EDMONTON
TRIBUNALS
Subdivision & Development Appeal Board

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Date: June 21, 2018
Project Number: 273258505-001
File Number: SDAB-S-18-007

Notice of Decision

April 19, 2018 Hearing:

[1] The Subdivision and Development Appeal Board made and passed the following motion:

> "That the appeal hearing be scheduled for May 17, 2018."

May 17, 2018 Hearing:

[2] The Subdivision and Development Appeal board made and passed the following motion:

> "That the appeal hearing be scheduled for June 6, 2018."

June 6, 2018 Hearing:

[3] The Subdivision and Development Appeal board made and passed the following motion:

> "That SDAB-S-18-007 be raised from the table"

[4] The Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on April 12, 2018. The appeal concerned the decision of the Subdivision Authority, issued on April 5, 2018, to approve the following subdivision:

> To create two (2) commercial lots

[5] The subject property is on Plan 1525501 Blk 94 Lot 1, located at 5138 - Gateway Boulevard NW, within the CB2 General Business Zone. The Major Commercial Corridors Overlay applies to the subject property.

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

- Copy of the approved Subdivision;
- The Subdivision Authority's written submissions; and

- The Appellant's written submissions.

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

- Exhibit A – 2 aerial maps of the subject site
- Exhibit B – Additional written submission

Preliminary Matters

[8] 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.

[9] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[10] The appeal was filed on time, in accordance with the *Municipal Government Act*, RSA 2000, c M-26 (the "*Municipal Government Act*").

Summary of Hearing

i) Position of the Appellant, Mr. S. Hayden, representing IVY Capital Corp.:

[11] IVY Capital Corp. wants to purchase the land that is the subject of the subdivision approval to develop Peters' Drive-In.

[12] Mr. Hayden referenced several aerial photographs to illustrate the location of the subject parcel of land between Gateway Boulevard and Calgary Trail.

[13] In his opinion, the spirit of the *Municipal Government Act* is not meant to catch small business owners, but rather large developers. Imposing a condition on the subdivision approval that requires the payment of almost $400,000.00 as money in place of Municipal Reserve simply stymies development and the fact that section 663(c) provides an exemption for parcels less than 0.8 hectares in size supports this argument.

[14] The land is located in an industrial/commercial area. It is not in close proximity to any parks that would require Municipal Reserve monies to maintain. However, Peters' Drive-In plans to use land to build and maintain its own outdoor park for the use of the municipality at its own expense (approximately $50,000.00). Cash in lieu is therefore duplicitous.

[15] Prior to the consolidation, both parcels of land were less than 0.8 hectares in size and section 663(c) provides an exemption when the land to be subdivided is less than 0.8 hectares in size. The consolidation of these two parcels of land to a size that exceeded 0.8 hectares should not mean that section 661 should now apply.

[16] Before the consolidation occurred, the 0.14 hectare parcel was located in the northeast corner. The larger 0.8 hectare piece could have been purchased and a 0.53 hectare parcel could have been kept while the balance sold to another purchaser to be combined with the smaller parcel. In that case, the larger parcel that they want to subdivide would have been less than 0.8 hectares in size and the requirement to provide money in place of Municipal Reserve would not have applied.

[17] In hindsight, the consolidation was not required because the owner has since changed his intention for the land. It was his opinion that a change in intention should not trigger a fee under the *Municipal Government Act* and the owner should be able to effectively reverse the consolidation at no cost.

[18] The land in question is 0.936 hectares in size, only 0.136 hectares larger than land that would be exempted by section 663.

[19] The land was never developed and there is no deleterious effect that needs to be offset with the purchase of river valley land. No improvements have been made and no value added from which a fee should be payable. A fee should be payable in the event of development, not as a result of a change in intention. It was his opinion that the condition requiring the provision of money in place of the Municipal Reserve should be waived.

[20] The proposed subdivision and subsequent development will be an improvement for land that has been vacant for more than 20 years.

