

**SDAB-D-15-001**

Application No. 162219092-001

An appeal to install (3) Freestanding On-Premises Signs (MACEWAN UNIVERSITY) on Lots C, D, E, Block OT, Plan RN2, located at 10050 MacDonald Drive NW, was **WITHDRAWN**



**Subdivision and  
Development Appeal Board**

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DATE: January 22, 2015  
APPLICATION NO: 162010978-003  
FILE NO: SDAB-D-15-002

**NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

This appeal dated December 1, 2014, from the decision of the Development Authority for permission to:

Construct an uncovered deck (irregular shape, 6.61 metres by 10.28 metres at 0.51 metres in Height) and to install a hot tub (2.21 metres by 7.92 metres).

on Lot 29, Block 2, Plan 1027095 located at 7559 May Common NW, was heard by the Subdivision and Development Appeal Board at its hearing held on January 7, 2015. The decision of the Board was as follows:

**SUMMARY OF HEARING:**

At the outset of the appeal hearing, Mr. Laberge disclosed that he was acquainted through past work experiences with the Appellant, Mr. Kohan but that he has not had any contact with him over the past 3 or 4 years. None of the parties in attendance were opposed 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 construct an uncovered deck (irregular shape, 6.61 metres by 10.28 metres at 0.51 metres in Height) and to install a hot tub (2.21 metres by 7.92 metres) located at 7559 May Common NW. The subject site is zoned RSL Residential Small Lot Zone. The development permit application was refused because it is the opinion of the Development Officer, in consultation with the Senior Geotechnical Engineer in Transportation Services, that the Site is not suitable for the intended development.

## SUMMARY OF HEARING (CONTINUED):

Prior to the hearing the Board received a submission from the Development Officer; a letter of opposition from an adjacent property owner; and a submission with several documents from the Appellant.

The Board heard from the Appellant, Mr. Miles Kohan, Vice President of Sterling Homes and owner of the subject site. Mr. Kohan provided Exhibit 'A' that included a copy of the original house drawings. He provided the following information in support of the appeal:

1. The proposed hot tub was included on the original blue prints and it was his assumption that it had been approved.
2. He only became aware that a development permit had not been issued for the hot tub after he received a Violation Notice from the City of Edmonton.
3. Mr. Kohan subsequently applied for a development permit.
4. He was advised that the City had issued a development permit for a hot tub in the neighbourhood, six lots from the subject site. Therefore this use should be considered appropriate for his property as well.
5. His house was designed with a court yard and the hot tub is intended to be a show piece in that area of the yard.
6. The proposed hot tub will be located 45 metres from the top of the bank.
7. IB Engineering has prepared the design specifications for the hot tub foundation, which include rain water leader connections and the installation of weeping tiles along the foundation to provide protection in the event of a water leak.
8. Mr. Kohan provided a letter from Consultech Engineering, marked Exhibit 'B', which he assumed would alleviate geotechnical concerns.
9. He contacted the author of the original Geotechnical Report who advised him that they could not provide any documentation with regard to the proposed development because of a potential conflict.
10. Mr. Kohan submitted a copy of the Restrictive Covenant, also marked Exhibit 'B'.
11. He noted that "hot tub" had been omitted from the Restrictive Covenant and "permanent structure" was added.
12. Mr. Kohan stated that the proposed development is not a swimming pool but rather a hot tub which should be considered as a temporary structure.
13. Mr. Kohan referenced a copy of the Revenue Tax Guide for Prince Edward Island, marked Exhibit 'C' which states that "Freestanding Hot Tubs" are tangible personal property.

## SUMMARY OF HEARING (CONTINUED):

14. He referenced the Geotechnical Report prepared in 2006, marked Exhibit 'D'. It was his opinion that this is a blanket policy that does not consider the site specific conditions.
15. It was his opinion that adequate measures have been undertaken to address the concerns about slope stability.
16. Mr. Kohan suggested that the City must follow the guidelines of the Restrictive Covenant as registered and not what was surmised.
17. He asked the Board to approve, or conditionally approve his development subject to a further geotechnical investigation.
18. He referenced Section 284(1)(j)(ii) of the *Municipal Government Act* to support his opinion that a hot tub is a temporary structure.

Mr. Kohan provided the following responses to questions:

1. It was his opinion that the letter submitted from Consultech Engineering complies with the requirements of Section 811.3(3) of the Edmonton Zoning Bylaw.
2. The hot tub is fibreglass and wood construction with a shallow section and a deeper section.
3. It was his opinion that it is a temporary structure because it is not attached or affixed and is not included as part of the sale of a house unless it is listed as a chattel.
4. Dashed lines were used to identify the location of the hot tub on the plans that were approved for his house and it was his assumption that it was reviewed and approved as part of that application.
5. He referenced Drawing No. 19-423-46-1 contained in the Geotechnical Report dated 2006 to clarify that one bore hole is located in close proximity to the subject site.

The Board then heard from Mr. Adam Sheahan, Mr. Paul Lach and Ms. Veronika Ferenc-Berry, representing the City of Edmonton.

Mr. Adam Sheahan, representing the Sustainable Development Department, provided the following information:

1. Transportation Services reviewed the application to construct a Single Detached House on this site in April, 2014 and the development permit was approved and issued on May 23, 2014.
2. The approved Plot Plan and architectural drawings did not show an uncovered deck or hot tub.

## SUMMARY OF HEARING (CONTINUED):

3. Sustainable Development became aware of development occurring on this site without a Development Permit and issued a Violation Notice in October, 2014, advising the Applicant that a Development Permit had to be obtained for the deck and hot tub.
4. Transportation Services does not support the proposed hot tub and he placed particular emphasis on the feedback from Transportation Services before deciding to refuse this application.
5. He did not base his decision on the requirements of the Restrictive Covenant but rather on the impact of the proposed development on neighbouring parcels of land.
6. He noted the Appellant's evidence that approval had been granted for a hot tub on a property located six lots south of the subject site. However, he was unable to find an approved development permit for that site.
7. He based his decision on the requirements of the Edmonton Zoning Bylaw and noted that his concerns were echoed in the letter of opposition received from the most affected property owner.

The Board then heard from Mr. Paul Lach, Senior Geotechnical Engineer, Transportation Services, City of Edmonton, who provided the following information:

1. He reviewed the specifications for the proposed development related to top-of-bank lands that are contained in Exhibit 'D' as well as the addendum that was completed in 2008, marked Exhibit 'E'.
2. He reiterated the evidence provided by the Development Officer that the proposed development does not comply with the recommendations contained in the report or the Restrictive Covenant.
3. It was his opinion that the proposed hot tub falls within the definition of a 'Swimming Pool' as outlined in Article 1H of the Restrictive Covenant which states 'Swimming Pool' means a swimming pool, ornamental pond, or other permanent structure designed to retain water on or below the ground surface.
4. Allowing improper development at this location could trigger the movement of soil and cause landslides that are not defined by lot boundaries but may also impact surrounding lands and properties.
5. Any geotechnical report addressing waiving of this development restriction would need to consider all of the homes within this subdivision covered under the Restrictive Covenant Agreement.
6. It would need to include defensible technical evidence to refute the findings of the Geotechnical Consultant that established top-of-bank restrictions for this neighbourhood.

## SUMMARY OF HEARING (CONTINUED):

7. It was his opinion that the cumulative effect of waiving this requirement would be detrimental to the neighbourhood.

Mr. Lach provided the following responses to questions:

1. He reviewed the letter from Consultech Engineering, dated November 18, 2014 but reiterated his opinion that this type of development cannot be considered on a site specific basis because of the impact on neighbouring properties.

The Board then heard from Ms. Ferenc-Berry, representing the City of Edmonton Law Branch, who provided the following information:

1. It is the City's position that any interpretations of the Restrictive Covenant will have to be decided by the Courts.
2. Based on the evidence provided by the Appellant, the proposed hot tub is a "show piece" of this property which leads one to assume that is a more permanent than temporary structure.
3. Ms. Ferenc-Berry asked the Board to rely on the findings of the Geotechnical Report prepared by Thurber Engineering in 2006 and the addendum to that Report that was prepared in 2008 when making a decision on this matter.
4. It was her opinion that the Development Officer properly interpreted the requirements of the Edmonton Zoning Bylaw in refusing this development permit application.

Ms. Ferenc-Berry provided the following responses to questions:

1. The City's right to enforce the requirements of the Restrictive Covenant lies with the Courts.
2. Any deviation or variation to the requirements outlined in the Geotechnical Report would require a comparatively comprehensive geotechnical review.
3. In general, a further geotechnical review would have to consider the potential long-term cumulative impacts of the development on all of the surrounding properties.

The Board then heard from Mr. Greg Eitzen, who resides immediately south of the subject site. Mr. Eitzen referenced his letter of opposition, a copy of which is on file, and provided the following information in opposition to the proposed development:

## SUMMARY OF HEARING (CONTINUED):

1. Mr. Eitzen is a Civil Engineer and has some experience with geotechnical engineering. He has also experienced some problems with geotechnical matters that arose at a house that he previously owned, but was speaking as a property owner and not an Engineer.
2. Mr. Eitzen sought the advice of an Engineer before he purchased his property because of the Restrictive Covenant and the risks involved.
3. He took some comfort in that the Restrictive Covenant applied to his lot and all of the neighbouring lots.
4. The lot was purchased as a long term investment that would ideally hold or increase its value.
5. There are locations in the Whitemud area where walking paths along the bank have slid away.
6. The house on the subject site is located approximately 5 feet from the shared property line and if water leakage occurs, it will affect his property.
7. The side of his house is only 10 feet from the proposed development. Any water saturation of the clay soil has the potential to affect the stability of the spread footing of his house foundation which can lead to settlement or uplift issues.
8. He does not know the water capacity of the proposed structure.
9. He questioned how a water leak would be handled if the Appellant was not home and the pumps failed.

Mr. Kohan made the following points in rebuttal:

1. The proposed weeping tile system will address any water leakage problems and the proposed rainwater leader extension is connected to the storm sewer for the express use of the proposed hot tub.
2. He reiterated the fact that the Sustainable Development told him that a development permit was issued for a hot tub in this neighbourhood but conceded it may not be for the property that he referenced.
3. It was his opinion that the Development Authority has not considered the merits of the proposed development. The decision to refuse this application was based solely on the requirements of the Restrictive Covenant.
4. Mr. Kohan reiterated that he has spoken to the author of the original Geotechnical Report, who at no time raised any concern about the proposed hot tub development.
5. The proposed hot tub development is a show piece but it is not attached or affixed to the house and is therefore a temporary structure.
6. He has an investment in this area and does not want to harm the slope stability on his site or any of his neighbour's sites.

## SUMMARY OF HEARING (CONTINUED):

7. Mr. Kohan asked the Board to approve his development with a condition to consult and obtain further recommendations from a Geotechnical Engineer.

Mr. Kohan provided the following responses to questions:

1. The calculations included in his written submission from IB Engineering were for the weight of the proposed deck, water, and the hot tub unit full of people.
2. He reiterated his opinion that each development permit application in this area has to be reviewed on a case by case basis.

## DECISION:

that the appeal be DENIED and the decision of refusal by the Development Authority CONFIRMED

## REASONS FOR DECISION:

The Board finds the following:

1. The proposed development is an addition to a Permitted Use in the RSL Residential Small Lot Zone.
2. The subject site is located within the North Saskatchewan River Valley and Ravine System Protection Overlay, pursuant to Section 811 of the Edmonton Zoning Bylaw.
3. Section 811.1 states that the General Purpose of this Overlay is to provide a development setback from the North Saskatchewan River Valley and Ravine System.
4. Section 811.3(3) states that any development on a Site that abuts or is partially or wholly contained within the North Saskatchewan River Valley and Ravine System, as shown in Appendix I to this Overlay, shall be accompanied by a report prepared by a registered Professional Engineer, and as set out in subsection 14.1 of this Bylaw, that details the minimum Setback for structures on the Site and any development conditions for the property required to prolong the stability of the bank. The Development Officer shall seek the advice of Transportation Services with respect to these applications and may approve the conditions or refuse such applications accordingly.



## REASONS FOR DECISION (CONTINUED):

5. The Board finds, based on the evidence provided, that the proposed development is a swimming pool as outlined in the restrictions contained in the Addendum to the Geotechnical Report dated April 29, 2008, marked Exhibit 'E', which specifically states that "no swimming pool shall be installed, where swimming pool means swimming pool, ornamental pond, or other permanent structure designed to retain water on or below the ground surface".
6. The most affected property owner who resides immediately south of the subject site submitted a letter of opposition and appeared at the hearing to address concerns regarding soil erosion and the impact of the proposed development on the use and enjoyment of his property as well as all of the other properties along the top-of-bank lands.
7. The Appellant did not provide a comprehensive engineering report to refute the findings of either the initial Geotechnical Report prepared in 2006 or the Addendum that was completed in 2008.
8. The Board accepts the evidence provided by the Development Authority in consultation with the Senior Geotechnical Engineer for the City of Edmonton that the subject site is not suitable for the proposed development because it does not comply with the major recommendations of the Geotechnical Report.
9. Based on the above, it is the opinion of the Board, that the proposed development will unduly interfere with the amenities of the neighbourhood and materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.

**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 5<sup>th</sup> Floor, 10250 – 101 Street, Edmonton.

Mr. B. Gibson, Presiding Officer  
SUBDIVISION AND DEVELOPMENT  
APPEAL BOARD

NOTE: Citizens can call 311, 24-hours a day, every day of the year for access to City of Edmonton information, programs and services.