EDMONTON
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Subdivision & Development Appeal Board

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Project Numbers: 175937692-002 / 175937692-006 / 175937692-007 / 175937692-008 / 175937692-009
File Numbers: SDAB-D-16-244/245/246/247/248

Notice of Decision

[1] On October 12, 2016, the Subdivision and Development Appeal Board (the "Board") heard 5 appeals in a single hearing that were filed on **September 14, 2016**. The appeals concerned orders of the Development Authority, issued with respect to the same Site on September 2, 2016 to:

> **SDAB-D-16-244 - Demolish the addition and remove all related materials by October 3, 2016.**
>
> **SDAB-D-16-245 - Demolish the accessory building and remove all related materials by October 3, 2016.**
>
> **SDAB-D-16-246 - Demolish the accessory building and remove all related materials by October 3, 2016.**
>
> **SDAB-D-16-247 - Demolish the addition and remove all related materials by October 3, 2016.**
>
> **SDAB-D-16-248 - Demolish the addition and remove all related materials by October 3, 2016.**

[2] The subject Site is on Plan 7721465 Blk 5 Lot 22, located at 301 - GRAND MEADOW CRESCENT NW, within the RF1 Single Detached Residential Zone.

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

- Copy of the 5 Stop Orders and attached Appendix A;
- The Development Officer's written submission;

- Online responses; and
- The Appellant's written submission.

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

- Exhibit A – Picture dated May 15, 2013
- Exhibit B – Hand drawn Diagram of eavestrough
- Exhibit C – Copy of Development Officers' PowerPoint presentation
- Exhibit D – Altered copy of Appendix A from Stop Orders

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. R. Rolf and Ms. P. Kerychuk

[8] The Appellants' arguments are found in their written submission previously provided to the Board.

[9] Mr. Rolf assigned a letter from A to H inclusive to each structure subject to a Stop Order, as he contends that three of the five structures identified in the Stop Orders are actually made up of two separate structures.

[10] The Stop Orders are invalid because the City is well beyond the 2-year time limit for prosecutions, pursuant to Section 565 of the *Municipal Government Act*. The City has known about the structures for at least 15 years. Neighbours have complained about them for many years and they have been addressed at other hearings. A satellite picture from April 2011 in his written submission evidences the existence of these structures at that time.

[11] Mr. Rolf reviewed pictures from the City's submission and identified portions of each of the structures. At page 61 is a picture dated July 23, 2012 of the garage and structure A. At page 68 is a picture dated July 23, 2012 of structures C/D. At page 73 is a picture dated July 23, 2012 of structures E/F. Also at page 68 is a picture dated July 23, 2012 showing the edges of structures G/H. At page 106 is a current photo of structures A and B.

[12] Mr. Rolf submitted a picture dated May 15, 2013 from a submission made to Community Standards License Appeal Committee ("CSLAC") that shows structures G/H (EXHIBIT A).

[13] The City is attempting a "re-do" of the 2013 Board appeal. The City did not bring up any other structures at that time so to bring them up now creates double jeopardy. The Stop Order said to remove all structures without an approved Development Permit. That Board said the Stop Order was complied with after he removed the tents that were too large. He assumed the matter had been dealt with because the City did not bring up any issues about the other structures. This hearing is double jeopardy, retrying something decided in 2013.

[14] The neighbour to the east across the lane facing structures C/D had no issues with them in 2013 and presumably still has no issues with them. Mr. Rolf keeps his weeds under full control. There is no greenery on the property. The sidewalk is made of wooden pallets.

[15] When Mr. Rolf built these structures originally, they were in full legal compliance. Then over the years he added material to one structure, the C/D lean-to. To comply with nuisance orders to clean up the property, in approximately 2007 he added materials to structures C/D. This addition made them wider than allowed. Structure C is 11.71 square metres in size and Structure D is 11.93 square metres in size. He is trying to comply with the nuisance order and is willing to remove the extra coverage to make it comply.

[16] Structure A was built more than 20 years ago. A couple of years after 2000, he added 4 feet to the width to park a lawnmower. It was originally legal.

[17] His key point is that the structures have been in place as they appear with alterations since the last Board decision.

[18] The City is treating structures C/D (Order 175937692-007) as one unit and the City dimensions are blatantly wrong. They are 24 feet long, but not 20 feet wide. There are two tents located to the left of structures C/D. They are 10 feet by 10 feet in size. They were added after the 2013 order requiring removal of the 10 feet by 20 tents that were too large. Structures C/D are 11.71 square metres and 11.93 square metres respectively.

[19] Structures G/H (Order 175937692-006) were measured from the neighbour's yard and are also wrong. The adjacent brown tent is 10 feet by 10 feet with a 3 feet setback. As shown on page 93 of Development Officer's submission, the edge of tent is to edge of the lean-to so the City numbers must be wrong.

[20] The Stop Orders just say to remove structures and provide no further detail. The Presiding Officer clarified that the Stop Orders indicate that Bylaw is breached because the structures have no Development Permits and two of the Stop Orders also indicate there is an overage in the 12 percent maximum Site Coverage for Accessory building.

[21] The Development Officers have treated structures C/D as one structure, but they are completely independent. They share a 4-inch eavestrough. Structures G/H are separate structures that share an eavestrough. Structures E/F are separate structures and have no eavestrough, but there is an overlap of roof material on them. The triangular corner of structure F was completed later, but before 2013. There are six separate structures that the City lumped together in error.

[22] Structures C/D need work to be legal. The PVC portion of the roof needs to be trimmed back 24 inches to make it under 10 square metres. Structure G (on the east) is 9.15 square metres in size, structure H (on the west) is 9.36 square metres in size. Structure E is fully legal at 7.52 square metres in size. Structure F is 11.52 square metres. Structure A is 12.82 square metres in size. Structure B is 5.99 square metres in size.

[23] Structures A and B are freestanding with a gap from the garage. You could stick plywood alongside them. The garage wall and the neighbour's fence are used to enclose structure A and the garage wall and fence along the rear lane are used to enclose structure B. 4 by 4 posts and trusses hold them up. The structure is just under the fence height of 6 feet. There is a gap between the fence and the roof.

[24] The neighbour's fence does not get wet as he has placed a folded piece of sheet metal in the gap towards the neighbours to drain the roof. As seen on page 61 (City Submission), the roof is recessed. Mr. Rolf submitted Exhibit B, a diagram of the sheet metal eavestrough which slope along A and F towards the lane. The downspouts for structures A and F are angled towards the lane so water drains to the lane and not onto adjacent properties. For structures G/H, water drains toward the centre of his rear yard towards the patio. They collect this rain in buckets and remove it.

[25] People cannot see these structures from outside of his yard, so in his opinion they are not objectionable. The yard is tidy and currently mess-free.

[26] The structures are temporary and he plans to get rid of them, but cannot commit to a timeline.

[27] The property has been difficult to clean up. Each time he empties a structure to clean up, a complaint is filed about the yard.

[28] As five Stop Orders were issued, the Appellants were required to file 5 separate appeals and pay 5 fees. The Stop Orders are not valid and Mr. Rolf asked that all his appeal fees be refunded pursuant section 23(3) of the *Subdivision and Development Appeal Board Bylaw* if successful and that 4 appeal fees be refunded if the Board rules against them.

[29] In response to a request from the Board, Mr. Rolf explained what he stores in each of his structures:

a) Structure A contains a lawnmover, a ladder, winter tires, bikes, exercise equipment and antique oscilloscopes.

b) Structure B contains PVC piping for Christmas lights, patio furniture, concrete blocks and an accumulation of electrical wire.

c) Structure C contains filing cabinets full of chemicals for the weed control, electronics and empty file cabinets.

d) Structure D contains items similar to those in structure C; old and antique computers which he has not got around to selling; and, 3 working wheel chair lifts that do not fit the Appellants current vehicle and spare parts. He keeps these just in case he needs to use parts as a backup. He bought them for his mother, but he could probably get rid of them as she is deceased.

e) Structure E contains a wood pile, construction materials to build Accessory buildings, pressure treated logs, and stacks of fence boards. He probably has no current use for those materials as he is downsizing.

f) Structure F contains old electronics that he needs to tear apart and recycle (these items have been in place for 5 years as is) and satellite hardware (for a satellite dish that is not in use). Structure F was emptied and later refilled pursuant to 2013 Order.

g) Structure G contains van seats, a table arm saw, a radial arm saw, cabinetry and empty shelves, Christmas lighting, rolls of coaxial cables for items he no longer uses as these items may be sold or may be needed in the future.

h) Structure H contains additional empty steel cabinetry, including a cabinet with mails slots which will be moved to the garage when he can make room for it, vacuum cleaner, leaf blower, three cases containing an infinite supply of florescent lighting, his adult son's old high quality plastic toys including Lego which they are saving for future grandchildren.

i) The double garage and workshop are also full of items including saws, radial saws, shelving, battery charger, car jacks, camping gear, an air compressor, items to service and repair things. He is a fixer and he likes to have back up items, but never gets around to getting rid of older items.

