



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: October 20, 2016
Project Number: 223356733-001
File Number: SDAB-D-16-214

Notice of Decision

[1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on September 7, 2016, made and passed the following motion:

“That the appeal hearing be scheduled for October 5 or 6, 2016.”

[2] On October 6, 2016, the Board made and passed the following motion:

“That SDAB-D-16-214 be raised from the table.”

[3] On October 6, 2016, the Board heard an appeal that was filed on August 10, 2016. The appeal concerned an order of the Development Authority, issued on July 22, 2016, which states, in part, to:

1. Immediately cease the use of the basement as Secondary Suites.

AND

2. Decommission the Secondary Suites.

[4] The subject Site is on Plan RN64 Blk 9 Lot 4, located at 11918 - 124 Street NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

- Copy of the Stop Order;
- The Development Authority’s written submissions;
- The Appellant’s submission of documents; and
- Online responses.

[6] The following exhibit was presented during the hearing and forms part of the record:

- Exhibit A – Letter from surrounding property owner

Preliminary Matters

- [7] 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.
- [8] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [9] Prior to the hearing, the Board raised a jurisdictional issue regarding the date the appeal was filed. The Board explained to the Appellant that it is constrained by the 14 day limitation period prescribed by Section 686(1)(a)(i) of the *Municipal Government Act*, RSA 2000, c M-26 ("*Municipal Government Act*").

Summary of Hearing on Preliminary Matter*i) Position of the Appellant, M. Taddei and D. Kolodziej on behalf of the Appellant*

- [10] Mr. Taddei's former spouse resides at the property where the Stop Order was sent. She was not timely in providing this information to Mr. Taddei. Around August 7, Mr. Taddei had a telephone conversation with the Compliance Officer, who advised him to file an appeal. He is not currently able to change his mailing address with the City. The address where the Stop Order was sent is the registered address for the company, which owns the subject property. Mr. Taddei's tenant contacted him around August 7, 2016 regarding the Stop Order.

ii) Position of the Compliance Officer, B. Bolstad

- [11] Mr. Bolstad indicated that he sent the Stop Order in accordance with standard practice to the registered owner of the property via regular mail and registered mail on either Friday July 22, 2016 or Monday July 25, 2016. He does not have any evidence as to the date of receipt of the registered letter.
- [12] The Board noted that included with the Development Officer's submission is a note that Mr. Bolstad was contacted by Mr. Taddei on August 8, 2016.

Decision on Preliminary Matter

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

Reasons for Decision on Preliminary Matter

- [14] Section 686(1)(a)(i) of the *Municipal Government Act*, states that a development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days, after the date on which the person is notified of the order or decision or the issuance of the development permit.

- [15] Based on the submissions of the parties, the Board is unable to determine the precise date when service was affected. Accordingly the Board has applied Section 23(1)(a) of the *Interpretation Act*, RSA 2000, c. I-8 (“*Interpretation Act*”), which states that if an enactment authorizes or requires a document to be sent, given or served by mail and the document is properly addressed and sent by prepaid mail other than double registered or certified mail, unless the contrary is proved the 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.
- [16] The Board accepts the evidence of the Development Officer that he mailed out the Notice of Development Permit no later than on July 25, 2016. In accordance with the *Interpretation Act*, service is presumed to have been effected on August 1, 2016. The 14-day limitation period expired on August 15, 2016. The appeal was filed on August 10, 2016, within the allowable 14-day period.

Summary of Hearing

- i) *Position of the Appellant, M. Taddei and D. Kolodziej on behalf of the 1665481 Alberta Ltd.*
- [17] Mr. Taddei and Ms. Kolodziej submitted a copy of the MLS listing they viewed when they purchased the subject property. The units were advertised with suites in the basements plus appliances. So they assumed the suites were properly permitted. They have since obtained copies of the development permit and submitted plans. The development permit approves a Semi-Detached House with undeveloped basements on both sides. The Secondary Suites had not been permitted, nor did the plans even depict suites.
- [18] The property is zoned RF3 Small Scale Infill Development Zone and does allow Apartment Housing up to 4 units.
- [19] They submitted MLS listings for similar properties, which were also advertised as containing 4-6 dwelling units. They did not have evidence about the existence of development permits for any of these properties.
- [20] The City of Edmonton has been encouraging affordable housing. The Yellowhead Youth Center is located a few blocks from the development. Mr. Taddei would like to provide affordable housing without discrimination, including potentially housing for families of the youths located in that centre.
- [21] Mr. Taddei agrees that the Stop Order was properly issued. However, this same developer is continuing to sell properties with illegal suites. The City should have stepped in during the inspection stage and should be attributed some fault.