[21] The City of Edmonton will benefit from the creation of approximately 100 ongoing jobs beginning in early 2019 and the receipt of significant property and corporate taxes that would be paid by Peters' Drive-In and its employees.

[22] Mr. Hayden provided the following information in response to questions from the Board:

a) It was his opinion that the Board can revoke the condition requiring the payment of money in lieu of Municipal Reserve because prior to the consolidation, the parcels of land were both less than 0.8 hectares in size and pursuant to section 663 of the *Municipal Government Act*, the provision of money in lieu or reserve land would not be required.

b) Peters' Drive-In plans to develop and maintain a park on the site at their own expense. There are no parks close to the subject site because it is located in an industrial area.

c) He could not confirm whether or not reserves were paid previously.

d) If the land is sold at some future time, they would happily donate the park space to the City.

e) IVY Capital Corp. will purchase the land and Peters' Drive-In will operate the business.

f) A previous owner consolidated the lots to develop a hotel but the development did not proceed.

g) It was his opinion that Policies 7.4.2.1 and 7.4.2.2 were not relevant because the development of a park would not benefit this industrial area in any way.

ii) Position of the Subdivision Authority, Mr. M. Beraldo:

[23] Mr. Beraldo provided a history of the subject land including subdivision plans from 1911, 1953, 1963 and 2015.

[24] Section 661 of the *Municipal Government Act* requires the owner of a parcel of land that is the subject of a proposed subdivision to provide subject to 663, land for municipal reserve, money in place of reserves or a combination of reserves and money. In this case, money in place is more appropriate because the site is located in an industrial zone.

[25] Policy 7.4.2.1 and Policy 7.4.2.2 of the *Municipal Development Plan* require the payment of municipal reserves for both residential and commercial or industrial subdivisions. Policy 7.4.2.2 of the *Municipal Development Plan* states that cash-in-lieu of Municipal Reserve, received through subdivision of industrial or commercial areas, will be used for the Parkland Acquisition Fund to purchase River Valley land.

[26] In 2016, a hotel development was proposed for the entire site, but it did not proceed.

[27] It is standard practice to require cash-in-lieu of Municipal Reserve for all commercial or industrial subdivisions. The Subdivision Authority did consider several different options for this proposed subdivision.

[28] Mr. Beraldo provided the following information in response to questions from the Board:

a) He could not find any record that reserves were taken when the land was originally subdivided. The City started to require money-in-lieu in approximately 1957.

b) The City used to take a piece of land, remove the reserve dedication and then sell the land. Cash-in-lieu is now always taken for commercial and industrial subdivisions.

c) The Subdivision Authority recognized the unique circumstances surrounding this subdivision application and had many discussions with the Applicant in an attempt to come to a resolution which would not require the payment. They are sympathetic to the Appellant's position. However, decisions have to be made according to City Policy and the *Municipal Government Act* in fairness to all land owners and all applicants for subdivision.

d) Given the situation in this case, they tried to be accommodating. The Applicant was not required to provide a new appraisal per section 667(1)(b) was waived to save the Applicants that cost. The appraisal that was completed in 2014 was used instead.

e) They advised the Applicants that there is a possibility that the consolidation could be reversed upon a Judge's order. They believe the Appellants have a strong legal case for reversal of the 2015 consolidation. If this were to occur then no money would be payable in place of municipal reserve per section 663.

iii) Position of the Appellant, Mr. S. Hayden, representing IVY Capital Corp. and Mr. A. Khurshed, representing Cushman & Wakefield:

[29] Mr. Hayden advised that the condition to pay cash-in-lieu of Municipal Reserve was only added after a conditional offer was made on the land.

[30] The Subdivision Authority could not confirm whether or not Municipal Reserve has been paid in the past.

[31] The amount of money required for the Municipal Reserve is prohibitive to the development of this land that has been vacant for more than 20 years.

