



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: February 21, 2019  
Project Number: 286337282-001  
File Number: SDAB-D-19-015

**Notice of Decision**

- [1] On February 6, 2019, the Subdivision and Development Appeal Board (the “Board”) heard appeals that were filed on January 9, 2019 by APPELLANT 1, Mr. Owen Van Every, and January 10, 2019 by APPELLANT 2, 564573 Alberta Ltd. o/a Westview Village MHC. The appeal concerned the decision of the Development Authority, issued on December 13, 2018, to approve the following development:

Construct two General Industrial Use buildings and to construct exterior alterations (vehicular access and retention pond) and to operate a General Industrial Use (temporary seacan storage)

- [2] The subject property is on Plan 0627961 Blk 1 Lot 6, located at 10831 - 231 Street NW, within the IM Medium Industrial Zone. The Winterburn Industrial Area Structure Plan applies to the subject property.

- [3] The following documents were received prior to the hearing and form part of the record:

- Copies of the approved Development Permit, Permit Application with stamped approved plans;
- Drainage Circulation Response;
- Development Officer’s written submissions;
- Appeal form filed by APPELLANT 1, Mr. Owen Van Every;
- Appeal form filed by APPELLANT 2, 564573 Alberta Ltd. o/a Westview Village MHC;
- Written submissions with enclosed List of Authorities of APPELLANT 2;
- Respondent’s supporting documentation;
- Four emails from neighbouring property owners in opposition to the development; and
- Five online comments submitted in opposition to the development, and two expressing a neutral position.

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

- Exhibit A – Speaking notes submitted by Ms. Thomas
- Exhibit B – Site map of Westview Village submitted by Ms. Cochrane
- Exhibit C – Speaking notes and supporting documents from Mr. Parks

### **Preliminary Matters**

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

### **Summary of Hearing**

*i) Position of the Appellants:*

#### **APPELLANT 1 – Mr. Owen Van Every**

- [8] Mr. Every did not object to the subject site being developed for industrial use, but he is opposed to the proposed sea can storage because of the site's proximity to Westview Village residents.
- [9] It was his opinion that this use should be located closer to 107 Avenue and 199 Street where several other container storage facilities and trucking companies are located.
- [10] It is not fair to expect the neighbouring residents to live with the eyesore that results from stacking sea can containers, equivalent to the height of a four-storey building, in their back yards.
- [11] Mr. Every questioned the types of chemicals that may be stored in the sea can containers and the impact that this could have on the water system.
- [12] The business operates seven days a week, and excessive noise is generated from moving and banging the sea can containers as well as the beeping of equipment working on the site. Noises start at 6:00 a.m. and goes well into the night.
- [13] It was his opinion that "temporary" sea can storage simply means that containers will move on and off the site, but that the nature of the business is essentially a permanent storage facility for sea cans.

- [14] He and the other Westview Village residents have invested significantly in their homes and are concerned that the proposed development will negatively impact their home values.
- [15] He was aware that the subject site was zoned to accommodate an industrial use but the use should take into consideration the close proximity to the Westview Village residences.
- [16] He expressed concern that notices of the approval were sent when the Canada Post mail disruptions were occurring and that many of the residents of Westview Village never received notice.
- [17] It was his opinion that the proposed berm and required landscaping is not sufficient to screen the proposed development from the residents of Westview Village because the sea cans can be stacked five high, or approximately 40 feet.
- [18] Mr. Van Every provided the following information in response to questions from the Board:
- a) He owns his mobile home but rents the land from Westview Village.
  - b) He purchased his mobile home for \$132,000.00 but estimated that it will only be worth \$30,000 if the proposed development is approved.
  - c) The proposed berm and trees will not adequately screen the proposed development from the residents of Westview Village regardless of whether the trees are coniferous or deciduous. He has never been provided with any information regarding the type or size of trees that are proposed.
  - d) The proposed development should be located closer to 107 Avenue and 199 Street where similar facilities are located.

**APPELLANT 2 – 564573 Alberta Ltd., o/a Westview Village MHC**

- [19] Appellant 2 was represented by legal counsel, Ms. S. Finlay. She was accompanied by Mr. C. Smith from Al-Terra Engineering Ltd., and Ms. C. Thomas, Manager of Westview Village. Westview Village is a residential mobile home park located adjacent to the proposed development. According to the 2016 municipal census, approximately 2,157 individuals reside in 1,060 mobile homes in Westview Village.
- [20] A mobile home park has existed on these lands since 1972. Westview Village and its residents have had to contend with increasing levels of noise and activity from surrounding uses.
- [21] The subject site falls within the Winterburn Industrial Area Structure Plan, a Statutory Plan pursuant to section 638 of the *Municipal Government Act*. It implicitly

acknowledges that these uses, adjacent to each other, have the potential to conflict. Section 3.3.3 outlines the land use objectives.

