bylaw* does not stipulate a maximum width for walkways, and that the 1.0 metres walkway threshold was established as a Department policy.

[24] There have been no site visits so she could not say whether the extension is currently being used for parking.

iii. Rebuttal of the Appellant, Mr. H. Gill

[25] Mr. Gill was invited to provide a rebuttal, but he declined to do so.

Decision:

[26] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The Development is REFUSED.

Reasons for Decision:

[27] The proposed development for a Driveway extension is Accessory to a Permitted Use, Semi-Detached Housing, in the RF4 Semi-Detached Residential Zone.

[28] Section 54.1(4)(b) states, in part, that a Driveway is limited to "a maximum width that shall be calculated as the product of 3.1 m multiplied by the total number of adjacent side-by-side parking spaces contained within the Garage."

[29] The Garage on the subject Site has one parking space, therefore the allowed maximum Driveway width is 3.1 metres.

[30] Under the original approved plot plan, a Driveway was approved on the subject Site with a width of 4.27 metres, which exceeds the maximum allowed Driveway width by 1.17 metres.

[31] The Board accepts the Appellant's evidence that the proposed Driveway extension which adds 1.87 metres to the approved 4.27 metre for a total continuous width of 6.1 metres is intended to be used to provide additional parking as well as pedestrian access to the principal dwelling.

[32] Section 54.2(2)(e)(i) states, in part, that "parking spaces shall not be located within a Front Yard."

[33] Section 55.4 (1) further provides:

> All open space including Front Yards, Rear Yards, Side Yards and Yards, at Grade Amenity Areas, Private Outdoor Amenity Areas, Setback areas and Separation Spaces shall be landscaped with trees, shrubs, flower beds, grass, ground cover or suitable decorative hardsurfacing, in accordance with the Landscape Plan submitted pursuant to subsection 55.3 and approved by the Development Officer. This requirement shall not apply to those areas designated for parking and circulation, which shall be landscaped in accordance with subsection 55.8 of this Bylaw.

> The Development Officer may require Landscaping of areas within a Site that are intended for future development if, in the opinion of the Development Officer, the lack of Landscaping creates a potential negative visual impact, given the visibility of these areas from adjacent properties and public roadways.

[34] The Board is being asked to vary development regulations enacted to achieve a balance between landscaping, pedestrian access, and vehicular access and parking in Front Yards. The regulations are designed to ensure that Front Yards are partially landscaped to prevent them from taking on the appearance of a parking lot and from being used as on-site parking spaces.

[35] According to the evidence, the proposed Driveway extension, currently existing without a permit, is a 6.1 metres wide monolithic concrete structure spanning all but the four most easterly feet of the width of the subject Site's Front Yard. It exceeds the maximum allowable Driveway width by 3.0 metres, and exceeds the original approved plot plan by 1.83 metres. It extends to the west Side Lot Line where it abuts an identical driveway that is to service the other half of the Semi-Detached House.

[36] The Board notes that the Development Authority refused the Driveway extension for the identical Driveway on the abutting lot to the west of the subject Site and that matter will be heard by a different panel at a future date.

[37] The proposed Driveway extension would result in monolithic paving of almost the entirety of the Front Yard. Should this concrete area in the Front Yard be used as intended for parking, the view of the principal dwelling would be blocked, the landscaped area would be drastically reduced, and the overall appearance of the residential property's Front Yard would be that of a parking lot.

[38] In addition, the negative impacts of the 6.1 metres expanse of monolithic concrete is exacerbated in this case by the fact that the principal dwelling is a Semi-Detached House, and the Appellant has constructed an identical Driveway extension for the connected Semi Detached Housing on the abutting lot.

[39] Given that the subject property is half of a Semi-Detached development, the two adjoining Driveway extensions will result in a monolithic concrete structure of 12.2 metres in width. Practically, these abutting Driveway extensions will result in virtually the entirety of the adjoining Front Yards being paved in concrete to facilitate the side-by-side parking of up to four vehicles.

[40] The Board is not persuaded by the photographs submitted by the Appellant that the proposed development is characteristic of the neighbourhood for the following reasons:

1) The photographs of other properties with Driveway extensions within a two block radius of the subject property were all Single Detached Houses with double front attached Garages. The subject property is a Semi-Detached House with a single front attached Garage.

2) None of the photographs depict Semi-Detached developments with abutting Driveway extensions that are comparable to the subject development.

3) The photographed Driveways were inconsistent: some showed walkway/Driveway extensions extending directly from the front door to the street, others showed curved walkway/Driveway cutouts which increase the landscaped area and are consistent with the Driveway originally approved for the subject property, rather than the proposed extension, existing without permits.

4) Some of the photographed properties are not fully developed, and others do not show the entire width of their respective subject sites; therefore, they do not provide an adequate basis for comparison.