[32] The seller is certainly not going to invest the time and money required to seek a Judge's order to have the previous consolidation of land reversed because of the expense and delay to the proposed development.

[33] Allowing the subdivision to proceed without the required Municipal Reserve will benefit the City in many other ways.

[34] It was Mr. Khurshed's opinion that the Subdivision Authority does have discretion to waive or reduce the amount of the payment required. He knows another developer who was allowed to donate several condominium units to Ronald McDonald House in lieu of the Municipal Reserve payment.

[35] Mr. Hayden indicated that requiring almost $400,000 as cash-in-lieu of the Municipal Reserve is prohibitive for the viability of the proposed business on this site. He suggested that no more than a nominal fee of $1,000 or $2,000 would be more appropriate.

iv) Position of the Subdivision Authority, represented by Mr. Beraldo and Mr. McDowell:

[36] In response to a question, Mr. McDowell acknowledged that section 661 of the *Municipal Government Act* could be interpreted to provide some discretion to the Subdivision Authority to require less than 10 percent or to not require any cash-in-lieu. He again noted that many options were explored in this case that would allow the subdivision and development to proceed. This is a case where a judicial order for reversal of the 2015 consolidation would be likely.

[37] However, it is standard City practice for the Subdivision Authority to take the full 10 percent of the land value as cash-in-lieu of Municipal Reserve. He could not provide an example of a subdivision where this had not occurred.

[38] In response to a question, Mr. McDowell stated that the Subdivision Authority does not have discretion in this matter based on City policy and the requirements of the *Municipal Government Act.*

[39] It was his opinion that the Board does have the power to revoke or change the condition of approval that is under appeal as part of its discretion pursuant to section 680(2)(e) of the *Municipal Government Act* which states that

> the Board may confirm, revoke or vary the approval or decision or any condition imposed by the Subdivision Authority or make or substitute an approval, decision or condition of its own.

[40] Regardless of these answers, the Subdivision Authority exercises a consistent practice for all subdivision applications which is to require the full 10 percent of the land value for Municipal Reserves for all subdivisions which do not fall within the exemptions listed in section 663 of the *Act*.

[41] In this case, the Appellants are correct that there was no notation on the title about this matter. This is because Municipal Reserve was not owing so there was no opportunity or ability to recognize that through a caveat on this land.

[42] Given the timing of subdivisions of this land, it is highly unlikely that Municipal Reserve was ever paid, but they have no record either way.

[43] The example cited by the Appellant where alternate arrangements were made did not occur through a subdivision of that land.

[45] The intended use of land does not impact or influence the decision of the Subdivision Authority.

v) Rebuttal of the Appellant

[46] Mr. Hayden had nothing further to add in rebuttal.

Decision

[47] The appeal is **ALLOWED IN PART** and the decision of the Subdivision Authority is **VARIED**. The subdivision is **GRANTED** as approved by the Subdivision Authority with the following changes:

Condition No. 1 of the Subdivision Approval Letter dated April 5, 2018 "that the owner provide money in place of Municipal Reserve (MR), in the amount of $376,834.00 representing 0.094 ha pursuant to Section 666 and 667 of the Municipal Government Act" is **DELETED**

Paragraph No. 3 of the Subdivision Approval Letter dated April 5, 2018, shall be **DELETED**. The paragraph states that:

> MR for legal description in the amount of $376,834.00, representing 0.094 ha, is being provided by money in place with this subdivision.

Reasons for Decision

[48] The subdivision was approved on April 5, 2018 subject to three conditions. The Applicant appealed the imposition of the first condition that:

> 1. the owner provide money in place of Municipal Reserve, in the amount of $376,834.00 representing 0.094 hectares pursuant to Section 666 and 667 of the *Municipal Government Act*.