[30] He owns the fence to the east. His neighbours own the fences to the north and south. For part of the perimeter facing his neighbours he has erected his own Coroplast fence of white PVC for privacy and the structures are not always connected to his fence or to his neighbours' fences.

[31] He considers the structures to be temporary. The definition of temporary is context dependent. Here temporary means several years and would be equated to the lifespan of the materials used to compose the structures, rather than the length of time that the items actually remain on the property inside structures.

[32] The Board asked Mr. Rolf to explain how this is temporary as he has stored a large quantity of items for 20 years. He indicated that some items are used seasonally or frequently, some have not been used for a long time. He agreed materials have been stored for many years and explained that if materials have value, it takes a while to get rid of them and get value back. In 2012, he removed two dumpsters of stored items. He cannot dispose of property and recoup some value in the time frame given.

[33] Mr. Rolf is a computer technician by trade. The stored items are not related to his current work. He does not operate a business at his home. He is not actively trying to sell the stored items.

[34] The structures sit on pallets to protect them from the elements, but they are exposed to the temperature changes. When it rains, water flows under the pallets. The electronics are safe because they are stored within cabinets in the structures. The garage and workshop are also on high density pallets. There is no landscaping in the rear yard it is all shale. They also have a patio.

[35] The lean-to structure was approved at the 2013 hearing because it was under 10 square metres and therefore did not require a permit. It houses Christmas lights.

[36] Structures E/F are accessed from the alley by removing portions of his rear fence or with greater difficulty by removing the Coroplast barrier on the west side. They do not have a floor. They are located on pallets and shale. The roof is held up by 2x4s that run along the fence. The structures are attached to the rear fence on one end. They are freestanding supported by a 2 by 8 beam to 4 by 4 posts. It sits just flush with the fence. The roofing sits on top of the 2x4s.

[37] They added Coroplast barriers along the south fence to prevent people from viewing the contents of the structures and the rear yard.

[38] The City's measurements for structures C/D and G/H are completely wrong, but Mr. Rolf agrees that if they are measured as single structures, they are over 10 square metres

[39] The Board confirmed details concerning each structure:

a) Structure A has a small access at west and items closer to the entrance must be pulled out to access items further to the back.

b) Structure B is accessed by a gate from the back alley, which is screwed shut. The roof is at 5 feet 11 inches situated just below fence so you cannot see it from the alley. Structure B is located under the Garage roof between the Garage wall and the fence. It is Coroplast on 2 by 4s.

c) Structures C/D are enclosed on the north and south and east with plywood panels from a shipping crate. The west side has panels for access so there is no door. The east wall is made of the fence boards.

d) Structures G/H are accessed by walls on hinges which act as a swing gate on the north side similar to a garage bin. Most of its contents sit on pallets or shale.

[40] All structures are just below the 6 foot fence height.

[41] The tent next to structure A has been there ten years. It replaced a prior tent and a wooden shed which had a Development Permit. It was addressed in another hearing.

[42] The Appellants bought the house brand new. They built the garage and the work shed. They identified structures currently on the property that have Development Permits. The canopy on the north wall of the house has a valid permit. The lean-tos must be removed if they sell the property. The big structures that need Development Permits have them. Other structures cannot get Development Permits because are not constructed of materials of sufficient quality.

[43] Mr. Rolf believes that the structures which are under 10 metres and do not require a Development Permit should not be included in Site Coverage. He believes the structures are close, but all separate. He is also asking for a small variance for the structures that are slightly over 10 square metres.

[44] The structures have all been in place for a very long time and Board should observe the two-year limit in section 565 of the *Municipal Government Act*. The City had ample chance to hold this very hearing in 2013 and they did not. This is a retrial.

[45] The items sitting between the garage and the work shed shown in the Development Officer's submission at Page 70 are gone. Now a small vehicle is parked there. It is accessed by a gate which is currently screwed shut.

[46] The overhead doors of the double car garage face south. Two tents and the lean-to (structures C/D) prevent vehicular access to the garage. The garage is not used for vehicles, it is used to store tools, antenna parts, milling machinery, aluminum, copper, steel, electronics, and items he has been ordered to remove from the rear yard. In his view, while the garage is full of electronics, the garage is not part of the appeal and its contents are not relevant.

[47] Structures A and B are open to the neighbour's fence. The garage wall shelters the contents from the elements. The east side is his fence. The west side is a wooden panel used for access.

[48] Structure B is accessed on the east through the fence and through the panel on the south.

[49] The north and south walls of structures C/D are wood panels made of sheathing from a construction crate. The fence forms the wall to the east. Plywood panels form the wall to the west. Structures C/D may be accessed by unscrewing these plywood panels, which are located 3 feet from the two tents. Structure C contains multiple items including gas and gardening tools. There are no walls or interior barriers separating structures C/D. They share a single eavestrough. You can store an item in structure in C and structure D simultaneously. The Appellant arranges stored items so as to create an interior barrier.

[50] Structure E/F is the same as structure A/B. It is connected to his fence, but not to the workshop. For security, there is Coroplast panel on the side facing the neighbour's fence. No interior walls separate structure E from structure F. The items inside can create an artificial barrier. The floor pallets are placed so that there is gap. The west side is also Coroplast. The structure is accessed through the fence boards on the east as the portion of the yard to the west is full of shelving and outdoor storage obstructing access.

[51] Structures G/H have the fence on south side, gates on the north side and no interior walls or barriers for separation. Items could be stored simultaneously in both structures. The walls to the north are on hinges that swing toward the tents and allow access to the structures. The access walls are attached to a single post at the centre.

[52] The Appellants were asked to explain their position that the City is coming for a redo from the 2013 decision given that apparently the only evidence before that Board pertained to a wedge lean-to and two tents (that all parties agreed had been removed) and the property was a work in progress. The Appellants agreed that the property was a work in progress and that was no discussion about any other buildings. The Appellants indicate the Order said "All" and it was the City's responsibility to bring up any other buildings. The City did not bring up any other buildings so he did not "stir the pot either". The Appellant confirmed there was no discussion of the structures A,B,C,D,E,F,G or H. Area coverage for other structures was discussed but nothing came of that.

[53] The City had previously tried to clean out all the lean-to structures. In 2012, the City Municipal Enforcement Officer got an estimate on the cost to have everything removed, including the lean-tos and their contents. The City made it clear that the clean up order was to sanitize the back yard. They totally complied with the clean up order, but nonetheless ended up with a $2,700.00 bill. They went through two separate processes in 2012 and 2013. That was the second kick at the Appellants. This is the third time dealing with this issue and it is adding to their health issues. The Appellants thought they were finished in 2013, but now it is not over. They are again fighting the same battle. They pay property taxes and they are not being treated fairly. The City should not say you can keep a structure one time and later say it must be removed. The City should not retroactively apply bylaws. After the 2013 hearing, City officials said the Bylaw would change and the issue was not over.

[54] The City told them this time that the lean-to approved in 2013 was in the required setback. The City cannot retroactively apply the setback rule to the lean-to approved in 2013

[55] The Board asked whether the Appellant's house had become subordinate to temporary structures or to on-site storage. Specifically, how the structures could be considered accessory to the principal use of the Single Detached house given that there are so many Accessory buildings and that some buildings preclude vehicular access to the garage. Mr. Rolf stated he had never thought about that point. He believes the buildings are subordinate. He lives in his home, conducts hobbies in his garage and uses his shed for machines. A lot of people do not use their garages for their vehicles.

It might be a valid argument that the property is being used for temporary outdoor storage, but he noted the storage is not for a commercial use. However, if the structures were such a big problem, they could have been dealt with in 2013. Also this time the City addressed them separately, unlike earlier applications which applied to all structures.

[56] Asked about the cumulative effect of the structures on Site Coverage, the Appellants pointed out there are exceptions for shorter structures which cover the same area. If a structure does not require a permit, the City does not regulate it. This implies it should not be counted in the Site Coverage calculation. The structures have been in place a long time and the City knew about them. If it was an issue, it should have been raised by the City in 2013. The section 565 two-year limit has passed from the alleged offence. The offence was twenty years ago when he built the first one and then fifteen and ten years ago as he incrementally built it. If it is considered an ongoing violation it should have been dealt with in 2013. The City is not doing its job.

[57] Based on the 2013 hearing, which went in their favour, they assumed they were in compliance. Yet they were told in August, 2016 that they were in violation and could be fined.

[58] In their opinion, they have always complied with decisions of the Board. The day after they won the 2013 SDAB hearing, they refused entry to the Development Officer who wanted to take additional pictures.