- [22] The Area Structure Plan was amended in 2012 and most recently in 2015 to ensure that the different uses can co-exist. Policy 3.3.3.1 of the Winterburn ASP requires the following:

A 6.0 metre wide landscaped buffer will be established at the Development Permit stage through the use of a 2.4 metre high coniferous tree planting at 4.5 metre spacing and a 1.8 metre high chain link fence with visual screening vinyl strips.

- [22] The attachments to Bylaw 17427, the amendment to the Winterburn Industrial ASP were referenced to illustrate the buffer that was established for light industrial development immediately adjacent to the mobile home park and the medium industrial zone beyond that.

- [23] The Development Officer recognized the need to establish the 6.0 metre wide landscaped buffer but a condition requiring the fence was not contained in the development permit approval.

- [24] The Board is obliged to enforce the requirements of the Winterburn Industrial ASP at the development stage in order to limit the impacts of industrial uses on the neighbouring residential use.

- [25] Section 57 of the *Edmonton Zoning Bylaw* addresses the General Performance Standards for Industrial Developments. Section 57.1.2(c) states:

Any Use or activity in the IM or IH Zones, or any Use other than Rural Farms in the AGI Zone, shall comply with the following standards:

all outdoor service, assembly, trash collection and storage areas including the trucking yards associated with such activities shall be screened from view from any public roadway other than a Lane, and from adjacent Sites, by building walls, freestanding walls, landscape materials, berms, wood Fences or a combination of these, to the satisfaction of the Development Officer, unless the public roadway is a local road serving only Sites in an AGI, IM or IH Zone, or the adjacent Site is Zoned AGI, IM or IH

- [26] The intent of this provision is to ensure that an industrial use is contained on the site. Part of the issue that arises in this appeal is that because the sea can containers are stacked five high, or approximately 40 feet, the visual impact is not contained on the site. The other issue is the excessive noise generated by the movement of the sea can containers – this noise is not contained on the site.

- [27] While these are potentially enforcement issues, not imposing conditions to address these nuisances creates a contest between the existing residential use and the proposed industrial use. The fact that there is no containment creates a conflict that could be remedied by the imposition of additional conditions.
- [28] Photographs were referenced to demonstrate the impact upon the residents' view. The residents have had to deal with the effects of this development for over a year because the business had been operating without a development permit. During this period, the owners of Westview Village received complaints from residents regarding constant noise from the placement and removal of large shipping containers. The noise is exacerbated because the shipping containers are stacked five or six high. A visual buffer or landscaping has not been put in place to screen the use in any way from residents.
- [29] Westview Village acknowledges the uses permitted on adjacent lands. However, the direction provided in the Winterburn Industrial ASP also includes limiting impacts from surrounding industrial uses on the residents of Westview Village. The impacts are to be limited by the establishment and maintenance of buffers and the design requirements for fencing. Impacts have not been mitigated in this case for the following reasons:
- a) The proposed trees are not of sufficient height or age to provide a true buffer;
  - b) The height of shipping containers has not been limited to below 18.0 metres;
  - c) The movements of the containers have not been limited to reduce the loud banging from the containers;
  - d) Buffers have not been provided at certain spots that are critical for visual screening;
  - e) Slats in the fencing have not been required; and
  - f) The height at which shipping containers can be stacked has not been limited.
- [30] There are a few small changes that could be made to the Development Permit conditions that would result in a more balanced co-existence between the two competing uses:
- a) The landscaped buffer should be shifted to be placed at the locations identified on the proposed landscaping plan attached at Tab 7 of the written submission.
  - b) Vinyl strips should be required to be added to the fence to provide a visual buffer or a new 1.8 metre chain link fence with vinyl slats installed on the buffer within the subject property.
  - c) Containers could be stacked in closer proximity to the property line (up to 500 feet instead of 590 feet) provided that the height of the stacking is limited to three

shipping containers tall. This has the potential to both limit the visual impacts as well as reduce the travel of noise.

