



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: March 2, 2018  
Project Number: 230721006-001  
File Number: SDAB-D-18-030

**Notice of Decision**

- [1] On February 15, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **January 22, 2018**. The appeal concerned the decision of the Development Authority, issued on December 21, 2017, to approve the following development:

**To construct a Single Detached House with side attached Garage, front veranda, side uncovered deck, and Basement development (Not to be used as an additional Dwelling)**

- [2] The subject property is on Plan 1820AX Blk 5 Lot 2, located at 9213 - 97 Street NW, within the A-Metropolitan Recreation Zone. The North Saskatchewan River Valley and Ravine System Protection Overlay and the North Saskatchewan River Valley Area Redevelopment Plan apply to the subject property.

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

- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions;
- The Respondent’s written submission; and
- Numerous email responses in opposition to the proposed development.

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

- Exhibit A – Appellant’s speaking notes
- Exhibit B – Mr. Meggison’s speaking notes
- Exhibit C – Ms. Abma’s speaking notes, PowerPoint presentation, and attachments
- Exhibit D – Mr. Chan speaking notes
- Exhibit E – Mr. Harper’s speaking notes
- Exhibit F – Mr. Weir-Chaba’s speaking notes
- Exhibit G – Ms. Madison’s speaking notes

- Exhibit H – Mr. Findling’s speaking notes
- Exhibit I – Mr. Cranston’s infrared photographs
- Exhibit J – Ms. Cotterrill’s speaking notes
- Exhibit K – Ms. Wishart’s speaking notes
- Exhibit L – Ms. Robinson’s speaking notes
- Exhibit M – Mr. Gormley’s speaking notes
- Exhibit N – Mr. Richmond’s speaking notes
- Exhibit O – Mr. Ingen-Housz’s diagram
- Exhibit P – Ms. Golub’s written submission
- Exhibit Q – Mr. Gunther’s Edmonton Journal notification
- Exhibit R – Mr. Bacon’s speaking notes

### **Preliminary Matters**

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).

### **Summary of Hearing**

i) *Position of the Appellant, Ms. P. Rockwell, representing the Strathcona Centre Community League:*

- [8] Ms. Rockwell is the Chair of the Civics and Planning Committee for the Strathcona Centre Community League.
- [9] She and all of the other individuals speaking in opposition to the proposed development are volunteers who have left jobs, schools and homes to attend because of their concerns regarding the proposed development in the middle of the park in Mill Creek ravine.
- [10] She expressed disappointment that the only notice of the proposed development was sent to the Strathcona Centre Community League. Many other people in the city care about this park land and would have been in attendance today if they had known about the planned development.
- [11] It was her opinion that the Development Officer may not have fully understood what was at stake when discretion was used to grant the development permit. The Development Officer advised her that he did not visit the site before the permit was issued as is the normal practice. However, this is not a normal urban site, it is park land and deserves greater respect and attention.

- [12] She expressed concern based on her review of a document contained in the Subdivision and Development Appeal Board file that the Development Officer may have determined that the subject site is not part of the River Valley Area Redevelopment Plan. It is zoned A-Metropolitan Recreational Zone and is park land. This zone requires 7.5-metre setbacks to protect the park land from development. Variances have been granted to allow the reduction of the setbacks which they oppose because it will allow the development of a house that is far too large for the location.
- [13] At this point, the Presiding Officer clarified that the document referenced by Ms. Rockwell was submitted by the Respondent. The Development Officer has made it clear in his written submission that the subject site is located within the North Saskatchewan River Valley Area Redevelopment Plan and is zoned A-Metropolitan Recreation Zone.
- [14] Ms. Rockwell stated that the setback requirements are in place to keep the building as far away from surrounding park land as possible. City officials have warned that this site is at risk for flooding and erosion because it is a natural site located beside an active creek. Fire officials warn that the site is at risk from, and to, wildland interface fires and the risk is exacerbated because access standards to the subject site have not been met.
- [15] Fire officials require that grasses on the site be cut down and replaced with lawn, that combustibles be removed within 10 metres of the proposed building and that immature trees and deadfall be removed from 10 to 30 metres of the building. This means that the naturalized Mill Creek Ravine Park cannot remain natural within 30 metres of the building. The forest that provides important habitat for wildlife will be thinned and removed and replaced with manicured lawn.
- [16] Ms. Rockwell advised that numerous other speakers who are affected by the proposed development will address a number of concerns including the consultation process, transportation issues, the required variances, the impact on children, the impact of the proposed house on the subject site, dangers to cyclists, the threat to the bike path, expropriation issues and how the development permit does not comply with City policies. The concerns of nature lovers and hikers, environmental concerns about erosion and light pollution, the watershed and insufficient environmental assessments will also be addressed.
- [17] She submitted her speaking notes, marked Exhibit A.

*ii) Position of Affected Individuals in Support of the Appellant***Mr. D. Meggison**

- [18] Mr. Meggison questioned the notification process, specifically why the only notice sent was as a courtesy to the Strathcona Centre Community League when there are several other Community Leagues that border on the ravine system.
- [19] Notice was not placed along the ravine trail system and he was advised by the Current Planning Department on February 6, 2018 that notice was not provided in either the Edmonton Journal or the Edmonton Sun.
- [20] Articles that appeared in the Edmonton Journal in January and again on February 12, 2018 reported that the development had been approved notwithstanding the lack of consultation with park users, nearby residents or community leagues.
- [21] It was his opinion that the City has failed in the consultation process and, if the development is allowed to proceed, it will be a hundred years before the impact on the area and the park users could be neutralized.
- [22] Therefore, the Board should suspend the approval and return the matter to City Council to allow for a full public hearing with full notice to all who may be affected by this development in Mill Creek Ravine Park.
- [23] He submitted his speaking notes, marked Exhibit B.

**Ms. C. Abma**

- [24] The proposed house will impact her personal enjoyment of the ravine and is in conflict with at least eight City of Edmonton policies.
- [25] A PowerPoint presentation marked Exhibit C, containing information obtained from the City of Edmonton website was used to review one pamphlet, two bylaws and five policies.
- [26] The proposed development is in conflict with the city of Edmonton Development Guide which clearly states that development permit applications will not be approved if they encroach on or alter public trails, or destabilize the ravine slope.
- [27] The proposed development does not comply with Bylaw 12308 for the unauthorized use of park land because of the proposed driveway, introduction of construction machinery and equipment, and because it will disturb the soil in the park land, which the North Saskatchewan River Valley and Ravine System Overlay, Section 811, defines as including the subject site.

- [28] She questioned whether or not the required on site visit by four City departments occurred to review the merits of the requested variances.
- [29] The proposed development falls under Policy C542A because it far exceeds the size of the previous development on this site and therefore should not be exempted.
- [30] Policy C524A addressing the impacts on the visual appreciation and experience of the area were not taken into consideration because the Development Officer did not visit the site to observe any potential impacts.
- [31] The proposed development is in conflict with Policy C531 Natural Area Systems and C594 Open Space Policy because the City did not demonstrate an effort to engage or collaborate with the public on this development involving public land.
- [32] It was not demonstrated that the ecological and environmental considerations were balanced with economic and social considerations in the decision making process because there was no known collaboration.
- [33] The proposed development is in conflict with Policy C593 Public Engagement Policy because it was required as part of Policy C531 Natural Area Systems Policy and was not done.
- [34] The proposed development is not in keeping with Policy C544 Active Transportation to provide safe, convenient and accessible infrastructure because of a personal use driveway crossing a public access multi-use path.
- [35] She acknowledged the property owner's right to build a house. However, the proposed development does not comply with at least eight City Policies and Bylaws, which supports her opinion that this is not the right location for the proposed house.

**Mr. C. Chan**

- [36] Mr. Chan is the Executive Director of the Edmonton Bicycle Commuters Society. He explained how the proposed development conflicts with sections of the River Valley Area Redevelopment Plan and the *Edmonton Zoning Bylaw*, specifically safety and accessibility.
- [37] There is a heavily used paved trail on the west side of the subject site and an unpaved walking trail and bike path on the east side of the site with a path connecting the trails on the north side of the site.
- [38] The proposed development does not comply with Section 2.8.1 of the North Saskatchewan River Valley Area Redevelopment Plan to control residential development in the Plan area and to limit its impact and extent on the natural environment and the parks system.

- [39] Section 3.2.4 states that it is the policy of this Plan that ravines and river edge lands will be used for low intensity outdoor recreational use.
- [40] Section 3.2.10 states that it is the policy of this Plan to establish pedestrian and other non-motorized vehicular movement systems, which includes bicycles, cross-country ski trail developments and equestrian trails in selected areas as the primary modes of movement along and through the river valley. There is a private driveway that crosses the main shared use path and the development includes a two-car garage with the potential for as many as four vehicles crossing the path on a regular basis. Larger vehicles and delivery trucks may also access the property, all of which significantly impact the safety of cyclists approaching the intersection. The trail is heavily used by cyclists and pedestrians because of the lack of vehicular traffic and they will feel less safe because of the safety concerns when crossing the driveway.
- [41] A photograph was referenced to illustrate that the shared use path does not have any lighting. Cyclists or pedestrians may see an approaching car because of the headlights but a driver may not see the trail user. Installing lighting would be expensive and would disrupt the natural character of the ravine and impact wildlife.
- [42] Section 3.2.12 of the Area Redevelopment Plan states that it is a policy of the Plan to develop a vehicular distribution and parking system in the river valley that permits access to parking areas but restricts vehicular penetration through recreational and park areas. This policy does not restrict emergency vehicle access required for public safety. The proposed encroachment agreement converts park land into private space and will result in the removal of the closest access point to the ravine. There are other access points but one is extremely steep and the other is located quite a distance away.
- [43] Section 3.2.18 of the Area Redevelopment Plan states that it is a policy of the Plan that recreational facilities will be designed, if feasible, to accommodate access and other requirements for the handicapped. Removal of this access point removes access for the handicapped because the only other access is extremely steep and is too long to be considered accessible.
- [44] The proposed house is much larger and taller than the house that previously existed at this location. The proposed walk out basement will give the appearance of a four-storey house, resulting in an unobstructed view of the house from the trail. Diagrams, photographs and videos were referenced to illustrate the view of the house from the trail. It was his opinion that the proposed development will unduly interfere with the park land and the use and enjoyment of the shared use paths.
- [45] Section 11.2.1(a) of the *Edmonton Zoning Bylaw* states that the Development Officer may approve, with or without conditions as a Class B Discretionary Development, an application for development that does not comply with this Bylaw where the proposed development would not, in their opinion, unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties.

- [46] The previous house on this site was used as a rental property for students who are less likely to drive. It was his opinion that the requested variances for this development are inappropriate.
- [47] Section 11.3.1(a) of the *Edmonton Zoning Bylaw* states that, in approving a development permit application, the Development Officer shall adhere to the following: a variance shall be considered only in cases of unnecessary hardship or practical difficulties peculiar to the Use, character, or situation of land or a building, which are not generally common to other land in the same Zone.
- [48] Photographs of the previous house on this site were referenced and contrasted with the view of the proposed new house from the shared path. The proposed development is approximately 10 metres in height, much higher than the previous house.
- [49] The driveway interrupts the shared path and is not in keeping with the Area Redevelopment Plan to preserve natural areas and park land. As well, it is not in keeping with green principles because it crosses a trail that is part of the bicycle priority network.
- [50] The driveway creates sight line concerns and the intersection is on a slope which makes it difficult to stop. It has been 10 years since a vehicle crossed over the trail and users have become accustomed to using the area without any concerns about motorized vehicles.
- [51] Bicycles are the primary mode of transportation in old Strathcona and their use has been steadily increasing over the years.
- [52] It can be expected that the volume of traffic for a large family living in the proposed house will be more than previously experienced.
- [53] Improved trail maintenance has resulted in increased usage of the trail system all year long.
- [54] In response to questions from the Board, Mr. Chan indicated that the pole illustrated in the photographs does have a street light but it is not currently operational.
- [55] He submitted his speaking notes, marked Exhibit D.

**Mr. R. Harper**

- [56] Mr. Haper has been a resident of the Mill Creek neighbourhood for more than 40 years.
- [57] He referenced photographs of the subject site that he took to get an idea of the scale and size of the proposed house.

- [58] The lots with single family houses from Whyte Avenue to the north end of 98A Street and from 99 Street to Mill Creek are 33 feet wide. Even sideways the proposed house could not be developed on one of these lots.
- [59] The setback variances make it possible to design a massive structure that is not appropriate in this beautiful, natural setting. It is much too big and overpowering. It will impinge on the beauty, serenity and enjoyment of the park. The Mill Creek Ravine Park is everyone's back yard.
- [60] Mr. Harper provided the following information in response to questions from the Board:
- a) He knew the owner of the previous house on this site. The house was small and surrounded by trees and could not be seen from the trail. The proposed house is much larger and will be visually imposing.
  - b) He did not know if he would still be opposed to the development of a smaller house on this site.
- [61] He submitted his speaking notes, marked Exhibit E.

**Mr. C. Weir-Chaba**

- [62] He and his family live in a house with a very small yard and the ravine is like his back yard. He grew up taking walks in the ravine with his family.
- [63] He and his friends play in the ravine and he walks in the ravine almost every day.
- [64] Many of the other neighbourhood kids play in the trees and the water in the ravine. All of the children in his school go on a field trip to the ravine twice a year.
- [65] The subject site has always been an empty place to play and the proposed large house will affect the activities that he and other kids do at this end of the ravine. He expressed worry that he and his friends will not be able to bike on the dirt trails in this area because there will be cars coming in and out of the subject property.
- [66] The proposed development will damage nature in this part of the ravine and the animals will leave the area.
- [67] The natural park areas like Mill Creek Ravine will be even more important to families and children as more condominiums are built in this neighbourhood. Park space is for everyone to enjoy.
- [68] He submitted his speaking notes, marked Exhibit F.



**Ms. M. Madison**

- [69] Ms. Rockwell read Ms. Madison's comments in her absence.
- [70] The history of Mill Creek was reviewed. The little white house that existed previously on this site was built before 1958 when coal was mined in the river valley.
- [71] In 1985 the North Saskatchewan River Valley Area Redevelopment Plan was adopted. The Plan envisioned the major portion of the River Valley and Ravine System for use as an environment protection area and for major urban parks. The Central Area (Rossdale and Cloverdale) envisioned a sensitive mix of land uses—residential, recreational, institutional and commercial—with limited use of the area for residential, transportation, public utility and institutional development. The major goals did not include residential development outside the Central Area.
- [72] Now more than ever people value the Mill Creek Ravine Park as a natural area, recreation area and major bicycle commuting route.
- [73] The City has changed since the little white house was built and since 1985 when the River Valley Area Redevelopment Plan came into existence.
- [74] Higher density housing has come to Strathcona and other nearby neighbourhoods. The *Municipal Development Plan* envisions a compact city that is transit and active transportation oriented. The *Edmonton Zoning Bylaw* is changing, allowing all housing developments to have virtually no required ground level amenity space. More than ever citizens rely on park land to experience nature and maintain their physical and mental health.
- [75] The little white house was compatible with surrounding uses in its era but that era has ended. Even the infrastructure that supported the house has crumbled.
- [76] It is time to put this land to its best and most valued use as park land. It does not make any sense to service the subject site for one family, when it impinges on the use and enjoyment of the surrounding area for so many others.
- [77] The proposed house with its large ecological footprint is not compatible in the Mill Creek Park.
- [78] It is Ms. Madison's suggestion that the City purchase this site.
- [79] Ms. Rockwell submitted Ms. Madison's speaking notes, marked Exhibit G.

**Mr. D. Findling & his son, Kelen**

- [80] Their house fronts the ravine and is located close to the subject site.

- [81] Their house and neighbouring house are located near the ravine park but not in it.
- [82] Both of his children learned to ride their bikes on the path where the City is now considering putting a roadway for cars. This will make the path very dangerous for everyone who uses the park.
- [83] This household will be full of children who will soon be new, inexperienced drivers crossing the path.
- [84] His family skateboards and snowshoes in the park throughout all seasons on both the upper paved path and the lower natural path. The proposed house will greatly disturb the natural beauty of the park.
- [85] Other cities in Canada are very envious of our river valley. The proposed development will compromise the enjoyment of the park for all Edmontonians now and in the future.
- [86] The Board has the opportunity to make the right choice and refuse the proposed development. It was his opinion that more people would be in attendance if proper notice had been provided.
- [87] Mr. Findling submitted his speaking notes, marked Exhibit H.

**Mr. M. Cann**

- [88] Mr. Cann has resided in this neighbourhood for 37 years and remembers the previous house on this site.
- [89] The easement required for the proposed garage and concrete driveway will negatively impact his access to the ravine from 93 Avenue.
- [90] He questioned why the City approved the development and wanted the Board to explore alternative solutions.
- [91] The Presiding Officer advised that the Board is an appeal board whose function is to rule on whether or not the development permit should be granted, not to determine whether there is an alternate solution.
- [92] Mr. Cann questioned why this site was not expropriated by the City when other properties have been expropriated along the ravine.
- [93] Mr. Cann provided the following information in response to questions from the Board:
- a) His solution is a land swap between the City and the owner of the subject site.
  - b) His house is located within the river valley park way.

**Ms. S. Campbell**

- [94] Ms. Campbell uses the multi-use path every day and finds it pleasurable being away from traffic.
- [95] The steep embankment that surrounds the bottom of the site is supported by rubble and trees. The site will have issues with erosion and flooding that were not addressed before the permit was issued.
- [96] The City's Geotechnical Engineer has not required any special conditions to allow building on this site. It is hard to believe that anyone actually visited the site before finding that it is geotechnically feasible to build on the site.
- [97] It is hard to see from the maps and photographs that the site itself sticks out from the upper trail. At the north and south end, the embankment drops off 60 feet closer to the multi-use trail on the west.

**Mr. J. Cranston**

- [98] Mr. Cranston uses the ravine every day and referenced maps to provide regional context for the Mill Creek Ravine watershed and illustrate the considerable development that has occurred between 1950 and 2018, marked Exhibit I.
- [99] Mill Creek Ravine is a prime location for water shed rehabilitation. However, the proposed development would undermine that initiative.
- [100] Mr. Cranston provided the following information in response to questions from the Board:
- a) He is a professional Geographic Information Systems Analyst.
  - b) He acknowledged that this is one single house but there will be a cumulative impact.

**Ms. P. Cotterill**

- [101] Ms. Cotterill considers herself affected by anything that happens in the River Valley and Ravine System.
- [102] She is a member of the naturalist community whose mission is to protect the ecological integrity of the river valley.
- [103] She is opposed to any further residential or industrial development in the park land of the river valley and ravines.

- [104] The development, if allowed, will contravene the *Edmonton Zoning Bylaw* and the North Saskatchewan River Valley Area Redevelopment Plan.
- [105] The General Purpose of Zone A-Metropolitan Recreation Zone is to preserve natural areas and parkland along the river, creeks, ravines and other designated areas for active and passive recreational use and environment protection in conformance with Plan Edmonton and the North Saskatchewan River Valley Area Redevelopment Plan.
- [106] Building a large, tall house adjacent to two trails and very close to the creek whose course is likely to vary over time does not seem to conform to a plan that aims to preserve park land.
- [107] Even though a Single Detached Dwelling is allowed as a Discretionary Use, it was her opinion that the intent of both the zoning and plan is to create more park land, not reduce it or its ecological and amenity uses. This is supported by the fact that the City has purchased adjacent property to this site in order to create park land and has attempted to purchase this site from the previous owner. The City is going to rely heavily on park land to provide green space in the future.
- [108] The *Municipal Development Plan* states under the environmental section “Natural Environment: Edmonton protects, preserves and enhances its natural environment by maintaining the integrity and interconnectivity of its natural areas, river valley, water resources, parks and open spaces, recognizing that these elements form a functioning ecological network within the Capital Region.” The presence of a large, tall house with reduced setbacks, reduced vegetation cover, reduced infiltration of precipitation, the presence of noise and light pollution, and of people and likely pets, will do little to improve ecological connectivity and habitat function.
- [109] City Council voted last year to spend future funds on the daylighting of Mill Creek. A statement on the daylighting plan notes that Mill Creek is a prominent feature of the river valley system. A new residential building will be counter to this initiative.
- [110] It was acknowledged that the Board has a narrow mandate but it was her opinion that it is important to look at the larger picture when considering the proposed development.
- [111] Ms. Cotterill submitted her speaking notes, marked Exhibit J.

**Ms. P. Witchart**

- [112] Ms. Witchart is a member of the Wild Rose Ramblers, a walking group that has used Mill Creek Ravine for almost 30 years. They published a guide book featuring the trails in the city, including Mill Creek Ravine.
- [113] The ravine is a treasure and has made an important contribution to the river valley system.

- [114] The City with the help of residents realized the value of Mill Creek Ravine as a place for outdoor recreation and eventually removed industry, some houses and railway tracks and constructed new trails for cyclists and walkers.
- [115] The Bylaw 7188, the River Valley Bylaw was adopted in 1985 in order to prevent any further inappropriate development in the river valley while allowing existing isolated residential areas to remain until the opportunity arose to remove them.
- [116] This development permit should be revoked so that the natural amenity value of Mill Creek Ravine will not be compromised.
- [117] Ms. Wishart submitted her speaking notes, marked Exhibit K.

**Ms. K. Robinson**

- [118] Ms. Robinson is a water resource engineer and questioned whether an environmental assessment for this site had been completed. What has been done to ensure that the construction of this house will not impact the environment?
- [119] The City has shown their commitment on public projects to ensure that environmental assessments are completed for projects in less sensitive areas than this one. This is a highly sensitive ecosystem to which the City has devoted many resources to identify the causes of degradation. Some of these resources include regular water quality monitoring, erosion studies, water quality studies and feasibility studies on methods to improve the water quality long term. It only makes sense that any additional stresses added to this area would be scrutinized at the same level to ensure that absolutely no ecological or water quality impacts will occur as a result of this development.
- [120] The assessment must also include the impacts of construction. The impacts would be immense. Standard erosion and sediment control methods are unlikely to be sufficient to protect the creek from all sediment exposed during construction given the slopes and lack of gutters to collect run off.
- [121] Mill Creek Ravine is a natural buffer for runoff during large storms. Protecting the creek from development was a brilliant move by City planners because it provides an area that naturally provides a buffer for runoff during large storms. The proposed development in this buffer area creates a distinct conflict of interest. Do you allow the ravine to function like it has during a very large storm or do you prevent the function of the buffer capacity of the ravine in order to protect the property of people who have decided to live there? This is the definition of resiliency and a house in the ravine will compromise that.
- [122] What replacement has been designed in that buffer zone to mitigate the lost capacity of resilience? What assurances has the City required from the property owner to cover possible legal fees should any of these impacts be realized and the current or future property owners decide to sue the City for damages to their property?

- [123] This is not a decision that can easily reversed in the future and the impacts of the decision will be felt by all Edmontonians for decades.
- [124] Ms. Robinson provided the following information in response to questions from the Board:
- a) She only reviewed the responses to the environmental assessments.
  - b) The statements made by City Administration did not sufficiently address her concerns.
  - c) It was her opinion that the Development Officer did not have a full understanding of the value placed by the City on work previously completed.
- [125] Ms. Robinson submitted her speaking notes, marked Exhibit L.

**Mr. E. Gormley**

- [126] Mr. Gormley is speaking on behalf of the Edmonton River Valley Conservation Coalition that represents groups and individuals across the city who share the philosophy of supporting conservation and restoration of Edmonton's North Saskatchewan River Valley and Ravine System through a focus on biodiversity, ecology and history. The philosophy reflects Bylaw 7188, the River Valley Bylaw. The first goal of the Bylaw is to ensure preservation of the natural character and environment of the North Saskatchewan River valley and Ravine System.
- [127] They do not support the development of a house in the Mill Creek Ravine or the required variances. The Coalition represents hundreds of users. The proximity of the house to the property lines as well as the overall height and size of the house will negatively impact the use and enjoyment of the ravine. It will interfere with the abundance of trees, birds and wildlife.
- [128] The Coalition endorses and supports the reasons for appeal provided by Strathcona Centre Community League. The development should have been refused because it is too large and too tall and will impede the use and enjoyment of the creek. The easement to allow the driveway to cross over the path will impede the use and enjoyment of public land. The Coalition agrees that the consultation and notification process was inadequate.
- [129] In response to a question from the Board, Mr. Gormley acknowledged that a variance to the maximum allowable height requirement is not required.
- [130] Mr. Gormley submitted a letter, marked Exhibit M.

**Mr. C. Richmond**

- [131] Mr. Richmond is speaking on behalf of the Sierra Club Canada, a national environmental organization.
- [132] Photographs and maps were referenced to illustrate that the subject site lies almost exactly in the middle of Mill Creek Ravine, a core ecological area. The required tree clearing to comply with FireSmart protocols will increase the ecological footprint of the development. The setback variances will result in a large four-storey house looming over people walking near the creek.
- [133] Would the development with the required variances have been approved if the site was located between two residences? It was his opinion that such deference should be afforded the adjacent natural area and the thousands who enjoy its beauty.
- [134] Mr. Richmond submitted his speaking notes, marked Exhibit N.

**Mr. Ingen-Housz**

- [135] Mr. Ingen-Housz's residence is the closest house to the subject site that still exists.
- [136] The house that was on the lot located closest to the site has been demolished and the lot will be turned into park land.
- [137] He acknowledged the competing values of the park land and the subject site that is privately owned.
- [138] It was his opinion that the process was not done correctly. The required setbacks have been waived to allow a residential use. If the development is not refused, it should be sent back to the property owner for revisions and an access management plan.
- [139] The condition to provide signage for a "Private Road" is not reasonable.
- [140] It was his opinion that the proposed development will materially impact him and his family and there are other options available to develop this site.
- [141] In response to a question, he advised that the only other access to the ravine is from 93 Avenue. He could not provide any further information as to how the proposed development would materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. He does like to walk his dog in the ravine, which will be less enjoyable because of the location of the proposed large house. The major impact will be when he is using the park, not to the use and enjoyment of his residence.
- [142] He referenced Enclosure II of the Transportation comments, marked Exhibit O.

**Ms. I. Berrington –Leigh on behalf of Ms. J. Golub**

- [143] The proposed development will affect her use of the ravine park.
- [144] She is concerned about the damage to trees from machines and equipment that will have to access the site.
- [145] Residents on 93 Avenue will be inconvenienced by mud and noise through the construction period because there is only one way to access the site.
- [146] Designating a private driveway and removing the yellow trail dividing line from the path is not in the best interests of the public and reduces the use and enjoyment of park land and also amenity value in the neighbourhood.
- [147] It was her opinion that the development permit should be revoked because of improper notification.
- [148] Ms. Berrington-Leigh submitted Ms. Golub's speaking notes, marked Exhibit P.

*iii) Position of the Development Officer, Mr. K. Bacon and Mr. M. Gunther, Law Branch:*

- [149] Mr. Gunther reviewed the legal framework under which the Development Officer reviewed this development permit application and advised that the City of Edmonton is in a difficult position with respect to this application. The Development Officer approved the proposed Discretionary Use with variances and the City is not in a position to advocate for or against the proposed development any further.
- [150] This is a very unique and unusual piece of land. This is one of three privately owned parcels of land in Mill Creek Ravine that he is aware of located north of Whyte Avenue. For various reasons, the City of Edmonton has not been able to acquire these unique pieces of property. It is important to remember that the subject site is private land.
- [151] Section 617 of the *Municipal Government Act* that outlines the fundamental purpose of development in Alberta applies to this site because it is privately owned. Section 617 states that:

The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted

- (a) To achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and;
- (b) To maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,



Without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

- [152] He acknowledged that there is both a public and private interest involved in this development, but the Development Officer must have regard for the applicable legislation when rendering a decision.
- [153] The Board must determine whether or not the proposed Discretionary Use is appropriate and if the required variances meet the test outlined in Section 687(3)(d) of the *Municipal Government Act*.
- [154] The Court of Appeal has not ruled on the definition of a Discretionary Use. It must be determined based on land use considerations which are numerous. The Court of Appeal has ruled that basing a decision on irrelevant considerations outside of land use considerations is an error of law.
- [155] It was his opinion that the objections raised by many who oppose this development are the result of a decision of City Council. City Council made the decision not to acquire the subject site even though they had the opportunity to do so. The Board cannot determine whether or not this land should be park land. If City Council wants the subject site to be park land, the land can be expropriated and zoned AP Public Parks Zone or NA Natural Area Protection Zone, zones that only allow public uses. He referenced *Hartel Holdings Co. Ltd. v. City of Calgary*, [1984] 1 S.C.R. 337.
- [156] The test to determine whether or not variances should be granted is outlined in Section 687(3)(d) of the *Municipal Government Act*.
- [157] Mr. Gunther submitted a copy of the notice for the proposed development that was published in the Edmonton Journal on January 2, 2018 to comply with Section 20.2 of the *Edmonton Zoning Bylaw* that outlines the notice requirements for a Class B Discretionary Development. This was marked Exhibit Q.
- [158] The access easement allowing the Respondent to cross parkland to access the site is a registered easement that runs with the subject land. Therefore the Development Officer and the Board have no ability to make any changes to the legal rights contained within that document.
- [159] Mr. Bacon referenced his written submission, marked Exhibit R, and summarized the development permit review.
- [160] The proposed development for a Single Detached House is a Discretionary Use on a privately owned lot located in the A-Metropolitan Recreation Zone.
- [161] The regulations of the *Edmonton Zoning Bylaw* and the North Saskatchewan River Valley Area Redevelopment Plan were referenced during the review process. Policy 3.7.1 of the Area Redevelopment Plan states that it is a policy to recognize existing

residential development and those lands presently districted for residential development outside the Central Area. Policy 3.7.2 states that it is a policy that additional residential lots will not be created, except in the Central Area.

- [162] The subject Site is considered an existing residential development. The site was previously approved as a residential house and this Use was never intentionally ceased or changed via a development permit. Therefore, as an existing residential development, the policies of the Area Redevelopment Plan that prohibit the creation of residential lots in certain areas of the River Valley and Ravine System do not apply.
- [163] An environmental review was required pursuant to Section 540.4(5) of the *Edmonton Zoning Bylaw*. The Respondent satisfied the environmental requirements by submitting an Environmental Site Assessment, Geotechnical Reports and a River Valley – Parks and Biodiversity Review, all of which were reviewed and supported by the appropriate City of Edmonton officials.
- [164] Mr. Gunther and Mr. Bacon provided the following information in response to questions from the Board:
- a) The site has been vacant since the previous house at this location was destroyed by fire.
  - b) The last approved development permit was for a Single Detached House. The previous use was never intentionally changed and continues despite the fact that the house was destroyed by fire.
  - c) All of the information required for an environmental review was submitted and found to support the proposed development at this location.
  - d) Variance power is provided in Section 11.2 and 11.3 of the *Edmonton Zoning Bylaw*. The policies of the North Saskatchewan River Valley Area Redevelopment Plan were considered as well as the unusual and unique circumstances of the lot.
  - e) The site was considered as an existing residential site pursuant to 3.7.1 of the Area Redevelopment Plan.
  - f) Section 11.3 of the *Edmonton Zoning Bylaw* provides variance power in a case of unnecessary hardship or practical difficulties particular to the Use, character, or situation of land or a building, which are not generally common to other land in the same Zone.
  - g) He chose to exercise this variance power because the subject site is an unusual and unique A-Zoned site. Lots zoned A are typically larger lots, many hectares in size. The surrounding City lot is 55.7 hectares in size while the subject lot is only .046 hectares in size.
  - h) The subject site is a square-shaped lot approximately 20 metres per side. Therefore, application of 7.5-metre building setbacks on all sides would only leave room for a building with an approximate footprint of 40 square metres (430 square feet), rendering the lot undevelopable.
  - i) There are no immediate neighbours living next to the proposed house and therefore no negative impacts on adjacent residential properties. The most affected property owner is the City of Edmonton, who has not objected.

- j) The proposed house is located approximately 12.5 metres from the west trail and 13 metres from the east trail and it was his opinion 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.
- k) City Policies C593 and C594, Public Engagement Policies, referenced by those opposed to the development do not apply to the subject site because it is privately owned land. Public engagement rights afforded to this site are outlined in the *Municipal Government Act* and the *Edmonton Zoning Bylaw*. Section 20.2 of the *Edmonton Zoning Bylaw* outlines the notification requirements for a Class B Discretionary Development and the appeal hearing provides an opportunity for those in opposition to provide feedback.
- l) The subject site is zoned A-Metropolitan Recreation Zone and therefore the development regulations contained in the Mature Neighbourhood Overlay do not apply.
- m) The access easement is attached to this land and existed for the previous house on this lot. Access has always crossed the trail and the owner has the right to use that access. Access will always exist regardless of who owns the land and a decision of the Board will not impact the access easement. The access easement appears to include the gravel parking area shown on Schedule A of the easement.
- n) There is no maximum allowable Site Coverage requirement contained in the A Zone.
- o) Determining reasonable compatibility is the most appropriate test to use when considering a Discretionary Use.
- p) Setback variances are required in order to develop any reasonably sized house on this lot. The previous house on this lot did not comply with the Setback requirements and the Setback variances required for the proposed house seem reasonable.
- q) Section 4.4 of the North Saskatchewan River Valley Area Redevelopment Plan states that land uses which are presently designated for residential use, under the *Edmonton Zoning Bylaw*, may continue to be used for residential use. The Development Officer interpreted this to mean that any piece of land where a residential development permit existed without interruption, such as the subject site, could continue to be used for residential development.
- r) It was the role of the Development Officer to gather information required for an environmental review of this site. This information was gathered and provided to experts within the City of Edmonton to review. Feedback from these experts was provided to the Development Officer and the Board. This information was available for public review on the Board file.
- s) The Forestry Branch will undertake all of the work required by the FireSmart assessment to clear deadfall and immature trees.
- t) Conditions regarding the drive aisle, barrier, private sign and removing the existing yellow line on the path will be implemented to address safety concerns that have been identified. Physical access to the ravine will not be removed. However, the Board could impose an additional condition that public access from 93 Avenue to the ravine trail be maintained.
- u) This site has been zoned A-Metropolitan Recreation Zone since approximately 1933.

*iv) Position of the Respondent, Mr. R. Weinrich, property owner and Legal Counsel, Mr. R. Colistro:*

- [165] This is a unique property and the dimensions, shape and location create development limitations for the property owner.
- [166] The development permit process was comprehensive and involved numerous City of Edmonton departments. The development permit application was made in September 2016 and the approval was **not** issued by the Development Officer until December 2017. The property owner has gone to great lengths to satisfy all of the concerns identified by the City of Edmonton.
- [167] The materials filed by the Development Authority include approval from Transportation Services, Drainage and Fire Rescue Services. Within those approvals are a number of reports addressing soil testing, a slope stability assessment, erosion plan and a FireSmart Assessment.
- [168] Through the circulation process and with input from other City departments, the property owner is going above and beyond when choosing building materials. Because of the unique location, the house will be constructed of concrete and construction of the walls will occur off site in order to minimize any damage during construction. A sprinkler system will be installed in the house.
- [169] It was noted that much of the opposition to the proposed development included generic statements about the river valley and the potential impacts. However, not a lot of evidence was provided as to how the proposed development would specifically have a negative impact. Several of the photographs and images of the proposed development referenced by those in opposition appeared to be distorted and out of scale and therefore did not accurately reflect how the proposed development would look when construction was complete.
- [170] The Court of Appeal has referenced the text of Professor Laux when considering Discretionary Uses. The test is whether the proposed development is reasonably compatible with neighbouring uses. It is important to remember that the proposed development is privately owned land. This is not a situation where the City of Edmonton has decided to allow development on publicly owned park land.
- [171] The proposed development is reasonably compatible with surrounding uses and the development regulations contained in the Mature Neighbourhood Overlay do not apply to this site because it is zoned A-Metropolitan Recreation Zone.
- [172] The proposed house complies with the maximum allowable height requirements and, although there are no maximum Site Coverage regulations in this Zone, the house is not over built. The proposed Site Coverage of 41 percent is consistent with other residential zones that allow maximum Site Coverage of between 40 and 45 percent. Although the

proposed house is larger than the house that previously existed on this site, it is not out of scale for the lot.

- [173] The footprint of the proposed house is 1200 square feet and the previously existing house was approximately 900 square feet in size.
- [174] As illustrated in the aerial photograph contained in the Development Officer's report, the subject site is a very small parcel of land located in the forest of the river valley and the proposed single family house will not detract from the vastness of the surrounding forest.
- [175] Aerial photographs were referenced to show two other existing single family houses located in forested ravines. One of the houses is close to a trail with vehicular access across the trail.
- [176] The subject site does not have access to a road. The access easement was granted at the time of subdivision to provide access to the site.
- [177] Photographs of the subject site were referenced to support their opinion that the impact of the proposed development is over stated. Even if a trail user can see the house, it will only be seen for a very short period of time. There is a paved trail located above the subject site closer to 93 Avenue and a gravel path below the site closer to the ravine. A photograph of the view of the subject site from the gravel trail included the existing power pole to provide a sense of scale. The treed bank between the gravel trail and the site is much higher than an average person and will limit the view of the house. The photograph taken from 93 Avenue looking towards the lot illustrates that the house will be tucked in behind some mature trees that will provide some screening to those using the paved trail.
- [178] The rights contained in the access easement allowing the Respondent to cross the paved trail are independent of the development permit. The property owner can access the site whether or not a house is built on this lot. The access easement does not cut off public access to the trails. The development permit does not provide any access rights that do not currently exist.
- [179] The concerns raised about vehicles crossing the trail have existed since the access easement was granted. It is a condition of the development permit that an access management plan must be prepared and submitted. Safety concerns can be addressed through signage. The condition in the development permit requiring the removal of the existing yellow centre line on the drive aisle with the easement and the posting of signage are required to avoid confusion for users of the trail.
- [180] Photographs were referenced to illustrate that these same types of measures have been undertaken at other locations along the trail system, specifically WC Bateman Park and Mill Creek Ravine Pool.

- [181] Those in opposition to the proposed development did not provide any quantitative data to support their concerns about the safety of the trail crossing.
- [182] Section 687(3)(d) of the *Municipal Government Act* outlines the test for the Board when considering variances. The Board used a notification radius of 120 metres that captured two, maybe three lots being used as residential properties for Single Detached Housing. It is therefore highly unlikely that the proposed Single Detached House will affect any property values. The City of Edmonton owns the immediately adjacent land and therefore would be most affected by the proposed development. The City has voiced no objection to the development.
- [183] The Board has to consider the extent to which those in opposition are impacted by the proposed development. Strathcona Centre Community League is the Appellant although the subject site is not located within the boundaries of that Community League. In addition, many of those who spoke in opposition to the proposed development do not reside in this neighbourhood.
- [184] The Development Officer addressed the long standing history of a residential use on this site that continues even though the previous house was destroyed by fire. The residential use for this site has never been changed.
- [185] A Single Detached House existed on this site before the trail system was developed. This development permit application is for a Single Detached House on a site where a Single Detached House previously existed.
- [186] A previous decision of the Board was referenced. It was acknowledged that Board decisions are not binding but it was noted that there should be some consistency. SDAB-D-08-276 dealt with the refusal of a development permit for the construction of a Single Detached House on a site zoned AG-Agricultural Zone. The Board approved the development permit and found that the lands had been privately held for a number of years without any attempt to purchase the land by the City of Edmonton. This case is similar in that the subject site is private land that has been vacant for many years without any attempt by the City of Edmonton to acquire the land.
- [187] A Court of Appeal decision, *Sihota v Edmonton (City)*, 2013 ABCA 43 was referenced because it addresses the need to have consistency in land use planning. In that case, the Board had denied the appeal because it was determined that the proposed building alteration was to a Use that was neither Permitted nor Discretionary. However, the Development Authority had previously approved the same Use and that Use had existed on the site for many years. The Court of Appeal overturned the refusal of the Board and found that the doctrine of issue estoppel applied.
- [188] Issue estoppel should also apply in this case. This appeal deals with the same Use that was previously allowed on this site. It would be unfair to refuse to allow a Single Detached House Use on this site now when that same Use had been allowed previously.

The Board still has the authority to consider whether or not the variances are appropriate but it would be wrong to say that this Use should not be allowed.

- [189] The proposed development complies with Policy 3.7.1 and 3.7.2 of the North Saskatchewan River Valley Area Redevelopment Plan because there has never been any attempt to change the Use. The proposed development will simply replace a previously existing house that was destroyed by fire.
- [190] Section 4.1 of the Area Redevelopment Plan states that lands that are privately owned may continue to be used for those uses listed under A-Metropolitan Recreation Zone, Section 540 of the *Edmonton Land Use Bylaw*.
- [191] The Development Officer provided a thorough and comprehensive review of the required variances and how it was determined that they are appropriate.
- [192] This lot is in an unusual location and the shape of the lot makes it difficult to develop without variances. The previously existing house required variances. The Front Setback variance is required in order to position the house as far away from the creek as possible. The Side Setback variances are necessary because the small size of the lot would not permit the construction of a house otherwise. The house will be behind large mature trees that will provide screening.
- [193] It is difficult to understand how the required Setback variances would have a material impact because the site is located approximately 100 metres from the closest residential property. A Site Coverage variance is not required and the use of the adjacent trails will not change. The proposed development complies with the maximum allowable height requirements. Based on the findings of the FireSmart assessment, the decision was made to use sod close to the proposed house and incorporate the existing trees and vegetation to provide landscaping. The removal of dead trees and debris will be directed and completed by the City of Edmonton Forestry Department.
- [194] It was reiterated that notice regarding the proposed development was published in the Edmonton Journal and that the environmental review required by the Development Officer was satisfied by the Respondent and supported by the City of Edmonton.
- [195] Mr. Colistro provided the following information in response to questions from the Board:
- a) The previous owner contacted the City when the decision was made to sell the property. However, the City made the decision not to purchase the property and it proceeded to a private sale.
  - b) It was not possible to obtain a copy of the development permit for the previous house. However, it was determined from the real property report that Setback variances were required.
  - c) The proposed living space is approximately 300 square feet larger than the previous house. Although the proposed house is larger, the Use remains the same.

- d) The property owner cannot change the terms of the access easement without the consent of the City.
- e) The terms of the access easement will not change regardless of the Board's decision.
- f) The conditions imposed on the approved development permit were driven by the City not by the property owner.
- g) Access by the public to the existing trail system through the drive aisle in the access easement will be dictated by the City. It is not the Respondent's intention to block public access.
- h) The proposed development is reasonably compatible with this area because there are single family houses located on 93 Avenue. There was a house on this lot before it was destroyed by fire almost ten years ago. Even though the lot has been vacant, the Use has not been changed by a development permit.
- i) The access easement has existed since the land was subdivided and the proposed development will not change what already exists.

v) *Rebuttal of the Appellant*

- [196] Ms. Rockwell reviewed the Board file and noted that the City Geotechnical Engineer stated that there was "a residual risk that could lead to property loss within the life span of the development" and warned of potential flood risk. It was her opinion from reviewing the report that this risk was deemed to be acceptable as long as the property owner and the City were aware. She also noted in her review that Transportation Services did not think it was appropriate to allow park land to be used for vehicular access.
- [197] She reiterated concerns that the development of a large house at this location could create erosion problems, a fire risk and could be impacted by floods. The concrete construction of such a large house could result in significant damage to the site and surrounding forest.
- [198] Concern was expressed that an ecological planner has not reviewed the application since the FireSmart assessment was completed. She questioned the completion of an environmental assessment to determine the impact of the construction process.
- [199] She questioned why the proposed house was so large. The original house only covered 25 percent of the lot while the proposed house will cover 42 percent of the lot. The construction of such a large house should not be allowed just because a small Single Detached House previously existed at this location.
- [200] The signage at trail crossings in other locations that was shown in the photographs provided by legal counsel for the Respondent is very different from the subject site. WC Bateman Park and Mill Creek Ravine Pool are located on off shoots of the trail system, not the rail trail that extends the entire length of the ravine. The trail located in front of the subject site is much busier.
- [201] The Respondent knew how this site was zoned before it was purchased and he should not be able to rely on issue estoppel.



- [202] The rail trail, the hiking trail and the creek all come together at the subject site. If the proposed house were smaller, some of those in opposition might be more accepting.
- [203] It was her opinion that the Development Officer should have been more concerned because of all of the red flags in this file. The subject site has not been a residential use since 2007. The City of Edmonton did want to purchase this property but did not want to pay the asking price. It was wrong for the Respondent to say that the City did not want to purchase this land.
- [204] It was not appropriate to compare the required variances to developments in other residential neighbourhoods. This is a small piece of land in the middle of a forest and the 7.5-metre setbacks are required to protect the surrounding park land.
- [205] It was her personal opinion that the development of a smaller house on this site would be more acceptable. However, others are vehemently opposed to the development of any house on this lot.
- [206] If the lot cannot be maintained as park land then the Setback requirements should be met. The Community League is opposed to the required variances because they exist to protect the park land. It was her opinion that complying with the Setback requirements will result in a smaller house with less visual impact.

### **Decision**

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

### **Reasons for Decision**

- [208] This case involves the proposed development of a Single Detached House in Mill Creek Ravine Park, which is part of Edmonton's North Saskatchewan River Valley and Ravine System.
- [209] The North Saskatchewan River Valley and Ravine System is widely regarded as an outstanding natural resource. It is much beloved by many of Edmonton's residents and its hundreds of kilometres of trails are extensively used by runners, walkers and cyclists.
- [210] Given the use made of the River Valley and Ravine System by individuals from across the city, the Board allowed all those individuals and groups who claimed to be affected by the issuing of the development permit the opportunity to speak at the hearing, even if the individuals did not reside close to the proposed development. The City of Edmonton is the owner of the land surrounding the lot. The City did not take a position for or against the proposed development.
- [211] Many of those opposed to the proposed development are passionate defenders of the River Valley and Ravine System who feel that any type of residential development at the

proposed location would not be in keeping with the park environment and would detract from the use and enjoyment of those using the park.

[212] On the other side is the owner of the land located within the park, the Respondent, who wants to use his land to build a home for his family. He feels the proposed house, which will be built on land that had a Single Detached House on it for many years, will have minimal impact on the use and enjoyment of the park. The Respondent was granted a development permit by the Development Officer.

[213] It is the task of this Board to weigh these competing interests within the legislative framework provided by the *Municipal Government Act* (the “MGA”) and the *Edmonton Zoning Bylaw*.

[214] Part 17 of the MGA deals with planning and development in municipalities. Section 617 states:

**617** The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted

(a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and

(b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,

without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

[215] The Board must determine if the overall greater public interest in this case outweighs the rights of the individual land owner to develop his land.

[216] This is a unique parcel of land. In this section of Mill Creek Ravine Park, it is located in the middle of the park as measured from top-of-bank to top-of-bank. There are no other residential lots within 100 metres of the lot and within 200 metres there are only nine other residential lots. A number of those lots have been acquired by the City.

[217] It is this isolation from other residential lots that led to a situation that many at the hearing complained about, namely that only the Appellant, the Strathcona Centre Community League, received notice of the issuing of the development permit to the Respondent. However, the Board finds that the Development Authority complied with Section 20.2 of the *Zoning Bylaw*, which requires the Development Authority to notify each assessed owner of land within 60 metres of the proposed development and the local community league president and to publish a notice in a local newspaper. Both of these things were done. The Board also notes that, despite the limited notice, many residents and groups became aware of the situation and had the opportunity to make their views known before the Board at the appeal hearing.

- [218] The privately owned lot and the surrounding park are zoned A-Metropolitan Recreation Zone. Within this Zone, Single Detached Housing is a Discretionary Use.
- [219] The lot is located on heavily treed, sloped land with Mill Creek at the bottom of the slope. Below the lot to the east, about 13 metres from the lot boundary, is an unpaved recreation trail. On the west side of the lot, about 12.5 metres from the lot boundary, is a paved recreation trail. There is an access easement that runs with the land that allows the owner of the lot to cross parkland and the paved trail to access the lot.
- [220] A Single Detached House existed on the lot for many years until it was destroyed by fire in 2007. The Board heard that a number of years ago the City attempted, unsuccessfully, to expropriate the lot. The Board also heard that the City had the opportunity to purchase the lot before it was sold to the Respondent but declined to do so.
- [221] The Board heard that, within the park north of Whyte Avenue, there are two other Single Detached Houses. Mill Creek Outdoor Pool is also located in this part of the park.
- [222] Those opposing the proposed development gave a number of reasons for doing so. These included:
- (a) The presence of the proposed house in this location will adversely affect the use and enjoyment of the park and its trails;
  - (b) The proposed house is inappropriately large and high;
  - (c) The proposed house will block views from both trails;
  - (d) The access easement across the paved trail will create safety issues for users of the trail;
  - (e) Vegetation will be adversely affected by the construction of the proposed house;
  - (f) The variances allowed to the Front and Side setbacks are too large;
  - (g) Proper environmental impact studies were not conducted;
  - (h) The requirements of the City's Fire Rescue Services with respect to landscaping and forest management around the site will be harmful to the environment;
  - (i) Such development within the park does not accord with the principles of the North Saskatchewan River Area Redevelopment Plan (the "ARP");
  - (j) The proposed development will undermine the water shed rehabilitation of Mill Creek Ravine; and
  - (k) The changes to the drive aisle within the access easement proposed by City Transportation will limit access to the park and its trails.
- [223] For the reasons that follow, the Board finds that the concerns raised should not prevent the development from proceeding and that the decision of the Development Officer should stand.
- [224] The Board must comply with applicable statutory plans, such as the ARP (MGA, s. 687(3)(a.2)). The ARP contains the following provisions:

### 3.7.1 Present Residential Development

It is a policy of this Plan to recognize existing residential development and those lands presently districted for residential development outside the Central Area.

### 3.7.2 Prohibit Additional Residential Development

It is a policy of this Plan that additional residential lots will not be created, except in the Central Area.

### 4.4 Residential Uses

Land uses which are presently designated for residential use, under the Edmonton Land Use Bylaw, may continue to be used for residential use.

- [225] There was existing residential development on this lot at the time the ARP came into effect and the lot was designated for residential use by a development permit. Allowing the proposed development to proceed will not create an additional residential lot. The fact that a house has not existed on the lot for a number of years does not change the fact that the land was previously designated for residential use. The Board concludes that the proposed development does not contravene the ARP.
- [226] Because the proposed development is a Discretionary Use in this Zone, the Board must determine, irrespective of the variances granted, whether it is of such a nature that it is reasonably compatible with neighbouring uses having regard to all the relevant circumstances.
- [227] Based on the evidence at the hearing, the Board concludes that the primary use of the park in this location is the use of the two trails by runners, walkers and cyclists. In other words, at this location the impact of the proposed house on the users of the trails would be the transitory view of the house they experience as they move past it along the trails.
- [228] With respect to the concerns about the size of the proposed house, the Board notes that it does not exceed the 10-metre maximum Height restriction in the *Zoning Bylaw*. Further, the Total Site Coverage of the development is 41 percent. In this Zone, there is no Maximum Site Coverage regulation. However, 40 to 45 percent Maximum Site Coverage is typical for Single Detached Housing in residential Zones. The Board also notes that there is extensive vegetation around the lot and that the trails are located more than 12 metres from the property lines of the lot. Given all these considerations, the Board concludes that the size of the proposed house will not have a significant impact on trail users.
- [229] The house will not impede the use of the trails. Although the access easement allows the Respondent to cross the paved trail with vehicles, this agreement exists regardless of the granting of this development permit. The Board concludes that the amount of vehicle traffic due to the proposed Single Detached House will not be such that it will pose a significant risk to the users of the paved trail. The Board also notes that it is a condition of the development permit that the Respondent must provide an access management plan

to address construction and permanent traffic/access to the site and the crossing of the paved trail. This plan should further mitigate safety concerns.

- [230] Other conditions of the development permit include the requirements to install a “private road” sign on the drive aisle within the access easement and to remove the painted yellow line in the middle of the drive aisle. Although some individuals felt that these measures would restrict public access to the park, the Board is of the view that these measures will have little or no effect on walkers, runners or cyclists but will only discourage motorized vehicles from using the drive aisle.
- [231] Some individuals questioned whether proper environmental assessments had been carried out prior to the granting of the development permit. The Development Officer did require an environmental review pursuant to Section 540.4.5 of the *Zoning Bylaw*. The appropriate City authorities reviewed, among other things, an environmental site assessment, a geotechnical report and a River Valley Parks and biodiversity review. In each case, subject to certain conditions that are contained in the development permit, all of these reports were approved by the relevant City authorities. The Board has no basis for concluding that the environmental assessments are inadequate.
- [232] One individual felt that there was the potential for water shed rehabilitation of Mill Creek Ravine, which has experienced significant development since 1950. He was of the view that the proposed development would impede this potential rehabilitation. Water shed rehabilitation is beyond the Board’s purview. In any event, the Board has no basis to conclude that, if water shed rehabilitation in this area proceeds, the proposed development will impede that effort in a significant way.
- [233] Considering all of the above in light of the discretionary nature of the proposed development, the Board concludes that the proposed development is reasonably compatible with surrounding uses.
- [234] Turning now to the specific variances granted by the Development Officer, MGA Section 687(3)(d) states:

687(3) In determining an appeal, the subdivision and development appeal board

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

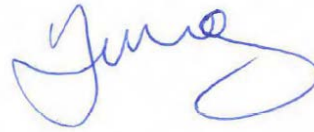
and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

- [235] The Board must evaluate each variance to determine how it impacts the amenities of the neighbourhood and the use, enjoyment and value of neighbouring parcels of land.
- [236] The Development Officer deemed the west property line to be the Front Lot Line. The rationale was that this site does not abut a public roadway. Access to the site is via the easement leading from 93 Avenue to the west property line. The Board agrees with the Development Officer's approach given that the west side of the house will present as the front of the house.
- [237] The Development Officer allowed a variance to Front Setback as follows: Reduced Front Setback - The distance from the house to the west property line is 1.5 metres to 3.1 metres instead of 7.5 metres (Section 540.4(1)). The Development Officer also allowed variances to Side Setbacks as follows: Reduced Side Setback - The distance from the house to the north property line is 1.2 metres instead of 7.5 metres and the distance from the house to the south property line is 1.5 metres instead of 7.5 metres (Section 540.4(3)).
- [238] The Board notes that the subject site is an unusual and unique A Zoned site. Lots zoned A are typically large lots many hectares in size. For example, the surrounding City lot is 55.7 hectares in size but this lot is only 0.0464 hectares in size. Larger Setbacks make sense where the site is large and located among other large sites. They do not make sense if the site is small, like this one.
- [239] For residential developments, Front Setbacks are intended to promote a consistent streetscape. In this case, there is no streetscape so allowing the reduced Front Setback will not impact neighbouring parcels of land. Allowing the smaller Front Setback positions the house further from the unpaved trail and the creek. The amenities and use of the park will not be interfered with by the reduced Front Setback because the paved trail is located over 12 metres from the front property line and the view of the house will be partially obscured by vegetation. The Board is of the opinion that the development with this Front Setback variance 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.
- [240] In residential areas, Side Setbacks are meant to reduce the impact that a development has on neighbouring development. In this case, there are no neighbouring houses or other development that will be interfered with by the smaller Side Setbacks. The proposed Setbacks are more typical of those found in residential Zones. The reduced Side Setbacks will not position the house closer to either of the trails. Given the significant natural area around the proposed development, the Board is of the opinion that the development with these Side Setback variances 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.

- [241] The Board also notes that the subject site is a square shaped lot roughly 20 metres per side. Application of 7.5-metre Setbacks on all sides would leave room for a building with an approximate footprint of approximately 40 square metres (430 square feet), essentially rendering the site undevelopable for a Single Detached House. The Board is of the view that requiring such large Setbacks on this site would infringe on the rights of the Respondent to develop this land beyond the extent that is necessary for the overall greater public interest.
- [242] The Development Officer allowed a variance to a deck projection as follows: Deck projection on south facade - The distance from the deck to the south property line is 0.3 metres instead of 0.9 metres (Section 44.3(c)). None of those opposed to the development mentioned this variance. The deck does not face either of the trails and the size of the variance is minimal considering the significant natural area around the house. The Board concludes that the development with this variance 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.
- [243] The last variance is the waiving of the requirements for landscaping. This came about because the Development Officer contacted City Fire Rescue Services prior to granting the development permit and was advised that this area is at risk from wildland interface fires. As such, Fire Rescue Services advised they would require a number of things such as fire resistant construction and sprinklers. They would also require that, within 10 metres of the house, all tall grass must be removed and replaced with lawn. They further would require that, between 10 and 30 metres from the house, selective removal of immature trees must be undertaken to prevent overcrowding and, within seven metres, dead and downed wood larger than three inches in diameter must be removed. The work related to tree and deadwood removal would be carried out by City personnel.
- [244] These requirements are not part of the development permit because they are dealt with by other regulatory agencies. However, the Development Officer waived the zoning regulations regarding landscaping of the site to address the concerns about fire safety. The Board is of the opinion that, given the extensive natural area around the site with its mature vegetation, the waiving of the landscaping requirements 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.
- [245] Some individuals at the hearing felt that the tree and deadwood removal would have a negative impact on the park. To the extent that such considerations are within the purview of the Board, the Board finds that the work required to be done in the park around the lot will not have an appreciable impact on the amenities, use, enjoyment or value of the park.

[246] For all of the above reasons, the appeal is dismissed and the decision of the Development Authority is confirmed.



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

Board members in attendance: Ms. G. Harris, Ms. S. LaPerle, Mr. R. Handa, Mr. L. Pratt



**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, Urban Form & Corporate Strategic Development, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
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*, 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 Development & Zoning Services, Urban Form & Corporate Strategic Development, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

*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.*