[59] They plan to keep the house in the interest of Ms. Kerychuk's health. He also wishes to preserve the value of his investment in his home. The Appellant is aging and wants to down size and get rid of many items and the structures.

[60] They are storing some items for potential use, some items are actively used. Others are used seasonally. Initially his collections were a hobby, but now he is going to sell them. He is not actively trying to sell them because he is busy and they have many medical appointments.

[61] He does not know how long it would take to dispose of the collections, it depends on buyer interest. The items first have to be made accessible, some are buried. If the orders are upheld, he needs at least 3-6 months to clean-up properly. Six months given the tough economy and time of year.

[62] He wants to recover some of his investment, but he has often sold items at a loss. He sold 30 items in a month in 2012 to comply with orders issued at that time. He also made 20 trips to recycle items in 2012. He got rid of ten antique computers, but later discovered they were each worth $2,500.00. He has done nothing to sell any items over the past 4 years.

[63] It is the neighbours' complaints and the City's actions, not the state of the property, that cause the Appellants' stress and adversely affect their health. Ms. Kerychuk spends most of her time in the house, but she can and has used the back patio.

[64] Mr. Rolf disputes the neighbours' claims that the state of their property leads to mice infestation. He regularly sets traps, but never catches mice on interior traps only perimeter traps. There are no weeds on their property and nothing for mice to eat. They are feeding on the neighbour's dog feces. Categorically, they are not coming from his property, he has never found a dead mouse, a live mouse or a nest on his property.

ii) Position of the Development Officers, Mr. M. Doyle and Mr. J. Young

[65] The Development Officers submitted a PowerPoint presentation, a copy of which was stamped Exhibit C.

[66] Section 565 of the *Municipal Government Act* states that "a prosecution under this Act or bylaw may be commenced within two years after date of the alleged offense, but not afterwards." The Appellants have misinterpreted this section of the Act. It does not apply to this situation. They are not prosecuting the Appellants, nor have they issued any tickets. Issuing a Stop Order is not considered a prosecution. In any event, the offense date would be the start date of the Stop Order.

[67] The Development Officers conceded that two of the Stop Orders included incorrect dimensions for the structures C/D and G/H. Structure C/D should be 7.32 metres by 3.18 metres not 7.32 metres by 6.36 metres. Structure G/H should be 3.73 metres by 5.43 metres not 7.46 metres by 5.4 metres. Essentially the values were doubled incorrectly. However, even with this minimal discrepancy, the outcome remains the same.

[68] Mr. Doyle issued the Stop Orders. He is a Development Compliance Officer, properly appointed under the *Edmonton Zoning Bylaw* and *Municipal Government Act*. Land titles documents submitted to the Board show the Appellants are owners of the subject Site.

[69] Between 1995 and 2016, four complaints relating to various sheds, setbacks and drainage were filed. In addition, six nuisance complaints were filed and dealt with by another City department that enforces community standards, junk storage and unsightly conditions. Nuisance orders were issued by Municipal Enforcement Officers to address the nuisance issues.

[70] By contrast, they are Development Compliance Officers who issue Stop Orders following their mandate under section 645, not section 565.

[71] The purpose of the RF1 Single Detached residential 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.

[72] The Development Officers received a litany of complaints that developments on the property were the source of adverse impacts on both the neighbourhood amenities and the use enjoyment and value of neighbouring properties. They reviewed several pictures of immediate neighborhood and subject property.

[73] The Development Officers reviewed existing Development Permits on Site, the Development Compliance and SDAB History. They noted the following permits for accessory building approvals: a Board approved major Development Permit for a canopy addition to the house in 1995; a minor Development Permit for the detached garage in 1995; an accessory combo permit to construct and accessory building, the shed/workshop (3.05 metres by 6.1 metres) in 2001.

[74] The Board noted the following decisions and Stop Orders concerning this property:

a) SDAB-D-95-220 – In 1995, a Development Permit to construct an addition to a Single Detached House (side canopy), shed (4.57 metres by 2.44 metres) – both existing without permits and 2 satellite dishes, was refused. Ultimately resolved by a panel of this Board issuing a Development Permit with variances.
b) SDAB-D-01-305 - In 2001, Stop Order for development without a permit for a number of lean-to structures which were attached to the fence, the order continues that on site there should only be a dwelling and a 32 by 22 garage. This Stop Order upheld by a panel of this Board for three reasons: unlisted storage or recycle materials use, material adverse impacts and an excess in site coverage. The Development Officer cannot tell what structures exactly were being spoken to.
c) SDAB-D-09-251 – In 2009, a Stop Order to remove accessory buildings without a Development Permit upheld by a panel of this Board which based on the decision pertained to three 10 by 20 tents.

d) SDAB-D-13-121 – In 2013, a Stop Order "to remove from the site all accessory structures that do not have an approved Development Permit." That Board's decision stated that "the Stop Order was properly issued and has been fully complied with." Based on the summary the subject matter was limited to three structures: two tents and a wedge lean-to. That Board found the order had been complied with as the tents were removed and the wedge lean-to structure was under 10 square metres. No other structures were spoken to in that summary.

[75] The City did not deal with the other structures subject to the 5 Stop Orders because they were not aware of them at that time. The aerial imaging used in 2013 is not as advanced as the aerial imaging used today. With the new imaging it is now easier to locate and measure the structures. They had no way to verify when they were constructed. He disagrees with the Appellants' argument that the 5 Stop Orders now before the Board were improperly issued as all the structures had been dealt with in the 2013 decision.

[76] Mr. Young was present for the inspections and the 2013 appeal hearing regarding that Stop Order. That appeal concerned only 2 tents and a lean-to wedge structure located close to the south side property line, which had been subject to complaints by neighbors. By the time it came to the Board only the lean-to was in issue. The summary of the hearing and subsequent reasons for decision speaks only to those three structures and no other structures.

[77] When Mr. Young conducted his inspection prior to the 2013 hearing, he only inspected those 2 tents and the lean-to structure located close to the south side property line. At the time of his inspection they were not aware of the location or extent of the other structures. They had no way to know of them because they were cleverly placed, tucked behind things and difficult to discern during an on-site inspection given the amount of clutter present in the yard. He was not aware of their location or size. He had been accompanied by Mr. Rolf in the yard and did not conduct a thorough investigation. The subject of the complaint was specific to the wedge lean-to. That building was the focus of their inspection and on inspection they noticed the two large tents. They did not conduct a thorough inspection of the entire site looking for any and all Accessory buildings. The tents were located centrally on the site and they screened other Accessory buildings. He did not go in the back alley or inspect other parts of the subject Site.

[78] The pictures included in their current submission at pages 52 – 75 were supplied by the Municipal Enforcement Officer. They show that they were all taken on July 23, 2012 by a Municipal Enforcement Officer investigating the nuisance complaints. Mr. Young was not present at that inspection. He did not recall seeing those pictures at the time of the 2013 hearing, but acknowledged they were probably present on the POSSE system. There are access rules for departments. His recollection is that these pictures were not part of the package at the 2013 hearing. The most recent inspection three years later was prompted by continued complaints. It was a thorough investigation of the entire Site and the departments did share information.

[79] The Development Officers reviewed aerial imaging obtained from 2013 to 2016. In 2013, the property was in the best condition that it been for a while. As the years progress, piles of materials and structures start to re-accumulate in the yard. The complaints continued to be received. The changing site conditions are more the responsibility of the Municipal Enforcement department. They agree that the structures were in place in 2013.

[80] The most recent complaint was received on July 15, 2016. Mr. Doyle came on board in September, 2015 after which a notice of entry was issued. No action was taken at that time. An inspection was conducted to assess the site holistically, identify infractions and address any and all issues on the property on August 9, 2016. As a result of this inspection, on September 2, 2016 five Stop Orders were issued.

[81] The *Edmonton Zoning Bylaw* regulations regarding conditions under which Accessory Buildings do not require permits were amended by Bylaw 17422. The changes were enacted to further the intent of the bylaw. They awaited these changes before proceeding to issue the 5 Stop Orders. After the changes were enacted they exercised discretion and proceeded to issue Stop Orders on the structures based on the bylaws that applied before the amendments.

[82] The Board asked the Development Officers about the status of the three tents shown on the 2016 aerial photographs, which are not mentioned in the 5 Stop Orders. They explained it is up to the discretion of the Development Officer whether to enforce on these 3 tents and they chose not to enforce on them at this time.

[83] The Board asked the Development Officers to address the impact of section 643 of the *Municipal Government Act* that deals with non-conforming buildings. They indicated that structures which required, and were granted, Development Permits are "grandfathered" in if the structures originally complied with the regulations and now no longer comply because regulations have changed. If no permit was required in the first place, then it is up the Development Officer's discretion to determine whether it is a Non-conforming building or not. The 5 Stop Orders deal with structures for which permits were initially required and for which permits were not obtained so they are not non-conforming buildings per section 643. The Development Officers are not pursuing structures that did not initially require permits because they were under 10 square metres.