- d) Shipping containers should be allowed to be placed and moved only between 8:00 a.m. and 5:00 p.m., Monday to Friday and not on holidays.
- [31] Section 687(3)(d) of the *Municipal Government Act* provides authority for the Board to step into the shoes of the Development Officer and impose conditions that should have originally been imposed in order to comply with the Winterburn Industrial ASP.
- [32] The ASP contains the explicit objective “to limit impacts on the existing Westview Village residential from surrounding industrial and commercial land uses”. Policy 3.3.3.1 of the Winterburn ASP was amended in 2015 by reducing the tree spacing in the buffer area and additional fence requirements.
- [33] The issuance of the Development Permit does not comply with the ASP because the proposed landscaping is insufficient to satisfy this Policy. Further there is no requirement for the lands to be fenced by way of a chain link fence with visual screening vinyl strips. It is possible for the Board to address these concerns by imposing additional conditions on the development permit.
- [34] Ms. Thomas, Manager of Westview Village, provided a written submission marked Exhibit A. She has fielded numerous complaints and has listened to many residents who are genuinely concerned about how they can live amicably with the neighbouring industrial businesses. Their concerns about the proposed development include the unsightly view from their back yards, excessive reverberating noise, the types of materials stored in the sea can containers because of possible leakage and contamination running directly into their yards, the safety of children, and decreased property values.
- [35] Westview Village has been home to some residents for more than 40 years. Although change is not always welcome they realize that it is inevitable and are hopeful that some of their concerns can be addressed so that they can live harmoniously with the developer of the adjacent land.
- [36] Mr. Smith referenced the Proposed Concept Plan that he prepared to include the additional requested conditions to create a buffer to protect the residents. The approved development permit includes a condition that the tree spacing would be one tree for every 7.0 metres, which does not comply with the ASP. This condition should be amended to provide one tree per every 4.5 metres to comply with the amended ASP.
- [37] A 1.8 metre fence with privacy slats is also required by the ASP. Trees proposed on the east side of the subject site should be relocated to the south boundary of the IM zoned parcel to provide visual buffering to the Westview Village residences abutting that boundary line. This will provide much more effective screening and will not increase the developer’s requirement for trees. The same number of trees will simply be shifted further to the west which in his opinion is a fair compromise.

- [38] The hours of operation should also be outlined and enforced to ensure that the business is not operating 7 days per week, 24 hours per day.
- [39] Noise from the high stacked sea cans has proven to be a problem. It is suggested that the proposed 180 metre container storage setback from Westview Village could be reduced to 150 metres in exchange for limiting the stacks to three sea cans in height. This ensures that the stacking activities are kept closer to the ground which will keep the wind from shifting the containers and assist with sound attenuation.
- [40] The Board thanked Ms. Finlay for her thorough submission. Ms. Finlay and Mr. Smith provided the following information in response to questions from the Board:
- a) The land on the eastern boundary of the subject site is owned by Westview Village and they have the ability to provide screening if this land is developed in the future.
  - b) They support the variance granted in the landscaping requirements regarding the proportion of deciduous to coniferous trees required. It is their opinion that it is most appropriate to require the planting of coniferous trees. However, it was noted that the Development Officer probably felt compelled to do this because of the requirement contained in the ASP that the trees be coniferous. The minimum height of the trees should be 2.4 metres and the tree spacing should be 4.5 metres to comply with the ASP.

*iii) Position of Affected Property Owners in Support of the Appellants:*

Ms. D. Kapas:

- [41] She agreed with all of the concerns that have been raised. There is a large pond located in Westview Village that is home to Canada Geese and many different species of birds and she expressed concern regarding the proposed retention pond and the possible negative impact that it may have on the wild birds in this area.

Ms. L. Cochrane

- [42] A map of the Westview Village site, marked Exhibit B, was submitted to illustrate the location of the pond that was referenced by Ms. Kapas.
- [43] She has lived in Westview Village for 20 years and has been active in the Community Association. Westview Village met with a developer for the same parcel of land four years ago but the storage of sea can containers was never discussed. She questioned whether or not this development permit was taken out by the same developer. That developer ensured the community that the development would consist of industrial buildings and warehouses. The berm and the installation of trees have never been completed.

- [44] Even though she lives some distance from the subject site, she is still affected by the noise that results from the movement of the sea cans.
- [45] Screening would have to be provided by trees, as shrubs would be useless. She questioned who would water and maintain the trees after they are planted. If the required landscaping is not maintained, the plants will eventually die and deteriorate to a bed of weeds.
- [46] She expressed concern that she and a large number of other residents did not receive notice of the hearing. She confirmed that she has received notices in the past.
- [47] The height of the sea cans stacked on the site is a concern as well as the 24/7 operation of the business.
- [48] She questioned the location of the proposed retention pond on the subject site and the possible impacts.

