

Edmonton Subdivision and Development Appeal Board

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Date: October 16, 2015
Project Number: 164673524-003
File Number: SDAB-D-15-222

Notice of Decision

This appeal dated September 3, 2015, from the decision of the Development Authority for permission to:

Construct exterior alterations (rear uncovered deck, 3.49m x 1.52m) and a rear addition with uncovered deck above (2.11m x 3.27 m @ 1.78m high - existing without permits), to an existing Single Detached House

on Plan 642KS Blk 6 Lot 5, located at 10921 - 158 Street NW, was heard by the Subdivision and Development Appeal Board on October 1, 2015.

Summary of Hearing:

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.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

The subject Site is zoned RF1 Single Detached Residential Zone and is within the Mature Neighbourhood Overlay.

The development permit application was refused due to an excess in the maximum allowable Site Coverage for a Principal building; a deficiency in the minimum required Rear Setback, that being 40 percent of the Site Depth; and because Privacy Screening on the side yard was not provided.

Prior to the hearing, the following information was provided to the Board, copies of which are on file:

- A written submission from the Development Officer received on September 23, 2015; and
- Development Permit Application Information.

The Appellant initially stated he did not know why he was here as the deck had been built as per the City's approval. The Board, with the Appellant's agreement, decided to have the Development Officer present first.

The Board heard from Mr. J. Booth, representing the City of Edmonton Sustainable Development Department who provided the following information:

1. The structure was not built according to the approved plan; the deck was larger than approved and while the basement entry had been approved, the enclosure of this rear entry was not. He displayed the original plans that had been submitted and approved. The rear elevation view showed no enclosed area to the basement entry.
2. The deck, as built, comes farther into the rear setback than what was originally approved. This increases the variance required on the rear setback and the maximum allowable site coverage has also been exceeded.

Mr. Booth provided the following responses to questions:

1. His file shows four signatures of support from neighbours that had been provided by the Applicant, but a full 60 metre community consultation had not been done. He was uncertain why the community consultation requirement had been waived during the initial application process, as the Development Officer who worked on it is no longer with the City.
2. This matter arose because of a Compliance Certificate Application. The Real Property Report on file did not match the plans as provided by the Appellant.
3. A failed inspection for the basement suite raised suspicion that there may be two secondary suites rather than one, but the inspector was unable to gain access. That inspector had taken the photos attached to Mr. Booth's submission.
4. The 1.72 metre variance granted for the Rear Setback with the original Development Permit application has now increased to a 3.09 metre encroachment into the Rear Setback.
5. The regulations under the Mature Neighbourhood Overlay are vague as to the requirements for privacy screening on decks. The requirements arise when platform structures are greater than 1 metre in Height. When Mr. Booth requests privacy screening he asks for a proposal from the Applicant and then reviews it to determine its sufficiency. Lattice, landscaping or a wall were given as examples of acceptable privacy screening.

The Board heard from the Appellant, Mr. A Duarte, who provided the following information:

1. He confirmed he now had a clearer understanding of why this appeal was before the Board.
2. He had supplied the City with amended plans in February 2015, which showed the entrance to the basement and the deck size. He contended that what was submitted in February 2015, showed the enclosure to the back entrance, and the deck had been built exactly as approved by the City.

3. The plans accompanying the permit, which were submitted by the Development Authority, were shown to the Appellant and he confirmed that these are the plans he was referring to.
4. When asked why the plans do not match the structure as it currently exists and specifically that the plans do not show the enclosed rear entry to the basement, he advised that a five foot deck did not serve the purpose of the residents of the house.
5. The City had asked him to provide plans which he obtained and submitted in February 2015. Subsequently, he repeatedly called the City for the Real Property Report since he had supplied the City with all they needed.
6. The deck was originally intended to be square-shaped, but he turned it into an L shape above the basement door to satisfy the City. He referred the Board to the 3rd photo on the first page of the Development Officer's report.
7. He agreed that the deck that was approved on paper is not what was actually built.