- [22] Upon questioning from the Board, Mr. Taddei does not recall the details about the existence of any compliance certificate or whether they had obtained a compliance certificate as part of their purchase of the property. To date, he has been unable to obtain documents from the lawyer he used for the sale.
- [23] Mr. Taddei was advised by city representatives that his chances of approval for Apartment Housing are nil.
- [24] Mr. Taddei advised he requires more time to remove his tenants from one of the basement units. The basement unit at 11918 – 124 Street is empty. The tenants in the basement unit at 11920 - 125 Street signed a tenancy agreement starting July 1, 2016. Mr. Taddei has verbally advised those tenants that they will probably have to vacate, but they were awaiting the outcome of this hearing before taking any formal steps. He would like an additional 30 days to remove this tenant and then another 30 days to decommission the Secondary Suites in compliance with the instructions in the Stop Order.

ii) Position of the Compliance Officer, B. Bolstad

- [25] Mr. Bolstad stated the Secondary Suites do not have permits and need to be decommissioned. He is apprehensive about extending the deadline for decommissioning a unit until the tenancy agreement expires because of safety and health issues.
- [26] Under the terms of the Stop Order, the Appellant is also required to obtain a permit for the basement development or revert the basement back to an undeveloped state. This process should be started immediately.
- [27] A basement permit application is a simple application. The Appellant's request for 60 days is well within processing time lines, assuming the application is made promptly.
- [28] Mr. Bolstad will need to do a follow-up inspection to ensure the tenants are gone and the suites have been decommissioned as set out in the Stop Order.
- [29] The Appellant can apply for Apartment Housing in the future. If a permit is approved, then people can move in at that point.
- [30] The time frame set out in the Stop Order is the standard compliance time allowed. The Appellant did ask him for additional time. He was uncomfortable extending this time because of safety and health reasons, so he advised the Appellant of the appeal procedure. Having heard the full situation at the hearing today, Mr. Bolstad believes 60 days is a reasonable amount of time. It is their department's policy to delay enforcement until after the Board's decision is issued.
- [31] If the Board grants an additional 60 days, the inspection would be booked on 61st day. If the Board does not grant additional time, the inspection would be booked at the first available time slot, in about 3-4 weeks, sometime in November.

- [32] Mr. Bolstad would prefer to see evidence that written notification has been provided to the tenants regarding eviction.
- [33] The Appellant could not actively decommission the suite while the tenants are living there. It is reasonable that tenants would need 30 days to vacate and the Appellant would then require 30 more days to decommission the units.
- [34] The Board asked Mr. Bolstad how he would change the wording of the Stop Order if the Board decides to grant an extension. He suggested a provision that the currently vacant unit continue to remain empty and be decommissioned. He would also like the date of the end of the tenancy for the currently occupied unit to be confirmed. The Stop Order would be not complied with until a follow up inspection is confirmed and all the terms of the Stop Order are complied with. He also needs to be granted access to the property.

iii) Position of Affected Property Owner in Support of the Stop Order, T. Newman

- [35] Mr. Newman submitted a letter, marked Exhibit A, outlining his concerns. Mr. Newman owns several rental properties. When he purchases property, he confirms zoning to prevent any problems such as this. He has dealt with this property for over 4 years. The state of this property has devalued his property. The tenants are still living there.

iv) Rebuttal of the Appellant

- [36] Mr. Taddei and Ms. Kolodziej stated it is difficult for all individuals, whether owners or tenants, to keep their properties clean. Ownership is not a guarantee of cleanliness. Mr. Taddei has provided his tenants with proper tools to maintain their property. The grass is being cut and the weeds are being controlled.

Decision

- [37] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The Stop Order is UPHeld.

Reasons for Decision

- [38] The Appellant is the owner of the property legally described as Plan RN64 Block 9 Lot 4.
- [39] Based on the evidence and the submissions of the parties, the Board finds that the Stop Order was properly issued to the registered owner in accordance with requirements of 645 of the *Municipal Government Act* by a duly appointed official.
- [40] Both parties agree that the building located at this site received a Development Permit for Semi-detached Housing with undeveloped basements. Both parties also agree that two Secondary Suites have been built without permits in the basement of the building, one in each half of the Semi-detached House. Therefore, the Board finds these developments are not in accordance with section 5.1 of the *Edmonton Zoning Bylaw* which requires approvals to be obtained for developments.

- [41] Also, while a Secondary Suite is a Permitted Use in the RF3 Small Scale Infill Development Zone, the Board finds these developments are not in compliance with the definition of Secondary Suite found in Section 7.2(7) of the *Edmonton Zoning Bylaw* which states:

Secondary Suite means development consisting of a Dwelling located within, and Accessory to, **a structure in which the principal use is Single Detached Housing**. A Secondary Suite has cooking facilities, food preparation, sleeping and sanitary facilities which are physically separate from those of the principal Dwelling within the structure. A Secondary Suite also has an entrance separate from the entrance to the principal Dwelling, either from a common indoor landing or directly from the side or rear of the structure. This Use Class includes the Development or Conversion of Basement space or above Grade space to a separate Dwelling, or the addition of new floor space for a Secondary Suite to an existing Single Detached Dwelling. This Use Class does not include Apartment Housing, Duplex Housing, Garage Suites, Garden Suites, Semi-detached Housing, Lodging Houses, Blatchford Lane Suites, Blatchford Accessory Suites, or Blatchford Townhousing. [Emphasis added]

- [42] In this case the principal use of the structure is Semi-detached Housing, not Single Detached Housing.
- [43] Therefore the Board finds the Stop Order was properly issued and confirms it.
- [44] The Board acknowledges that the Appellant asked it to delay the date for compliance from the original date of August 15, 2016 until 60 days from the date of this decision. The Board has declined this request because the City indicated that there may be safety and health concerns with ongoing occupation of these unpermitted developments and the Appellant and the remaining tenants have been well aware of the issue and the potential impact on any tenants for several months.

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

Board Members in Attendance:

Mr. M. Young; Mr. R. Hachigian; Mr. I. O'Donnell; Ms. E. Solez

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*, R.S.A. 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.