



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: October 6, 2016
Project Number: 132768653-002
File Number: SDAB-D-16-231

Notice of Decision

- [1] On September 21, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **August 25, 2016**. The appeal concerned the decision of the Development Authority to issue a Stop Order on August 16, 2016 to:

Comply with an Order to decommission one of the additional dwelling units and apply for a Secondary Suite Development Permit for the other unit OR decommission the two additional dwelling units and apply for a Basement Development Permit.

- [2] The subject property is on Plan 1350HW Blk 16 Lot 10, located at 15430 - 104 Avenue NW, within the RF2 Low Density Infill Zone. The Mature Neighbourhood Overlay and the Jasper Place Area Redevelopment Plan apply to the subject property.
- [3] The following documents were received and form part of the record:
- A copy of the Stop Order submitted by the Development Officer; and
 - The Development Officer's written submission.

Preliminary Matters

- [4] 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.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The Board determined the appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) *Position of Legal Counsel for the Appellant, Mr. A. Sproule, Student at Law, Robert Gillespie Law Firm.*

[7] Mr. Sproule (the “Appellant”) clarified that the western portion of the Basement is used as a rental Suite and the eastern portion of the Basement is part of the main floor Dwelling.

[8] He indicated that the current owner purchased the property in 1999 and the Basement was already developed at that time. The property owner was unaware that permits were needed.

[9] In his opinion, the eastern portion of the Basement should not be decommissioned as it is used by the property owner’s daughter and a permit application will be made to apply for a Secondary Suite permit for the western portion of the Basement.

[10] He confirmed that the eastern portion of the Basement contains a kitchen and a stove but has never been used as a rental suite.

[11] With respect to questions from the Board, Mr. Sproule provided the following:

- a. With regard to the definition of Secondary Suite in the *Edmonton Zoning Bylaw*, he agreed that it is possible the eastern portion of the Basement meets the definition, but it is used by the property owner’s family.
- b. The Presiding Officer clarified that the Secondary Suite definition refers to the physical configuration of the development, not who uses it.
- c. With regard to the definition of Dwelling in the *Edmonton Zoning Bylaw*, Mr. Sproule agreed the eastern portion of the Basement could fall within that definition.
- d. With regard to extending the Stop Order compliance date, he indicated that if the Appeal is denied, they would request at least a month to apply for the Secondary Suite permit for the western portion of the Basement and to decommission the kitchen of the eastern portion of the Basement.
- e. He confirmed that the Secondary Suite in the western portion of the Basement is a revenue generator for his client.
- f. He confirmed that there are a total of three kitchens in the subject building.
- g. He reiterated that the only difference between the two portions of the Basement is the type of occupancy.

ii) Position of the Development Officer, Ms. Lamont

[12] With respect to questions from the Board, Ms. Lamont provided the following:

- a. The last inspection of the property was completed on August 16, 2016.
- b. She clarified that both the eastern and western portions of the Basement each had its own separate entrance, kitchen/food preparation area, bedroom and sanitary facilities.
- c. She confirmed each development had its own key lock entrance that was separated from the main floor Dwelling.
- d. She confirmed that a locked separation exists that closes access from the main floor to the eastern portion of the Basement.
- e. She did not object to adding a one month extension to the Stop Order compliance date.

vi) Rebuttal of the Appellant

[14] Mr. A. Sproule had nothing further to say.

Decision

[15] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The Stop Order is **UPHELD** as issued by the Development Authority, subject to the following **CONDITION**:

- 1) **The Stop Order must be complied with on or before November 3, 2016.**

Reasons for Decision

[16] The Board accepts that an Inspection of the subject property was conducted by the Development Authority and it was confirmed that the existing Single Detached House contains one main floor Dwelling and two Basement Dwellings.

[17] The Board finds that each of the two Basement Dwellings meet the definition of a Secondary Suite as per section 7.2(7) of the *Edmonton Zoning Bylaw*.

[18] Further the Board finds that only one Secondary Suite is allowed within a Single Detached House, as per section 86.5 of the *Edmonton Zoning Bylaw*.

- [19] The argument of the Appellant is that the eastern portion of the Basement is not a Secondary Suite because it is occupied by the property owner's daughter. However, the Appellant acknowledged that the configuration of the eastern portion of the Basement in terms of cooking facilities, food preparation, sleeping, and sanitary facilities was the same as the western portion of the Basement, the only difference being the eastern portion is occupied by a family member and not a renter.
- [20] The Board finds the Use and occupancy of a Secondary Suite does not matter in terms of whether or not it is a Secondary Suite. Accordingly, the Board finds that there was no error in issuing the Stop Order.
- [21] The Appellant requested a 30--day extension to comply with the Stop Order and the Development Officer had no objection to this request.
- [22] Accordingly, the Board grants this 30--day extension and compliance with the Stop Order must be met on or before November 3, 2016.
- [23] The Board notes that there is a long history of non-compliance at this property going back to February 2013. The Board is of the view the property owner has had ample opportunity to bring this development into compliance and the Board expects the Appellant to comply with this Stop Order.

