



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: December 15, 2016
Project Number: 230916952-001
File Number: SDAB-D-16-303

Notice of Decision

[1] On November 30, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **November 10, 2016**. The appeal concerned the decision of the Development Authority, issued on November 8, 2016, to refuse the following development:

To construct a Semi-detached House with front Verandas, fireplaces, rear uncovered decks (North Unit: 2.29 metres by 5.84 metres, South Unit: 1.83 metres by 6.05 metres) and to demolish an existing Single Detached House and rear detached Garage

[2] The subject property is on Plan 3620AH Blk 12 Lots 12-13, located at 9943 - 78 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions; and
- Online response and email.

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

- Exhibit A – Photos of the Appellant’s similar developments
- Exhibit B – Google street view map of the subject site

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*, R.S.A 2000, c. M-26.

Summary of Hearing

i) Position of the Appellant, Mr. J. Kumar

- [8] He is a small builder who would like to build a Semi-detached House on this RF1 zoned lot that is surrounded by other higher density zones.
- [9] He was advised by the Sustainable Development Department that Semi-detached Housing was a Discretionary Use in the RF1 Zone but that the subject lot did not comply with the locational criteria for Semi-detached Housing in the RF1 Zone.
- [10] There is a lot on 77 Street that is zoned RF3 Small Scale Infill Development Zone and there is an apartment building on the same street.
- [11] It was his opinion that the proposed development would be acceptable on this street in this neighbourhood.
- [12] Mr. Kumar responded to questions and told the Board that there is a house with a suite located on the lot to the north.
- [13] The adjacent zone to the west is an RF4 zone with numerous new developments.
- [14] There is a single detached bungalow located on the lot to the south.
- [15] There are single detached houses existing on the lots to the east.
- [16] This would be the first Semi-detached House on 78 Street but there are several on 79 Street.
- [17] He talked to the immediately adjacent neighbours who reside north and south of the subject site who did not want to provide any written support but verbally indicated that they had no objections to the proposed development.
- [18] There is a small 400 square foot house on the subject site which is in a state of disrepair.
- [19] The Development Officer did advise him to make a rezoning application but he decided to proceed with his appeal instead. If the appeal is denied he may look at other options.

- [20] He made attempts through the design to ensure that the dwelling units were differentiated by using different roof lines, stucco design and colour.
- [21] He referenced a photo on his phone to illustrate design features that he has used on a similar Semi-detached House that is currently under construction, marked Exhibit A.
- [22] He acknowledged the concerns outlined in the email received from the neighbour who resides immediately south of the subject site.
- [23] Mr. Kumar provided that neighbour with the addresses of other similar developments that he was currently working on so that he could visit the sites. Upon further discussion he indicated that he would prefer the development of two Single Detached Houses on a subdivided lot.
- [24] These lots are zoned RF3.
- [25] He has built three other Semi-detached Houses using the exact same plan.
- [26] He acknowledged that this is not a corner lot and that it does not comply with the locational criteria for Semi-detached Housing in the RF1 Zone.

ii) Position of the Development Officer, Mr. J. McArthur

- [27] The General Purpose of the RF1 Zone is to provide for Single Detached Housing while allowing other forms of small scale housing in the form of Secondary Suites, Semi-detached Housing and Duplex Housing under certain conditions.
- [28] The proposed development complies with all of the development regulations of the Mature Neighbourhood Overlay but does not comply with the locational requirements for Semi-detached Housing in the RF1 Zone. It is not located on a corner or abutting an arterial or service road.
- [29] There is a Single Detached House with a basement suite located on the immediately adjacent lot to the north and a Single Detached House on the lot to the south.
- [30] The subject site is located two lots from the corner.
- [31] None of the Statutory Plans support the development of Semi-detached Housing at this location.
- [32] This would be the first Semi-detached development on this street and would set a precedent.