Mr. Duarte provided the following responses to questions:

1. He recently consulted with his neighbours on either side of the subject property after building the structure. He received no opposition but was not able to provide signatures.
2. He had made the deck smaller than what was shown on the original plan to satisfy the City and made it L shaped rather than square.
3. The deck is 5 feet wide for most of the structure except for the 7 foot wide portion that extends above the basement door.

Decision:

The appeal is ALLOWED and the development, including the revised deck and basement enclosure, is APPROVED, subject to the following CONDITIONS:

1. The Appellant must submit plans to the satisfaction of the Board which show:
 - a. The proposed development as built, including plans for the revised rear entry;
 - b. The full basement plan; and
 - c. All plans to be submitted to the Subdivision and Development Appeal Board by November 13, 2015.

In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. A variance of 9.32 square metres to the maximum allowable site coverage for a Principal building pursuant to Section 110.4(7)(a);
2. A variance of 3.09 metres to the minimum required Rear Setback pursuant to Section 814.3(5); and
3. The requirement for privacy screening on the deck is waived pursuant to Section 814.3(8).

Reasons for Decision:

The Board finds the following:

1. The proposed development is an addition to a Permitted Use in the RF1 Single Detached Residential Zone.
2. The Board finds that the additional enclosure of the basement entry and the projection of the deck will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land for the following reasons:
 - a. The Appellant's evidence that he had consulted with the two most affected neighbors to the north and the south, and received no objections; and
 - b. The fact that no one appeared in opposition to the proposed development.
 - c. Photographic evidence indicated that existing mature landscaping provides adequate screening on the north edge of the deck.
3. The Board notes that the conditions for approval are for a Single Detached House with a single Secondary Suite. Any additional Dwelling requires a new development permit application.

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board;
 - b) the requirements of the *Alberta Safety Codes Act*, RSA 2000, c S-1;
 - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d) the requirements of any other appropriate federal, provincial or municipal legislation; and
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw 12800*, as amended.

5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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

Noel Somerville, Presiding Officer
Subdivision and Development Appeal Board

cc:

Edmonton Subdivision and Development Appeal Board

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Date: October 16, 2015
Project Number: 159575991-004
File Number: SDAB-D-15-223

Notice of Decision

This appeal dated September 7, 2015, from the decision of the Development Authority for permission to:

Construct a Single Detached House with front veranda, side attached Garage, fireplace, rear covered deck (6.10m x 4.27m) and Basement development (Not to be used as an additional Dwelling)

on Plan 1621HW Blk 5 Lot 1, located at 8958 - Windsor Road NW, was heard by the Subdivision and Development Appeal Board on October 1, 2015.

Summary of Hearing:

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.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

The Board heard an appeal of the decision of the Development Authority to approve an application to construct a Single Detached House with front veranda, side attached Garage, fireplace, rear covered deck (6.10m x 4.27m) and Basement development (Not to be used as an additional Dwelling) located at 8958 Windsor Road NW. The subject site is zoned RF1 Single Detached Residential Zone and is located within the Mature Neighbourhood Overlay.

The development permit application was approved, subject to conditions, and with a variance granted in the minimum required rear setback to the proposed covered deck. The approved application was subsequently appealed by a neighbouring property owner.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- A Submission from legal counsel for the Respondent, Mr. K. Wakefield of Dentons Canada LLP;
- A copy of the Development Officer's written submission dated September 24, 2015;
- The Development Permit application information;
- Photos submitted online by the Appellant on September 30, 2015;

- An e-mail from the President of the Windsor Park Community League dated August 19, 2015; and
- A letter from the Windsor Park Community League dated September 30, 2015.

The Board heard from the Appellant, Mr. A. Derocher, who provided the following information. He was accompanied by Ms. K. Pontus.