[84] Structures A (Order 175937692-008) and B (Order 175937692-009) are attached to the garage. They are considered additions, which required permits.

[85] Structures E/F (Order 175937692-002) are attached to the shed and are considered additions, which required permits.

[86] Structures C/D (Order 175937692-007) are considered to be a single structure over 10 square metres in size. Under the old regulations the structure is an Accessory building, which required a permit. The same is true for structures G/H (Order 175937692-006). Accordingly these two accessory buildings are not non-conforming buildings.

[87] The Development Officers reviewed aerial pictures of the site conditions looking north, west, south, and east which illustrate the magnitude of the structures' Site Coverage.

[88] The Development Officers believed that the Accessory buildings on-site were already over the maximum allowable Site Coverage. The Appellants were unlikely to receive permits for any additional structures. They provided the plan the Appellant submitted in 2001. This is evidence that the Appellants were well aware of the 12 percent maximum allowable Site Coverage per section 50.3(3)(a) for Accessory buildings in 2001.

[89] The Development Officers specifically reviewed each of the structures subject to the Stop Orders:

a) Their Addition A (Appellant's structure A, Order 175937692-008) abuts the garage and shares walls with it.
b) Their Addition B: (Appellant's structure B, Order 175937692-009) abuts the garage and shares walls with it.
c) Their Addition C: (Appellants' structures E/F, Order 175937692-002) is considered an addition as it shares a common wall with the workshop.

d) Their Accessory Building D (Appellants' structures G/H, Order 175937692-006) includes a single shared eavestrough.
e) Their Accessory Building E (Appellants' structures C/D, Order 175937692-007) has no walls.

[90] The Bylaw permits 28 percent Site Coverage for the Principal Dwelling and 12 percent for Accessory buildings for a total of 40 percent total Site Coverage. Their existing Site Coverage calculations based on the 2016 Aerial photos is 54 percent total Site Coverage made up of:

a) Principal dwelling with the approved Canopy addition: 24 percent
b) The garage and work shed: 12 percent
c) Accessory Buildings which do not require permits: 7 percent (the one lean-to addressed in the 2013 SDAB decision is 1.3 percent and 5.7 percent is made up of the other Accessory buildings).
d) Accessory buildings and additions without valid Development Permits and subject to the 5 Stop Orders total 11 percent.

[91] A property owner cannot use "remaining" Site Coverage from a Principal building to increase the Site Coverage for Accessory buildings. A property owner cannot get around the Site Coverage regulations by developing several small accessory buildings that would be not large enough to require Development Permits.

[92] As evidenced from the aerial photographs, the subject site Accessory building Site Coverage is not characteristic of the neighborhood or immediate area. The subject site is not meeting the intent of the *Edmonton Zoning Bylaw* and is having a clear negative effect on the neighborhood.

[93] The complaints about the property concerned drainage, construction materials, the magnitude and volume of the structures, and the general nuisance of the property. Aerial photos prove this property is not characteristic of the neighbourhood. Section 57.2 of *Edmonton Zoning Bylaw* does provide General Performance Standards for Non-industrial Developments which are not met by these structures.

[94] The Development Officers do not believe there is proper internal drainage.

[95] The Development Officers acknowledged that an excess in allowable Site Coverage was cited in only 2 of the 5 Stop Orders. They simply provided this as extra information in the some of the Stop Orders. This does not affect the validity of the Stop Orders. The Appellants are already at maximum allowable Site Coverage before any of the structures subject to the 5 Stop Orders are taken into consideration.

[96] The Board asked the Development Officers to address whether the developments viewed together could amount to another use being conducted on the property, particularly given the evidence presented by the Appellants concerning the contents of all the on-site structures and about other items stored in other Accessory buildings and outdoors on the Site. The Development Officers reviewed Section 7.1(3) of the *Edmonton Zoning Bylaw*, which provide guidelines in interpreting Use Class Definitions. Potentially, the use of the property could be considered a General Industrial Use, pursuant to Section 7.5(2)(d), which provides, the storage or transshipping of materials, goods and equipment. They do not believe it meets the definition of Temporary Storage, pursuant to Section 7.5(5), because there is no outdoor storage. However, they are not comfortable at this point, selecting a new class without further investigation. But at some point, developments can evolve into another Use. This use would have to comply with the Bylaw.

[97] They are not certain whether all the structures identified in their materials are temporary structures as that term is not defined in the Bylaw. Some are soft or vinyl sided, some are not durable. All new Accessory buildings would have to meet the requirements under the 2016 bylaw. They are not pursuing enforcement and do not plan to for the Accessory buildings under 10 square metres including the two yellow tents provided they are not altered or added too. New Accessory buildings must meet the 2016 regulations.

[98] The Development Officers conceded the wording in the 2013 Stop Order was not clear.

[99] If the Stop Orders are upheld, the enforcement of those orders, including the timing of enforcement will still proceed at the discretion of the Development Officers. Given it is now October, they believe an extension until April is reasonable.

iii) Position of Affected Property Owners in Support of the Stop Order

Ms. P. Villeneuve

[100] Ms. Villeneuve lives directly north of the subject Site. She finds it difficult to believe that there are no mice present in the Appellants' yard as her property has mice and the adjacent neighbour to the south also has mice. Mice are not attracted to dog feces. Neighbours have seen cats gathering on the fences of the Appellants' property and she believes this is because they are looking for mice. In 2014, she put her house up for sale and the realtor advised her that prospective buyers turned down the sale because of the condition of the subject Site. The condition of the Site has a direct negative effect on her. The structures can be seen from her house. She finds it difficult to believe that something that has been in place for 15 plus years can be considered temporary.

Although, the locations of these structures may have changed, the constant longstanding intention has been storage. Moving the structures does not change the fact that they are there illegally. The structures on the north end of the property have been built right up to her fence. The Appellants are using these structures as permanent storage solutions. She wants all the Stop Orders upheld and wants additional structures removed from the Site. The condition of the subject Site attracts mice and devalues her property.

Mr. G. Villeneuve

[101] Mr. Villeneuve stated that this matter should have been dealt with properly in 2013. The City "dropped the ball". The structures should already have been removed. He did not realize that one of the structures in the yard was previously approved by a panel of this Board. The Appellants have essentially built right up to the rear and side property lines. He listed his property for sale at a price less than the City's assessed value. The realtor indicated that people will not live next door to a "hoarder". The structures are constantly being altered. Mr. Villeneuve's sidewalk is lifting and sinking and it was not like that when they moved in. He attributes this to improper drainage due to structures on the Appellants' Site. Mr. Villeneuve has a garden shed located close to the Appellants' property.

[102] He believes that these structures are attached to his fence with screws and nails. He can see the connections. If he removed his fence, the structures would fall. The fence consists of cement pillars, metal, and wood. He believes the structures have impacted the quality of his fence. The ground is lower where where the pillars are located in his fence alongside the structures. Water collects at the rear of his property between his shed and his fence next to the Appellant's garage.

[103] Structures are constantly altered and moved over time. The structures are an eyesore built out of garbage. These structures are simply a way for the Appellants to avoid the original complaint of his nuisance yard.

[104] They have an extreme negative impact on him as the City has not removed them. He asks if any member of the Board would like to live beside the property.

[105] He has complained year after year. City employees come and go and nothing is done. He has complained about the structures, about the collections which accumulate and about the drainage. He has followed up on each complaint. The Appellant is jumping through loopholes. The prior Stop Order was not dealt with properly and all the stuff should go.

[106] While some water may be channeled into the alley via the Appellants homemade eavestroughs, this does not work with snow and snow melt. Snow collects and water goes into his yard along the sidewalk and at the rear of his property. His sidewalk is heaving and sinking due to the drainage. The sidewalk is located next to the canopy addition to the house and his garden shed is located by two additions subject to the Stop Orders.

Ms. D. Tames

[107] Ms. Tames' home is located two lots from the subject site to the south and west. She has lived at her house for 32 years. She has been dealing with this issue for a significant portion of those years and is completely frustrated. She plans to sell her property in the next five years and is concerned about finding a buyer who would buy her house given the state of the subject Site, which can be viewed on Internet photographs. Nothing is done to address the situation, yet her property taxes rise. She believes the state of the subject Site negatively impacts her and adversely affects her property values.

[108] Every time Mr. Rolf goes in the yard to move things around, there is an influx of mice into her and her neighbors' properties. She has seen mice moving from her property to the adjacent lot to the east. He is constantly bringing items into the yard. These structures can be seen from the alley. Garbage is picked up at the front of the property. She confirmed that Mr. Rolf does set up large Christmas display every year.

[109] She believes the Appellant is laughing in the face of all these bylaws because he does not adhere to any of them.