Mr. M. Young, 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 an 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 NW, Edmonton.



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Date: October 6, 2016
Project Number: 182138658-003
File Number: SDAB-D-16-232

Notice of Decision

[1] On September 21, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **August 29, 2016**. The appeal concerned the decision of the Development Authority, issued on August 12, 2016, to refuse the following development:

**To develop and operate a General Industrial Use (existing without permit) –
Visco Rentals & Contractors Ltd.**

[2] The subject property is on Plan 1124684 Blk 3 Lot 19, located at 2603 - 121 Avenue NE, within the IM Medium Industrial Zone. The Yellowhead Corridor Area Structure Plan applies to the subject property.

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

- A Development Permit Application, including the plans;
- A copy of the Refused Development Permit Application;
- The Development Officer's written submission;
- A Transportation Services Memorandum with Conditions if Approved, submitted by the Development Officer;
- A Registered Mail Delivery Notification submitted by the Development Officer;
- The Appellant's written submission; and
- A letter of opposition from an adjacent property.

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

- Exhibit A – An aerial photograph from *Slim Internal Maps*;
- Exhibit B – Photographs submitted by the Development Authority; and
- Exhibit C – A photograph submitted by an adjacent property owner in opposition to the proposed development.

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 Presiding Officer addressed the Registered Mail Delivery Confirmation submitted by the Development Officer. The decision of the Development Officer was issued August 12, 2016. The Registered Mail was delivered August 16, 2016 and the appeal was filed August 29, 2016.
- [8] The Board determined the appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing*i) Position of the Appellant, Mr. R. Visser, Demolition Contractors*

- [9] Mr. Visser indicated that he has been using the subject land as a recycling operation since 1998.
- [10] He indicated that the subject property used to be part of Strathcona County but was annexed by the City of Edmonton. In his opinion, this has led to the site no longer being compatible with the abutting properties.
- [11] In approximately 2007 or 2008, the previous property owner wanted to subdivide the site and offered Mr. Visser the opportunity to purchase the subject property, which he later did.
- [12] He indicated that he also owns the abutting property to the south at 12010 – 28 Street NE and leases the abutting property to the northeast at 12030 – 28 Street NE.
- [13] He confirmed all three properties are part of the same demolition and recycling business.
- [14] At the time of purchase he did not know that the subject site required a Development Permit for their ongoing Recycling operation because he assumed the previous property owner had obtained a Development Permit when they first began operating.
- [15] The existing recycling business on the subject property grinds, screens and sells woodchips and wood products.

- [16] Before the economy began to decline, the amount of wood stock on their property was small because of the high demand for their product. However, the economic recession has created a substantial wood stockpile on their property. They were contractually bound to continue to take in wood but were unable to sell it. At this point, they are not taking in any more wood.
- [17] Mr. Visser confirmed that their company has no intention to continue with the woodchip business but they will have to remove the current stock from their property, which includes grinding the wood-based products into woodchips to decrease the number of truck loads required to haul it away. They are charged by the truck load when they dispose of the woodchips.
- [18] He clarified that the City issued a Violation Notice to their concrete and steel recycling business because of complaints about dust and an encroachment onto City property. In response, they removed all materials from City lands and they are attempting to install landscaping, fencing and curb crossing permits because the subject property also requires access from 121 Avenue NE to become a legal lot.
- [19] He indicated that it will take approximately five years to screen, grind, and truck the existing wood stockpile from the subject property and it will cost approximately \$1 million to remove. He estimated it will take 3000 to 4000 truckloads to remove the wood stockpile or 2500 truckloads if the wood is ground into woodchips.
- [20] He reiterated that his company is a demolition contractor and recycling operation. On their property to the south, they recycle and store concrete and metal material and they have a valid Development Permit for this aspect of their business. He confirmed that the site that is the subject of this appeal is only used for wood-based products and they plan to remove the entire business from all three properties within 10 years.
- [21] He confirmed he is willing to comply with all of the suggested conditions in the Development Officer's written submission if this development is approved.
- [22] They are in the process of building a 10 foot metal fence around their property to provide screening for their neighbours.
- [23] They will not allow their wood stockpile to exceed 18 metres in height, which is the maximum Height allowed in the IM Medium Industrial Zone.
- [24] With regard to possible noise complaints, in his opinion his business is no louder than an excavator. They are surrounded by heavy industrial businesses, such as paving plants and modular yards, and there are no residential areas nearby.