5) No information was presented with respect to whether the comparable Driveway extensions had valid permits.

[41] The Board finds that there is no hardship in this case because all of the required on-site parking is provided per the originally approved site plan.

[42] The Board also notes the proposed development is one of the first Semi-Detached Houses in this area. This neighbourhood is currently being developed, and according to the Appellant, Driveways for similar Semi-Detached Houses along the block face have not yet been poured; therefore, the Board finds that the proposed Driveway extension is not characteristic of existing developments in the neighbourhood.

[43] Given the above, the Board finds that granting the development permit and the necessary variances will unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use and enjoyment of neighbouring parcels of land.

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

c.c.

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. 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.

2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by 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.

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Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-577-3537
Email: sdab@edmonton.ca
Web: www.edmontonsdab.ca

Date: February 19, 2016
Project Number: 180380572-001
File Number: SDAB-S-16-002

Notice of Decision

[1] On February 4, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on January 7, 2016.

[2] The appeal concerned the decision of the Subdivision Authority, issued on December 23, 2015, to approve the following:

> Create separate titles for Lots A and B, Block 93, Plan 2177 AH located east of 136 Street and north of Stony Plain Road; Glenora [unedited from the subdivision approval letter]

[3] The subject property is located on 13534 Stony Plain Road NW. It is within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

- Appellant's written submissions, received on January 7, 2016 and January 26, 2016;
- Copy of the Subdivision File, including the Approval Letter with Conditions; and
- Memorandum from the City of Edmonton's Law Branch, dated February 3, 2016.

Summary of Hearing:

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

[6] The appeal was filed on time, in accordance with Section 678 of the *Municipal Government Act*, RSA 2000, c M-26.

i. Position of the Parties

[7] The Appellant, Peroba Homes, was represented by an agent, Mr. Christopher Wigeland. The Subdivision Authority was represented by legal counsel, Mr. M. Gunther.

[8] The parties confirmed that they wished to make joint submissions.

[9] They acknowledged that the Appellant's initial reason for filing an appeal arose from the first condition listed on the Subdivision Authority's approval letter, which stated "that the owner dedicate road right of way to the satisfaction of Transportation Services, as shown on Enclosures I and II".

[10] Mr. Gunther explained that the purpose of the first condition was for the anticipated widening of Stony Plain Road for future LRT expansion.

[11] Section 662 of the *Municipal Government Act* states:

> **662(1)** A subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land for the purpose of roads, public utilities or both.
>
> **(2)** The land to be provided under subsection (1) may not exceed 30% of the area of the parcel of land less the land taken as environmental reserve or as an environmental reserve easement.
>
> **(3)** If the owner has provided sufficient land for the purposes referred to in subsection (1) but the land is less than the maximum amount authorized by subsection (2), the subdivision authority may not require the owner to provide any more land for those purposes.

[12] Although Section 662 permits the Subdivision Authority to require dedication of the road right of way for the purpose of roads or utilities, it does not authorize the Subdivision Authority to ask for what is more than sufficient for the purposes of that road or utility.

[13] Upon further review, it was determined that the portion of land required to be dedicated pursuant to the first condition of the Subdivision Authority's decision was slightly more than was needed for the road.

[14] Accordingly, the condition has been revised to require land dedication only for what is needed for the purposes of the Stony Plain Road expansion. In support, Mr. Gunther submitted Exhibit "A", consisting of two maps which illustrated the amended area required for land dedication.

[15] Per the revised condition, Lot A as depicted in Exhibit "A" will be 360 square metres.

[16] The parties therefore requested that the Board amend the first condition of the Subdivision approval to read as follows: "that the owner dedicate road right of way to the satisfaction of Transportation Services, as shown on *Revised* Enclosures I and II [emphasis added to highlight the amendment]".

[17] Upon questioning, Mr. Wigeland stated that he now understands that the City is within its rights to require land dedication pursuant to Section 662. He confirmed that he was in agreement with the proposed amendment to the first condition as outlined by Mr. Gunther.

Decision:

[18] The appeal is ALLOWED IN PART, and the decision of the Subdivision Authority is CONFIRMED. The subdivision is APPROVED, subject to the amended conditions as follows:

1. that the owner dedicate road right of way to the satisfaction of Transportation Services, as shown on Revised Enclosures I and II (attached); and

2. that any outstanding property taxes be paid. (Tax Collection Branch 780-496-6366).

[19] All other advisements as laid out in the Subdivision Authority's approval letter, dated December 23, 2015, remain unchanged.

Reasons for Decision:

[20] The Board approves the amended condition requiring dedication of an amended portion of the subject parcel.

[21] The parties have agreed that the revised proposed dedication represents the amount of land sufficient for the purposes of roads.

[22] The land dedication is therefore properly required and authorized, pursuant to Section 662 of the *Municipal Government Act.*

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Enclosures I & II

c.c.

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26.