[110] She wants all 5 structures to be removed.

Ms. M. Krueger

[111] Mrs. Kruger has lived next door to the subject site for 23 years. She works hard to maintain her property and is tired of dealing with this issue again and again. The matter could have been settled if the site had been cleaned up ten years ago or in 2013.

[112] The subject Site creates an extremely awkward and upsetting situation. She likes the Appellants. Her dream resolution would be that Mr. Rolf used his garage and workshop properly.

[113] Three sides of her fence are immaculate and her yard is beautiful. She is not able to complete the last portion of her fence which she shares with the Appellants. The contractor indicated that because of the subject Site, there was not enough clearance to complete the fence. She does not believe she has drainage issues because his house is much lower than anyone else because the property was never properly graded and finished. He always gets extra water in his property.

[114] She is not sure if structures G/H and E/F are attached to the fence on her Side Lot Line. At the end of the "V" portion of the fence, Mr. Rolf built another section of fence and offered her extra property.

[115] She also experiences an influx of mice if Mr. Rolf starts working in his yard and moving things around. They use poison to deal with this.

[116] She constantly sees him bringing more random items of all sorts, including 10 wheelchairs and cement bags, into the yard.

[117] She was approached by a potential buyer for the Villenueve's house who was concerned about the state of the Appellant's property. This was also awkward; she understands they were deterred by the Appellants' property. She would not buy a house next to a property in this state and questions whether members of the Board would.

[118] She is upset that the Appellant is mocking her because she is crying.

[119] Items from the yard were put in the garage, but she has never seen the garage door open.

Ms. S. Bennett

[120] Ms. Bennett is concerned that all the equipment including electronics stored on the property creates a health hazard including a potential fire hazard. She is retired and she can see him bringing materials from his van into the property. These items include metal things and boards. He takes them straight to the back yard and when the gate is open you can see the amount of garbage in the back yard. During the spring thaw, Mr. Rolf must remove water from his property using buckets. The front is very clean. She also confirmed that Mr. Rolf does set up large Christmas display every year. She agrees with her neighbours' concerns regarding the mice. She believes that the state of his property, particularly the accumulation of stuff, is destroying the value in her home. She does not understand how the Appellants can live in this state.

iv) Rebuttal of the Appellants

[121] The mice are coming from the greenbelt located nearby. The problem has been around for 32 years and the neighbours report seeing them moving toward the Appellant's property. They do not have anything edible in their yard. The stored items are mostly metal and plastic. The fence was built in 1991 before any of the structures, so the mouse problem predates the structures.

[122] Most of their house is comprised of stucco, which has little fire hazard. They have several fire extinguishers scattered in the rear of their property. They have proper drainage on the property. He constructed eaves to facilitate drainage.

[123] The Appellants cannot understand how the property is impacting their neighbors if they cannot even see the backyard. They added to the fence on the north property line to screen structure A from view when the Villeneuves complained about it. Structure A is not connected to the Villeneuves' fence.

[124] Some structures are below fence level as they do not wish them to be seen from the outside the property, particularly from the alley. The front yard is immaculate so their property fits the context of the neighbourhood. The Appellants use and enjoy their property. Ms. Kerychuk spends 90 percent of her time in their house.

[125] The structures are not attached to the neighbour's fence. The property had the canopy and the shed and material in the back yard 12 years ago when the Villeneuves moved in. While there is more stuff in the yard now, he believes that people will purchase his neighbors' properties. It was Ms. Krueger who decided to not proceed with building the fence because she did not want to store the Appellants' boards in her yard during construction. The garage and workshop are not heated.

[126] They use and enjoy their property, including the patio in the back yard. The Appellants feel there is a great deal of animosity against them. People have thrown lit candles into their yard. Previous neighbours made threats on their lives.

[127] If the Orders are upheld, they would like an additional eight months to properly complete the cleanup. Mr. Rolf requires the use of the tents, which are not a part of these Stop Orders, to sort through the contents of the structures and properly dispose of items. He does not want the Stop Orders changed to require removal of the tents. The tents are not part of the 5 Stop Orders and he wants the Board to stay focused.

[128] He understands the Site Coverage issue presented by the City, but is asking the Board for a variance should they be considered structures over 10 square metres.

[129] The Appellants want to be neighbourly. They are tired of the complaints and harassment. They will never get along and he simply wishes to be left alone. Mr. Rolf intends to clean up the mess on the property and to tear down the structures one at a time. However, he wants to do so in a way that will not sacrifice the value of his items. He would like to keep the Garage, the workshop, the lean-to discussed in the 2013 decision and structures A and B as they are very efficient.

[130] He would remove structures C, D, E, F, G, H and the tents when this is done in 8 months. He has no issue with the Stop Orders on structures C, D, E, F, G and H if the Board varied their terms to allow for 8 months to comply. The Appellants discussed removal even before this hearing, removing them is not a problem, the problem is he is getting older and the factor has been time. Also every time they try to clear it out they get a nuisance complaint from the neighbours about the state of the yard. He cannot commit to a Stop Order to remove the tents within 8 months. He will need the tents to clean up by April during the winter.

[131] He has tried hard to clean up because he needs somewhere to store these items. He is tired of fights. The neighbours win because the Appellants want the complaints to stop. He wants to downsize and dispose of items in an orderly way, but does not have a good plan to deal with storage on his site within the time frame set in the orders. Ms. Kerychuk indicated she agrees with whatever Mr. Rolf decides as he is the one who will be carrying out the cleanup.

[132] If he keeps the structures, he knows it will be dealt with again in two or three years. He thought the issue was settled and here he is again. The Development Officer even told him he had to remove the lean-to structure that the Board specifically addressed in 2013.

[133] The neighbours have no proof that the sale of their house was prevented by the structures on the subject site.

Decision

[134] Appeal SDAB-D-16-244 is DENIED and the decision of the Development Authority is CONFIRMED. Stop Order 175937692-002 is UPHELD as issued.

[135] Appeal SDAB-D-16-245 is DENIED and the decision of the Development Authority is CONFIRMED. Stop Order 175937692-006 is UPHELD as issued.

[136] Appeal SDAB-D-16-246 is DENIED and the decision of the Development Authority is CONFIRMED. Stop Order 175937692-007 is UPHELD as issued.

[137] Appeal SDAB-D-16-247 is DENIED and the decision of the Development Authority is CONFIRMED. Stop Order 175937692-008 is UPHELD as issued.

[138] Appeal SDAB-D-16-248 is DENIED and the decision of the Development Authority is CONFIRMED. Stop Order 175937692-009 is UPHELD as issued.

Reasons for Decision

[139] The Appellants' property has been the subject of many complaints over the years resulting in multiple investigations by Development Enforcement Officers and by Municipal Enforcement Officers. As a result of the Development Enforcement Officers' investigations, the City issued several Stop Orders or decisions which were ultimately considered by the Board:

a) SDAB-D-95-220 – In 1995, a Development Permit to construct an addition to a Single Detached House (side canopy), shed (4.57 metres by 2.44 metres) – both existing without permits and 2 satellite dishes, was refused. The matter was ultimately resolved by a panel of this Board issuing a Development Permit with variances.
b) SDAB-D-01-305 – In 2001, a Stop Order indicating that investigation reveals a freestanding shed and lean-to sheds that have been constructed and attached to the fence which surrounds the perimeter of the property. It ordered removal of all structures (lean-to sheds and the freestanding shed) that exist without Development and Building Permits for development. This Stop Order was upheld by a panel of this Board because the situation: constituted a non-listed use, storage of recycle materials, created undue interference and material adverse impacts; and exceeded 12 percent maximum allowed Site Coverage.
c) SDAB-D-09-251 – In 2009, a Stop Order to demolish all Accessory buildings that do not have permits and clear the site of all debris. The Stop Order was upheld by a panel of this Board which, based on the decision, pertained to three 10 by 20 tents.

d) SDAB-D-13-121 – In 2013, a Stop Order to remove from the site all Accessory structures that do not have an approved Development Permit. The Board's decision stated that "the Stop Order was properly issued and has been fully complied with." Based on the summary the subject matter was limited to three structures: two tents and a wedge lean-to. That Board found the order had been complied with as the tents were removed and the wedge lean-to structure was under 10 square metres.

[140] On September 2, 2016, the City issued 5 Stop Orders concerning the subject Site. Each Stop Order identifies a specific development alleged to be in violation of the *Edmonton Zoning Bylaw* and orders its removal by October 3, 2016. Appendix A, an aerial photograph identifying the 5 developments, is referenced in and attached to the Stop Orders.

[141] The Appellants appealed each Stop Order. The Board heard the 5 appeals simultaneously in a single hearing.

[142] In their written submissions, the Appellants disagreed as to the dimensions and consequently, the area of two Accessory buildings. At the outset of their verbal submissions, the Development Enforcement Officers conceded that the City's dimensions were erroneous and accepted the dimensions regarding the area for all 5 developments identified on the final page of the Appellants' written submission.

[143] The Appellants refer to the addition to an Accessory Building identified in Order 175937692-002 as structures E/F (Site Areas: 7.52 square metres and 11.52 square metres). The Appellants refer to the Accessory Building identified in Order 175937692-006 as structures G/H (Site Areas 9.15 square metres and 9.36 square metres). The Appellants refer to the Accessory Building identified in Order 175937692-007 as structures C/D (Site Area 11.71 square metres and 11.93 square metres). The Appellants refer to the addition to an Accessory Building identified in Order 175937692-008 as structure A (12.82 square metres). The Appellants refer to the addition to an Accessory Building identified in Order 175937692-009 as structure B (5.99 square metres).

[144] Some development regulations applicable to Accessory buildings were amended in 2016 after the commencement of the latest investigation. The City made its assessment based on development regulations previously applicable to the structures concerning allowable Site Coverage and the requirement for Development Permits as they have been existing for some time.

[145] The Appellants appealed the 5 Stop Orders on the following grounds:

a) The structures have been in existence well beyond the 2-year time limit for prosecutions contrary to section 565 of the *Municipal Government Act*.
b) The matter was settled by a panel of this Board in 2013; therefore the 5 Stop Orders constitute an improper re-hearing by the City which creates "double jeopardy" for the Appellants.
c) There were errors in the alleged size of some of the structures.
d) The City gave absolutely no clear reason for issuing the Stop Orders.
e) The three Accessory buildings are clearly 6 separate units and should be assessed separately for Site Area calculations.
f) Structures under 10 square metres do not need Development Permits and are not subject to the 12 percent maximum Site Coverage development regulation.

[146] Alternatively, if the City is correct about the number of structures and if the structures are over 10 square metres in area, then the Appellants requested a variance to allow them to continue to exist.

[147] Neither the Appellant, nor the City provided definitive evidence about the exact date that the structures were constructed. However, based on the submissions of the Appellants and Ms. Villeneuve, the terms of the 2001 Stop Order and the Board's 2001 decision confirming this Order, the Board finds it more likely than not that the structures subject to the 5 Stop Orders were in existence on the subject Site in 2001 for the following reasons:

a) In their written submission, the Appellants include an aerial photograph dated April 2011 showing the structures and state:
   i. the structures "that are over area… have been that way for over a decade"
   ii. "the structures cited in these orders have existed unchanged on my property for more than 5 years"
   iii. they ask "for variances to allow them to stay as-is, since they have been that way for over a decade and were not brought up in previous Board hearings when the City had ample opportunity to do so"

b) At the hearing, the Appellants identified portions of the structures in photos from July 23, 2012 (found in the City's written submission) to show they existed for over two years.

c) At the hearing, the Appellants indicated:

i. The City has known about the structures for at least 15 years. Neighbours have complained about them for many years and they have been addressed at other hearings.

ii. When Mr. Rolf built these structures originally, they were in full legal compliance. Then over the years (approximately 2007ish) he added material to one structure, the C/D lean-to.

iii. Structure A was built more than 20 years ago.

iv. The section 565 two-year limit has passed from the alleged offence. The offence was twenty years ago when he built the first one and then fifteen and ten years ago as he incrementally built it.

d) At the hearing, an adjacent property owner, Ms. Villenueve stated she finds it difficult to believe that something that has been in place for 15 plus years is temporary.

e) The 2001 Stop Order confirms the Appellants' comments to the effect that the structures were in place as of 2001. It states "our investigation revealed that lean-to sheds have been constructed and attached to the fence which surround the perimeter of your property and an accessory building (shed) has been constructed in the rear yard. The City of Edmonton has not issued Development Permits in respect to this construction, which is contrary to Section 683 of the *Municipal Government Act*, S.A. 1994, c. M-26 . You are hereby ordered pursuant to Section 645 of the *Municipal Government Act*, S.A. 1994 c.M-26.1 to remove all the structures (lean-to sheds and the freestanding shed) which existed without Development and Building Permits by September 7, 2001."

f) In the 2001 Summary of Decision upholding that order, the Board states "The Board also reviewed photographic evidence provided by the Applicant, by the Subdivision and Development Appeal Board Officer and the Planning and Development Department. This photographic evidence substantiates that the property is in fact being used for the storage of large amounts of recyclable material in a series of structures which the Applicant claims are exempt from permit requirements and consistent with the bylaw because of their limited size and height".

[148] The Board disagrees with the Appellants' position that the Stop Orders are invalid because the structures have been in existence well beyond the 2-year time limit for prosecutions in section 565 of the *Municipal Government Act*. The 5 Stop Orders were issued pursuant to section 645 under part 17 Planning and Development. The 5 Stop Orders are not a prosecution under part 13 of the *Municipal Government Act*.

The Development Enforcement Officer who issued the Stop Orders is authorized to enforce the *Edmonton Zoning Bylaw*. He has no authority to enforce any other bylaw, nor to conduct investigations or prosecutions under section 565. Section 565 is irrelevant.

[149] Moreover, with respect to the issue of delay, the Board notes that the alleged violation of the *Edmonton Zoning Bylaw*, failure to obtain a Development Permit, is an ongoing offence per section 5.1(1)(2) which provides:

No Person:

1. shall commence, or cause or allow to be commenced, a Development without a Development Permit therefor issued under the provisions of Section 12 of this Bylaw; or
2. shall carry on, or cause or allow to be carried on a development without a Development Permit therefor issued under Section 12 of this Bylaw.

[150] The Appellants argue that all 5 Stop Orders are invalid because the matter was settled by a panel of this Board in 2013. That panel upheld the validity of the City's 2013 Stop Order "to remove from the Site all Accessory structures that do not have an approved Development Permit" and determined that "the Stop Order was properly issued and has been fully complied with". According to the Appellants, the City and this Board are in effect precluded from taking the position that there are no Development Permits authorizing the developments identified in the 5 Stop Orders.

[151] The Board disagrees. In *Sihota* v *Edmonton (City),* 2013 ABCA 43, the Alberta Court of Appeal confirmed the test for issue estoppel in planning decisions which binds the Board is based on the Supreme Court of Canada ruling in *Danyluck* v *Ainsworth Technologies Inc*., 2001 SCC 44. Four conditions must be satisfied in order for estoppel to arise:

a) The same issue must be involved;
b) The decision said to create the estoppel must be final;
c) The same parties or their privies must be involved; and
d) As a discretionary matter, it must be fair and just to apply the doctrine of issue estoppel in the particular circumstances.

[152] In this case the parties are the same, but the other criteria are not met.

[153] The Board concludes that the same issue is not involved for the following reasons:

a) The Board has never ruled that Development Permits were ever issued for any of the structures under appeal.
b) The Board has never made a finding that would lead to the conclusion that the Appellants have ever had Development Permits for any of the structures under appeal.
c) On its face, the 2013 decision is restricted to three structures – two tents and a lean-to located south of the principal dwelling. The Appellants agreed that the property was a work in progress and that there was no discussion about any other buildings and specifically confirmed there was no discussion of structures A,B,C,D,E,F,G or H (the 5 structures under appeal).
d) On its face, the 2009 decision is restricted to two tents. The 5 structures under appeal were not considered.
e) As noted above, the Board has found that the 5 structures under appeal existed in 2001 and were addressed by the Board and ordered to be removed. Paragraph 2 of this decision states: "The Board finds as a fact that sheds and lean-to sheds have been constructed on the subject property without permits, contrary to section 645 of the *Municipal Government Act*." Accordingly, if the principle of estoppel applies, it applies against the Appellants' position.
f) Whatever the structures considered in 2001, the Board ordered them to be removed. Therefore, even if the Board is incorrect and the 2001 decision did not refer to any of the 5 structures under appeal, the decision clearly makes no finding that the 5 structures under appeal ever had Development Permits.

[154] Similarly, the Board finds that the requirement for finality has not been met. The 2013 and 2009 decisions were final only with regard to the specific structures they addressed. The 2001 decision either was final and determined the 5 structures under appeal ought to be removed or that some other structures ought to be removed. There is no final decision stating that the 5 structures subject to these appeals did not require Development Permits or that they could remain on the subject Site.