Mr. Parkes:

- [49] He provided documents in support of his position, marked Exhibits C-1 to C-11.
- [50] The proposed development will have a direct impact on his quality of life and the use and enjoyment of his modular home because the site is in the direct line of sight from his southwest facing living room and kitchen windows as well as the patio doors. He has a deck and north facing screen room and nearly the entirety of his view is taken up by the subject site.
- [51] He acknowledged that the open space and prominent wildlife in the area will diminish as the city expands.
- [52] He fully supports the additional conditions proposed by Westview Village. One of his primary concerns is noise. On many occasions he has heard the loud banging of sea can containers as early as 5:30 a.m. During a wind storm last fall, a sea can was blown off the top of a stack piled three or four high which sounded like a bomb going off and shook the whole house. If such an incident occurred close to his property, he would be concerned about physical damage.
- [53] A photograph was referenced to illustrate the view from his home to the subject site.
- [54] As an asthmatic he expressed concern that the continual movement of equipment and sea cans located closer to his home would stir up more dust.
- [55] Exhibit 7 of the ASP contains a map that illustrates a wide strip of land between the southern boundary of Westview Village and the designated medium industrial zone.



- [56] Citing the General Purpose of the Light Industrial Zone, he questioned whether this area will be used as such and subject to the requirements of section 410.4 of the Bylaw, or developed as medium industrial with container storage located six metres from his fence.
- [57] It was his opinion that the subject site should comply with the Development Standards contained in Policy 3.7 of the ASP.

Mr. J. Szeryk:

- [58] He moved into Westview Village last fall because of the location and the beautiful views.
- [59] He understands the concerns that have been raised regarding the proposed berm and tree planting. He is also concerned about light pollution in addition to noise and dust pollution.
- [60] He was aware that the subject site would eventually be developed before he moved into Westview Village. He does not oppose the use but is concerned about the stacking height of the sea can containers and the intensity of the use. He would rather look at a large grass berm than a wall of sea cans.

Ms. P. Youck:

- [61] She was aware that the adjacent land would eventually be developed when she moved into Westview Village 15 months ago.
- [62] She is concerned about the excessive noise but it was her opinion that the suggested changes would address her concerns.

Ms. D. Cyre:

- [63] She questioned whether or not the developer is the same developer that met with the residents of Westview Village four years ago.

Ms. T. Bittner:

- [64] An existing gas line runs along the rear of her lot and all of the other lots that back onto the subject site, which makes it impossible to install anything physical to screen the view.

Mr. M. Clark:

[65] His lot also backs onto the subject site. He questioned how much closer the containers would be stored to the property line if the stacking height is reduced. If a swale is installed, water runoff may impact his property. He was also concerned about light pollution because City Enforcement has already required the owner to relocate some of the lighting on the site.

Ms. H. Jacobs:

[66] She lives some distance away from the subject site but can hear the loud bangs that occur when containers are being moved. She moved into Westview Village in 2012 because of the peaceful quiet location.

*vi) Position of the Development Officer, Ms. J. Kim:*

[67] Ms. Kim did not attend the hearing but provided a written submission that was considered by the Board.

*vii) Position of the Respondent, Railroad Runner Container Services, represented by Mr. D. Olund, Mr. J. Hiebert and Mr. A. Renowitzky:*

[68] Mr. Olund is a retired Professional Engineer and businessman and has operated Railroad Runner Container Services in Winterburn Industrial Park since 2007 from a site located at 107 Avenue and 199 Street. In 2014, the City began to exert pressure on the business because they wanted to improve the views along major corridors. They did not want the business at this location because it was visible from Anthony Henday Drive.

[69] Because of the anticipated Bylaw changes, he began to look for a new site. The zoning requirements for this site were reviewed and found to accommodate the needs of the business.

[70] When the site was purchased in 2016, he was aware of the concerns of Westview Village. A letter was sent to Westview Village's owner in Michigan, offering to sell some of the land adjacent to Westview Village to provide additional buffer, but the Respondent never received a response.

[71] Railroad Runner Container Services simply relocated the business to this site and the land was taken to market because of the resulting drastic increase in taxes.

[72] Mr. Hiebert, General Manager, thanked everyone for attending and agreed that the community was beautiful.