[49] In assessing whether or not this condition should be imposed, the Board considered the history of the subject land:

a. in 1911, the subject land was subdivided to accommodate multiple residential lots;
b. in 1953, the subject land was subdivided into two lots for commercial or industrial uses, one lot was significantly larger than the other and each lot was equal to or less than 0.80 hectares;
c. in 1963, the lot lines were adjusted slightly due mainly to an issue with an abutting property, the resultant two lots remained equal to or less than 0.80 hectares
d. in 2016, the two lots were consolidated into Lot 1, Block 94, Plan 1525501 which is approximately 0.94 hectares in size to accommodate the land owner's anticipated hotel use.
e. based on the evidence provided, the anticipated hotel development never came to fruition and the site has remained undeveloped for more than 20 years.

[50] The authority to impose Condition 1 is found through the operation of sections 661, 663, 666 and 667 of the *Municipal Government Act* (the "*Act*").

[51] Section 661 grants the Subdivision Authority the power to require money in place of municipal reserve land:

> The owner of a parcel of land that is the subject of a proposed subdivision must provide, without compensation,
>
> (a) To the Crown in right of Alberta or a municipality, land for roads and public utilities,

(a.1) subject to section 663, to the Crown in right of Alberta or a municipality, land for environmental reserve, and

(b) subject to section 663, to the Crown in right of Alberta, a municipality, one or more school boards or a municipality and one or more school boards, land for municipal reserve, school reserve, municipal and school reserve, money in place of any or all of those reserves or a combination of reserves and money,

as required by the subdivision authority pursuant to this Division. [Emphasis added]

[52] Section 663 creates exemptions to the usual section 661 authority where money in place of municipal reserves may not be required by the Subdivision Authority:

> A subdivision authority **may not require** the owner of a parcel of land that is the subject of a proposed subdivision to provide reserve land or money in place of reserve land if
>
> (a) one lot is to be created from a quarter section of land,
> (b) land is to be subdivided into lots of 16.0 hectares or more and is to be used only for agricultural purposes,
> (c) the land to be subdivided is 0.8 hectares or less, or
> (d) reserve land, environmental reserve easement or money in place of it was provided in respect of the land that is the subject of the proposed subdivision under this Part or the former Act. [Emphasis added]

[53] Sections 666 and 667 establish the maximum quantum of money that may be required and provide other details concerning the calculation of the specific amount which may be required:

> 666(1) Subject to section 663, a subdivision authority **may require** the owner of a parcel of land that is the subject of a proposed subdivision
>
> (a) to provide part of that parcel of land as municipal reserve, school reserve or municipal and school reserve,
> (b) to provide money in place of municipal reserve, school reserve or municipal and school reserve, or
> (c) to provide any combination of land or money referred to in clauses (a) and (b).
>
> (2) The aggregate amount of land that may be required under subsection (1) may not exceed the percentage set out in the municipal development plan, which may not exceed 10% of the parcel of land less all land required to be provided as conservation reserve or environmental reserve or made subject to an environmental reserve easement.

(3) The total amount of money that **may be required** to be provided under subsection (1) **may not exceed** 10% of the appraised market value, determined in accordance with section 667, of the parcel of land less all land required to be provided as conservation reserve or environmental reserve or made subject to an environmental reserve easement.

(3.1) For greater certainty, for the purposes of calculating the 10% under subsection (2) or (3), the parcel of land includes any land required to be provided under section 662.

(4) When a combination of land and money is required to be provided, the sum of

(a) the percentage of land required under subsection (2), and
(b) the percentage of the appraised market value of the land required under subsection (3) may not exceed 10% or a lesser percentage set out in the municipal development plan. [Emphasis added]

667(1) **If money is required to be provided** in place of municipal reserve, school reserve or municipal and school reserve, the applicant must provide

(a) a market value appraisal of the existing parcel of land as of a specified date occurring within the 35-day period following the date on which the application for subdivision approval is made

(i) as if the use proposed for the land that is the subject of the proposed subdivision conforms with any use prescribed in a statutory plan or land use bylaw for that land, and

(ii) on the basis of what might be expected to be realized if the land were in an unsubdivided state and sold in the open market by a willing seller to a willing buyer on the date on which the appraisal is made,

or

(b) if the applicant and the subdivision authority agree, a land value based on a method other than that described in clause (a).