1. The Appellant read from a written document which has been entered into the record and marked Exhibit "A".

Mr. Derocher provided the following responses to questions:

1. Their Garage in Tab 12 of the Respondent's submission is incorrectly depicted as their Garage is not directly in line with the west wall of the house.
2. Tab 2 of the Respondent's submission illustrates the anomaly in the sun study.
3. The Appellants have a garden between the Garage and the house where they spend a large part of the summer growing season. The Respondent's covered deck will affect the sunlight on their property in the early morning, which is the time they are most in their back and side yards. Their garden extends to the back fence, along the lane, and is already limited in sunlight.
4. They welcome the redevelopment of the subject property and their only issue is with respect to the covered deck. Had the deck been uncovered they would have no issue and would not have appealed. The covered deck adds to the overall massing effect.
5. When the Appellants redevelop their property the massing effect of the subject property will impact their lands to a greater affect.
6. They were never approached by either the Community League or the Developer.
7. They acknowledged that the Respondents had revised their original plans and those revisions were before the Board.
8. Their more affected neighbour to the east of the subject property as well as the Community League support the development with the revisions.

The Board heard from Ms. F. Hamilton, representing the City of Edmonton Sustainable Development Department who provided the following responses to questions:

1. She confirmed that the plans under consideration were those that had been approved.
2. The covered deck is a totally open structure with a roof, a portion of which is flat to reduce the height.

The Board heard from Mr. K. Wakefield of Dentons Canada LLP, representing the Respondent, Plex Developments Ltd. He was accompanied by Mr. S. Fix of Renu Building Science and Ms. H. Paranych of Plex Developments Ltd.

Mr. Fix provided the following information:

1. He provided his background and a summary of his expertise in the subject of sun shadowing. He provided an updated version of the documents under Tab 12 of Mr. Wakefield's submission which were marked Exhibit "B".
2. The diagrams in Exhibit "B" show the incremental sun shadowing effect from the proposed development onto the Appellant's property. The most affected time of the sun shadowing is in the early morning.
3. The outlined orange area on the diagrams show the actual place on the property where shadowing will affect the Appellant's property attributable to the covered deck.
4. In conclusion he advised that the covered deck should cause solar shading on the Appellant's property for 15 to 30 minutes directly following sunrise from September 20 to October 10 and from March 1 to March 15.

Ms. Paranych of Plex Developments Ltd. provided the following information:

1. She is the owner of Plex Developments Ltd, the owner / developer of the subject site.
2. She provided information on the consultation process (outlined in Tabs 4 and 7) which contains a summary of attempts to contact the Appellants and consult with them about new development.
3. She was able to contact Ms. S. Nyland, who owns the property to the East as well as the Community League. Several modifications were made to the plans to satisfy both the concerns of Ms. Nyland and the Community League.
4. Tab 6 outlines the community consultation process and contains letters of support from surrounding neighbours.
5. This development has an attached Garage and the development is not oversized, is under the maximum allowed Site Coverage and under the maximum allowed Height. Only a slight variance is required to allow for the intrusion of the covered deck into the Rear Setback. If there were a separate attached Garage there would be greater sun shadowing to the west.
6. She directed the Board to Tab 9 that identified groups of trees on neighbouring properties that, in her opinion, would cause more shadowing on the Appellant's property than the proposed covered deck.
7. She described a six foot fence running along the west side along the lane and stated they would plant trees to soften the impact of the house on the alley.
8. There is a jog in the foundation shown on the Real Property Report and this is the area in which the rear covered deck would be placed. A person standing on the covered deck would not have a clear view of adjacent properties.
9. She referred to Tab 3 which shows there is no second storey on the northwest corner of the development. This provides a variation in roof lines, sensitivity to the massing effect and reduces sun shadow. Her Company made much effort in this project's design to fit into the community and have as low an impact as possible on neighbouring properties.
10. Through consultation attempts they did meet with the Derochers and the future property owners on Sept. 15, 2015, and outlined their plan.

11. Tab 10 shows other developments in the Windsor Park area and shows that it is not uncommon to have a new development of this size next to existing bungalows.
12. Tab 11 contains a map that outlines newly constructed developments as well and those currently under construction within the Windsor Park Community.