- [25] With regard to dust complaints, in his opinion, the dust issues are created by the number of heavy trucks in the area. In his opinion, once Anthony Henday Drive is completely open, the heavy truck traffic will significantly decrease. Part of the problem with dust on their property was caused by the dry weather last summer. They have taken steps to water the dirt roads on their property as needed to minimize dust.
- [26] He indicated that the wood chipper on the subject site has built in water jets and chemicals used to reduce dust. It has a decibel level that is comparable to that of a running truck.
- [27] In his opinion, there are no odour issues associated with the wood grinding.
- [28] With regard to the subject site being unsightly, in his opinion visual appearance is relative.
- [29] With respect to questions from the Board, Mr. Visser provided the following:
- a. With regard to his Appeal possibly being denied, he indicated he would only have one option, which would be to continue to remove the wood stockpile from his property, which cannot be done overnight. If the City were to take over, he would end up bidding on the contract to remove the stockpile because his business is one of only a few that deals with this type of work. In his opinion, the work would take exactly the same amount of time no matter who does it.
 - b. He reiterated that the business is not accepting any more wood-based products to be stored on the property.
 - c. They will continue to haul the wood stockpile to landfills until the economy changes and there is a demand for woodchips again.
 - d. He confirmed all of the work activities on the subject site are shielded from the outside, but he would be willing to put up a temporary tent over the wood chipper if required. The Presiding Officer indicated that adding a Temporary Tent structure would have to be applied for on a separate Development Permit. He further clarified that the wood chipper is currently being used off-site but will be brought back when that job is complete.
 - e. He indicated that the neighbour to the east at 12020 – 28 Street NE has occupied that property for approximately 10 years and has no issues with his business.
 - f. With regard to whether the wood stockpile was continuing to increase in height, he clarified that it was not.
 - g. He indicated that the subject site does have some storage bins, trailers and excavators stored on the northeast corner of the property that are related to the overall business.

h. He said he is willing to comply with City Transportation's requirement to install curb cuts to allow vehicular access on and off the subject property from 121 Avenue NE as part of the development permit. However, in his opinion the section of 121 Avenue NE adjacent to his property is congested and has speeding traffic. Also, there is a curve there, which he feels makes exiting onto the avenue at that location unsafe. He would prefer not to have vehicular access from 121 Avenue NE and to continue to access the Site through the adjoining property.

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

[30] They confirmed that the main reason for the development permit refusal is the scope of the processing and storage operation of the subject business.

[31] They indicated that Bylaw Enforcement was first involved with the property to the south of the subject site, the steel and concrete recycling operation, in 2006 and they are still dealing with the Appellant's failure to comply with development permit conditions. There are also nuisance issues with respect to all three properties the Appellant uses for this business.

[32] They indicated that they deal with all three properties as a whole and cannot differentiate between the three properties because they are all part of the same business.

[33] They referred to photographs of the subject business ("*Exhibit B*") showing the metal and concrete stockpile. They confirmed that there were no photographs of the wood stockpile on the subject property.

[34] They confirmed that their main concern with this business was the operation on the property to the south (12010 – 28 Street NE) but reiterated they deal with all three properties as a whole.

[35] With respect to questions from the Board, the Development Officers provided the following:

- a. They confirmed that, if the Appellant is denied the opportunity to remove the wood stockpile, the City would have to undergo a lengthy, complex process to determine the most efficient way to remove the materials.
- b. They agreed that removing the wood stockpile would most likely have the same impact on the neighbourhood whether it was done by the Appellant or someone else.
- c. Regarding the possibility of issuing a Development Permit that expired in 10 years, they indicated that they would have concerns because they have dealt with nuisance issues since 2006 with the subject business.

d. It was their opinion the subject property should be rezoned to an IH Heavy Industrial Zone because the proposed development does not meet the General Purpose of the IM Medium Industrial Zone as per section 420.1 of the *Edmonton Zoning Bylaw*.

e. They referenced a portion of section 420.1 that states:

The purpose of this Zone is to provide for manufacturing, processing, assembly, distribution, service and repair Uses that carry out a portion of their operation outdoors or require outdoor storage areas. Any nuisance associated with such Uses should not generally extend beyond the boundaries of the Site. [...].