- [73] Time cards and emails were submitted to confirm the hours of operation. When the business first relocated to this site, the gates opened at 7:00 a.m. and the last truck was accepted at 3:15 p.m. in order to allow sufficient time for data entry and control before 3:30 p.m. and have the gates closed at 3:30 p.m. There may have been the occasional time when containers had to be moved until 4:00 or 4:30 p.m. but never past 5:00 p.m.
- [74] Over the past year the business hours have changed so that the gates open at 7:00 a.m., the last truck is accepted at 4:15 p.m. and the gates close at 4:30 p.m. The downturn in the economy has eliminated overtime hours. An operator arrives at 6:30 a.m. to start the machinery but it cannot be heard from Westview Village. There has been some heavy equipment activity occurring at the back of the site on Saturdays but it is kept to a minimum in order to comply with the requirements of Bylaw 14600, and between 7:00 a.m. and 5:00 p.m. on weekdays. He could not find any noise policies contained in the ASP.
- [75] Ninety percent of the containers stored on the site are empty.
- [76] The retention pond is required because water must be retained on the site and capable of handling 200-year flood requirements. He noted that the pond in Westview Village is also a retention pond. It was his opinion that the proposed retention pond will not negatively impact the wildlife or birds in this area.
- [77] If the land located to the south of this site and immediately west of Westview Village is developed, a retention pond will be required.
- [78] The business operated on 199 Street for ten years before moving to this site. The truck traffic has actually decreased since moving to this site because there is less highway frontage and the site is less visible.
- [79] They are also concerned about the train traffic. He has personally witnessed the first train passing by at 4:00 a.m. and at ten or fifteen minute intervals all day long. The train noise is much more onerous than the noise generated by the business because the trains run 24 hours per day but the business does not.
- [80] When the containers land at port, the Canada Food Control Board and Safety Board are responsible for ensuring that no contaminated containers enter the country. The Canadian Food Control Board has visited the site, moth boxes were put in the surrounding trees and no results were found. They are currently waiting for the written report that can be shared with the residents of Westview Village to alleviate their concerns. These are the same containers that bring goods to the store shelves, part of the intermodal system.
- [81] Equipment has been vandalized in the past by children who reside in Westview Village but charges were not laid in an attempt to be good neighbours. They want to install a berm and fencing in order to prevent children from accessing the site in the future.

- [82] It was their opinion that the recommendations made by Westview Village are positive and relocating the berm and trees from the east side of the property to the south side is a good suggestion. Containers will never be stored there because of the location of the high pressure gas line. The container piles will remain where they are currently located. The back 10 acres will be developed for uses allowed in the IM Zone, but will not be used for container piles. The location of the sea can containers is included on the approved drawings.
- [83] Unfortunately the recommendation to only stack the containers three high is a non-starter because it would result in a 40 percent revenue reduction and is not economically sound. Stacking the containers five high is the required number for the business to be viable, and the height does not exceed the maximum allowable 18 metre height requirement.
- [84] The containers will not be stacked any higher because they need to be piled safely. There is a Safe Piling Procedure that has to be followed. It was acknowledged that there was a wind storm roll the previous year. However, the operator that was responsible has been relieved of his duties because the Safe Piling Procedure was not followed.
- [85] All lights are shut off until 5:00 a.m. when they are turned on for container inspections. One light close to the shop is left on, but it is blocked from Westview Village by the piles of sea can containers.
- [86] The previous owner was the developer that Westview Village met with four years ago.
- [87] There is no one on site during the night or on Saturday or Sunday.
- [88] The location of the berm and swales are indicated on the approved drawings.
- [89] Even though the ASP requires a slatted fence, the Development Officer asked them to remove it from the original plans, perhaps as part of the requirement to plant only coniferous trees closer together.
- [90] Mr. Olund and Mr. Hiebert provided the following information in response to questions from the Board:
- a) The site cannot be reconfigured to accommodate stacks of only three sea cans because the issue comes down to value per acre. They have to be able to handle a certain number of containers per acre. Their customers are the international shipping lines, including Chinese, Korean, and French shipping lines who pay a daily container storage rate. If the containers cannot be stacked five high, the business will not be economically viable.
  - b) There are at least six other container yards operating in Winterburn. Five high stacking is an industry standard and the height complies with the maximum allowable Height requirement in the IM Zone.

- c) Currently the closest container is located 619 feet from the boundary of Westview Village. Reducing the height of the container piles and moving them closer to the Westview site will not address the noise concerns raised by the residents. The banging of containers is the result of an inexperienced operator and has nothing to do with the height of the container piles.
  - d) The site was not purchased until 2016. Mr. Olund could not provide any clarification on why the drawings prepared by Stantec were dated May 2014.
  - e) This land has been zoned IM Zone for as long as Westview Village has existed.
  - f) The aerial photograph dated 2018 was referenced and it was clarified that the current layout of the site is similar. Two piles of containers were moved further west in the fall and there are no containers located east of the line marked at 180 metres.
  - g) Ninety percent of the containers are empty. On occasion, containers loaded with scrap metal or grain are stored on site but there are never more than 50 at one time.
  - h) It was clarified that “temporary storage” means that containers are only on site on a temporary basis because they come and go continuously from the site. A container yard has to be located close to the CN railhead.
- v) *Rebuttal of the Appellants:*

**APPELLANT 1:**

- [91] He has worked in the industry for 32 years and does not want this type of business operating in his back yard just as the City does not want this type of business visible along Yellowhead Trail, a major corridor into the City.
- [92] There is no way to eliminate the noise of moving sea can containers because metal on metal creates noise.

**APPELLANT 2:**

- [93] The Respondent purchased the subject site, which is located adjacent to a residential use and creates a contest between the IM Zone site and the adjacent residential use.
- [94] The proposed development is a Permitted Use at this location but the Winterburn Industrial ASP states:

medium industrial land uses are generally limited to the areas where they will have the least amount of visual impact on surrounding development or are in areas with limited or constrained access. The impact of Medium

Industrial uses is limited to being contained on site. This ASP identifies buffers where transition is needed between land uses.

- [95] An issue arises because noise and light travel, and are not contained to the site.
- [96] Westview Village is happy that the Respondent is prepared to implement some of the suggested conditions. However, these are bare minimums given that most of these requirements are included in the ASP and are required for the issuance of a development permit.
- [97] Relocating trees from the eastern boundary to the southern boundary simply makes sense because Westview Village can provide screening on its own property if required in the future.
- [98] The Respondent has not really made concessions because the changes they are willing to make are required by the ASP.

### **Decision**

- [99] The appeal is **ALLOWED IN PART** and the decision of the Development Authority is **VARIED**. The development is **GRANTED** as approved by the Development Authority with the following additional conditions:
1. There shall be no noise-generating business-related activity after 7:00 p.m on any day of the week. This condition is in addition to those noise control provisions contained in City Of Edmonton Bylaw 14600 Community Standards Bylaw.
  2. Container storage must be located within the area denoted by a dashed line as set out on the stamped approved Site Plan, C-102.
  3. The original 165 metre vegetated buffer proposed at the east property line of the subject Site shall be relocated to the south property line in accordance with the diagram noted as Appendix "A" to this decision.
  4. Frequency of planting at this south boundary shall be one tree per 4.5 metres in accordance with the diagram noted as Appendix "A" to this decision.
  5. The minimum vegetated screening buffer, as indicated on the diagram noted as Appendix "A" to this decision, shall be comprised of a 2.4 metre high trees spaced at a minimum distance of 4.5 metres.

6. Screening along the east property line of the subject Site shall be erected where indicated on the diagram noted as Appendix “A” to this decision and must consist of:
  - a) Vinyl privacy strips to be installed in the existing chain link fence; OR
  - b) A new 1.8 metre tall chain link fence shall be installed with vinyl privacy strips

[100] In granting the development, the following variance to the *Edmonton Zoning Bylaw 12800* is allowed:

- 1) The proportion of deciduous to coniferous trees and shrubs is 0:100, instead of 50:50 per section 55.3(c).

### **Reasons for Decision**

[101] A General Industrial Use is a Permitted Use in the Medium Industrial Zone (“IM Zone”).

[102] The only variance required is a landscaping requirement with respect to the proportion of coniferous trees to deciduous trees, pursuant to Section 55 of the *Edmonton Zoning Bylaw 12800* (the “Bylaw”).

[103] The majority of evidence provided to the Board was not related to the variance that was granted, but rather addressed the underlying principles of the Winterburn Industrial Area Structure Plan (the “ASP”) as well as Section 57.1(2) of the Bylaw.

[104] Given that no concerns were raised regarding the variance in question, the board finds that granting this variance would 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.

[105] When rendering a decision, the Board must comply with any applicable statutory plans (s. 687(3)(a.2) of the *MGA*). The ASP is such a statutory plan and the Board was presented with evidence that suggested the proposed development was in conflict with the ASP.

[106] The ASP provides a framework for development and sets standards for land use and servicing in the area:

Medium Industrial land uses are generally limited to the areas where they will have the least amount of visual impact on surrounding development or are in areas with limited or constrained access. The impact of Medium Industrial uses is limited to being contained onsite. This ASP identifies buffers where transition is needed between land uses.