Ms. Paranych provided the following responses to questions:

1. She confirmed the sun shadow report provided to this Board was the accurate one.

Mr. K. Wakefield summed up the Respondent's presentation as follows:

1. He provided a summary of his briefing materials that were not previously covered by Mr. Fix or Ms. Paranych.
2. As this property has two lanes, they were able to enter from the side lane and therefore provide an attached garage. This allowed the front of the building to have a more traditional look.
3. He provided a copy of the Mature Neighbourhood Overlay and identified the requirements under Section 52 of the *Edmonton Zoning Bylaw*. The only reason this was before the Board was because of the variance required for the cover over the rear deck.
4. He referred to previous decisions of the Board that he likened to the proposed development in which minor variances were granted, although he understands this Board is not bound by previous decisions.
5. He reviewed the effects caused by sun shadowing and noted this effect on a non-growth time of year is not substantial.

The Board heard from Mr. J. Collier, who spoke on behalf of Ms. S. Nyland, the most affected property owner immediately to the east of the subject property. He provided the following information:

1. He confirmed that the drawings submitted to the Board reflect what was agreed to between Ms. Nyland and Plex Developments Ltd.

In rebuttal Mr. Derocher made the following points:

1. Although it was not a large portion of his property that was shaded the effect was large and took away 35 days of the year when they sit on the back deck of the house. This has the result of removing 8 to 10 percent of their sun per annum.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority

In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. Section 814.3(5) requires a 40% Rear Setback (18.28 metres). This requirement is reduced to permit a Rear Setback of 29.24% or 13.37 metres.

Reasons for Decision:

The Board finds the following:

1. Single Detached Housing is a permitted Use in the RF1 Single Detached Residential Zone as per Section 110.2 of the *Edmonton Zoning Bylaw*.
2. It was confirmed to the Board by all parties that the plans were the correct ones and that the principal structure fully complies with all the regulations of the Edmonton Zoning Bylaw save for the variance granted. The variance before this Board was specific in nature as it dealt only with the covered rear deck (6.10 metres by 4.27 metres) in the rear yard.
3. The Board accepts the outcomes of the sun shadow study presented that clearly identified that there was very minimal impact on the Appellant's property at very limited times of the year.
4. The photographic evidence provided by both the Appellant and the Respondent shows significant trees, bushes and plantings on the Appellant's property that would further create its own shadow effect.
5. The Board also noted that the Appellant's property has what appears to be a six foot fence which would have some impact on the sun shadow effect created by the covered deck.
6. The Board notes the significant community consultation conducted by the Respondent. The Respondent, through direct consultation with the most affected neighbour to the East worked on changes to the plans to help mitigate her concerns. It should be noted that this neighbour provided both written approval and also appeared before the Board today to personally confirm she was satisfied with the proposed Development. There are also letters of support within the Respondent's presentation as a result of the Community Consultation.
7. The Board noted correspondence was received from the Community League in support of the variance.
8. The Board notes that part of the reason for the 40 percent Rear Setback requirement is to ensure future developments comply with parking requirements, to allow for secondary structures, and to ensure sufficient private Amenity Space. As there is no detached Garage, and the principal structure, save for the minor variance granted, fully complies with all Edmonton Zoning Bylaw regulations, the need for a full 40 percent Rear Setback is mitigated.
9. The Appellant identified that in his opinion a variance should not be granted as no unnecessary hardship is associated with the subject property, pursuant to Section 11.4 of the *Edmonton Zoning Bylaw*; however, this Board is not bound by that test in making its decision. Rather, the Board may make a decision in accordance with the test set out in Section 687(3)(d) of the *Municipal Government Act*.