It was their contention that the wood chipping activity is conducted entirely outdoors on the subject property, therefore it does not meet the General Purpose of this Zone, which states that only a portion of the operation should be outdoors.

f. They confirmed that the proposed development met the General Industrial Use classification and agreed it was a Permitted Use in the IM Medium Industrial Zone and met all of the IM Medium Industrial Zone regulations as per section 420.4 of the *Edmonton Zoning Bylaw*. However, they reiterated that this development would be more compatible in an IH Heavy Industrial Zone.

g. With regard to the proposed vehicular access from 121 Avenue NE, they indicated that the Appellant would have to revise the Site Plan and submit a new application if they do not want that access into their property.

h. They confirmed that the Appellant is aware of all 17 of the recommended conditions contained in the Development Officer's written submission if the Board allows the appeal and the development permit is issued.

i. They confirmed that the General Performance Standards as per Section 57 of the *Zoning Bylaw* means that privacy screening must be installed to mitigate unsightly storage onsite.

j. With regard to whether the City would support the Site being rezoned as an IH Heavy Industrial Use, they indicated that they could not comment.

iii. *Position of a Neighbour in opposition to the proposed development, Mr. Leckelt*

[36] Mr. Leckelt confirmed that he is the owner of the property at 2633 – 121 Avenue NE immediately to the north and east of the subject development.

[37] In his opinion, the subject property has become a landfill and is not a recycling operation.

- [38] He indicated that prior to 2006 all of the land on the subject property was at the same elevation.
- [39] He stated that there is an existing 15-foot berm of garbage on the subject property that has decreased his property value by 15 to 20 percent.
- [40] In his opinion, drainage from the subject property is flooding his property, especially during periods of heavy rainfall and snow melt. He indicated that his building was flooded in 2013 due to the Appellant's property. Further, he is concerned about the subject property leaking its materials into the adjacent ravine.
- [41] He felt that all of the material on the subject property should be removed. However, he believed that 10 years would not be sufficient time to achieve that.
- [42] He understands that it will take a long time to remove all of the material on the subject property. However, there was no consideration from the Appellant years ago when the material was accumulated.
- [43] He referred to a photograph he took on September 19, 2016 ("*Exhibit C*") to demonstrate what the subject property looks like from the roof of his building.
- [44] With respect to questions from the Board, Mr. Leckelt provided the following:
- a. He confirmed that he leases his property to a company that manufactures ventilation equipment.
 - b. He indicated that he does not have any evidence that the Appellant's property is directly affecting his property value. However, he did receive a \$6000 to \$7000 reduction in property taxes after he successfully appealed his assessment. In his opinion, the decrease in property value is a result of the state of the Appellant's property.
- iv. *Rebuttal of the Appellant*
- [45] Mr. Visser reiterated that he is trying to comply with all of the past wrongs associated with the business, many of which occurred when his father was operating it, and he wants to comply with any conditions that are imposed.
- [46] He confirmed that he was not opposed to having a time limit on the proposed Development Permit.
- [47] He advised that, prior to the subdivision of the land on which the two businesses operate, there was a building on the same Site as the wood recycling operation. However, when the subdivision was carried out, it created a Site with all outdoor material and no associated building.

[48] In his opinion, their property does not create drainage issues. There is a berm around the property to contain drainage. This berm prevents the drainage from Mr. Leckelt's property from going onto their property and that is what caused the flooding Mr. Leckelt is complaining about. In his opinion, their property acts as a natural drainage basin. He indicated that to properly conduct the drainage assessment the City wants, they would have to complete a topographic survey of the catch basins on their land, which can only be done by removing their wood stockpile. This will take time.

Decision

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

- 1) This Development Permit will expire on **October 6, 2023**.
- 2) The wood stockpile shall be removed on or before **October 6, 2023**.

The Development Authority provided the following **CONDITIONS** that the Board accepts:

- 3) **PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW OR BUSINESS LICENSE REVIEW**, the PAC's must be paid by entering into a servicing agreement, which will be prepared by the Sustainable Development. The applicant/owner should contact Dan-Christian Yeung at 780-496-4195, upon issuance of the Development Permit when he/she is ready to initiate the servicing agreement and make payment.

Based on our record, this property was never assessed for PAC's. PAC's are applicable to the entire property; however for the current DP#182138658-003 the assessment area is 0.3394 ha, which represents 20% of the total property. The total area for the Plan 1124684, Blk 3, Lot 19, is 1.697 ha and is obtained from the City's information computer program called POSSE. PAC's for the remaining area of 1.3576 ha (i.e. 1.697 ha – 0.3394 ha) will be assessed at future application of subdivision, development permit, or servicing connection application.