- [33] It was his opinion that rezoning the site would be more appropriate because it would involve a public hearing and the opportunity to obtain feedback from affected property owners.
- [34] Design features have been included to articulate the dwelling units, including varying roof lines, window styles and size and façade treatments to comply with the development regulation.
- [35] It is easier to justify variances to other development regulations than the locational criteria because the General Purpose is a guideline for the entire neighbourhood. Semi-detached Housing is listed as a Discretionary Use and only allowed under specific circumstances.
- [36] He agreed that the subject site is located close to the fringe of the neighbourhood and is more conducive to a higher density development.
- [37] He acknowledged that a two storey house of a similar size and a detached garage could be built on this site without variance. As well, a Secondary Suite could be developed in the basement which would result in the creation of two dwelling units on this site.
- [38] He referenced a street view map on Google maps to illustrate the context of the block which is comprised primarily of Single Detached Houses.
- [39] It was his opinion that even the development of a two storey Single Detached House on this lot would be out of character for this street.
- [40] The lot zoned RF3 on 77 Street was viewed on Google maps, marked Exhibit B, and it was his opinion that this rezoning occurred some time ago based on the appearance of the existing duplex.
- [41] Mr. McArthur could not provide any details regarding the cost or time line for a rezoning application but he assumed that the appeal process was much less expensive and much quicker.

iii) Rebuttal of the Appellant

- [42] Higher density developments already exist in this neighbourhood.
- [43] If his appeal is denied he will investigate the possibility of subdividing the lot to allow the development of two Single Detached Houses which may still require variances.
- [44] This is a good development plan for a modern Semi-detached House that will appeal to buyers and improve the area.

Decision

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

1. The maximum Height shall not exceed 8.6 metres, in accordance with Section 52 of the *Edmonton Zoning Bylaw* 12800.
2. Semi-detached Housing requires 2 parking spaces per Dwelling; parking may be in tandem as defined in Section 6.1(104). Reference Schedule 1 of Section 54.2);
3. The area hard surfaced for a driveway, not including the area used for a walkway, shall comply with Section 54.1(4);
4. All Yards visible from a public roadway, other than a Lane, shall be seeded or sodded. Seeding or sodding may be substituted with alternate forms of ground cover, including hard decorative pavers, washed rock, shale or similar treatments, perennials, or artificial turf, provided that all areas of exposed earth are designed as either flower beds or cultivated gardens. (Reference Section 55.2.1);
5. Landscaping shall be provided on a Site within 18 months of the occupancy of the Single Detached House. Trees and shrubs shall be maintained on a Site for a minimum of 42 months after the occupancy of the Single Detached House. (Reference Section 55.2.1);
6. One deciduous tree with a minimum Caliper of 50 mm, one coniferous tree with a minimum Height of 2.5 metres and six shrubs shall be provided, per Dwelling, on the property. Deciduous shrubs shall have a minimum Height of 300 mm and coniferous shrubs shall have a minimum spread of 450 mm. (Reference Section 55.2.1);
7. For Semi-detached Housing and Duplex Housing, a minimum Private Outdoor Amenity Area shall be designated on the Site Plan. Neither the width nor length of the Private Outdoor Amenity Area shall be less than 4.0 metres. The Private Outdoor Amenity Area may be located within any Yard, other than a Front Yard, and shall be permanently retained as open space, unencumbered by an Accessory Building or future additions. (Reference Section 47).

[46] In granting the development the locational requirements of Section 110.4(4) of the *Edmonton Zoning Bylaw* have been waived.

Reasons for Decision

- [47] Semi-detached Housing is a Discretionary Use in the RF1 Single Detached Residential Zone.
- [48] The proposed development is in keeping with many of the objectives of the *Municipal Development Plan, The Way We Grow*, by providing higher density housing in mature neighbourhoods under appropriate circumstances.
- [49] The proposed Semi-detached House complies with all of the development regulations contained in Section 814, the Mature Neighbourhood Overlay, and Section 110 of the *Edmonton Zoning Bylaw* except for the locational criteria for Semi-detached Housing contained in Section 110.4(4). That section states that Semi-detached Housing shall only be located on Corner Sites; on Sites abutting an arterial or service road; where both Side Lot Lines abut existing Duplex or Semi-detached Housing; or where a minimum of one Side Lot Line abuts a Site where a Row Housing, Apartment Housing, or a commercial use is a Permitted Use, or is not separated from a Site where Row Housing, Apartment Housing or a commercial use is a Permitted Use by a public roadway, including a Lane, more than 10.0 metres wide.
- [50] The Board notes that the subject site is located one lot from the northern boundary of an RF1 Single Detached Residential Zone. There is an RA7 Low Rise Apartment Zone and two sites zoned CSC Shopping Centre Zone across the rear lane to the north and an RF4 Semi-detached Residential Zone located one street over to the west. Further, a lot on 77 Street, one block to the east, has been rezoned RF3 Small Scale Infill Development Zone. In short, this Site is located close to the northern most boundary of this RF1 Zone and is surrounded by other higher density Zones. This is not a situation where a Semi-detached House would be built in the middle of a Single Detached Housing neighbourhood.
- [51] Two affected property owners indicated in writing their opposition to the proposed development. One did not state why he was opposed. The other, who lives next door to the south listed several concerns, including the construction of multi-storey residential developments nearby that would cause parking problems, duplexes being built one block over (in an area zoned for Semi-detached Housing), cars being broken into in the back alley and a desire to maintain the character of the neighbourhood as single family. Of these, parking concerns and maintaining the neighbourhood as Single Family Housing are the only valid planning concerns. Regarding parking, no parking variances are required for the proposed development. With respect to the Single Detached character of the neighbourhood, the Board is of the view that, because of the location of the proposed development as discussed above, it will not significantly impact the character of this neighbourhood.

- [52] Further, the Board notes that a Single Detached House with similar dimensions to the proposed development with a Secondary Suite in the basement could be constructed on this Site as a Permitted Use without variances. Such a development would result in nearly identical massing, have the same number of Dwellings as the proposed development and have essentially the same impact on the neighbourhood.
- [53] For these reasons, the Board finds that allowing the proposed Semi-detached House at this location would be reasonably compatible with surrounding developments.
- [54] The Board also finds that the proposed development with the imposed conditions and variances granted 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.

Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. V. Laberge, Mr. J. Kindrake, Mr. L. Pratt, Mr. A. Bolstad

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, 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: December 15, 2016
Project Number: 088505707-002
File Number: SDAB-D-16-304

Notice of Decision

[1] On November 30, 2016, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **November 8, 2016**. The appeal concerned the decision of the Development Authority, issued on October 24, 2016, to issue the following Order:

To cease the use of and decommission the Secondary Suite(s) on both sides, and revert each side of the property back to a Single Household by November 25, 2016

[2] The subject property is on Plan 1844KS Blk 23 Lot B, located at 9114 - 75 Street NW, within the RF4 Semi-detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

- Copy of the Stop Order;
- The Development Officer’s written submissions; and
- The Appellant’s written submissions.

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

- Exhibit A – Photographs of the Dwelling submitted by the Appellant
- Exhibit B – A copy of Bylaw 1339

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*, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”).

Summary of Hearing

i) Position of the Appellant, Mr. C. Rochat

[8] Mr. Rochat used photographs (marked Exhibit A) of the electrical panels, plumbing and other structural work to support his contention that this work to construct the two dwelling units in the basements was done at the time of the original construction in 1958.

[9] All of the doors and millwork are reflective of the style of building in the late 1950s.

[10] The basements are elevated out of the ground to accommodate the basement dwellings and provide access and egress.

[11] In response to questions, Mr. Rochat indicated that he purchased the property in 2008.

[12] He has never received any complaints from any of his neighbours.

[13] The dwelling has been assessed and taxed by the City of Edmonton as “other residential” with four dwelling units since 1993.

[14] It was his contention that this structure was originally built with four dwellings and that the development and building permits have either been lost or misplaced.

[15] There are long term tenants living in all four dwellings who are dependent on this type of housing and the building has existed for almost 60 years without any problems.

[16] The *Municipal Government Act* states that the City “may” issue a Stop Order, not that they “should”.

[17] Mr. Rochat acknowledged that Secondary Suites are not allowed in Semi-detached Housing under the current Bylaw regulations. However, the building sits on an L-shaped piece of land located north of a commercial strip mall. It was his contention that his land could have been zoned differently under a previous Land Use Bylaw and that a four-plex may have been permitted at that time.

[18] He did not purchase the property from the original owner.

[19] He had no idea how the Stop Order came to be issued.

[20] He had had some problems with tenants over the years but the problems were always dealt with in a timely manner.

- [21] The Presiding Officer noted that, according to the Development Compliance Officer's written submission, a complaint was raised by Safe Housing in March 2015 which gave rise to the Stop Order. Mr. Rochat indicated that he was never advised of this matter.
- [22] He did not personally review the listed Uses in the RF4 Zone but it was his opinion that this development is suitable for the Zone because the RF4 Zoning did not exist when the building was originally constructed in 1958.
- ii) Position of the Development Compliance Officers, Mr. Escudro & Mr. Young*
- [23] The Stop Order was issued by the City of Edmonton because Secondary Suites are not permitted in Semi-detached Housing.
- [24] Development Compliance Officers inspected the property on October 13, 2016 and observed keyed lock separation between the main floor and the downstairs level. Both dwelling units in the basement had a kitchen with a stove, refrigerator and sink, two furnished bedrooms and one shared bathroom. Shared laundry/mechanical rooms were observed on the basement levels next to the stair landings. The basement developments fit the definition of a Secondary Suite.
- [25] Based on these findings, a Stop Order was issued to the property owner on October 24, 2016 to cease the use of the Secondary Suites on both sides of the Semi-detached Dwelling.
- [26] A letter was sent to the property owner on October 28, 2016 to advise that the City had completed a property search and that there was no record of development, building or electrical permits ever being issued with respect to the basement suites.
- [27] In response to questions, the Development Compliance Officers indicated that the key element identified during the inspection was the keyed lock separation between the main floor and the basement.
- [28] The Development Compliance Officers could not provide any details regarding the Zoning Bylaw that was in effect when this building was constructed in 1958 but indicated that they could determine that information if they were given an opportunity.

At this point, the Presiding Officer called a recess to provide time for the Development Compliance Officers to undertake a search to determine which *Zoning Bylaw* was in effect at the time of the original construction and to provide copies of any development or building permits that may have been issued at the time of the construction.

[29] When the Board reconvened, the Development Compliance Officers submitted a copy of *Interim Development Bylaw 1339*, marked Exhibit B. This Bylaw was in effect when the original construction of this dwelling occurred in 1958.

[30] This Site was zoned District C – Two-family Dwelling District. Section 6.2(a) of that Bylaw defines the Use Class and states that in a Two-family Dwelling District, no building or land shall be used and no building shall be erected, reconstructed or structurally altered, except as otherwise provided in this Bylaw, save and except for any of the following uses, namely: two-family dwellings being duplex two-family dwellings and semi-detached two-family dwellings only.

[31] The records were searched again and there is no record of the issuance of a development permit for the existing suites in the basement of this building.

[32] Although the Bylaws have changed through the years, it was their opinion that the Use for this Site would have always been similar to that of the current RF4 Zone and that Secondary Suites were never permitted in Duplexes or Semi-Detached Housing.

[33] They are required to review this development based on the regulations contained in the current *Edmonton Zoning Bylaw 12800* and Secondary Suites are not permitted.

[34] The property owner will have to decommission the existing Secondary Suites and revert the building back to a Semi-detached Dwelling or apply for a rezoning application to keep the suites.

[35] It was their opinion that the building did not comply with the zoning regulations that were in place in 1958 and have never complied with the zoning regulations for the subject Site.

[36] The Assessment and Taxation Branch conducts their property tax assessments based on the structures on Sites, which are not linked to the development permitting process.

iii) Rebuttal of the Appellant

[37] Mr. Rochat reiterated his opinion that the records are limited and that the City cannot prove that development and building permits were not issued at the time of the original construction.

[38] The building has been used and taxed as a four-plex for almost 60 years.

Decision

[39] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The Stop Order is UPHOLD.

Reasons for Decision

[40] Based on the evidence provided, the Board finds the following:

- a) The Permit to Build that was issued for this Site in 1957 states under Occupancy “Duplex (2 family)”.
- b) *Interim Development Bylaw 1339* was the land use bylaw in effect at that time and the subject site was zoned District C – Two-family Dwelling District. Section 6(2)(a) states that: “In a “C” Two-family Dwelling District, no building or land shall be used and no building shall be erected, reconstructed or structurally altered, except as otherwise provided in this by-law, save and except for any of the following uses, namely: (a) two-family dwellings being duplex two-family dwellings and semi-attached two-family dwellings only”. There are other listed Uses in District C but none of them are residential.
- c) Secondary Suites were constructed in the basements of the development at the time of construction in 1958 or sometime after that.
- d) The Development Compliance Officers have searched the City’s records but have been unable to find any evidence that development permits were ever issued with respect to the Secondary Suites.
- e) In its current configuration, the development fits the definition in the current land use bylaw, the *Edmonton Zoning Bylaw*, of Semi-detached Housing with a Secondary Suite in each Basement. The Site is located in what is now designated the Semi-detached Residential Zone (RF4)

[41] Section 7.2(8) of the *Edmonton Zoning Bylaw* states:

Semi-detached Housing means development consisting of a building containing only two Dwellings joined in whole or in part at the side or rear with no Dwelling being placed over another in whole or in part. Each Dwelling has separate, individual, and direct access to Grade. This type of development is designed and constructed as two Dwellings at the time of initial construction of the building. This Use Class does not include Secondary Suites or Duplexes.

[42] Based on this definition, the Secondary Suites are not permitted in this type of development. On the face of it, the Stop Order was validly issued.

[43] Although the original permit described the development as a Duplex (2 family), the development does not fit the current definition in Section 7.2(2) of the *Edmonton Zoning Bylaw*, which states:

Duplex Housing means development consisting of a building containing only two Dwellings, with one Dwelling placed over the other in whole or in part. Each Dwelling has separate and individual access, not necessarily directly to Grade. This type of development is designed and constructed as two Dwellings at the time of initial construction of the building. This Use Class does not include Secondary Suites or Semi-detached Housing.

[44] Based on the definition above, Secondary Suites are not allowed in Duplex Housing either.

[45] At the time of construction, the only types of residential construction allowed on this Site were “two-family dwellings being duplex two-family dwellings and semi-attached two-family dwellings.” It is important to note that according to both the land use bylaw in effect at the time of construction and the current land use bylaw, development of more than two Dwellings in Duplex or Semi-detached Housing is not allowed.

[46] The Appellant did not dispute the fact that Secondary Suites have been built in the basements of both Semi-detached units. Rather, he took the position that the Board should infer, for a number of reasons, that the Development Authority at some point issued development permits allowing the Secondary Suites.

[47] First, he submitted photographs of the basement conversions that demonstrated that the work was completed many years ago. While the Board accepts that the Secondary Suites were constructed long ago, perhaps at the time the main development was built, this does not constitute proof that development permits were issued for the Secondary Suites.

[48] Second, the Appellant submitted property tax assessment documentation from the City showing that this property has been assessed and taxed for many years as “Other Residential”, which is defined in the *2017 Residential Assessment and Supplementary Assessment Subclass Bylaw* as a subclass of property classified as, among other things, “four or more self-contained dwelling units.” However, the City’s property tax assessment process operates independently of the development process. The fact that one branch of the City administration was apparently aware that there are four dwelling units on-site does not change the fact that, from a development perspective, Secondary Suites are not permitted in Semi-detached Housing.

[49] Finally, the Appellant argued that the onus was on the Development Authority to prove that development permits had never been issued allowing the Secondary Suites. The mere fact that the City could find no record of any such development permits did not meet this onus because it was not uncommon for old development permits to be lost. In support of this proposition, he cited the case of *Emeric Holdings Inc. v. Edmonton (City)*, (2009) ABCA 65.

- [50] The *Emeric* case is distinguishable on its facts. As is stated in the first paragraph, the issue in that case was whether representations made by the City, as vendor of land, that long term usage of the property complied with zoning regulations precluded the City from enforcing those regulations against a subsequent purchaser. The City had operated a surface parking lot for many years before selling the land. A subsequent purchaser of the land continued to operate a surface parking lot until the City issued a Stop Order to cease because there was no development permit. There was no evidence that a development permit allowing the operation of a parking lot had ever been issued. The majority of the Court of Appeal concluded that, based on the City's own past use of the land there was an evidentiary basis to infer that the Development Authority had determined that no development permit was required. In the circumstances, the parking lot operator could not be reasonably be expected to provide evidence of this, so the onus shifted to the City to show that such development was not allowed. There was no indication on the record that the parking lot operator would have been denied the required development permit if he applied for one.
- [51] In the present case, there is no basis for believing that the Development Authority ever issued development permits allowing the Secondary Suites or, alternatively, determined that development permits were not required. At the time of construction, the land use bylaw in effect specified that the only residential development allowed on the Site was "two-family dwellings". The permit that was issued at the time specifically states "Duplex (2 family)". There is no question that the subject development consists of four Dwellings. Because development consisting of four Dwellings was not a listed Use in the zone at the time of construction, issuing permits allowing the Secondary Suites would have been contrary to the provisions of the land use bylaw. In contrast, in *Emeric* there was no indication that the Use being made of the land was not listed in the zone.
- [52] Under the current land use bylaw, Secondary Suites are not allowed in Duplex or Semi-detached Housing. There no reason for the Board to conclude that, at any time between when the original permit was issued for the subject development and the present, Secondary Suites have ever been allowed in this type of development. That being the case, it seems extremely unlikely that the Development Authority would have ever issued development permits for the Secondary Suites as the Appellant urges the Board to conclude.
- [53] The Board accepts the evidence of the Development Compliance Officer that he has conducted searches and the only permit he can find is the one issued in 1957. The Appellant has not presented any evidence that suggests another development permit exists. In the circumstances of this case, the evidence is overwhelming that no development permits were ever issued for the Secondary Suites. Further, there is no evidence that the Development Authority has made representations to the Appellant or to any other owner of the Site that the Secondary Suites would be allowed.
- [54] With respect to the Appellant's assertion that the onus is on the Development Authority to prove that there are no development permits allowing the Secondary Suites, the Board

finds that, given its conclusions on the facts, there is no need for it to rely on onus of proof to reach a determination. As was stated by the Supreme Court of Canada in *Geffen v. Goodman Estate*, [1991] 2 S.C.R. 353 at pp. 397-8:

But onus as a determining factor of the whole case can only arise if the tribunal finds the evidence pro and con so evenly balanced that it can come to no sure conclusion. Then the onus will determine the matter. But if the tribunal, after hearing and weighing the evidence, comes to a determinate conclusion, the onus has nothing to do with it, and need not be further considered.

- [55] Because development permits were never issued for the Secondary Suites, they could never have been a legal non-conforming Use as argued by the Appellant. A Use can only be a legal non-conforming use if a valid development permit allowed the development in the first place. Section 643(1) of the *Municipal Government Act* states;

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

- [56] Accordingly, the Board finds that the Stop Order was properly issued to the registered owner in accordance with requirements of 645 of the *Municipal Government Act* by a duly appointed official and the Appeal is denied. The Board is confident that the Development Authority will consult with the Appellant with respect to the timing and enforcement of the Stop Order.

Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. V. Laberge, Mr. J. Kindrake, Mr. L. Pratt, Mr. A. Bolstad

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.