10. The Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Important Information for Applicant/Appellant

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 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board;
 - b) the requirements of the *Alberta Safety Codes Act*, RSA 2000, c S-1;
 - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d) the requirements of any other appropriate federal, provincial or municipal legislation; and
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edm

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.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

CC:

Edmonton Subdivision and Development Appeal Board

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Date: October 16, 2015
Project Number: 144141223-003
File Number: SDAB-D-15-224

Notice of Decision

This appeal dated September 4, 2015, from an Order of the Development Authority to:

Apply for a Development Permit or Dismantle and Remove the Accessory Building (to be complied with on or before September 4, 2015).

on Plan 2465MC Blk 9A Lot 75, located at 10330 - Lauder Avenue NW, was heard by the Subdivision and Development Appeal Board on October 1, 2015.

Summary of Hearing:

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.

The Presiding Officer first addressed the issue of jurisdiction and whether the appeal was filed within the allowable 14-day appeal period, pursuant to Section 686(1)(a)(i) of the Municipal Government Act, RSA 2000, c. M-26 (the "MGA").

The Appellant, while providing a date, was unsure specifically and conclusively whether he did receive the decision on that day.

The Board heard from the Development Officer who referred to Section 23(1)(a) of the *Interpretation Act*, RSA 2000, c I-8, which presumes that "unless the contrary is proved... service shall be presumed to be effected 7 days from the date of mailing if the document is mailed in Alberta to an address in Alberta". The Development Officer confirmed to this Board that the notice was mailed on August 17, 2015, therefore it was presumed to be served on August 24, 2015. This appeal was filed on September 4, 2015, and falls within the 14 days appeal filing period as prescribed under Section 686(1)(a)(i) of the MGA.

The Board therefore assumes jurisdiction.

The Board heard an appeal of the decision of the Development Authority to issue an Order to Apply for a Development Permit or Dismantle and Remove the Accessory Building located at 10330 Lauder Avenue NW. The Order is to be complied with by September 4, 2015. The subject site is zoned RF5 Row Housing Zone and is within the Mature Neighbourhood Overlay.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

1. A written submission received with the Appellant's original appeal; and
2. A written submission from the Development Officer received on September 18, 2015.

The Board heard from Mr. L. Onyschuk, representing the Appellant, Ms. F. Fernandez, who provided the following information:

1. He had requested City Staff to advise what was needed to comply with the Bylaw. He was told he had to remove the centre structure to which he contended that the three structures (two sheds and the centre structure between the two) were not attached. It is his opinion that there is a separation between the centre structure and both of the previously existing sheds.
2. One of the sheds is approximately 96 square feet and the other existing shed is 104 square feet. Even with centre section added it does not exceed the maximum allowed area of 107 square feet (10 square metres).
3. When he had requested information from the City, he had been told that two sheds could abut each other and would still be considered individual structures, not one structure.
4. When City officials had visited the Site they had agreed that a separation did exist between the existing sheds and the centre section.
5. He reviewed a set of 12 pictures which were projected on the screen (marked Exhibit "A"). Light showing through between the existing shed and the back wall of the centre structure indicated they were in fact separate structures.
6. Efforts to communicate with the City on the development had been unsuccessful.
7. The connection between the two original sheds was constructed as a result of landscaping work that was being undertaken. The section between the sheds was being used for the storage of materials that had previously been strewn in his yard and covered with tarps. He was told that it was unacceptable to leave these materials in his yard. He therefore built a more permanent connection between the two sheds so that the materials could be stored within the center section.
8. In negotiating with the City he had offered to remove the centre section if the two \$400.00 tickets were withdrawn. The City had offered to withdraw one of the tickets but not the other.

Mr. Onyschuk provided the following responses to questions:

1. He felt there were no compliance issues with the sheds.
2. The shed was not the reason that the fence was falling over.
3. The smaller of the two original sheds and the connecting portion did share a foundation but he felt this was not relevant as they are separate structures.
4. He conceded that the original shed towards the back of the property does share a wall with the centre section.