[107] Section 57.1(2) of the Bylaw states:

1. **Any Temporary Storage Use shall be screened from view from any public roadway other than a Lane, and from adjacent Sites, by building walls, freestanding walls, landscape materials, berms, wood Fences or a combination of these.** [Emphasis added]
2. Except for landscape materials, screening materials shall have a maximum height of 3.7 metres.

[108] The Appellants suggested that additional conditions could be placed on the development permit to satisfy the requirements of the ASP, as well as many of the concerns raised by the residents of Westview Village. The suggested additional conditions included:

- a) Shifting the 165 metre vegetative landscaped buffer from the east boundary to the south boundary of the subject site as indicated on the Proposed Concept Drawing dated January 31, 2019.
- b) The addition of vinyl strips to the fencing adjacent to Westview Village to provide a visual buffer, or the installation of a new 1.8 metre chain link fence with vinyl slats in the buffer area within the subject site.
- c) The stacking of containers in closer proximity to the property line (up to 500 feet instead of 590 feet) provided that the height of the stacks is limited to three shipping containers tall. This has the potential to both limit the visual impacts as well as reduce noise travel.
- d) Limit the times when shipping containers can be moved to between 8:00 a.m. and 5:00 p.m., Monday to Friday and no holidays.
- e) No noise-generating activity is permitted on the site after 7:00 p.m.

[109] The Respondent agreed that most of the suggested conditions could be met and would result in a more balanced co-existence between the proposed development and the residents of Westview Village. However, the suggested condition limiting the height of the container stacks to three sea cans is not feasible because it is not in keeping with the industry standard height of five sea cans and is therefore not economically viable for this business.

[110] The purpose of this Board is, at times, to balance the competing interests of adjacent property owners. Given that the Respondent agreed to all of the landscape reconfigurations proposed by the Appellants, the Board finds that imposing these reconfigurations as additional conditions to the permit to be reasonable.



- [111] The Board was succinctly provided with these configurations in the form of a site plan concept prepared by Al-Terra Engineering. The Board has adopted that site plan as an Appendix to this decision for the purposes of providing clarity regarding the landscape reconfiguration conditions imposed by this decision.
- [112] In addition, the Board heard evidence from all parties that imposing additional noise-related conditions on the Respondent's operations would balance the residents' interests with the commercial interests of the Respondent. The Board finds that imposing limits on noise generation to be reasonable.
- [113] However, the Board finds that imposing a limit on the height of the container stacks to be an unreasonable condition to impose on the permit for the following reasons:
- a) The containers are located 180 metres from the closest corner of the Westview Village site.
  - b) The additional buffers and screening arising from the landscape reconfiguration will help to address any visual and noise impacts.
  - c) The stacking of sea can containers five high is an industry standard and complies with the maximum allowable height requirement for structures in the IM Zone.
  - d) All of the activities occurring on the subject site are generally permitted in the IM Zone and the Respondent has a right, subject to the ASP, to conduct business in a reasonable fashion on their land.
  - e) The Respondent provided evidence that no noise-generating business related activity occurs on site prior to 7:00 a.m. or after 5:00 p.m., which complies with the requirements of Bylaw 14600, the *Community Standards Bylaw*. This, coupled with the additional restriction on noise generation noted at paragraph 112 above, should sufficiently balance the competing interests of the neighbours in question.
- [114] Based on the foregoing, the Board finds that the proposed development with the additional conditions imposed strikes an appropriate balance between the rights of the property owners of the subject site and the rights of adjacent landowners. The development will now comply with the requirements of the Winterburn Industrial Area Structure Plan pursuant to the *MGA*. This compliance is a pre-requisite notwithstanding that we are dealing with a permitted use.