- 4) **PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW OR BUSINESS LICENSE REVIEW**, the applicant or property owner shall pay a Sanitary Sewer Trunk Charge fee of \$2658.18. All assessments are based upon information currently available to the City. The SSTC charges are quoted for the calendar year in which the development permit is granted. The final applicable rate is subject to change based on the year in which the payment is collected by the City of Edmonton.

- 5) PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW OR BUSINESS LICENSE REVIEW, the applicant or property owner shall pay a Lot Grading Fee of \$153.32.
- 6) PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW OR BUSINESS LICENSE REVIEW, the applicant or property owner shall provide a guaranteed security to ensure that landscaping is provided and maintained for two growing seasons. The Landscape Security may be held for two full years after the landscaping has been completed. This security may take the following forms:

cash to a value equal to 100% of the established landscaping costs; or

an irrevocable letter of credit having a value equivalent to 100% of the established landscaping costs.

Any letter of credit shall allow for partial draws. If the landscaping is not completed in accordance with the approved Landscape Plan(s) within one growing season after completion of the development or if the landscaping is not well maintained and in a healthy condition two growing seasons after completion of the landscaping, the City may draw on the security for its use absolutely. Reference Section 55.8.

- 7) Landscaping shall be in accordance to the approved landscape plan, Section 55 and to the satisfaction of the Development Officer.
- 8) The proposed 13.4 m access to 121 Avenue NE, located 7 m from the west property line, is acceptable to Transportation Planning and Engineering and must be constructed as a commercial crossing access with hard surfacing to the property line, as shown on Enclosure I.
- 9) The proposed 8.5 m access to 121 Avenue NE, located 7.5 m from the east property line, is acceptable to Transportation Planning and Engineering and must be constructed as a commercial crossing access with hard surfacing to the property line, as shown on Enclosure I.
- 10) Transportation Planning and Engineering will not permit a graveled access to a paved roadway. The access/drive aisle must be hard surfaced from the curb face to 10 m into the site, as shown on Enclosure I. The pavement will limit loose gravel from being carried onto the paved surface of the adjacent roadway from the graveled yard.

11) PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW OR BUSINESS LICENSE REVIEW, the owner must enter into a Municipal Improvement Agreement with the City for the following improvements:

- a) construction of 13.4 m commercial crossing access to 121 Avenue NE with hard surfacing to the property line, located 7 m from the west property line; and
- b) construction of 8.5 m commercial crossing access to 121 Avenue NE with hard surfacing to the property line, located 7.5 m from the east property line.

The owner must contact Transportation Planning and Engineering (Tim Knoll at 780-496-3031) and provide the required information to obtain the Municipal Improvement Agreement. Engineering Drawings are not required for this Agreement. However, construction must meet the City of Edmonton Design and Construction Standards. The Agreement must be signed by the property owner and returned to Transportation Planning and Engineering to the attention of Annie Duong (780-496-1799) including an irrevocable Letter of Credit in the amount of \$30,000 to cover 100% of construction costs. The Agreement will be forwarded directly to the owner for his signature.

12) PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW OR BUSINESS LICENSE REVIEW, the owner must enter into a servicing Agreement with the City of Edmonton.

This lot is within the Aurum and Clover Bar Industrial Arterial Roadway Assessment (ARA) catchment. The owner must enter into a Servicing Agreement with the City of Edmonton for the payment of the ARA owing. The amount of ARA owing using the 2016 rate totals \$168,023 for the entire site. The assessment amount may be adjusted to reflect the current ARA rate at the time the Servicing Agreement is signed. The owner must contact Raghda Abdelmonem (780-442-7042) of Sustainable Development for more information on the Servicing Agreement and ARA owing.

13) The proposed gates must not swing out over road right-of-way. The gates must either swing into the property or slide along the fence. No objects are permitted to encroach onto, over or under road right-of-way.

- 14) There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.
- 15) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at: http://www.edmonton.ca/bylaws_licences/licences_permits/oscam-permit-request.aspx).
- 16) Any boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Planning and Engineering, as per Section 15.5(f) of the Zoning Bylaw. The boulevard will be inspected by Transportation Planning and Engineering prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.
- 17) No parking, loading, storage, trash collection, outdoor service or display areas shall be permitted within a required Yard and loading, storage, parking and trash collection areas shall be screened from view from any adjacent site and public roadway in accordance with Section 54 of the Zoning Bylaw.
- 18) Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51).
- 19) The development shall comply to the performance standards for the IM Zone in accordance to Section 57 of the Edmonton Zoning Bylaw.

Reasons for Decision

- [50] The proposed development is a General Industrial Use, which is a Permitted Use in the IM Medium Industrial Zone.
- [51] This business has been operating for a number of years without a development permit. The Board heard evidence that the subject property used to be under the jurisdiction of Strathcona County but was subsequently annexed by the City of Edmonton. It appears that the City and Strathcona County may have different standards with respect to medium industrial Uses.

- [52] The Board heard evidence from the Development Officers that there are two businesses adjacent to one another. The property at 12010 – 28 Street NE handles recycling and storage of metal and concrete. There is a development permit for this Use. The subject property, located to the north, handles the storage and recycling of wood.
- [53] According to the Development Officers, complaints were received about the subject business but it was impossible to differentiate between the aforementioned businesses and identify which one was generating the complaints. Their inspection led to the realization that the wood recycling business did not have a development permit.
- [54] According to the Appellant, the only complaint he was aware of related to dust. The Board heard nothing that specifically tied the dust complaints to the wood-based operation of the subject property. The Board accepts the Appellant's evidence that he has taken steps to mitigate the dust problem by watering the dirt roads on the property as needed.
- [55] The wood recycling operation used to be such that all the material that was brought to the subject property was quickly recycled into wood chips and stock did not accumulate on the property. However, due to a downturn in the economy, there is no longer a demand for woodchips, which has resulted in a large wood stockpile on the Site.
- [56] The Board accepts the Appellant's evidence that he is no longer bringing wood onto the property and that it is his intention to get out of the woodchip business and to remove the wood stockpile from his property.
- [57] The Board accepts the evidence that it will take approximately five years to remove all of the wood stockpile from the Site. It will take approximately 4000 truck loads of unchipped wood or 2500 truck loads of chipped wood to remove the stockpile. Because the Appellant is charged by the truck load, it is more economical to process the wood into chips before removal. Further, the Board accepts the Appellant's evidence that he can handle 500 to 600 truckloads per year.
- [58] The Development Officer refused to issue a development permit on the basis that this type of General Industrial Use was more appropriately located in an IH Heavy Industrial Zone.
- [59] Section 430.2(1)(a) of the *Edmonton Zoning Bylaw* states that General Industrial Uses in the IH Heavy Industrial Zone differ from those in a IM Medium Industrial Zone because they have one or more of the following features:
- a. large land requirements for storage, outdoor service, assembly, processing or fabricating operations;
 - b. the creation of nuisances that extend beyond the boundaries of the Site and that may have a deleterious effect on other Zones due to their appearance, noise, or odour; and

- c. the use of materials or processing operations that requires separation from other developments, due to risk of toxic emissions or fire and explosion hazards.
- [60] The Board finds that there is no evidence that any noise or odour associated with the wood recycling operation extends beyond the boundaries of the Site.
- [61] The Board finds that the large land requirements for storage and processing and the appearance of the large wood stockpile are such that the proposed development comes close to having a deleterious effect on other Zones.
- [62] However, the Board finds that, if the development permit application were refused, the Appellant would be unable to continue to process the wood so it can be hauled away in an economical and efficient way and eliminate a Use that comes close to being inappropriate on this Site. The situation on the Site would still have to be dealt with and it would most likely be dealt with in the same way—by processing the wood and hauling it away—and take the same amount of time with the same impact on the neighbourhood.
- [63] The Board accepts that the Appellant’s business is one of a few operations in the City that has the equipment and capacity to do the processing and hauling required.
- [64] Considering all of the evidence, the Board is of the view that, although this General Industrial Use comes close to being the type of General Industrial Use more appropriately located in an IH Heavy Industrial Zone, the scope of operations, which is aimed at removing the large wood stockpile and decommissioning the wood recycling business, should be allowed to continue in this IM Medium Industrial Zone.
- [65] However, the Board is of the view that the current use of the Site should not continue indefinitely. Accordingly, the Development Permit will expire in seven years. This will provide the Appellant with sufficient time to remove the large stockpile of wood from the Site and make the property more compatible with a General Industrial Use in an IM Medium Industrial Zone.
- [66] The Board heard from an affected owner of property immediately to the north and east of the subject property who was concerned about the unsightliness of the property and drainage issues. He felt that the subject business had decreased the value of his property.
- [67] The Board is of the view that the most efficient way to address the appearance of the subject property is to allow the Appellant to continue to remove the wood stockpile.
- [68] With respect to drainage issues, the Board notes that there is no obligation that the subject site provides drainage for its higher neighbour to the northeast. Further, these drainage issues should be addressed by Drainage Services and are outside the purview of this Board.

- [69] There was no compelling evidence that the subject development has decreased the property value of the affected neighbour.
- [70] The Board is of the opinion that the proposed development, over the time period for which the Development Permit is valid, will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

Important Information for the 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*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
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4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street NW, 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.

SITE & LANDSCAPING PLAN

1/8" = 1'-0"



LEGAL DESCRIPTION
 Lot 19
 Block 3
 Plan 1124584



ENCLOSURE II

FILE: DA-182138658-003
 DATE: May 20, 2016



KENNETH R. POWLEY
 ARCHITECT

LANDSCAPING of STORAGE AREA
 for Visco Demolition
 2603 - 121 Avenue NE
 SITE & LANDSCAPING PLAN



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
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Date: October 6, 2016
Project Number: 142969751-008
File Number: SDAB-D-16-233

Notice of Decision

[1] On September 21, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **August 29, 2016**. The appeal concerned the decision of the Development Authority, issued on August 10, 2016 with a Notification Period from August 16, 2016 to **August 30, 2016** to approve the following development:

To construct 2 Apartment House buildings (total of 166 Dwellings), with an underground parkade.

[2] The subject property is on Condo Common Area (Plan 1023525), located at 12004 - 22 Avenue SW, within the RA7 Low Rise Apartment Zone. The Rutherford Neighbourhood Area Structure Plan applies to the subject property.

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

- A Development Permit Application, including the plans, the elevating drawings; and a Transportation Services memorandum;
- The Approved Development Permit;
- The Development Officer's written submission; and
- The Appellant's written submissions; with letters and signatures in opposition to the proposed development.

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

- Exhibit A – The Development Permit Notice sent to the Appellant by the City.

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

Summary of Hearing

- [8] The Presiding Officer referenced section 685(3) of the *Municipal Government Act*, which states:

Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted.

- [9] The Presiding Officer indicated that the proposed development is a permitted Use with the only variance being with respect to maximum Site Area. Accordingly, the Appellant should focus on that variance and on how the Development Officer may have misinterpreted the *Zoning Bylaw*.

i) *Position of the Appellant, Ms. A. Giguere*

- [10] Ms. Giguere referred to the SDAB notification map and indicated that her property was actually immediately to the southeast of where the "A" was marked on the map.
- [11] She referred to Exhibit A to show that the map sent to her by the City was unclear and difficult to read.
- [12] She referred to a condo land survey of the subject Site and pointed out that the Site Area indicates the proposed development would be located on a 1.257-hectare parcel next to her property.
- [13] She indicated that there is an existing fence that runs along the west property line of the subject Site and that there will be a gate in the fence allowing access to and from the proposed development. There are concerns from the neighbourhood that, by opening up the fence to allow access to the path adjacent to the fence, there will be increased traffic on the path.
- [14] She is concerned that the proposed development will increase vehicular traffic and cause parking problems. The Presiding Officer advised that the proposed development met the parking requirements of the *Edmonton Zoning Bylaw* and reiterated that the only variance at issue was that the existing Site exceeds the maximum allowable Site Area. The Presiding Officer pointed out that, if the subject Site were subdivided into two separate lots, there would be no variance and right of appeal.
- [15] The Appellant stated that she felt the Setback between the proposed development and her property was too small. It was her interpretation of Section 210.4(7) of the *Edmonton Zoning Bylaw* that the Setback is a Rear Setback, which requires it to be a minimum of 7.5 metres.

- [16] She indicated that at one time there was a proposed development for 77 Dwellings on the Site. That development did not proceed and the current proposal is for 166 Dwellings, which is too much.
- [17] She referred to the original application to show that the total Site Area is 13,270 square metres and the total Floor Area is 17,161 square metres. Based on her calculations, the Density is 132 Dwellings per hectare, which exceeds the maximum requirement of 125 Dwellings per hectare as per section 210.4(1) of the *Edmonton Zoning Bylaw*.
- [18] She indicated that she has safety concerns because the proposed underground parkade is located close to a gas pipeline.
- [19] She referred to crime statistics in the area and said some of the neighbours felt the proposed development would contribute to crime.
- [20] She advised that some of the neighbours felt that proposed development was too high and would block sunlight.
- [21] She referred to the 0.85 Floor Area Ratio of the proposed development. In her opinion, this does not meet the minimum Floor Area Ratio requirement of 1.3.
- [22] She indicated that Row Houses exist on the land southwest of the proposed development. She indicated that she and her neighbours had been under the impression that only Row Housing would be allowed on the subject Site.
- [23] She indicated that she spoke to two realtors who live in the neighbourhood, who told her that her property value would decrease if the proposed development is built.
- [24] She feels that the proposed development will affect the enjoyment of her property.
- ii) *Position of the Development Officer, Mr. K. Bacon.*
- [25] Mr. K. Bacon clarified that the proposed Apartment Housing is a Permitted Use in this RA7 Low Rise Apartment Zone and that the proposed development complies with all of the regulations of the *Edmonton Zoning Bylaw* except for the maximum Site Area.
- [26] With regard to the maximum Site Area regulation, in his opinion, the purpose of limiting the Site Area for low rise apartments is to ensure that the scale of such developments is not excessive because a larger Site Area can often mean a larger development.
- [27] He confirmed that half of the subject Site has already been developed with Row Housing.
- [28] He advised that the Appellant was referencing the Condo land survey in her Site Area calculation. The Approved Plot Plan submitted indicates that the Site Area is 2.43 hectares.

- [29] He clarified that the proposed development meets all of the Setback requirements. The front entrance to the Apartment Housing faces 22 Avenue SW and that is considered the Front Setback. Therefore, the west Yard is considered the Side Setback, not the Rear Setback, and the minimum requirement is 4.0 metres. The proposed development has a 5.1-metre Side Setback.
- [30] He clarified that the 9.6-metre dimension in his written submission was referring to the height of the proposed development, which is under the maximum allowable Height of 14.5 metres.
- [31] With regard to the Density requirement, he clarified that the Density calculation also includes the entire Site, including the Row Housing to the southwest of the proposed development.
- [32] He confirmed that the proposed Floor Area is well below the maximum requirement.

iii) Position of the Respondent, R. Osborne and K. Pareht (Grand Design Homes)

- [33] They indicated that they had a previous Development Permit for a 166 Dwelling Apartment Housing development that previously was approved by the Subdivision and Development Appeal Board but it expired after two years so they re-applied with an almost identical application.
- [34] With regard to the pathway to the west of the subject Site, they indicated that the City and Transportation Services asked them to provide a connection through the fence to the path and 126 Street SW.
- [35] They indicated that the Rutherford Neighbourhood Area Structure Plan (“NASP”) references pathways and states that they are important for the neighbourhood. Further, the NASP asks for more Density close to LRT stations and Transit Centres, which this development provides.
- [36] They indicated that the only changes from the expired Development Permit to the proposed development were a slight roofline change above the entrance, some changes to the Drainage plan, and some Building Code changes to the parkade because the Building Code was amended in November, 2015.

vii) Rebuttal of the Appellant

- [37] Ms. Giueret referred to the condo land survey to show it was stamped “Approved” by the Development Officer.
- [38] In her interpretation of the plan, the Setback between the proposed development and the west property line is four metres.

[39] She reiterated that her neighbours have concerns.

Decision

[40] The appeal is DENIED and the decision of the Development Authority is CONFIRMED with the conditions imposed.

Reasons for Decision

[41] The proposed development is a Permitted Use in the RA7 Low Rise Apartment Zone.

[42] The Board notes that the only variance for this proposed development is related to the maximum Site Area. The maximum Site Area is 1.4 hectares but the proposed development is on a 2.43-hectare Site.

[43] Although the Appellant raised some concerns about calculations with respect to Density, Rear Setback and Floor Area Ratio, the Board is satisfied that the Development Officer did not err in interpreting the regulations of the *Edmonton Zoning Bylaw*.

[44] Section 210.4(13) of the *Edmonton Zoning Bylaw* states the Development Officer may exercise discretion in a case where Apartment Housing is located on a Site greater than 1.4 hectares having regard for Site design, building massing and scale. The Board agrees that the variance to maximum Site Area is appropriate for the following reasons:

- a) Although the Site Area is 2.43 hectares in size, a portion of the Site has already been developed with Row Housing buildings and the proposed Apartment Housing would be located on the other portion of the Site. The entire Site will have a mix of building forms with 3-Storey Row Housing on the eastern half and 4-Storey Apartment Housing on the western half.
- b) All minimum Setbacks have been met. The subject Site is separated from the RF1 Single Detached Housing Zone and RSL Residential Small Lot Zone to the northwest by a 15-metre wide public right of way with a pathway and landscaping that provides a buffer between the proposed development and the adjacent properties.
- c) The onsite parking requirements have been met.
- d) The buildings are less than the maximum allowable Height.
- e) The overall Site Density of 91 Dwellings per hectare is well below the maximum allowed of 125.

[45] Further, the Rutherford Neighbourhood Area Structure Plan identifies the subject Site as a suitable location for medium density residential development. The Board finds that the

proposed development, together with the existing development on the subject Site, complies with the vision of the Rutherford Neighbourhood Area Structure Plan.

- [46] For all of the above reasons, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

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