[155] The Board also finds it would not be fair and just to apply the doctrine in the circumstances particular to this case for the following reasons:

a) The Board finds that the Development Enforcement Officers were not aware of the 5 structures during their investigation leading up to the issuance of the May 2, 2013 Stop order because:

i. The complaint which prompted this investigation concerned a single structure, the lean-to located south of the principle dwelling along the south Side Lot Line.
ii. Given the limited nature of this complaint, their investigation centered on the lean-to structure, they did become aware of two very large tents but did not inspect the entire Site or view the property from the rear.
iii. The state of the Appellants' yard and the location of the structures relative to the two large tents and other buildings made them hard to discern during the on-site investigation into the lean-to or through aerial photographs available at that time.
iv. The poor quality of construction materials used to construct the structures made them difficult to differentiate from other materials being stored outdoors in the Rear Yard.

b) The 2013 decision contains no indication that the Development Enforcement Officers made any representations about the 5 structures at the time of the 2013 hearing. The Development Officer who attended the hearing stated the 5 structures were not addressed.

c) This is also confirmed by the Mr. Rolf's submissions to the Board in this appeal when asked to explain their position on double jeopardy. He confirmed that there was no discussion about any of the structures under appeal. He stated it was the City's responsibility to bring up any other buildings. The City did not bring up any other buildings so he did not "stir the pot" either.

d) Paragraph 2 at page 2 of 2013 decision indicates that in response to questions by the Board, the Appellant (Mr. Rolf) provided the following information "The aerial photograph provided by the SDAB staff shows the state of the property approximately one and a half years ago and that the majority of the structures shown in the photographs have been removed."

e) The Appellant's response appears to have narrowed the inquiry to the two tents and the wedge lean-to. Accordingly, the 5 structures now under appeal were not addressed.

f) The structures under appeal were addressed in the 2001 hearing and ordered removed.

[156] Based on the evidence and the submissions of the parties, the Board finds that the 5 Stop Orders were properly issued to the registered owners of the subject Site by a duly appointed official, a Development Enforcement Officer in accordance with the requirements of section 645 of the *Municipal Government Act*.

[157] The Appellants argued that developments under 10 square metres should not be considered in the calculation of Site Coverage. The Board disagrees. Accessory buildings under 10 square metres do not require a permit per section 12.2 of the *Edmonton Zoning Bylaw*. However, at all relevant times, all Accessory buildings (including those under 10 square metres) have been included in the determination of Site Coverage subject to the 12 percent rule based on a plain reading of the definition Site Coverage in section 6.1(96) of the current bylaw and section 14 of the former *Land Use Bylaw 5996*.

> *Edmonton Zoning Bylaw*
> Under Section 6.1(96), **Site Coverage** means the total horizontal area of all buildings or structures on a Site which are located at or higher than 1.0 metres above Grade, including Accessory buildings or Structures, calculated by perpendicular projection onto a horizontal plane from one point located at an infinite distance above all buildings and structures on the Site. This definition shall not include:
>
> a. steps, eaves, cornices, and similar projections;
> b. driveways, aisles and parking lots unless they are part of a Parking Garage which extends 1.0 metres or more above Grade; or
> c. unenclosed inner and outer courts, terraces and patios where these are less than 1.0 metres above Grade
>
> *Land Use Bylaw*
>
> Coverage, Site means the total horizontal area of all buildings or structures on a site which are located at or higher than 1.0 metres (3.28 feet) above grade, including accessory buildings or structures, calculated by perpendicular projection onto a horizontal plane from one point located at an infinite distance above all buildings and structures on the site. This definition shall not include:
>
> a. steps, eaves, cornices, and similar projections;
> b. driveways, aisles and parking lots unless they are part of a parking garage which extends 1.0 metres (3.28 feet) or more above grade; or
> c. unenclosed inner and outer courts, terraces and patios where these are less than 1.0 metres (3.28 feet) above grade.

[158] The Board's interpretation is also consistent with a contextual and purposive approach because if Accessory buildings under 10 square meters were not considered in the calculation of Site Coverage then the 12 percent regulation could be entirely circumvented and rendered meaningless by the erection of several small structures rather than a single larger non-permissible Accessory building. The Appellants' position leads to an absurd result, contrary to the intent of the regulation.

[159] Development Permits have been issued for the following Accessory buildings on the subject Site: detached Garage (65.42 square metres); Work shed (18.61 square metres); and the Accessory building (9.45 square metres). There are also 4 other Accessory buildings currently in existence on the Site (two white tents, a brown tent, and a shed). Each of these four Accessory buildings are approximately 9.5 square meters in size. The lot is 703.75 square metres in size. Therefore, the existing Accessory buildings exceed the allowed maximum of 12 percent in section 50.3(3)(a) of the *Edmonton Zoning Bylaw*.

[160] Stop Order #175937692-002 (SDAB-D-16-244) requiring the removal of the addition to an Accessory building (structures E/F) is upheld for the following reasons:

a) This Stop Order requires the Appellants to demolish an addition to an Accessory building as indicated on the attached Appendix A and remove all related materials.
b) The Board finds that the Stop Order cites a clear reason for issuing the Stop Order. The development was ordered to be removed because it had been developed without a permit contrary to Section 5.1 of the *Edmonton Zoning Bylaw* as quoted.
c) There is no Development Permit for this development.
d) The Appellant argued this development is two freestanding structures, structure E (7.52 square metres) and structure F (11.52 square metres).
e) The Board finds that the development is an addition to the work shed rather than a freestanding Accessory building because there is no practical separation between the work shed and the addition. They appear and function as a single development which bridges the entire space between the work shed and the fences. The added portions are located directly adjacent to the work shed and depend upon its walls to shelter the contents of the structure. The development could not function as indoor storage, but for the walls of the work shed.
f) This conclusion is consistent with characterization of the canopy structure along the north western portion of the site which was previously approved as an addition to the principal dwelling rather than an Accessory building.

g) The work shed is 18.61 square metres in size. Any addition to it requires a Development Permit. Accordingly, the development is in violation of Section 5.1 of the *Edmonton Zoning Bylaw*.
h) Therefore this Stop Order has been validly issued.

[161] If the Board is in error and structures E/F are not considered an addition to the work shed, the Board finds that the development is a single Accessory building 19.04 square metres in size because structures E/F are abutting, share common roofing materials and function as a single building. There is no internal separation between structures E/F and items may be stored in both areas simultaneously. Therefore, the Accessory building requires a Development Permit. Accordingly the development is in violation of Section 5.1 of the *Edmonton Zoning Bylaw*. On this basis, the Board would also find that the Stop Order #175937692-002 has been validly issued.

[162] Finally, even if the development were characterized as two separate Accessory buildings (structure E (7.52 square metres) and structure F (11.52 square metres)), structure F would require a Development Permit per section 12.2 and would be in violation of 5.1 of the *Edmonton Zoning Bylaw*. Further, both structure E and structure F would be in violation of section 50.3(3)(a) due to an excess in Site Coverage for Accessory Buildings. On this basis, the Board would also find that the Stop Order #175937692-002 has been validly issued.

[163] Stop Order #175937692-006 (SDAB-D-16-245) requiring the removal of an Accessory building (structures G/H) is upheld for the following reasons:

a) This Stop Order requires the Appellants to demolish an accessory building (approximately 7.46 metres by 5.43 metres) as indicated on the attached Appendix A and to remove all related materials.
b) The Board finds that the Stop Order indicates a clear reason for its issuance. The development was ordered to be removed because it had been built without a permit contrary to Section 5.1 of the *Edmonton Zoning Bylaw*. The order also states a Development Permit cannot be issued for this Accessory building as the site already exceeds the maximum allowable Site Coverage.
c) There is no Development Permit for this Accessory building.
d) The Appellant argues the City measurement of approximately 7.46 metres by 5.43 metres is incorrect. The Development Officer indicated there was a clerical error involving a doubling of one dimension and accepted the Appellants' measurements and area calculation of 18.51 square metres. The Board finds that the clerical error does not impact the validity of the Stop Order because:

i. This Stop Order #175937692-006 refers to an Appendix A, an attached aerial photograph which clearly identifies the subject Accessory building
ii. Based on submissions of all parties, the Appellants were aware which specific Accessory building was subject to the Stop Order and the clerical error in one dimension did not interfere in any way with Appellants' ability to fully and fairly present their case.
iii. The Appellants' submissions clearly identified the correct subject of the Stop Order as structure G/H and include accurate measurements of its dimensions.

e) The Appellant argued this development is in fact two freestanding structures, structure G (9.15 square metres) and structure H (9.36 square metres).
f) The Board finds that the development is one accessory Building with an area of 18.51 square metres. The structures G/H abut one another. The development appears to be one building and functions as a single, continuous storage structure. The development has a single eavestrough shared by structures G/H which creates a common roof. Both portions of the development are open to the other, there are no walls or interior separations between structures G/H. Both are accessed from the same swinging panels. Items may be stored in both structures simultaneously. Neither could function as indoor storage protecting their shared contents from the elements without the other. Accordingly, the Accessory building requires a Development Permit and is in violation of Section 5.1 of the *Edmonton Zoning* Bylaw.
g) The Accessory building is also in violation of section 50.3(3)(a) as it results in an excess in allowable Site Coverage for Accessory buildings.
h) Therefore the Board upholds this Stop Order.

[164] Finally, even if the Board is incorrect and the development should be characterized as two separate Accessory buildings (structure G (9.15 square metres) and structure H (9.36 square metres)), each structure would be in violation of section 50.3(3)(a) due to an excess in Site Coverage for Accessory buildings on the Site as noted on Stop Order #175937692-006. On this basis, the Board would also find that the developments are in violation of *the Edmonton Zoning Bylaw* and that Stop Order #175937692-006 has been validly issued.

[165] Stop Order #175937692-007 (SDAB-D-16-246) requiring the removal of an Accessory building (structures C/D) is upheld for the following reasons:

a) This Stop Order orders the Appellants to demolish an Accessory building (approximately 7.32 metres by 6.36 metres) as indicated on the attached Appendix A and to remove all related materials.

b) The Board finds that the Stop Order specifies a clear reason for its issuance. The development was ordered to be removed because it had been built without a permit contrary to Section 5.1 of the *Edmonton Zoning Bylaw*. The Stop Order also states a Development Permit cannot be issued for this Accessory building as the site already exceeds the maximum allowable Site Coverage.

c) There is no Development Permit for this Accessory building.

d) The Appellant argues the City measurement of approximately 7.32 metres by 6.36 metres is incorrect. The Development indicated there was a clerical error involving a doubling of one dimension and accepted the Appellants' measurements and calculation of its area as 23.64 square metres. The Board finds that the clerical error does not impact the validity of the Stop Order because:

   i. This Stop Order refers to an Appendix A, an attached aerial photograph which clearly identifies the subject Accessory building.

   ii. Based on submissions of all parties, the Appellants were aware which specific Accessory building was subject to the Stop Order and the error in one dimension did not interfere in any way with Appellants ability to fully and fairly present their case.

   iii. The Appellants submissions clearly identified the correct subject matter of the stop order as Structure C/D and provided accurate measurements of its dimensions.

e) The Appellant argued this development is in fact two freestanding structures, Structure C (11.71 square metres) and Structure D (11.93 square metres).

f) The Board finds that the development is one Accessory building with an area of 23.64 square metres. The structures C/D abut one another. They are attached to a continuous portion of the Appellants' rear fence. The development appears to be one building and functions as a single, continuous storage structure. The development has a single, central eavestrough which creates a common roof that protects both areas from the elements. Both portions of the development are open to one another, there are no walls or interior separations between structures C/D. Both may be accessed by removing panels on the west side. Items may be stored in both structures simultaneously. The Accessory building requires a Development Permit and is in violation of Section 5.1 of the *Edmonton Zoning Bylaw*.

g) The Accessory building is also in violation of section 50.3(3)(a) as it results in an excess in allowable Site Coverage for Accessory buildings.

h) Therefore the Board upholds this Stop Order.

[166] Even if the development referred to in Stop Order #175937692-007 is characterized as two separate Accessory Buildings each one would be in violation of the Bylaw. Structure C (11.71 square metres) and structure D (11.93 square metres) each require a Development Permits and none has been issued, a violation of section 5.1. Each Accessory building is also in violation of section 50.3(3)(a) due to an excess in Site Coverage for accessory Buildings on the Site. On this basis, the Board would also find that the Stop Order #175937692-007has been validly issued.

[167] Stop Order #175937692-008 (SDAB-D-16-247) requiring the removal of the addition to an accessory building (structure A) is upheld for the following reasons:

a) This Stop Order orders the Appellants to demolish an addition to an Accessory building as indicated on the attached Appendix and to remove all related materials.
b) The Board finds that the Stop Order indicates a clear reason for issuing the Stop Order. The development was ordered to be removed because it had been built without a permit contrary to Section 5.1 of the *Edmonton Zoning Bylaw*.
c) There is no Development Permit for this development.
d) The Appellants argued this development is a freestanding structure, structure A (12.82 square metres).
e) The Board finds that the development is an addition to the garage rather than a freestanding Accessory building because it bridges the entire space between the garage and the neighbour's fence to the north. There is no noticeable separation between the garage and the addition, they appear as a single development. The addition depends upon the garage walls to shelter and provide security for its contents. The development could not function as indoor storage, but for the walls of the garage.
f) This conclusion is consistent with characterization of the canopy structure along the north western portion of the site which was previously approved as an addition to the principal dwelling rather than an Accessory building.
g) Regardless of whether this structure is characterized as an addition or an accessory Building it is in violation Section 5.1 of the *Edmonton Zoning Bylaw* because:
    i. Any addition to the garage which is 65.42 square metres in size requires a Development Permit per section 12.2(1)(c); and,
    ii. Any single Storey Accessory building 12.82 square metres in size, requires a Development Permit per section 12.2(1)(c)
h) Therefore, this Stop Order has been validly issued.

[168] Finally, the Board notes that regardless of whether it is considered an addition or an Accessory building, this development is also in violation of section 50.3(3)(a) due to an excess in Site Coverage for Accessory buildings and the Board would uphold Stop Order #175937692-008 on this basis.

[169] Stop Order #175937692-009 (SDAB-D-16-248) requiring the removal of the addition to an Accessory building (structure B) is upheld for the following reasons:

a) This Stop Order orders the Appellants to demolish an addition to an Accessory building as indicated on the attached Appendix A and to remove all related materials.
b) The Board finds that the Stop Order indicates a clear reason for its issuance. The development was ordered to be removed because it had been built without a permit contrary to Section 5.1 of the *Edmonton Zoning Bylaw*.
c) There is no Development Permit for this development.
d) The Appellant argued this development is a freestanding structure, structure B (5.99 square metres).
e) The Board finds that the development is an addition to the garage rather than a freestanding Accessory building because it bridges the entire space between the garage and the Appellants' fence to the east. There is no noticeable separation between the garage and the addition. They appear as a single development. The addition depends upon the garage walls as well as the Appellants fence to shelter and provide security for its contents. The development could not function as indoor storage, but for the walls of the garage.
f) This conclusion is consistent with characterization of the canopy structure along the north western portion of the site which was previously approved as an addition to the principal dwelling rather than an Accessory building.
g) The garage is 65.42 square metres in area, thus any addition to the garage requires a Development Permit per section 12.2(1)(c).
h) There is no permit for this development and accordingly it is in violation of Section 5.1 of the *Edmonton Zoning Bylaw*.
i) Therefore the Stop Order has been validly issued.

[170] Finally, if this development is considered an Accessory building, it is in violation of section 50.3(3)(a) due to an excess in site coverage for accessory Buildings and the Board would affirm the issuance of Stop Order #175937692-009 on this basis.

[171] In the Appellant's written submission, they state: "NOTHING of significance has changed since then, except for the addition of 3 fully legal tents that do not need Development Permits." During the hearing, Mr. Rolf stated that he does not want the Stop Orders changed to require removal of these three existing tents and that as they are not part of the 5 Stop Orders, he wants the Board to stay focused on the 5 developments. The City indicated it is not currently pursuing enforcement action respecting these tents and has no plans to pursue them. Given the evidence in front of the Board and the fact that the 5 Stop Orders were directed against 5 specific structures, the Board has made no findings with respect to the tents or any other existing Accessory buildings. Nothing in this decision should be taken as an indication of the Board's acquiescence with the position that the three tents or any other Accessory buildings are in compliance with the *Edmonton Zoning Bylaw* or about whether or not they require Development Permits.

[172] The Appellants requested a variance to permit the structures to remain for any developments that this Board determined required Development Permits. The Board declines to grant any such variance given it has determined the 5 Stop Orders were validly issued. The Appellant is free to apply for a Development Permit for any Accessory building, or addition to an Accessory building, including any of the 5 identified structures, and to have the appropriateness of any necessary variance be considered by the Development Authority in the normal course, with the appropriate information and plans, and subject to the applicable development regulations.

[173] The Appellants requested an extension to the date for compliance by a further 6-8 months in the event the orders were upheld. The Board has declined to change this term of the order because these structures were ordered to be removed by a panel of this Board 15 years ago in 2001 and because the timing for enforcement of the 5 Stop Orders is a matter which remains at the City's discretion.

[174] The Appellants asked for a refund of four of the five appeal fees per section 23(3) of the *Subdivision and Development Appeal Board Bylaw* as the issuance of 5 separate Stop Orders were unnecessary. In the Appellants' view, one Stop Order would have sufficed. The Board declines because the issuance of Stop Orders, including the number and content of Stop Orders in any given case, is a matter determined at the discretion of the City.

The Board finds no evidence that the Stop Orders were issued individually for an improper purpose and City's exercise of discretion was not unreasonable. The Appellants were free to appeal none, some or all 5 of the Stop Orders. The Appellants elected to appeal all 5 Stop Orders and all 5 appeals were heard by this Board.

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

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.