



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: July 17, 2018
Project Number: 279658672-001
File Number: SDAB-D-18-094

Notice of Decision

- [1] On July 4, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on June 12, 2018. The appeal concerned the decision of the Development Authority, issued on June 6, 2018, to refuse the following development:

Construct a Semi-detached House with Unenclosed Front Porch, fireplace, rear uncovered deck, Basement development (NOT to be used as an additional Dwelling), and to demolish the existing Single Detached House and Accessory building (rear detached Garage).

- [2] The subject property is on Plan RN60 Blk 21 Lot 17, located at 10973 - 132 Street NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay and West Ingle 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 stamped plans, and the refused Development Permit;
- The Development Officer’s written submission;
- The Appellant’s written submission; and
- Online response in support of the proposed development.

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

- Exhibit A – Community Consultation information submitted by the property owner

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. C. Park and Mr. S. Mielczarek., representing Swish Developments and the property owner, Mr. T. Myers:*

[8] Mr. Mielczarek acknowledged that the Appellants are completely aware of the zoning of this site and the development regulations that applied. The decision was made by the property owner to develop a Semi-detached House rather than subdividing the lot and building two skinny houses because it was better suited to the needs of Mr. and Mrs. Myers. The owners plan to reside in one of the dwellings and their son will reside in the other.

[9] Considerable and extensive efforts have been taken to ensure that the proposed exterior design is an appropriate addition to the street. The Semi-detached House is designed to appear as one large single family home that is characteristic of the historical architecture of Westmount.

[10] The only reason for refusal was that the proposed Semi-detached House is located on an interior lot and therefore does not meet the locational requirements. Photographs were referenced to illustrate that Semi-detached Houses have been developed on other interior lots in this neighbourhood.

[11] There is a large amount of redevelopment occurring in the community of Westmount, including new Single Detached Houses, Semi-detached Houses and skinny houses. This is one of the first new developments on this block.

[12] A rendering of the proposed development was referenced to illustrate the treatments used on the front elevation to ensure that the development was in keeping with the historical architectural style of the neighbourhood and the appearance and massing of one large single family house.

[13] The proposed Semi-detached House looks like a single dwelling rather than two dwellings with a common wall.

[14] If this lot was subdivided into two lots and skinny houses were constructed, the parking requirement would be the same.

[15] Mr. Mielczarek and Mr. Myers provided the following information in response to questions from the Board:

- a) The property is currently a single title. Mr. and Mrs. Myers will live in one dwelling. Their son and his wife will live in the other dwelling and it is anticipated that they will purchase that dwelling at some point in the future.
- b) Mr. Myers estimated that at least 20 skinny houses have been developed in this neighbourhood.
- c) The Single Detached House that existed on this lot has been demolished.
- d) Two skinny houses have been built across the street from the subject site.
- e) The property owners have no intention of developing a basement suite and there are no separate entrances included on the proposed plans.
- f) Each dwelling unit will have a rear detached two-car garage. Rear detached garages are characteristic of this neighbourhood.
- g) The proposed development complies with all of the other development requirements for Semi-detached Housing.
- h) There are three new houses currently being constructed on this block.
- i) Mr. Myers, his wife and son visited all of the affected neighbours and circulated a handout, marked Exhibit A, to introduce their family and provide some information about the proposed development. Neighbours expressed appreciation for the personal contact and did not have any objection to the proposed development.
- j) The distinct choice was made to build a Semi-detached House rather than two skinny houses in order to be sensitive to the wishes of the neighbourhood.
- k) This development will allow Mr. and Mrs. Myers to maximize their quality of life by living in a good neighbourhood in close proximity to family.

ii) Position of the Development Officer, Mr. K. Yeung:

[16] The Development Authority did not appear at the hearing and the Board relied on Mr. Yeung's written submission.

Decision

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

1. Within 14 days of the approval, prior to any construction activity, the Applicant must post on-site a development permit notification sign (Section 20.6.2).

2. Immediately upon demolition of the building, the site shall be cleared of all debris.
3. The development shall be constructed in accordance with the stamped and approved drawings.
4. The maximum Height shall not exceed 8.9 metres, in accordance with Section 814.3(5) and Section 52 of the *Edmonton Zoning Bylaw* 12800.
5. Platform Structures located within a Rear Yard or interior Side Yard, and greater than 1.0 metre above the finished ground level, excluding any artificial embankment, shall provide Privacy Screening to prevent visual intrusion into Abutting properties (Reference Section 814.3.9).
6. Semi-detached housing requires 1 parking space per dwelling; parking may be in tandem as defined in Section 6.1 (Reference Schedule 1 of Section 54.2).
7. Landscaping shall be installed and maintained in accordance with Section 55.

ADVISEMENTS:

1. Any future deck development greater than 0.6 metres (2 feet) in height will require development and building permit approvals.
2. Any future deck enclosure or cover requires a separate development and building permit approval.
3. Any future basement development requires development and building permit approvals.
4. Note that Semi-detached Housing does not include Secondary Suite Use.
5. The driveway access must maintain a minimum clearance of 1.5 metres from the service pedestal and other surface utilities.
6. Lot grades must match the *Edmonton Drainage Bylaw 16200* and/or comply with the Engineered approved lot grading plans for the area. Contact Drainage Services at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
7. A Building Permit is required for any construction or change in use of a building. Please contact the 311 Call Centre for further information.

[18] In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. The locational requirements as per Section 110.4(4) are waived to allow a Semi-detached House at this location.

Reasons for Decision

[19] Semi-detached Housing is a Discretionary Use in the (RF1) Single Detached Residential Zone (the “*RF1 Zone*”).

[20] The proposed development complies with all of the development regulations of the RF1 Zone, including Height, maximum allowable Site Coverage, Front, Rear and Side Setbacks and parking. The only variance required is with respect to the locational criteria for Semi-detached Housing in Section 110.4(4) of the *Edmonton Zoning Bylaw*, which states:

Semi-detached Housing and Duplex Housing shall only be located

- a) On Corner Sites;
- b) On Sites abutting an arterial or service road;
- c) Where both Side Lot Lines abut existing Duplex or Semi-detached Housing;
or
- d) Where a minimum of one Side Lot Line;
 - i. Abuts a Site where Row Housing, Apartment Housing, or a commercial Use is a Permitted Use, or
 - ii. Is not separated from a Site where Row Housing, Apartment Housing or a commercial Use is a Permitted Use by a public roadway, including a Lane, more than 10.0 metres wide.

[21] The Development Officer in his written submission indicated that the intent of the locational criteria is to direct the majority of infill projects away from the interior lots to the edges of a neighbourhood in order to help minimize parking and traffic impacts on the interior of the neighbourhood. However, this lot is wide enough to be subdivided and accommodate the development of two Single Detached Houses with Secondary Suites as Permitted Uses in the RF1 Zone. This would result in the development of four Dwellings on this Site as opposed to the proposed development with two Dwellings, a significant increase in density in the middle of the block. The Board is of the view that enforcing the locational criteria for Semi-detached Houses at this location will not achieve the objectives outlined by the Development Officer.

[22] The Board is of the opinion that the design of the proposed Semi-detached House, which has the appearance of a large single family home, is in keeping with the architectural style of other developments in this neighbourhood.

[23] The Board notes that extensive community consultation was undertaken by the Appellants and that no written or verbal opposition was received from any of the affected property owners.

[24] Based on all of the above, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

A handwritten signature in blue ink, appearing to read "Mark Young", is centered on the page.

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

Board Members in Attendance: Ms. P. Jones; Mr. C. Buyze; Ms. G. Harris; Mr. R. Hobson

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, 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 the Sustainable Development Department, 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.



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Date: July 17, 2018
Project Number: 187211303-010
File Number: SDAB-D-18-096

Notice of Decision

- [1] On July 4, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on June 7, 2018. The appeal concerned the decision of the Development Authority, issued on May 22, 2018, to refuse the following development:

Continue to Operate a Residential Sales Centre (West Block) for one year.

- [2] The subject property is on Plan 1653Z Blk C Lot 8, located at 14304 - Stony Plain Road NW, Plan 1653Z Blk C Lot 9, located at 14302 - Stony Plain Road NW and Plan 1653Z Blk C Lots 6-7, located at 14314 - Stony Plain Road NW, within the RF3 Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies 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 refused Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submission;
- Support from the Glenora and Grovenor Community Leagues; and
- One letter in opposition and two online responses in opposition.

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

- Exhibit A – Map of the west leg of the Valley Line LRT
- Exhibit B – Photo taken from window of Appellant towards Sales Centre

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, 1807061 Alberta Ltd.*

- [8] Mr. J. Murphy of Ogilvie LLP appeared to represent the Appellant. His clients, Mr. R. Smith and Mr. A. Thailleur, of Beaverbrook Communities were also present.
- [9] Mr. Murphy advised that the proposed development is located on the northeast corner of 143 Street and Stony Plain Road. The project was initially started by another developer and then sat abandoned for five years. Beaverbrook took over the project because they saw potential with the coming LRT.
- [10] This is an application to extend the duration of a Residential Sales Centre by one year. They intend to move this sales centre into the West Block Building by June 2019. They are unable to relocate it prior to that date as construction will not be far enough advanced.
- [11] They created a full sized show suite with full height ceilings to let people know exactly what they are selling. The sales centre could not be placed on the subject site in the form of a trailer because of the construction undertaken by the previous developer took up considerable room on the building site, not allowing any space for the sales centre.
- [12] The City of Edmonton had acquired the subject property for LRT land and agreed to lease it to Beaverbrook in the interim. Mr. Murphy advised the Board that the City is prepared to extend the lease if the Board approves this Development Permit.
- [13] Mr. Murphy clarified that the subject site is zoned (RF3) Small Scale Infill Development Zone, not (CB2) General Business Zone as he had indicated in his appeal letter.
- [14] The Residential Sales Centre does not have a permanent foundation and is constructed on screw piles resulting in the building being over the permitted Height. Under Section 11 of the *Edmonton Zoning Bylaw*, the Development Officer has no authority to vary Height and is therefore unable to approve this Development Permit.
- [15] Section 82.3(b) of the *Edmonton Zoning Bylaw* stipulates Height restrictions applicable to Residential Sales Centres but do not contemplate what is being built at the subject site. It lends itself more to a move-in trailer situation as it reads:

In the case of a temporary structure, the Height of the building including any hoardings or false fronts shall not exceed one Storey or 4.0 metres.

Mr. Murphy notes that the proposed development is approximately 1.5 metres over the permitted Height.

- [16] This development was approved by another panel of this Board two years ago (SDAB-D-16-110). At that time, the Board was concerned that two years would not be sufficient time for this sales centre to operate; however, the *Edmonton Zoning Bylaw* restricts the duration of this type of development permit. Section 82.8 indicates that:

The Development Permit for a Residential Sales Centre shall be valid for such period time as specified by the Development Officer having regard for the amount of land or development being marketed, but in no case shall the time period exceed two years.

- [17] Mr. Murphy referred to Paragraphs 15 and 16 of SDAB-D-16-110:

[15] When questioned about the development timelines, the Appellant stated that if the appeal is successful, the Residential Sales Centre could be operating by late summer 2016, and with appropriate sales, the larger project could begin on Site activity by fall 2016.

[16] The Board noted that the lease with the City expires in two years, as would the development permit, if granted. With the earliest activity for the West Block development planned for Fall 2016, the Appellant would effectively have approximately only a year and a half to use the sales centre to market the West Block Phase One development. In response, the Appellant explained that there is the option to extend the land lease with the City, in which case, a new development application would need to be processed.

- [18] The project is currently 75% sold. Mr. Murphy indicated that without this sales centre his clients would not have sold any units.

- [19] Mr. Murphy reviewed the Pictometry images contained in his presentation to provide context to the site and show its location in relation to Stony Plain Road, the townhouse condos immediately to the north, the alley and parking lot.

- [20] He then reviewed a series of photos previously submitted which illustrate:

- i) The landscaping at the front of the Residential Sales Centre and the parking lot.
- ii) The alley running between the Residential Sales Centre and the condos to the north. Mr. Murphy noted here the significant setback from the proposed development (sales centre) to the alley. Also, the east townhouses are set much further back than the west ones because they are staggered.
- iii) The piles that the sales centre sits on.
- iv) The West Block project currently under construction.

- [21] The photos also show the advertising that is located on the outside walls of the sales centre. Mr. Murphy advised that his clients agree that the advertising on the north wall of the building facing the condos should be removed and are prepared to accept this as a condition of approval.
- [22] The condo owners to the north of the proposed development had identified an issue with a security light over the sales centre entrance. While the Appellants cannot remove this light because of security concerns, they are willing to work with the condo owners to re-adjust or re-direct this light to reduce its impact. They are prepared to accept this as a further condition of approval.
- [23] The Appellants acknowledged that the condo owners have legitimate concerns regarding the amount of traffic in the parking lot. His clients, at the request of the community league and City Council, had allowed trades people working on the West Block development to park there in order to alleviate on-street parking. Parking had also been offered for community league events. Mr. Murphy advised the Board that this practice is no longer occurring and in the future the parking lot will be empty most of the time. It will only be used for events related to sales meetings and viewings by prospective customers.
- [24] Mr. Murphy showed a map of the west leg of the Valley Line LRT taken from the City's LRT website (marked Exhibit A). Thirty to forty percent of the subject site will be lost to LRT construction. His clients are not preventing any development from occurring by using this location and are providing tax and lease revenue for the City in the interim.
- [25] Mr. Murphy referred to a drawing in his submission (Rear Setback – Typical RF3 Zone) to give the Board a sense of what could be allowed in this zoning. A two storey Single Detached House could cover 32 percent of the site and a rear detached garage could also be constructed. The permitted Heights would far exceed that of the subject proposal. The footprint of the current Residential Sales Centre is outlined in black. While the Residential Sales Centre extends past the setback required for a principal dwelling, it is much further back from the property line than a garage would be.
- [26] Mr. Murphy submits that the temporary introduction of a Residential Sales Centre is not completely out of character with what is permitted in the RF3 Small Scale Infill Development Zone.
- [27] The Appellants provided the following responses to questions from the Board:
- i) A show suite can go anywhere above the second floor in the building under construction. Construction is not yet advanced enough to set up this show suite but they should be ready by June of 2019.
 - ii) 3,000 square feet of retail space has been leased.

- iii) There are no set operating hours for the Residential Sales Centre – clients are seen by appointment only.
- iv) The security light at issue is located on the west side of the building over an entrance.

ii) *Position of Affected Property Owners*

Mr. D. Israel and Mr. R. Slight

- [28] Mr. D. Israel and Mr. R. Slight appeared to represent the owners of the affected condos to the north. They own one of these units.
- [29] The owners are concerned that the proposed development is compromising their property values. There has only been one sale in their complex since the sales centre went up and the sales price was \$25,000.00 below the expected selling price. Another unit is currently up for sale and there has not been one showing in six weeks. This is in contrast to the rest of the Grovenor area where properties sell very quickly and there has been a continuing uptick in property values. Mr. Israel has been informed that no one wants to purchase a condo that looks out onto the sales centre.
- [30] They have been very patient neighbours and there was not much objection to the original development permit for the Residential Sales Centre despite receiving incorrect information from both the City and Beaverbrook.
- a) The City informed them that this area where the proposed development sits currently would always remain as a green space.
 - b) When Beaverbrook initially approached the residents, they were informed that the sales centre would be up for a maximum of two years. Now they are looking at a further extension of another year.
- [31] Mr. Israel noted that three years is a long time in the real estate cycle. People cannot put their property up for sale and expect to move because their property values are impacted.
- [32] There is already a Beaverbrook sales centre in City Centre Mall and the remaining 25 percent of the units could be sold out of it. As well, there are other potential locations for a sales centre, such as the former Glenora liquor store site where the construction office is located, or on one of the other properties Beaverbrook owns around the development site.
- [33] The parking lot and surrounding on-street parking have always been congested with construction workers, making their lives more difficult.
- [34] Mr. Israel submitted that the support of the Glenora and Grovenor Community Leagues does not hold much weight. The Grovenor Community League has a vested interest in the

proposed development staying where it is considering that it has used the subject site for its own purposes. The sales centre is not even located within the boundaries of the Glenora Community League.

- [35] The advertising on the west side of the Residential Sales Centre should be removed as well as the advertising on the north side because both faces of the building can be seen from the front windows of the condos.
- [36] The security light is basically on for the entire evening and morning. It is extremely bright and lights up the entire parking lot as well as the front of their property.
- [37] Prior to the opening of the sales centre the site was just a field and no one was spending any time there. Now there are people loitering.
- [38] They provided the following responses to questions:
- a) The upcoming LRT is seen as a positive influence on property values. People want to be within walking distance of the LRT and that is why the Grovenor property values are increasing.
 - b) The view from the front windows of the condo is directly angled towards the sales centre because of the staggering of the buildings. People do not want to look at advertising and commercial space. This property was never to be developed for anything other than the LRT.
 - c) The \$25,000 loss incurred by a previous property owner was determined by looking at the initial purchase price of the unit and what they were actually able to sell it for as compared to the perceived market value for that unit. A comparative market value is determined by looking at similar types of properties in the neighbourhood with adjustments made regarding size, finishes, size of garage, etc. This owner did not recoup the initial purchase price plus the \$20,000 of upgrades when they sold, which is shocking in this neighbourhood.
 - d) Mr. Slight believed that the noise has not been a major issue although he notes that there have been a few occasions where food trucks were present on Saturdays creating more traffic and noise than usual. Mr. Israel acknowledged that there should be no issues with noise if the community league events are being suspended and sales centre visits are by appointment only.
 - e) The additional Height and reduced Rear Setback are issues because the marketing on the sides of the Residential Sales Centre is brought closer to their homes.
- [39] While the security lighting and advertising are nuisances, their main concern is the effect of the Residential Sales Centre on their property values. The prime time to sell would be prior to the LRT construction beginning and the presence of this sales centre results in reduced sales values.

[40] The Residential Sales Centre is virtually the size of one of their triplexes. It is not an insignificant building. The Appellants showed a photo of the view of the Residential Sales Centre from their third floor windows (marked Exhibit B).

Ms. C. Vaselenak

[41] Ms. Vaselenak was the first owner of the six condo units. When she purchased in December of 2012, the realtor assured her that the adjacent property would be green space and also advised her of the future LRT. She contacted the City who confirmed the property would remain as green space until LRT construction began. She believes she has been misled by the City and Beaverbrook from the beginning.

[42] In the spring of the year after the purchase of her property, Standard General leased the entire space from the City and used it to store their tractors, gravel trucks, porta potties, etc. The City advised her that the property was being used for six months to a year during the 142 Street revitalization project and would be returned to a green space once the work was completed.

[43] Three months later the site was leased to Beaverbrook so it has never been a green space as promised. Beaverbrook sales people went door to door and told residents they were looking for a year with the potential for a second year. Their sign has always said “by appointment only” so she does not understand why such a large parking lot is required. She was surprised when she saw the photos of the empty parking lot as it has rarely been empty. Red carpet sales events have been held during which the visitors’ spots in their own units were taken up.

[44] At this point, another year is just too much. She doubts that Beaverbrook will be out by next June as promised as nothing else that has been promised was true.

[45] In addition to loss of property value, she has to keep her blinds down and reduce the use of her bedroom due to the light issue. If she thought she could have sold her unit in the last two years, she would have.

[46] She acknowledged that at some time a good section of the green space will be lost to the LRT but she submits that she will not have to look at a residential or commercial development. She thinks a ten year window would be a reasonable time for the LRT to be built.

iii) Position of the Development Officer, K. Yeung

[47] The Development Authority was not in attendance at the hearing and the Board relied on the written submission of Mr. Yeung.

iv) Rebuttal of the Appellant

- [48] Mr. Murphy indicated that the Appellants never said there was no opposition to the Residential Sales Centre at the time of the last permit application.
- [49] Mr. Murphy noted that no evidence has been presented to show the correlation between the sales centre and a drop in property values. The fact that single family lots are going up in value does not mean that triplexes will also go up at the same rate.
- [50] The area where the sales centre is located was originally purchased by the City for the re-alignment of Stony Plain Road. Plans later changed and it is now set aside for LRT construction. While realtors hope that the trains going by will drive property values up, it is not certain how residential property values will be impacted by the passing trains.
- [51] These lots were zoned RF3 Small Scale Infill Development Zone when acquired by the City and they have never been re-zoned as park or utility lots. We are left with the knowledge that the LRT is coming but it is uncertain what could be developed on the remaining land. The conception drawings show that a 2 ½ storey high house with a garage could be built.
- [52] These owners are looking for a window to sell their properties because they do not want to be there when the LRT comes. There is as much of an impact on property values from the incoming LRT as from the interim uses. If the concerns about sales are based on the presence of the Residential Sales Centre, the realtor could simply show to potential buyers the SDAB decision limiting the duration of the sales centre's existence. The real problem is the potential impact of the LRT and the uncertainty of the Use of the remaining land.
- [53] The line of demarcation between the Glenora and Grovenor Community Leagues is 142 Street. The 142 Street corridor ties these two community leagues together and they are both in support of the proposed development.
- [54] Mr. Murphy acknowledged that red carpet community league events have been held but his clients are aware they cannot do this anymore. Further, to address the concerns about parking, Mr. Murphy reiterated that his clients thought they were alleviating issues with on-street parking by allowing workers to park in the parking lot. This has been discontinued as well.
- [55] They would prefer to leave the cladding on the west side of the Residential Sales Centre. This advertising is important to his clients because that is where the traffic travelling downtown sees it. They could live with blanking out the northerly one-third if they had to but that would not be ideal.
- [56] It is true that Beaverbrook has a sales centre set up in Edmonton Centre but they cannot sell the types of units in a development like the West Block from there. Customers have to be able to see what an actual unit will look like. Mr. R. Smith of Beaverbrook stated

that the Residential Sales Centre is 100 percent essential to the successful completion of the project. It is a significant undertaking and they have not yet met their pre-sales requirement.

Decision

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

1. The approval shall expire on July 17, 2019. A new application for a development permit must be submitted for any subsequent valid extensions.
2. Within 30 days of the date of this decision, the Appellant will remove all advertising from the north face of the Residential Sales Centre.
3. Within 30 days of the date of this decision, the Appellant will, after consultation with the condo owners to the north, make adjustments to the security light above the entrance to the Residential Sales Centre to mitigate its impact.

Advisement:

1. A Building Permit is required for any construction or change in use of a building. Please contact the 311 Call Centre for further information.

[58] In granting the development permit, the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. The maximum allowable Height (to midpoint) of 4.0 metres as per Section 82.3.b is varied to allow an excess of 1.5 metres, thereby increasing the maximum allowed Height to midpoint to 5.5 metres.
2. The maximum allowable Height (to peak) of 4.4 metres as per Section 52.2(c) is varied to allow an excess of 1.5 metres, thereby increasing the maximum allowed Height to peak to 5.9 metres.
3. The minimum allowed Rear Setback of 15.25 metres as per Section 814.3(4) is varied to allow a deficiency of 7.0 metres, thereby decreasing the minimum required Rear Setback to 8.25 metres.

Reasons for Decision

[59] This is an application to extend the Development Permit for an existing Residential Sales Centre for a further one year. The Development Permit has existed for two years at this site. A Residential Sales Centre is a Discretionary Use in the (RF3) Small Scale Infill Development Zone.

- [60] The Site of the Residential Sales Centre is on land adjacent to Stony Plain Road and is owned by the City of Edmonton. The Board heard evidence that in the future a portion of the Site will be required for LRT construction.
- [61] The affected persons who are opposed to extending the development permit are the owners of the six townhouse condominium units located to the north of the sales centre and separated by an alley.
- [62] Although those individuals were under the impression that the land on this Site would be maintained as green space pending LRT construction, the Board notes that the zoning of the Site has never been changed from RF3 Small Scale Infill Development Zone meaning that the City can do as they wish with the Site provided that the proposed Use is compatible with the zoning. In this case, the City leased the land to the Appellant so it could use it for a Residential Sales Centre. The Board heard that the City is prepared to extend the lease if the Appellant can get approval to extend the development permit.
- [63] Three variances are required. Two of the variances relate to Height. The Development Officer does not have the authority to vary Height and this is the main reason why the extension of the Development Permit was refused.
- [64] One of the regulations regarding Height relates specifically to Residential Sales Centres. Section 82.3(b) of *Edmonton Zoning Bylaw* states the maximum permitted Height to midpoint is 4.0 metres. The Height of the existing structure to the midpoint of the roof is 5.5 metres. Another regulation governing Height, section 52.2(c) of the *Edmonton Zoning Bylaw*, states that the maximum permitted Height to peak is 4.4 metres. Currently, the Height of the peak of the existing building is 5.9 metres.
- [65] The Board notes that often Residential Sales Centres are trailers in contrast to the existing structure, which is an actual building that has been constructed on screw piles. In the Board's view, the fact that the existing structure is not a trailer and looks like a permanent building warrants variances to the Height regulations.
- [66] Further, under the RF3 Small Scale Infill Development Zone, a Permitted Use is a Single Detached House with an Accessory Building. A Use such as that would have a significantly greater Height than the existing building and would have a greater impact on the neighbours who live in the six condos to the north of the Site.
- [67] Another variance required relates to the Rear Setback as per section 814.3(4) of the *Edmonton Zoning Bylaw*, which is in the Mature Neighbourhood Overlay. This states that the minimum Rear Setback shall be 40 percent of Site Depth. That Rear Setback relates to the Principal Building, not to Accessory Buildings. The Board notes that in the RF3 Small Scale Infill Development Zone a detached garage could be built in the rear yard, which would be significantly closer to the condos to the north than the existing Residential Sales Centre and would have a greater impact on those owners.
- [68] The Board is of the view that there is a significant Rear Setback behind the existing Residential Sales Centre plus there is an alley separating the condo owners from the Site.

As well, the condos are staggered in distance from the Residential Sales Centre with those to the east most directly behind the sales centre being further away from it, which tends to mitigate the effect of a reduced Rear Setback. Further, the reduced Rear Setback allows most of the parking spaces to be located to the west of the sales centre, thereby reducing the impact on the condo owners.

- [69] The Board is satisfied that the requirement for community consultation in the Mature Neighbourhood Overlay has been substantially complied with.
- [70] At the hearing there was a significant amount of discussion by the affected condo owners about what they felt was a decrease in property values as a result of the existence of the Residential Sales Centre. It was indicated that one condo that sold received a value of about \$25,000 less than what was expected. Another condo unit has been for sale for six weeks without a single showing. The opinion expressed was that this was directly related to the presence of the Residential Sales Centre because of the view that the residents of the condos have of the sales centre from their front windows.
- [71] The Board is of the view that the evidence provided with respect to loss of value is at best anecdotal. The Board would require a much more rigorous analysis by someone with the appropriate qualifications indicating how the presence of the sales centre affects nearby property values.
- [72] There were concerns raised by the condo owners about the parking lot being busy at times because trades people were parking there and because of community league events that were allowed to take place on the parking lot. The Board was advised by the Appellant that neither of these things will be allowed to take place on the parking lot in the future.
- [73] The Board was advised by the Appellant that it will not be seeking another extension for the Development Permit for this Residential Sales Centre and that their intention is to have the Residential Sales Centre move into the West Block development Site by June 2019. The Appellant stated that the continuing use of the Residential Sales Centre was essential for the completion of condo sales and therefore the completion of the development. The Board was also advised that in the future all visits to the Residential Sales Centre will be by appointment only.
- [74] To address the concerns of condo owners, the Appellant indicated it was prepared to remove all advertising signage from the north face of the Residential Sales Centre. The Appellant is also prepared to take steps to adjust the security light above the door to the Residential Sales Centre to make it less intrusive to the neighbours. The Board has added these as conditions of the approval of the extension of the Development Permit.
- [75] There were two letters of support from the community leagues in the area. The Glenora Community League supported the proposed development as the West Block is in their jurisdiction. Grovenor Community League provided support as the Residential Sales Centre is within the Grovenor Community League area.

[76] For all of the above reasons, the Board is of the opinion that extending the Development Permit for the proposed development for one year 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.



Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. P. Jones; Mr. C. Buyze; Ms. G. Harris; Mr. R. Hobson

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, 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 the Sustainable Development Department, 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.