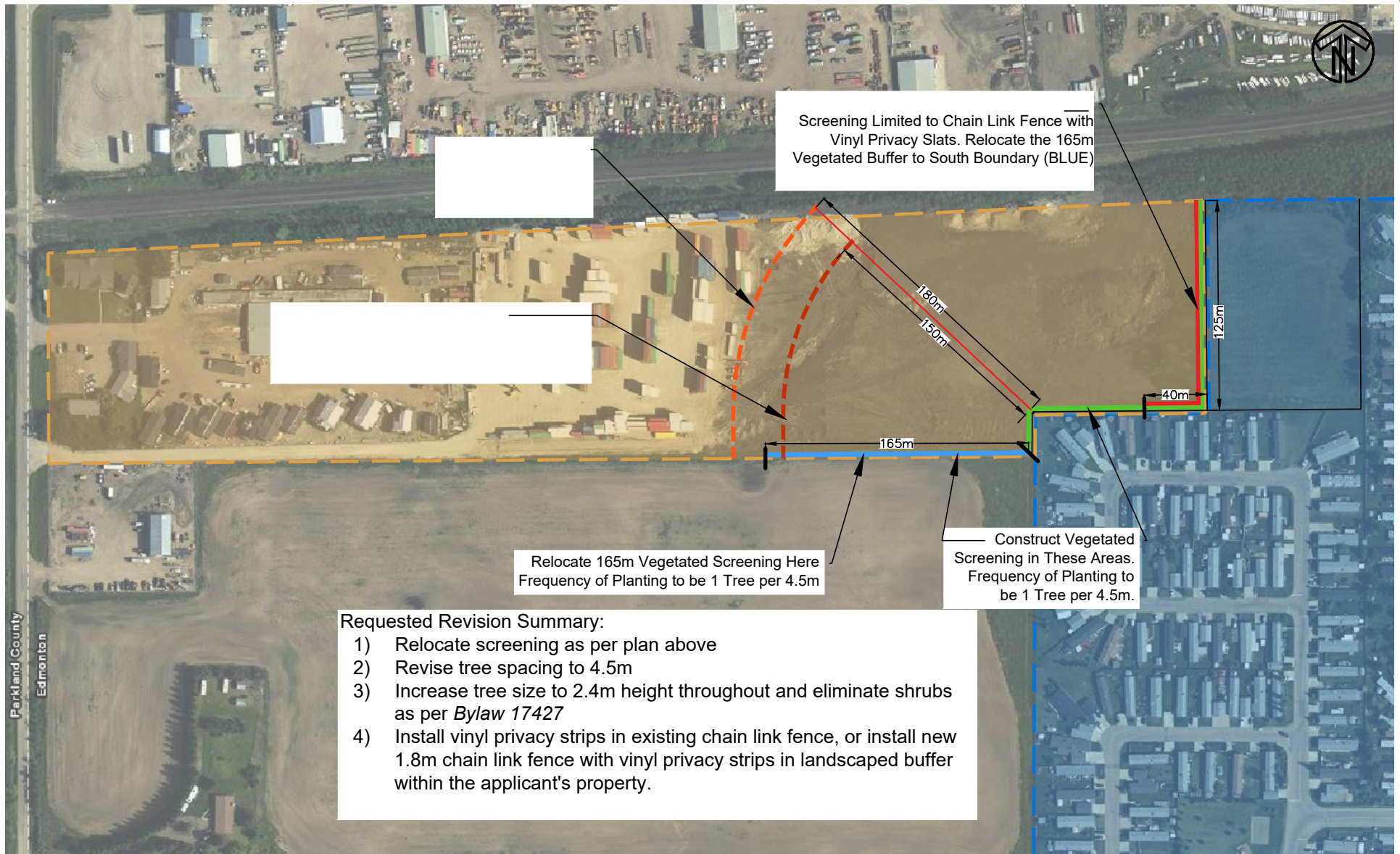
[115] With respect to the variance in question, the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

A handwritten signature in black ink, appearing to read 'R. Handa', with a stylized flourish at the end.

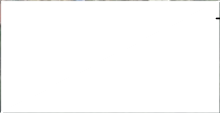
Mr. R. Handa, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance: Mr. W. Tuttle; Mr. L. Pratt; Mr. J. Wall

Enclosure: Appendix A



Screening Limited to Chain Link Fence with Vinyl Privacy Slats. Relocate the 165m Vegetated Buffer to South Boundary (BLUE)



Relocate 165m Vegetated Screening Here  
Frequency of Planting to be 1 Tree per 4.5m

Construct Vegetated Screening in These Areas.  
Frequency of Planting to be 1 Tree per 4.5m.

- Requested Revision Summary:**
- 1) Relocate screening as per plan above
  - 2) Revise tree spacing to 4.5m
  - 3) Increase tree size to 2.4m height throughout and eliminate shrubs as per *Bylaw 17427*
  - 4) Install vinyl privacy strips in existing chain link fence, or install new 1.8m chain link fence with vinyl privacy strips in landscaped buffer within the applicant's property.

APPENDIX "A"

NTS - Image Date: 2018

Development Permit #286337282-001

January 31, 2019

**LEGEND**

- Developer Lands
- Westview Village Lands
- Developer Proposed Screening
- Westview Village Proposed Screening - Fence Only
- Westview Village Proposed Screening - Relocation of 165m of Proposed Vegetated Buffer

**Adjacent Landowner Appeal (Westview Village)  
Proposed Concept**

Note: All Dimensions shown herein are approximate and subject to field verification.



**Important Information for the Applicant/Appellant**

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

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