(2) **If money is required** to be provided in place of municipal reserve, school reserve or municipal and school reserve, the subdivision authority must specify the amount of money required to be provided at the same time that subdivision approval is given. [Emphasis added]

[54] While providing evidence about the imposition of Condition 1, the Subdivision Authority recognized that:

a. sections 661 and 663 of the *Act* do appear to include discretion concerning whether reserve land or money in place of reserve land, if any, should be required as a condition of a subdivision;
b. discretion is also provided to the Board pursuant to Section 680(2)(e) of the *Act* to vary conditions imposed by the Subdivision Authority, and
c. the cited polices of the applicable Municipal Development Plan, *The Way We Grow*, support the position that money may be required in place of reserve land for commercial/industrial areas.

[55] The Board finds that sections 661, 663, 666 and 667 include both mandatory and permissive provisions. As the added emphasis above shows, the phrases dealing with the power to require money in place of municipal reserve lands are all written as permissive. Unlike other portions of these sections, they do not state that the Subdivision Authority must require municipal reserve land or money or a combination of the two. Further, the 10 percent figure is a maximum rather than a set amount. In view of the wording of all of these sections, the Board agrees that the Subdivision Authority has been granted discretion to require (or not) an amount of cash in lieu of municipal reserve land equal to up to the maximum 10 percent of the value of the land.

[56] The Board also reviewed policies 7.4.2.1 and 7.4.2.2 of *The Way We Grow*. These policies deal with the circumstances when funds may be sought in lieu of lands and with use of those funds. The Board finds that neither of these policies support the view that maximum ten percent amount must be required for all subdivision applications regardless of any other factors or exceptional circumstances.

[57] The Board also finds that it has the discretion per section 680(2)(e) to vary Condition 1.

[58] Given these legal findings, the Board next considered whether Condition 1 should be affirmed or varied in light of the specific circumstances.

[59] The Appellants argued that Condition 1 was unfair and should be removed because:

a. if the land had not been consolidated in 2016, the subdivision application currently before the Board would have been exempt from the imposition of Condition 1 per section 663(1)(c) of the *Act* because the lands to be subdivided would be 0.8 hectares or less in size;
b. while the land was consolidated in 2016, no development ensued and so despite the fees, no benefit has been realized from the consolidation;
c. while a order reversing the consolidation and exempting the property might be available, it is unnecessary, wasteful and unfair to obtain a judicial order reversing the 2016 consolidation as the condition can be waived;
d. the property is only 0.94 hectares in total in any event which is so close in size to the 0.80 hectare exemption that 10% of the land value ($376,834.000) is excessive and makes the subdivision and future development of the land (which has been vacant for over 20 years) commercially non-viable.

[60] The Subdivision Authority was sympathetic to the situation and acknowledged that the imposition of Condition 1 could be perceived as unfair for the reasons outlined by the Appellant, however they imposed it for the following reasons:

a. While the authority to require cash in place of Municipal Reserve land may be discretionary, in the interests of fairness the City follows the unwavering policy that all applicants must be treated in the same manner.
b. In accordance with this policy, in all cases where the property is not exempt per section 663 of the *Act* at the time of application, the Subdivision Authority always requires money in place of reserve land equal to the maximum allowable amount (10 percent of the market value of the property to be subdivided).

[61] The Subdivision Authority also indicated that they have no record that Municipal Reserve had ever been paid and that they could not refute or confirm whether the imposition of a standard requirement in the amount of $376,834.00 would make the property commercially non viable. On the last point, they noted that an application for a hotel use was made in 2016, but that it was never built and the land has in fact been vacant for over 20 years.

[62] In light of the unusual and unique circumstances surrounding this land, the Subdivision Authority's discretion to require a quantum of cash in place of municipal reserve up to 10 percent of the value of the land and the Board's authority to vary the decision per section 680(2)(e), the Board finds that it is appropriate to revoke Condition No. 1 and accompanying paragraph 3 of the approval dated April 5, 2018 for the following reasons:

a. Based on the evidence presented, the Board finds that but for the 2016 consolidation, there would be no authority under section 661 of the Act to require any cash in lieu of land for Municipal Reserve as the parcels would be exempt due to their size per section 663(c).
b. In other words, had nothing been done to the register the plan of subdivision in 2016, no cash in lieu whatsoever could be required as a condition of the proposed subdivision currently before the Board.
c. Further, based on the evidence before it, while the consolidation was registered and Development Permits sought for a hotel use, the land has remained vacant and no party has received any benefit whatsoever from the registration of the plan of consolidation in 2016.
d. The Board was also mindful of the parties' submissions that given the undisputed facts, the Appellant could likely obtain a court order reversing the 2016 consolidation and that if that order were obtained, no amount of land or cash in place of Municipal Reserve could be required whatsoever.

[63] The Board notes that each party provided evidence of conditions placed on other properties to support their arguments. The Board has not placed weight on these other cases as it is not strictly bound by precedent. Further, the Board found that both cited cases were substantively distinguishable in any event.

[64] For the above reasons, the appeal is allowed and the owner is not required to provide money in place of the Municipal Reserve as a condition of subdivision.

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

Board Members in Attendance: Mr. R. Handa, Mr. J. Jones, Ms. D. Kronewitt-Martin

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26.

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Date: June 21, 2018
Project Number: 275792653-001
File Number: SDAB-D-18-079

Notice of Decision

[23] On June 6, 2018, the Subdivision and Development Appeal Board (the "Board") heard an appeal that was filed on May 11, 2018. The appeal concerned the decision of the Development Authority, issued on April 25, 2018, to refuse the following development:

> **To construct a Semi-detached House with fireplace, rear uncovered deck, verandas, Rooftop terrace and to demolish an existing Single Detached House and Accessory Building (rear detached Garage)**

[24] The subject property is on Plan 1324HW Blk 6 Lot 4, located at 11316 - 73 Avenue NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay and McKernan/Belgravia Station Area Redevelopment Plan apply to the subject property.

[25] 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 submission;
- The Appellant's written submissions; and
- One letter of opposition from the Community League.

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

- Exhibit A – Copy of a SLIM map used by the Appellant

Preliminary Matters

[27] 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.

[28] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[29] 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, Mr. G. Sharek and his daughter, Ms. A. Sharek:

[30] Mr. Sharek and his wife purchased this property in the McKernan area in 2012. One of the primary reasons for purchasing the property was its proximity to the McKernan/Belgravia LRT station. Because they both work downtown, it has always been their plan to downsize to this property and take the LRT to and from work each day.

[31] Their daughter is one of the tenants of the property and works at the University Hospital. She either walks or takes the LRT to and from work each day and is an integral player in the future plans for this property.

[32] Their plan is to build a semi-detached house that would be occupied sometime during the summer of 2019. They would own the one side of the house and their daughter would own the other side.

[33] The 400 metre buffer map from McKernan/Belgravia LRT Station illustrates that the subject site is well within the 400 metre radius. The LRT line can be seen in the Appellant's photographs.

[34] Transit Oriented Development (TOD) is derived from Edmonton City Council City Policy C565. The Transit Oriented Development Guidelines contemplate higher density development close to LRT stations and transit stations and neighbourhood infill development within 400 metres of the McKernan/Belgravia transit station.

[35] It was his opinion that the proposed development is precisely what the City has identified as potential infill development within 400 metres of the LRT station.

[36] This application was refused because it does not comply with the locational requirements for Semi-detached Housing in the RF1 Zone. Regardless, he believes that since the City has identified this site as a prime location for infill housing, Semi-detached Housing would be an appropriate use.

[37] Semi-detached Housing is a Discretionary Use in the RF1 Zone and an argument can be made that if one fetters the discretion of the Development Officer then it is really not a Discretionary Use.

[38] Rezoning the site to accommodate Semi-detached Housing should not be required because it is a Discretionary Use in the RF1 Zone.

[39] Photographs of the subject site and similar infill developments in the area were referenced to illustrate that the proposed development is characteristic of the

neighbourhood and will not unduly interfere with the amenities of the neighbourhood, nor the use or enjoyment of neighbouring properties.

[40] This is exactly the type of housing that should be developed close to the LRT. It is characteristic of future development and will have a positive effect on this neighbourhood.

[41] St. Peter's Centre, an institutional use, is located across the rear lane from the subject site.

[42] St. Peter's Centre is owned by the Edmonton Catholic School Board. There is currently an administration building on the east portion of this parcel and a sports field on the west portion. There are plans to redevelop the site with medium density residential uses, including low rise Apartments and Row Housing on the western portion of the site. The building on the eastern portion of the site will be demolished and replaced by a relocated sports field. After this redevelopment, the subject site will be located across from the proposed low or medium density residential development.

[43] It is the City's intention to develop higher density residential housing in the entire neighbourhood. A lot located north of St. Peter's Centre is the same size as the subject lot. It was recently rezoned to RF3 Small Scale Infill Development Zone as evidence of this intention.

[44] Mr. Sharek was disappointed that the Community League submitted a letter of opposition. The proposed development will comply with all of the required setback requirements and it was his opinion that the deficiency of 6 inches in the minimum required lot width is inconsequential.

[45] He reviewed the community consultation that was undertaken by his daughter on two occasions. The immediately adjacent neighbour to the west (11320 - 73 Avenue), a neighbour who resides across 73 Avenue to the south (11315 - 73 Avenue) and a neighbour who resides two houses to the east (11308 - 73 Avenue), all provided written support for the proposed development. A letter and contact information was left in the mailbox of the immediately adjacent house to the east at 11312 - 73 Avenue but a response was never provided. No one has ever resided in this house since the Appellant purchased the property.

[46] None of the neighbours who were contacted raised any objection; the proposed development is compatible with neighbouring properties and is compatible with the concept of infill properties in the City, particularly within a 400 metre radius of an LRT station.

[47] Mr. Sharek reviewed and accepted all of the recommended conditions contained in the Development Officer's report.

[48] Mr. Sharek provided the following information in response to questions from the Board:

a) He acknowledged that the subject lot does not comply with any of the locational criteria and that two of the Semi-detached Houses in the photographs provided were located on corner lots.

b) He confirmed that the rear lane is 4.88 metres wide.

c) A SLIM map, marked Exhibit A, was referenced to confirm that the lot located at 11307 – 75 Avenue that was recently rezoned from RF1 to RF3 is 42 metres long and 14.49 metres wide.

d) It was his opinion that the proposed development is consistent with other infill that is occurring in the area.

e) A rezoning application could be made for this lot but it is time consuming and expensive. Seeking approval of this development as a Discretionary Use with variances is the more desirable outcome and an available lawful route.

ii) Position of the Development Officer, Ms. F. Hetherington:

[49] The Development Authority provided a written submission and did not attend the hearing.

Decision

[50] 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 **CONDITIONS contained in the Development Officer's written submission:**

1. Within the end of the notification period with no appeal and prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Section 20).

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 52 of the *Edmonton Zoning Bylaw 12800*.

5. Platform Structures located within a Rear Yard or interior Side Yard, and greater than 1.0 metres 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. For Semi-detached Housing, Amenity Area shall be in accordance with Section 46

8. Landscaping shall be installed and maintained in accordance with Section 55.

9. Frosted or opaque glass treatment shall be used on windows to minimize overlook into adjacent properties as per the submitted plans.

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 Secondary Suite Use Class does not include Semi-detached Housing.

5. The driveway access must maintain a minimum clearance of 1.5 metres from the service pedestal and all 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.

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

1. The minimum required Site Width of 14.8 metres as per Section 110.4(3)(b) is varied to allow a deficiency of 0.2 metres, thereby reducing the minimum required Site Width to 14.6 metres.

2. The requirements of Section 110.4(4) are waived to allow a Semi-detached House at this location.

Reasons for Decision

[52] The proposed Semi-detached House is a Discretionary Use in the RF1 Single Detached Residential Zone. The proposed development requires two variances to the development regulations contained in Section 110 of the *Edmonton Zoning Bylaw*.

[53] The Board considered whether or not the proposed Use was reasonably compatible with surrounding Uses or if there was a valid planning reason to support a refusal of the proposed Discretionary Use. The Board finds that the proposed development is reasonably compatible for the following reasons:

a) Semi-detached Housing is a purely residential use and the subject site is located in the middle of a residential neighbourhood.

b) While there is currently an Institutional Use, St. Peter's Centre, located across the rear lane from the subject site, the Area Redevelopment Plan identifies that this site will be redeveloped with higher density residential housing on the western portion of the site and open green space on the eastern portion of the site (immediately adjacent to the subject site). Therefore, the proposed Semi-detached House is reasonably compatible with both the current and future surrounding uses.

c) The proposed development is not inconsistent with the McKernan-Belgravia Area Redevelopment Plan (the *Plan)* because it is located within an area identified as suitable for:

   a. Small Scale Residential Infill (the *Plan* at page 27 and 28); and,

   b. possible rezoning to RF3 Small Scale Infill Development Zone (the Plan, Policy 4.4.6), in the RF3 Zone the proposed development would be available as of right as a Permitted Use fully compliant with all applicable development regulations .

d) The subject site is also located within the 400 metre radius from Garneau Transit Station in the Transit Oriented Development area which the City has identified as suitable for higher density residential development.

[54] The Board then considered and granted the two required variances for the following reasons:

a) Based on the evidence provided, including the photographic evidence, the Board finds that the 0.20 metre deficiency in the minimum required Site Width will be imperceptible from the street and will have a negligible impact if any on parking or traffic in the rear lane.

b) The Board accepts the evidence of the Appellant that even though the subject lot does not meet the locational requirements for Semi-detached Housing in the RF1 Zone, the proposed development will not adversely impact any of the neighbourhood amenities.

The Appellant undertook community consultation even though it was not required and obtained written support from three property owners who reside close to the subject site, including one of the most affected who resides immediately west of the subject site. The Appellant left information concerning the required variance and contact information in the mailbox of the house immediately east of the subject site but a reply was never received. The Appellant noted that no one has ever resided in this house since he purchased the property.

c) The Board considered the letter of opposition received from the Community League and notes that the opposition appeared to be based on the propriety of granting variances in general. The main focus was the variance required in the minimum Site Width which the Board has determined to be negligible. The Board also notes that the Community League expressed concern regarding cramped buildings. However, even though the proposed development does not comply with the locational criteria, it meets or exceeds all of the other development regulations, in particular those pertaining to Site Area, Setbacks, Amenity Areas and Site Coverage. Multiple variances to these development regulations can together be an indicator of overdevelopment on a given lot. They are absent in this case.

d) Based on the evidence provided, the Board does not agree with the concerns of the Development Authority regarding increased traffic and parking on the interior of this neighbourhood given the proximity of the subject site to a transit station and the provision of four onsite parking spaces.

[33] The Board notes that the Appellant reviewed and accepted all of the recommended conditions of the Development Authority and the Board has included them.

[34] For all of the above reasons, the Board is of the opinion 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.

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

<u>Board members in attendance</u>: Mr. R. Handa, Mr. J. Jones, Ms. D. Kronewitt-Martin

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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, 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.