The Board heard from Mr. J. Young, and Mr. J. Hogberg, representing the City of Edmonton Sustainable Development Department, who provided the following information:

1. Mr. Hogberg went through a time line with respect to this matter which is set out on Page 2 of his written submission.
2. On May 27, 2015, he responded to a call regarding an adjacent property and noticed the shed in the Appellant's yard. It had attracted his notice because he felt that the sheds were connected to make one shed and would require a Development Permit. He sent a violation notice
3. He checked the file management system and saw records from another Development Officer when the sheds on the Appellant's property were separated.
4. He was called by the Appellant, after he sent the violation notice and they discussed various options. He advised Mr. Onyschuk that the middle portion had to be removed but he did not recall stating that the materials would have to be moved off of the site.
5. On June 18, 2015, Mr. Onyschuk asked for an extension to remove the middle portion of the shed. This extension was not granted because it was a day after the three weeks compliance period had passed.
6. A July 10, 2015 inspection showed the structure was still standing, so Mr. Hogberg issued a Notice of Entry which was exercised on July 14, 2015. The shed was still in an illegal state and he took photo evidence.
7. On July 17, 2015, both Mr. Young and Mr. Hogberg attended the site and measured the total area of the shed to be 19.9 square metres.
8. On July 20, 2015, two tickets were issued to the Appellant. Mr. Hogberg noted this was 2 months after the violation notice had been sent.
9. Nearly a month later on August 14, 2015, Mr. Hogberg attended the site and noticed a small separation in the shed, but the rear of the shed remained attached and he prepared the Order under the MGA, which was mailed to the Appellant on August 17, 2015.
10. Mr. Hogberg pointed out that there had been six inspections since May 2015.
11. Mr. Young acknowledged that the Appellant had spoken with a number of City of Edmonton employees, and he felt confident the Appellant had received consistent information and advice.
12. He acknowledged the separation at the front of the structure but pointed out that the structure shares the same common wall and roof line at the back of the shed. If the Appellant were to apply for a Development Permit, the structure would be treated as one building and not as multiple sheds.
13. Mr. Hogberg acknowledged that the *Edmonton Zoning Bylaw* does not have specific separation requirements for accessory buildings. He stated that in this case the existence of common walls and the massing effect of the entire structure led him to conclude that the two sheds and center section comprised of one structure.

They provided the following responses to questions:

1. If the center section was removed, the remaining sheds would be compliant with the *Edmonton Zoning Bylaw*. These sheds would also appear to be compliant regarding Setback requirements but he could not be totally certain without a survey.

2. The matter of the unfinished nature of the shed would be addressed at the time of Development Permit application.
3. Mr. Young felt the sheds do not share a common foundation.
4. The sheds could abut one another if the total floor area did not exceed 10 square metres, and if the sheds were distinct from each other in terms of being able to tell one from the other. The massing effect of the sheds should be considered.

Mr. Onyschuk made the following points in rebuttal:

1. He had been instructed to remove the centre section from the property.
2. It was his position that the two existing sheds and the connecting section were all separate structures, all of which were less than the area that required a permit.
3. He noted there is nothing in the Edmonton Zoning Bylaw that stipulates minimum separation space between shed structures.
4. The measurements taken by the two City officials varied from each other and were different than his measurements.
5. He was left with no option but to appeal to get an accurate and consistent answer to his questions.

Decision:

The Appeal is denied and the Order to Comply is upheld, subject to the following CONDITIONS:

1. The Order is to be complied with by October 30, 2015.

Reasons for Decision:

The Board finds the following:

1. The Board accepts the authority of the Development Officer to issue the Order being appealed pursuant to Section 210(1) of the MGA.
2. The Board accepts the results of the investigations undertaken by the Development Officers as identified in their written submissions.
3. By the Appellant's own admission, the center portion shares one wall with one of the two sheds.
4. Based on the photographic evidence provided by both the Development Officer and the Appellant, the Board has determined that it is one accessory structure as opposed to three accessory structures; therefore the Board supports the Order to Comply and gives the Appellant 14 days to comply with the Order.
5. While the Appellant submitted that there is a defined separation distance between the sheds, the Board has deemed these particular accessory buildings to be one as they appear visually to be one building.
6. The Appellant indicated on several occasions within his presentation that he is prepared to remove the center section in question.

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.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

CC: