

Edmonton Subdivision and Development Appeal Board

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Date: October 15, 2015
Project Number: 172591440-001
File Number: SDAB-D-15-219

Notice of Decision

This appeal dated September 4, 2015, from the decision of the Development Authority for permission to:

Construct 3 Dwellings of Row Housing with verandas and an Accessory Building [rear mutual detached Garage (3 @ 3.45m x 6.71m)]

on Plan 686HW Block 5B Lot 11, located at 10515 - 114 Avenue NW, was heard by the Subdivision and Development Appeal Board on September 30, 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*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to approve an application to construct 3 Dwellings of Row Housing with verandas and an Accessory Building [rear mutual detached Garage (3 at 3.45m x 6.71m)], located at 10515 - 114 Avenue NW. The subject Site is zoned RF3 Small Scale Infill Development Zone and is within the Mature Neighbourhood Overlay

The development was approved with conditions and a variance of 1.54 metres granted to reduce the minimum required Site Width in Section 140.4(4)(c) of the *Edmonton Zoning Bylaw* from 14.8 metres to 13.26 metres. The approved permit was subsequently appealed by an adjacent property owner.

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

- A written submission from the Appellant received with the original appeal on September 4, 2015;
- Development Permit Application Information which includes a comment from City of Edmonton Drainage dated June 2, 2015;

- A written submission from the Development Officer dated September 14, 2015, and the Development Officer's technical review dated August 20, 2015; and
- A memorandum from Transportation Services dated June 24, 2015.

The Board heard from the Appellants, Mr. D. Tsang and Ms. L. Moore, who provided the following information to the Board:

1. They are opposed to the variance granted by the Development Officer. The variance speaks only to reducing Site Width, but they believe there are actually three issues:
 - a. The Site Width is deficient under the requirements of the RF3 Small Scale Infill Development Zone (14.8 metres) as well as the requirements of the Mature Neighbourhood Overlay (18.3 metres). They are adamant that Row Housing cannot be located on a lot smaller than 14.8 metres due to the use of the word "shall" in the *Edmonton Zoning Bylaw*.
 - b. The required Private Outdoor Amenity Area as per Section 47 of the *Edmonton Zoning Bylaw* is deficient. The occupants of the middle unit will not have direct access to their private outdoor amenity area.
 - c. The front doors of the proposed development are facing 114 Avenue, the flanking side road, rather than 106 Street, which is the true front road. This is not consistent with other developments in this area.
2. Spruce Avenue is a mature neighbourhood adjacent to such areas as Kingsway Mall, the Polish Church, the Glenrose Rehabilitation Facility and Norwood Extended Care.
3. All developments within the 60-metre notification area are traditional 1940's-style homes (either 1 storey or 1 ½ storeys). The proposed development does not fit in.
4. A large tree is to be placed on the property behind the fire hydrant which abuts the property. When this tree matures it will create a traffic hazard for people exiting the lane onto 114 Avenue. The proposed birch trees will also affect water and sewer lines because of the spread of the root system.
5. The existing fire hydrant limits available on-street parking.
6. Privacy for this development is to be provided by their existing fence and the mature trees on the north side of their property.
7. They are not against development, but feel the lot is not wide enough for the proposed three-unit Row Housing development. They would prefer a duplex development or a single-family development with a secondary suite although they are not sure of the required setbacks for these types of dwellings.
8. They believe too many variances are being granted for new developments in the Spruce Avenue Neighbourhood and allowing this development will set a precedent.
9. They did note that the distance from the proposed development to their adjacent property complies with the *Edmonton Zoning Bylaw*. To their knowledge the width of the proposed development has been reduced to comply with the development regulations.
10. The slamming at night of the three doors backing on to their property will affect their sleep.

Mr. Tsang and Ms. Moore provided the following responses to questions:

1. They agreed that the height and size of a development could be the same if a duplex or single-family home were to be built rather than the proposed Row Housing.
2. They confirmed that their main objection is that there will be three dwelling units, each with back doors that face their property in close proximity to their bedroom.

The Board heard from Ms. V. Stainthorp and Ms. E Siebels, representing the Spruce Avenue Community League. Ms. Siebels is also a resident of the neighbourhood but is not within the 60-metre notification area. They provided the following information:

1. This development does not meet the General Purpose of the Mature Neighbourhood Overlay, Section 814 of the *Edmonton Zoning Bylaw*. It does not fit the pre-established visual continuity or appeal of the neighbourhood at large, is not sensitive in scale to existing development, does not maintain the traditional character design of the streetscape, and neglects privacy on adjacent properties.
2. The proposed development is much higher than the existing housing stock and will have a direct effect on the sunlight penetration of the most affected neighbour and will affect their ability to have a garden.
3. No community consultation has been done.
4. Three back doors would have more of a negative impact than one doorway on a single-family dwelling and the orientation of the three dwelling units on the site compromises the adjacent area.
5. The required Site Width for Row Housing as per Section 140.4(4) of the *Edmonton Zoning Bylaw* is not being adhered to and the proposed variance will be precedent setting.
6. Parking is an issue in the Spruce Avenue Neighbourhood due to the Royal Alexandra Hospital, the Glenrose Rehabilitation Facility, Norwood Extended Care, and basement suites.
7. This developer has poor construction practices.
8. New low density development is to be sensitive in scale to existing developments. This large scale development does not fit into the Spruce Avenue neighbourhood.
9. There is inadequate outdoor amenity space.
10. The previous zoning of this area was RF2 Low Density Infill Zone and they were unaware of when the zoning changed. They first became aware of the rezoning to RF3 Small Scale Infill Development Zone in 2008 when they filed their first appeal.
11. The Community League embraces change and supported a four-unit development on a 66-foot-wide lot in the area which is appealing to the neighbourhood. The area does need higher-density development to support the schools and the community needs the influx of people. However, any multi-unit development on a lot less than 50 feet wide is not appealing.
12. These units will become rentals which are not attractive to homeowners in the neighbourhood.
13. The area is becoming more transient, which does not lead to a positive ambience for residents in this area.

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

1. This entire neighbourhood is zoned RF3 Small Scale Infill Development Zone, not just this specific site.
2. The proposed development is to the north of the adjacent neighbour so sunlight will not be impeded; the neighbour will have east, south and west sunlight exposure.
3. The Mature Neighbourhood Overlay (Section 814 of the *Edmonton Zoning Bylaw*) does not speak to Site Width, only Setbacks. The Site Width is determined by the requirements of the underlying zone which in this case is the RF3 Small Scale Infill Development Zone of the *Edmonton Zoning Bylaw*.
4. The requirement of Section 47 of the *Edmonton Zoning Bylaw* for Private Outdoor Amenity areas is met by upper-storey balconies.
5. A landscaping technician has approved the landscaping plan.

Mr. Illingworth provided the following responses to questions:

1. The Site Width variance is justified because it is an existing site that is otherwise appropriate for Row Housing - the lot meets the minimum Site Area and Site Depth requirements, and the building has been designed without the need for any additional variances. He felt that the development did not present a material or adverse effect on neighbours.
2. He had previously met with the developer, who reduced his initial proposal to comply with all requirements other than the minimum required Site Width.
3. It is difficult to determine what constitutes a hardship on a site. At times it is the irregular shape of the lot. Here, in his opinion, it is that the site cannot meet the Site Width requirement, but is otherwise fully compliant. He feels that granting the variance in Site Width for the proposed development complies with current policy direction. There are no negative impacts regarding Setbacks and Height.
4. The choice of trees and landscaping design are at the owner's discretion.
5. He confirmed that a semi-detached house could be built on this site with the same dimensions as the proposed development.
6. The proposed development permit application was reviewed by Edmonton Fire Services and the City of Edmonton Transportation Services Department who expressed no concerns with the proximity of the fire hydrant to the property or to site access.

The Board heard from the Respondent, Mr. V. Lopes of Altarose Homes Ltd., who provided the following information:

1. He started the application process in March, 2015, and worked with the Development Officer until the development permit was issued in August, 2015. Many changes were made to the plan until all of the requirements were met other than Site Width.
2. The subject site is a corner lot.
3. Parking is not a concern as each garage has a driveway which can also accommodate a vehicle.

4. There is a full boulevard which provides aesthetics for the placement of this development.
5. A duplex or semi-detached dwelling would likely be just as large and he felt these types of dwellings could include two legal suites; therefore the properties could house four families rather than just three.
6. The required setbacks for duplexes and single detached homes could be less than those required for the proposed Row Housing.
7. The landscape proposal has been approved. He would have no problem with changing the types of trees that are planted.
8. There are many existing triplexes and fourplexes along 113 and 114 Avenues between 101 and 106 Streets. These developments are not within the 60-metre notification area, but are within the community.

Mr. Lopes provided the following responses to questions:

1. He didn't do any community consultation. He did leave the plans with the adjacent neighbours for a few days to review.
2. When he returned to retrieve them, the adjacent neighbours said they would speak to the issues when the time came; they did not discuss the matter with him further.

In rebuttal Mr. Tsang and Ms. Moore made the following points:

1. The Appellants referred to the 60-metre notification map. The only dwellings in the area are 1-storey or 1 ½-storey family houses.
2. There are other multi-family developments being constructed in the neighbourhood, but not within the 60-metre notification area.
3. They reiterated that the hardship that they will have to endure is being created by the increased foot traffic to the three back doors of this development.
4. They cannot see the back doors of the development from their single-family house and there are no windows on the north side of their dwelling. This development could only be viewed from the outside of their home.
5. Only a single-family dwelling would be appropriate for this site as this is the only type of development that meets all the requirements of the *Edmonton Zoning Bylaw*.
6. The proposed development is not a benefit to the neighbourhood.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority subject to the following CONDITIONS:

1) PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the owner/applicant shall pay the Sanitary Sewer Trunk Charge (SSTC). SSTC is applicable to the property for 3 multi family dwellings at \$1,021/dwelling with credit given for one single family dwelling at the rate of \$1,430/dwelling under the current DP#172591440-001. The number of dwellings is based on the drawings submitted with the Application for Major Development Permit. The above SSTC charge is quoted at year 2015 rate. However, the final SSTC is based on the prevailing rate at the time the applicant/owner makes payment at the 5th Floor cashiers, Sustainable Development, 10250 - 101 Street NW.

2) PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the owner/applicant shall pay a Notification Fee of \$100.00.

3) PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT 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 55.6 of Edmonton Zoning Bylaw 12800). Please contact Jolene Brooks at 780-496-6203 to initiate this process.

4) Access to the rear alley is acceptable to Transportation Services. A permit will not be required for the construction of access to the alley, as shown on the Enclosure of Transportation Services Memorandum dated June 24, 2015.

5) The proposed sidewalk connectors from the front entrance of the proposed row housing units to 114 Avenue are acceptable to Transportation Services, as shown on the Enclosure of Transportation Services Memorandum dated June 24, 2015.

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

A variance of 1.54 metres to the minimum required Site Width of 14.8 metres under Section 140.4(4)(c) of the *Edmonton Zoning Bylaw* to permit a Site Width of 13.26 metres.

Reasons for Decision:

1. Row Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone per Section 140.2(5) of the *Edmonton Zoning Bylaw*.

2. The builder, in consultation with the City of Edmonton Sustainable Development Department, has proposed a development which meets all development regulations of the Mature Neighbourhood Overlay set out in Section 814 and meets all development regulations of the underlying RF3 Small Scale Infill Development Zone apart from the minimum required Site Width in Section 140.4(4)(c).
3. The proposed variance of 1.54 metres to the minimum required Site Width has no bearing on the massing or the size of the development, which is compliant with the *Edmonton Zoning Bylaw*.
4. The Board accepts the information in the Development Officer's Report dated August 20, 2015, which addresses the concerns raised by the Appellants:
 - a. The height requirement in Section 814 is met.
 - b. The parking requirements are met by three stalls in the rear detached mutual Garage and 3 tandem parking stalls on the rear Driveway.
 - c. The Private Outdoor Amenity Area requirement per Section 47 is met by upper-storey balconies.
 - d. The interior Side Setback from the Appellants' property required per Section 814(5) is met (1.77 metres has been provided for the interior Side Setback).
5. Further, the site exceeds the minimum required Site Area and Site Depth for Row Housing and the development is under the allowed 45-percent maximum Site Coverage.
6. Section 814.3(2) is a direction, not a development Regulation. This section identifies the Side Setbacks applicable to lots less than 18.3 metres in width -- it does not set a minimum standard for Site Width. Therefore, no Site Width variance to the Mature Neighbourhood Overlay is required for this development.
7. The Board accepts the submission of the Development Officer that the Municipal Development Plan, *The Way We Grow*, contains several policies supportive of infill development such as the proposed three-unit Row Housing in established, older neighbourhoods such as Spruce Avenue.
8. The Board is not convinced that the proposed three-unit Row Housing is inconsistent with the General Purpose of the Mature Neighbourhood Overlay for the following reasons:
 - a. The area is zoned RF3 Small Scale Infill Development Zone with Row Housing as a Permitted Use.
 - b. As explained above, the proposed development complies with all regulations contained in the Mature Neighbourhood Overlay.
 - c. The proposed development is not uncharacteristic of the area. Redevelopment is ongoing in the area and all parties acknowledged the existence of nearby semi-detached houses, triplexes and fourplexes.
 - d. The proposed development is located to the north of the Appellant's property on a corner lot so it will have no impact on sunlight penetration.
 - e. The proposed development incorporates parking off the rear lane, so it will not impact the pedestrian-friendly design of the streetscape.
 - f. Privacy is addressed as the proposed development meets Side Setbacks, incorporates frosted and repositioned windows and screening through landscaping. The Appellants have no windows facing the proposed development.

9. Based on the above, it is the opinion of the Board 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

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

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

CC:

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Date: October 15, 2015
Project Number: 141173722-228
File Number: SDAB-D-15-220

Notice of Decision

This appeal dated September 2, 2015, from the decision of the Development Authority for permission to:

Reduce the size of 2 approved Apartment House buildings (reducing the number of Apartment House Dwellings from 238 to 173) and to construct an additional 4 Row Housing buildings (total number of Row Housing Dwellings to be increased from 52 to 72). This is a revision to permit 141173722-001

on Plan 1422087 Block 10 Lot 62, located at 2121 - Casselman Link SW and Plan 1422087 Blk 10 Lot 63, located at 2129 - Casselman Link SW, was heard by the Subdivision and Development Appeal Board on September 30, 2015.

Summary of Hearing:

At the outset of the appeal hearing, the Presiding Officer introduced the members of the Board. Mr. R. Hachigian, one of the Board members, indicated that he had worked with Mr. K. Bacon, the Development Officer present, 2 ½ years ago. The Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

The Presiding Officer advised the parties in attendance that the Appellant, Ms. V. Chan, was not present at today's hearing. The meeting coordinator called the Appellant, Ms. V. Chan, who advised she would not be attending due to another meeting. She advised that the Board should proceed on the basis of her written appeal; therefore the hearing proceeded.

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 of the *Municipal Government Act*, RSA 2000, c. M-26 (the "MGA").

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

1. The Presiding Officer confirmed with the Development Officer that notification was done in accordance with the City of Edmonton Sustainable Development Department's usual practice.

2. Mr. Bacon indicated that the decision had been issued on August 10, and that a letter had been sent to all parties within the 60-metre notification zone setting out the notice of appeal period as August 18, 2015 to August 31, 2015.
3. He indicated that he had received notice that this appeal had been filed on September 2, 2015, which was outside of the filing date.

Decision:

Based on the evidence presented at the hearing and the documents on file, the Board finds that the notice of appeal was not filed within the allowable 14-day period. As the requirements of Section 686(1)(b) of the MGA have not been met, the Board lacks jurisdiction to hear the appeal.

Important Information for 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.

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

CC:

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Date: October 15, 2015
Project Number: 176684761-001
File Number: SDAB-D-15-221

Notice of Decision

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

Comply with a Stop Order to Cease the Non-Accessory Use (Secondhand Store) and remove all related materials from the Site. This Order is to be complied with before September 7, 2015

on Plan 244HW Block 7 Lot 1, located at 7805 - 114 Street NW, was heard by the Subdivision and Development Appeal Board on September 30, 2015.

Summary of Hearing:

At the outset of the appeal hearing, the Presiding Officer introduced the members of the panel. Mr. Rick Hachigian, one of the Board members, disclosed that he was in the employ of the City of Edmonton when Mr. Young, the Development Officer present, first started working for the City.

Mr. Peter, the Appellant, asked how the members of the SDAB are appointed. Ms. Cherniawsky explained the procedure.

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 of the *Municipal Government Act*, RSA 2000, c. M-26 (the "MGA").

The Board heard from Mr. M. Peter, Appellant, who provided the following information regarding the late filing issue:

1. He considered the appeal to be filed within the legislated time given the seven-day rule for mail by regular service.
2. He received the notice via regular mail. He does not look at his mail every day. He went to his property and received the letter. He could not recall the exact date, although it was after August 21, 2015.

The Board heard from Mr. J. Young, representing the City of Edmonton Sustainable Development Department, who provided the following information regarding the late-filing issue:

1. He confirmed that the Stop Order was issued on August 14, 2015, and was sent out by regular mail.
2. Using the seven-day rule under the *Provincial Offences Procedures Act*, the appeal is considered to be served on August 21, 2015.

Based on evidence provided by the Appellant and the Development Officer, the Board has determined that the appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

The Board heard an appeal of a Stop Order, issued by the Development Officer, to Cease the Non-Accessory Use (Secondhand Store) and remove all related materials from the Site located at 7805 - 114 Street NW. The subject Site is zoned RF3 Small Scale Infill Development Zone. The Order was to be complied with before September 7, 2015.

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 29, 2015
- Three online responses in opposition from affected property owners
- Two letters of opposition from property owners in the neighbourhood
- A letter of opposition from the Community League dated September 28, 2015
- A copy of the McKernan-Belgravia Station Area Redevelopment Plan

The Board heard from the Appellant, Mr. M. Peter, who provided the following information to the Board:

1. The activity on the subject site is not a store but simply a yard sale, which does not require a permit.
2. There are no limits imposed on the length of a yard sale operation within the City of Edmonton's legislation and the City of Edmonton website and policy say that yard sales are allowed. He is in full compliance with the law.
3. There are two pending court cases dealing with the activity on the subject property and he sees this proceeding as an attempt by the City to bring the matter into court again without merit.
4. There is other legislation, including the *Community Standards and Licence Appeal Committee Bylaw*, which addresses nuisances and is inherently subjective. In addition, the MGA also weighs in to deal with properties which are unsightly - also a subjective measure.
5. He finds it strange that the City of Edmonton would allow yard sales and then resort to other requirements that are subjective to say it is unsightly.

6. While there are community members who are not in favour of the yard sale, for every 3 community members who are upset, there are 300 others who come to the site, find treasures and have a great time. Even if 5 to 15 people complained, hundreds of others did not weigh in because they are indifferent.
7. There are two ways to resolve this matter:
 - a. This Board could impose the draconian measure of upholding this vague Stop Order. If this occurs, he will appeal to the Court of Queen's Bench and from there to the Court of Appeal. Then he could appeal again. In this way the yard sale could continue to operate for 2 ½ years. This is not what anyone wants.
 - b. The matter could be resolved and the front yard returned to a sightly condition within 48 hours if this Board would put in an Order what is and isn't allowed and resolve the lack of clarity. He noted other items such as swing sets are allowed in yards. In order to promote harmonious living, there must be a balance between a property owner's rights and the rights of others.
8. If all items were removed to the backyard the property would not be unsightly, the Development Officer wouldn't see anything, the property would not be a nuisance, and he would be in complete compliance.

Mr. Peter provided the following responses to questions:

1. This activity is not a Secondhand Store.
2. Given two options, 99.9 percent of people on the street would say it is a yard sale rather than a Secondhand Store.
3. This process is a feeble attempt by the City of Edmonton to put a restriction into the law which the City had negligently forgotten to do. The City is being negligent in pursuing this matter as he is in compliance with the laws as written.
4. When asked how long he intended to continue the yard sale, he stated he wants the City to allow him to do what is in compliance with the law and to provide clarity regarding what the law does and does not allow.
5. It is up to the City to show him where it is written that he requires a permit to conduct a yard sale; he is in compliance with all yard sale requirements.
6. He indicated that the Board should vary the Order to add some clarity about what is allowed, what is not allowed, and what is unsightly, then he will be in complete compliance and the yard sale can continue.
7. Any residential property in the City is allowed to have a yard sale. Such a sale can go on indefinitely because there is no legislated time limit; therefore the RF3 Small Scale Infill Development Zone designation of this neighbourhood is irrelevant.
8. He did not know if the people attending the yard sale were from the surrounding community and reiterated that for every 3 people who complained about the activity there were 300 who enjoyed the activity or did not have an opinion.

The Board heard from Mr. J. Young, representing the City of Edmonton Sustainable Development Department, who provided the following responses to questions:

1. The development was determined to be a Secondhand Store and not a yard sale.

2. One of the factors in making this determination was the length of time the sale had been in existence. Guidelines are provided by the City for yard sales which suggest they can exist for 3 days. The guidelines are not specific and there was no specific definition for yard sale.
3. In his view, a yard sale which continues for an extended time of 2 to 3 months or a year continuously meets the definition of a Secondhand Store in the *Edmonton Zoning Bylaw*.
4. The City of Edmonton Community Standards Branch has had complaints since early July, 2015, regarding this sale although it has been addressing other matters on the property for a longer period.
5. The matter was referred to Sustainable Development on July 27, 2015.
6. He examined the site on August 7, 2015. He found employees on the site working with the goods as well as Fascia and Freestanding On-premises signs on the property; he did not see the Appellant on site at the time of his visit.
7. He confirmed the definition of a Secondhand Store as:
 - a development used for the retail or consignment sale of secondhand personal or household goods, including the minor repair of goods sold on-Site. Typical Uses include clothing, jewelry, book, and antique stores. This Use Class does not include the sale of used vehicles, recreation craft or construction and industrial equipment, and does not include Flea Markets or Pawn Stores.
8. He had no doubt that the development was a commercial enterprise and was non-accessory to the residential use of the property. He understood that continual exchange of goods was occurring at the site. The development was open for business regularly and there were employees working on site.
9. The accessory buildings (sheds) located on the site were not included in this Order because they are a symptom of the problem. This Order deals with Non-accessory use without a permit. Some of the other issues will be dealt with by the Community Standards Branch.
10. The *Edmonton Zoning Bylaw* does not include yard sales; the legislation is silent, as yard sales are not intended to require a permit. Guidelines exist on what constitutes a yard sale.

The Board heard from Ms. S Lynn, the next-door neighbour to the subject site.

1. She and her husband have lived in their home for 43 years.
2. For the past 5 years the subject site has been used to hold materials from the Appellant's junk-hauling business and there has been a junk sale in existence on the subject site for the past 9 to 11 weeks. The activity on the property is unsightly and causes health concerns and a fire risk. It also projects a negative view of the neighbourhood and damages her property.
3. Over the past five years Mr. Peter has expressed an interest in buying their property; his last offer was made during the summer of this year.
4. On August 15, 2015, she was interviewed at the site by media regarding the impact of the sale to the community. After the interview was completed Mr. Peter told her that if she did not like the yard sale "you really won't like what is coming next". She took this as a threat and an intimidation tactic.

5. The summer has been a “gong show”, with trespassing on her property by both yard sale attendees and Mr. Peter’s tenants. A two-foot wire fence, which was put up between their property and the subject property, was constantly trampled on.
6. The subject property’s address is not readily visible and she and her husband are constantly asked for directions to the sale.
7. It has been very stressful to have paid workers washing and repairing items next door. She and her husband are personally on display in their own back yard.
8. Mr. Peter has given her items, but she is now appealing to him to do the right thing and relocate his business to a commercial site.
9. The materials in Mr. Peter’s back yard impact her significantly. There are 11 to 12 garden sheds in the yard chockfull of salvaged items.
10. She believes that the Appellant is a good, but misguided, individual. She has asked him to do the right thing and clean up both the front and back yards, remove the garden sheds, and consider the impact his operation has on his neighbours.

Ms. Lynn provided the following responses to questions:

1. There are people residing in the house on the subject site; however, she feels that non-residents run the sales. The Appellant’s workers came with him on a daily basis to the subject site over the summer and new materials were continuously being delivered and sold. His workers would arrange, sort, and wash new materials.
2. She was uncertain of the number of employees but estimated there to be 1 to 3 per day.
3. There are now “closed” signs up more frequently, but the site was very active over the summer.
4. She had not thought about how the activity occurring at the site should be defined (yard sale vs. secondhand store), but notes that there have been ongoing operations at the site.
5. There has been less activity at the site over the last 2 weeks. The large yard sale sign is still present, but closed signs are often posted as barriers to access to the property.
6. Discarded items would be put out for garbage pick-up from the alley and at times garbage bags would be stacked above the height of the six foot fence. This affected her alley access and the garbage strewn in the back alley triggered her objection to the development.
7. She was unsure of the regular hours of operation, but was aware that the Appellant also sells items on Kijiji and knows that those buyers come to the property to purchase items at any hour.
8. She believes that the transactions are cash only.
9. Items for sale at the site include clothing, household goods and dishes which are washed and cleaned on site, small appliances, bikes, and furniture. Many items are left open to the elements.
10. The Appellant or his employees deliver these items to the property with either one of two commercial trucks from the Appellant’s 1-800 Dump Now business or a smaller truck which she believes is the Appellant’s personal vehicle. The back yard is used to store and accumulate materials for this sale.
11. The amount of goods available through this sale is not typical of a family living at a residence and they are commercial in nature and volume.

The Board heard from Mr. F. Weichman, who provided the following information to the Board:

1. He does not live within the 60-metre notification area, but is one block east of the subject site. He has been involved with the McKernan Community League for many years.
2. He regularly passes by the property on his way to and from the LRT station and he is good friends with the immediate neighbours.
3. He knows nothing about the legality of the Use of this property. In his view it is a junk yard that looks bad.
4. He urges all parties to work together, courteously and not just to be motivated by individual profits.
5. Mr. Peter is not considering the community in regards to this business and his interaction with neighbours and the community league is poor.

The Board heard from Ms. H. Gray and Mr. P. Gray who provided the following information to the Board. They live two blocks southeast of the subject property. Ms. Gray is speaking on behalf of the McKernan Community League.

1. In Mr. Gray's view, the Board is being threatened by the Appellant and the Appellant's tone makes him rather dubious about the whole affair.
2. He then sat down and Mrs. Gray made the remainder of the presentation.
3. Mrs. Gray received notice of this appeal as the secretary of the Community League and was speaking on the Community League's behalf.
4. She and Ms. Franchuk, the Community League president, have been on the front lines regarding this matter as they have been approached on the street and have received phone calls and e-mails from community members aware of laws for Home Based Businesses.
5. They have not received any communication of support; all contacts have been opposed to the activity occurring on the site.
6. The operation has affected residents' pride in their community.
7. Most people in the neighbourhood who are opposed to the activity were unable to attend the hearing. She read out a selection of excerpts of e-mails that she had received from some of these people (marked Exhibit "A"). The e-mails commonly referred to the property as an "eye-sore, as being inappropriate, affecting community pride and devaluing property." All supported the Community League's efforts to stop the yard sale.
8. The community felt the operation is a business and the requirement for a Home Based Business should be met.
9. 1-800 Dump Now trucks are often at the subject property and parked within the vicinity, providing unofficial advertising for the business.

The Board heard from Roberta Franchuk, president of the McKernan Community League, who provided the following information to the Board:

1. The Community League Building, a new two million dollar building, is located directly across the street from the development.

2. She provided a series of eight photographs to the Board (marked Exhibit "B") showing the current situation at the subject site which were taken on Monday, September 28, 2015. These photos show a fence blocking access to the property and that the multiple signs, items and junk are still located in the front yard.
3. She confirmed that these items are replenished by the 1-800 Dump Now trucks, one of which was shown in the photographs.
4. The photos taken from the Lynn's property show the back and side of the subject site. Propane tanks are being used as supports for makeshift tables holding the sale items.
5. The Community League is concerned about safety on the site given that there are two regular children's services provided within the Community League Building just across the street.
6. While the business was closed on Monday, it was open yesterday and items such as fridges can clearly be seen offered for sale.
7. While the Appellant claims it is a yard sale she indicated that the City cannot apply a label for every type of business.
8. The Use is a commercial one, given the length of time it has been running, the use of trucks to deliver items, the used items for sale and the employees working on the site.
9. In her view, the externalities of this business are borne by the neighbours and not the customers. The Community is bearing the brunt of this business.
10. She reiterated Mr. Gray's concerns about the behaviour of the Appellant at this hearing and confirmed she heard a threat in his comments stating that if the Board were to uphold the Stop Order it would result in the development continuing for an additional 2 ½ years.
11. She cannot speak as to whether or not the person running the sale is a resident at the subject site. She has seen it open, but has never bought anything or been on the property herself.
12. Opinions of nearby residents should be given more weight than the opinions of clients who come from unknown areas.

The Board heard from Mr. N. Mol, who lives within two blocks of the development. He provided the following information to the Board:

1. He was almost in a car accident in front of the site.
2. The sale is a distraction to drivers and a danger to the children using the community league building.

In rebuttal, Mr. Peter made the following points and answered questions from the Board:

1. Most of what has been provided as evidence is irrelevant. The issue in this appeal is whether the activity is a Secondhand Store or a yard sale. This is a zoning issue. Nuisance and unsightly conditions are not relevant issues to this particular appeal.
2. He confirmed he had a discussion with Ms. Lynn after the media interview but did not intend to be intimidating. He only said that there are many other activities other than yard sales that were allowed on residential properties.

3. It is a grey area about who was actually holding the yard sale. A tenant of the subject property is running it today. He had not been at the property and was not seen by the Development Officer or by other parties speaking at the hearing.
4. He has tried to be a good neighbour and has given items to the next door neighbours in the past. His tenants have been quiet and he has ensured they have also been good neighbours.
5. A barrier and sign have been put up to keep people from going on to the neighbour's property.
6. He had been at the property daily during the summer and has not seen any mice or rodents.
7. Comments made by parties appearing at today's hearing have been sensationalism.
8. The sheds on the property are in complete compliance. He is allowed to have multiple sheds on a property.
9. The 1-800 Dump Now trucks are at the property quite often as he has been doing work at the property including re-roofing, new patio blocks, landscaping and internal renovations.
10. The propane tanks are not a safety issue; virtually every residential property in Edmonton has propane tanks.
11. His comments at today's hearing were not meant to be adversarial or antagonistic. He was merely pointing out that if this Board affirms the Order as written he would have to appeal, which would take years. There are already multiple actions before the Courts and those appeals also have not been exhausted.
12. The main issue is with respect to the matter of unsightliness and he wants clarity on what is legal and what is not.
13. While he has been to the back yard and has seen mice, he believes the source is the adjacent neighbour's sunflower seeds rather than conditions on the subject site.
14. He acknowledges that the situation is ambiguous as to whether the development is a Secondhand Sale or a yard sale. There should be legal clarity as to what is legally compliant. Any items in his yard that are not viewable by anyone else are not unsightly. In his view there are no "excessive materials" on site and this issue is subjective in any event.
15. He is in complete compliance with all laws and there are no land use infractions at the subject site.
16. In his view there is no doubt that this is a yard sale and not a Secondhand Store. Even his neighbour was reluctant to label the activity as a Secondhand Store. The City has been negligent regarding yard sale permits and he is in complete compliance with all laws.
17. He goes to the property daily because there are Orders against the property and he is the landlord and he is doing work on the property as previously detailed.
18. He would not elaborate as to where the sale items were coming from, but said that the items were obviously coming from off of the property.
19. He would not comment on who is holding the sale, but indicated that the person running it now is a tenant and he is the landlord.
20. Much of the money from the sale is going to the people running it but he declined to confirm whether he personally receives money from the sale or whether he pays people to run the sale or if he runs the sale himself.
21. Bringing goods onto the property and selling them for profit is not a commercial venture.

22. He had no interpretation of the intent of the residential zone, RF3 Small Scale Infill Development Zone, but stated that the legislation is silent and does not regulate yard sales.
23. He was not able to provide set hours of operation and advised the yard sale has been closed for a good portion of the last two to three weeks.
24. The material he gathers from his salvage business goes to the dump or to recyclers. He would not comment on whether any material from his salvage business goes to the subject property.
25. There is no onus on him as an owner or landlord to know where the items he sells come from; he agreed that items offered for sale come from various sources. He agreed the items offered for sale come from elsewhere, but refused to comment on that issue.

Upon reviewing the photos in Exhibit "B" which show the commercial vehicle associated with the business owned by the Appellant, Mr. R. Hachigian, one of the Board members, recused himself from the hearing as he was previously employed with the City of Edmonton and may be in potential conflict. He took no part in the deliberation, discussion, or decision with respect to this appeal.

Decision:

The Appeal is DENIED and the Stop Order is CONFIRMED.

Reasons for Decision:

The Board finds the following:

1. The Stop Order under appeal was issued pursuant to Section 645(2) of the MGA to cease the non-accessory Use (Secondhand Store) and remove all related materials from the site.
2. The Appellant argues that the Use occurring on the subject site is a "yard sale", an unregulated accessory use per City guidelines which does not require a development permit and is fully compliant with the *Edmonton Zoning Bylaw*.
3. The Development Officer determined the Use occurring on the subject site is non-accessory and falls within the Commercial Use Class "Secondhand Store", which is not a listed Use in the RF3 Small Scale Infill Development Zone.
4. The issue before the Board is whether the Stop Order has been properly issued and in particular whether the development is a non-accessory Use (Secondhand Store).
5. Other issues were raised at the hearing related to licencing and community standards concerning unsightliness and nuisance occurring on the subject site. Those issues are beyond the authority of this Board in this Appeal and are left to other forums.
6. "Yard Sale" is neither a defined term, nor a defined Use class under the *Edmonton Zoning Bylaw*.
7. Section 7.4(46) of the *Edmonton Zoning Bylaw* defines Secondhand Store as a "development used for the retail or consignment sale of secondhand personal or household goods, including the minor repair of goods sold on-Site. Typical Uses include clothing, jewelry, book and antique stores. This Use Class does not include the sale of used vehicles, recreation craft or construction and industrial equipment, and does not include Flea Markets or Pawn Stores."

8. Section 6.1(2) of the *Edmonton Zoning Bylaw* provides “Accessory means, when used to describe a Use or building, a Use or building naturally or normally incidental, subordinate, and devoted to the principal Use or building, and located on the same lot or Site.”
9. The Board notes that during the hearing the Appellant declined to provide information or clarification requested by the Board concerning the nature of the activities occurring on the site. In particular, the Appellant declined to provide full answers regarding the origin and replenishment of goods offered for sale, the role of employees (including his employees), hours of operation, future duration of operation, or the distribution of remuneration and profits for the sale of goods at the site.
10. The Board accepts the submissions and photographic evidence of the Development Officer, the adjacent neighbour and the community league representatives concerning the scale and duration of the operation and activities occurring on the site.
11. The Use occurring on the property is a Commercial Use, non-accessory Second Hand Store, for the following reasons:
 - a. The duration of the Use. Complaints were referred to the Development Compliance and Inquiries Unit regarding the sale of goods and the state of this property dating back to July, 2015. Based on the evidence provided at the hearing, this development has been in operation for over 9 weeks and the Appellant has no apparent intention to stop or cease the Use. The City of Edmonton guidelines suggest that yard sales are temporary, minor Accessory Uses to primary Residential Uses and typically last up to 3 days.
 - b. The magnitude and regular replenishment of inventory of items offered for sale on the Site is also indicative of a commercial operation rather than a temporary accessory Use.
 - c. The secondhand household goods offered for sale, including electrical appliances, larger appliances such as fridges, furniture, and clothing, have occupied the majority of the Site, including the Front, Side and Rear Yards of the property since July 29, 2015. Over ten sheds are located on the site to facilitate the sale activities. Some items offered for sale are stored within these sheds, others are left to the elements.
 - d. The large inventory of goods offered for sale has been replenished regularly over the past nine weeks. The Board accepts the evidence of neighbours that inventory available for sale has been brought onto property from outside sources using the Appellant’s commercial junk-hauling and personal vehicles.
 - e. One to three employees work regularly on the site delivering, unloading, preparing, cleaning and arranging the items offered for sale. When the operation is open to the public, these employees also facilitate the sale of goods to customers.
 - f. As shown in the photos, the development has been advertised on an ongoing basis since July through large Fascia and Freestanding On-premises Signs.
 - g. Given the evidence received about the scale and duration of this development and the use of employees, the Board holds that this Use is not naturally or normally incidental, subordinate, and devoted to the principal residential Use of Single Detached Housing. The impugned Use impedes the normal residential Use of this property.

12. Secondhand Store is neither a permitted, nor a discretionary use for the RF3 Small Scale Infill Development Zone and no Development Permit has been granted by the City of Edmonton for this Use. Accordingly the Stop Order was correctly issued and is hereby confirmed.

Important Information for 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.

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

CC: