

EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Grovenor Community League et al v Development Authority of the City of Edmonton,
2024 ABESDAB 10114

Date: October 3, 2024
Project Number: 494423383-002
File Number: SDAB-D-24-114

Between:

Grovenor Community League et al

and

The City of Edmonton, Development Authority

Board Members

Rohit Handa, Chair
Miles Davis
Landon Haynes

DECISION

[1] On August 21, 2024, the Subdivision and Development Appeal Board (the “SDAB” or “Board”) considered who would be affected parties pursuant to section 686(3)(c) of *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*” or “*MGA*”), and passed the following motion:

“That property owners within a 60 metre radius of the subject property be notified of the appeal hearing.”

[2] On September 19, 2024, the SDAB heard an appeal that was filed on August 21, 2024 for an application by Lumia Enterprises Inc. The appeal concerned the decision of the Development Authority, issued on July 25, 2024, to approve the following development:

Construct a Community Service building with a Platform Structure (front steps).

[3] The subject property is on Plan 1623397 Blk 3 Lot 11, located at 10414 - 142 Street NW, within the RS - Small Scale Residential Zone.

- [4] The appeal hearing on September 19, 2024 was held through a combination of in person, video conference and written submissions. The following documents were received prior to the hearing and form part of the record:
- Copy of the proposed plans and the approved Development Permit;
 - The Development Planner's written submission and attachments;
 - The Appellant's written submissions; and
 - The Respondent's written submissions.
- [5] The following exhibits were presented during the hearing from Legal Counsel for the Appellants and form part of the record:
- Exhibit A – Land Title Certificate for Lot 12A;
 - Exhibit B – Land Title Certificate for Lot 13A;
 - Exhibit C – Land Title Certificate for Lot 14A;
 - Exhibit D – Land Title Certificate for Lot 15A;
 - Exhibit E – Land Title Certificate for Lot 11;
 - Exhibit F – Survey of Subdivision for Lots 11, 12, 13, 14, & 15; and
 - Exhibit G – Lot Map.

Preliminary Matters

- [6] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [7] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [8] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*.
- [9] The Chair outlined to the parties in attendance that a Postponement Request had been received from Legal Counsel for the Appellants and the Postponement Request will be dealt with as a Preliminary Matter.

Summary of Preliminary Matter (Postponement Request from the Appellant)

- i) Position of Legal Counsel for the Appellant, A. McDaniel (Ogilvie LLP), representing the Grovenor Community League et al*
- [10] A. McDaniel indicated that the postponement request was so the Appellants could more thoroughly canvas the residents.
- [11] The subject site is zoned RS - Small Scale Residential which is to provide certain types of residential homes in addition to limited opportunities for community and commercial development to provide services to local residents.

- [12] Given that this is not a residential development and thus would arguably have to provide services to local residents, he submits that having a chance to canvas more of the local community, and to obtain their input is necessary for the Board to make a decision as to whether the development is compatible at the proposed address and with the surrounding uses.
- [13] Based on the timing of the hearing, the Appellants were not able to canvas the entire community; however, with a postponement they would be able to complete the canvassing.
- [14] There would be no prejudice in granting a postponement.
- [15] The development permit is for Plan 1623397, Blk 3, Lot 11 that was issued at the end of July 2024.
- [16] On September 14, 2024 it was determined that Lot 11 ceased to exist. He provided the updated plans and titles to the Board.
- [17] Lot 11 ceased to exist because Lots 11 to 15 were reconfigured; four lots have been created from the five, all of which are in the name of Edmonton 2 Spirit Society (E2SS). Lots 12A and 15A are subject to a development agreement with the City of Edmonton and E2SS.
- [18] This suggests that the parties are potentially working on a development of a different kind than the one that was proposed and further to their request to canvas and gather further community support, he believes that they would need additional time to address the new issue before speaking to the merits of the appeal.
- [19] A. McDaniel provided the following information in response to questions by the Board:
- a) The postponement will give them the opportunity to speak to the other residents.
 - b) If they were able to canvas the entire community and find that no one intended to use this proposed service, the proposed development would not be providing services to the residents and that would support their position that the proposed development is not suitably zone as a Discretionary Use.
 - c) He agreed that community consultation is not a requirement in the RS - Small Scale Residential Zone.
 - d) It is his understanding that the proposed development is listed as a Discretionary Use on the development permit. However, that was for Lot 11 which does not exist anymore which supports the postponement request for him to have more time to look into the merits.
- ii) *Position of Affected Property Owners in Support of the Appellant*

R. Smart

[20] R. Smart owns the property south of the subject site.

[21] In his opinion, there has not been enough time for residents to discuss the proposed development.

iii) Position of the Development Planner, I. Welch

[22] I. Welch indicated he is not opposed to the postponement request. However, he is summoned for jury duty and cannot guarantee when he would be available at a later date.

[23] The new Lots are not in the records as of yet. The Lot lines for the overall site have not changed and he does not see how that would impact the subject development permit application.

iv) Position of the Respondent, P. Gibson, representing Lumia Enterprises Inc., who was accompanied by B. Spencer and Q. Wade of Edmonton 2 Spirit Society (E2SS)

[24] P. Gibson indicated that his clients will address the postponement request.

B. Spencer

[25] B. Spencer and some of her employees at E2SS will be out of the country and will not be available in October 2024.

[26] In her opinion, canvassing the neighbourhood will not benefit anything.

[27] She could not confirm the date when she will be back in the country but it will not be until the end of October at the earliest.

Q. Wade

[28] Q. Wade indicated that there is no consultation required for this development so there should be no reason to canvas the neighbourhood.

[29] They tried to speak with the Grovenor Community League several times. They had several opportunities to get the information they needed.

[30] More canvassing will not change that until they can meet with the Community League.

v) *Rebuttal of A. McDaniel*

- [31] A. McDaniel indicated that none of the Respondents had provided that there would be any prejudice to the postponement request being granted except for their availability. He is able to attend a hearing at the end of October.
- [32] The community was not contacted by the Respondent to provide any information about the proposed development.

Decision of Preliminary Matter (Postponement Request from the Appellant)

- [33] In determining whether to grant a contested postponement, the Board must balance the often competing interests of the parties involved with the Appeal.
- [34] The Board heard evidence from Counsel for the Appellant that the postponement is being sought in order to further consult with the neighbours and gather additional support in favour of the Appeal.
- [35] Moreover, Counsel for the Appellant recently identified a change in the legal description of the lands and believed additional time would allow him to fully consider the implications of that change in legal description vis-à-vis the development permit in question.
- [36] The Respondent, on the other hand, has an interest in the development proceeding which would be delayed as a result of any postponement. This delay would likely be extended given the Respondent's unavailability in the month of October.
- [37] They further argued that additional consultation was not necessary nor relevant given that there is no requirement for community consultation with respect to the proposed development.
- [38] The Board is of the opinion that a postponement is not appropriate in these circumstances.
- [39] The Appellant had ample time to conduct any consultation they desired leading up to the Appeal. The Board agrees that any additional consultation with respect to the proposed development will provide limited probative value in the context of what is being considered with respect to the proposed development.
- [40] This is so because there is no requirement for consultation with respect to the variances being sought. The Board's test with respect to an appeal of this nature is to assess the relative impacts of the proposed development and not to assess its popularity amongst neighbours.
- [41] The Board is accordingly satisfied that the Appellant, and neighbours in opposition, are sufficiently represented and are able to put their best case forward without the need for any additional consultation.

- [42] Moreover, the impact of the legal description changing with respect to lands is irrelevant. Any permit that is granted for lands run with the lands even in the case of a subdivision, consolidation, or other circumstances that trigger a change of legal description.
- [43] The impacts of such a change have no bearing on this Board's consideration of the matter before it.
- [44] Accordingly, the postponement request is denied.

Summary of Hearing

- vi) *Position of Legal Counsel for the Appellant, A. McDaniel, representing the Grovenor Community League et al*
- [45] A. McDaniel read from his written submission that was previously provided to the Board.
- [46] This is an appeal to reverse the Development Authority's approval for Development Permit Application 494423383-002 (the "Appeal").
- [47] The Appeal was made July 26, 2024, for a Discretionary Development located at 10414 - 142 Street NW (Legal Description: Plan 1623397 Blk 3 Lot 11), developed for the use of "Community Services" as defined in Section 2.10.2.9 of the *Zoning Bylaw* (the "Development").
- [48] The Development required two variances: (1) Use of a Setback Area for bike parking, 2.65 metres from the property line facing 142 Street; and (2) Location of a Use. The Community Service is sited in an interior lot, instead of a Corner Lot (Section 2.10.3.5.1, *Zoning Bylaw*).
- [49] Section 2.10.3.5 of the *Zoning Bylaw* provides that Community Services developments are only permitted: (1) on a corner site that abuts a collector road or arterial road; (2) in an existing non-residential building; or (3) on a site where an interior side lot line abuts a site in a non-residential zone. None of these characteristics apply to the proposed development.
- [50] The Development is owned by the Edmonton 2 Spirit Society (E2SS) and is being developed in conjunction with the Jasper Place Wellness Centre (JPWC).
- [51] The Development is zoned as RS Small Scale Residential Zone ("RS Zone"). Section 2.10.1 of the *Zoning Bylaw* provides the following purpose:

To allow for a range of small scale Residential development up to 3 Storeys in Height, including detached, attached, and multi-unit Residential housing. Limited opportunities for community and commercial development are permitted to provide services to local residents.

[52] The Development is classified as a Community Service, as set out in Section 2.9 of the *Zoning Bylaw*:

Community Service means a development used for institutional, cultural, recreational, religious, spiritual, social, arts, and educational activities that provide a service to the public and may involve people gathering at peak times and creating intermittent impacts such as noise and traffic. This Use does not include Child Care Services, Libraries, or Schools.

Typical examples include: community halls, community league buildings, community recreation centres, Religious Assemblies, Seasonal Shelters, and Year-Round Shelters.

[53] Section 2.10.3.5 of the *Zoning Bylaw* provides that Community Service is only permitted:

3.5.1.1 on Corner Sites that Abut a Collector Road or Arterial Road, except

3.5.1.1.1 Child Care Services are permitted on any Corner Site where proposed in a where proposed in a building previously developed as Single Detached Housing;

3.5.1.2 in an existing non-residential building; or

3.5.1.3 on a Site where an Interior Side Lot Line Abuts a Site in a non-residential Zone, at the time of Development Permit application.

[54] Section 687(3) of the *MGA* provides that:

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

(a) must act in accordance with any applicable ALSA regional plan;

(a.1) must comply with any applicable land use policies;

(a.2) subject to section 638, must comply with any applicable statutory plans;

(a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;

(a.4) must comply with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises;

(b) must have regard to but is not bound by the subdivision and development regulations;

(c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;

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

(i) the proposed development would not

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

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

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

[55] In his opinion, the proposed development is a Discretionary Use and requires variances in order to proceed. The development is incompatible with the surrounding areas, does not conform with the Use in the *Zoning Bylaw*, and is inappropriately zoned for RS Zone Use.

[56] The development does not meet any of the requirements as set out in Section 2.10.3.5.1 of the *Zoning Bylaw* and the proposed development will unduly interfere with the amenities of the neighbourhood and materially interfere with the use, enjoyment or value of the neighbouring parcels of land.

[57] As the proposed development is a Discretionary Development, as opposed to a Permitted Use, the Board is entitled to consider whether the development is compatible with the surrounding Uses. If the Board determines that the development is compatible, the Board must then determine whether the development, with the required variances, meets the test set out in Section 687 of the *MGA*.

[58] The proposed development is zoned as RS Zone, which provides for small scale residential developments, multi-unit residential homes, and limited opportunities for community and commercial development to provide services to local residents. As the development is not a proposed residential development, to meet this use, it would have to be a community or commercial development to provide services to local residents.

- [59] Attempts were made to speak with the residents who live within 60 metres of the subject site, as shown in Figure 1. None of the residents who were surveyed indicated that they supported the Development, nor that they would make use of any of the potential services provided.
- [60] Residents who were surveyed indicated various concerns with the development and the potential uses, including the potential for increased traffic and congestion, safety concerns, increased crime and nuisance, and a decrease in property value associated with being in close proximity to the development.
- [61] The Appellants were not able to contact each of the residents within this 60-metre radius within the deadlines provided, nor were the Appellants able to canvas the remaining residents of Grovenor with respect to this, and other concerns with the proposed development. An adjournment of this Appeal was requested in order to give every resident the opportunity to speak to these, and any other concerns with the proposed development.
- [62] The Appellants received a letter from E2SS and JPWC indicating their purchase of the land and intention to proceed with the development. The letter indicated that there would be an information session to provide details of the proposed development. However, nothing was planned to provide details to the Appellants.
- [63] The Appellants requested additional information from E2SS and JPWC on multiple occasions concerning the development, but they have not received any additional information. The only information regarding the development was from the City of Edmonton at the Appellant's bimonthly board meeting, where it was disclosed that the development would provide services to homeless individuals fleeing from poor domestic situations.
- [64] The permit provided in conjunction with the development also does not specify or narrow the intended uses of the development. The development has the potential for the entire range of Community Services uses, including Temporary and Year-round Shelters. Based on the wide range of uses, the development has the potential to be a significant and detrimental intrusion to the Community of Grovenor, and one of which has effectively been universally opposed by residents.
- [65] The Appellants and the residents of Grovenor are concerned that the development could be used to provide these types of services, in addition to as a temporary or year round shelter for homeless individuals.
- [66] The facilities that are utilized as shelters for homeless individuals bring an increased likelihood of crime and nuisance within them, and pose a risk in the surrounding areas. A study recently reported in the Edmonton Journal that assaults in two homeless shelters in Edmonton are trending upward.

- [67] The Appellants attended the two other facilities on September 10, 2024, which provide similar services to those described such as health services and shelter for the homeless, as shown in photographs in Schedule "A". Both of these facilities are located on a corner lot, as opposed to an interior lot. As can be seen in the photos, individuals who appear to be homeless are spread out to each side of the facility, some looking to have collapsed or are not conscious, one in which an ambulance had to be called during the short period of time during which the photos were taken. The areas immediately surrounding these shelters are filled with litter and debris. There can be no argument that circumstances such as those depicted in these photographs are not appropriate to be in any proximity to the amenities. Given that the development would be situated on an interior lot, as opposed to a corner lot, circumstances such as those depicted in these photographs would likely extend in front or and/or into the residential lots of both 10412 and 10424 - 142 Street NW , as well as 10417 and 10427 - 143 Street NW.
- [68] The development is not compatible with the proposed location, which is situated in between residential dwellings, adjacent to other residential dwellings within a residential neighbourhood, and in close proximity to amenities which would be detrimentally impacted, including the amenities, which are largely utilized by young children.
- [69] As the development is a Discretionary Use, and given that this provides the Board with the discretion to consider in compatibility in the area, the Appellant respectfully submits that the Board consider the objections of the residents who live immediately surrounding the Development (those within the 60-metre radius identified in the Permit). These residents have indicated that they oppose the Development and that there is no intention to utilize the potential services provided.
- [70] Given the wide variety of Uses which could be utilized by the development, including the use of the development as a Temporary or Year-round Shelter, and the lack of information provided by the E2SS and JPWC, that the potential intrusion of the development is significant and, as a result, has been opposed by the residents of Grovenor.
- [71] In his opinion, the proposed development is incompatible with the surrounding Uses and the appeal should be allowed on this ground alone. The development fails to meet the requirements of the *Zoning Bylaw* and does not meet the test as set out in Section 687 of the *MGA*.
- [72] The Development is proposed to be located in an interior lot, as opposed to a corner lot, on which no non-residential building currently exists, nor did one exist at the time the development permit application was issued, and is not on a site where an interior side lot line abuts in a non-residential zone. As identified in Figure 1 of his submission, the subject site is located at 10414 - 142 Street, denoted by "x":

- [73] The failure to conform with the requirements of Section 2.10.3.5.1 of the *Zoning Bylaw* make it inappropriate for its current proposed location. The failure to conform with the requirements of Section 2.10.3.5.1 of the *Zoning Bylaw* also contribute to the development's interference with the amenities of the neighbourhood and the use, enjoyment or value of neighbouring parcels of land.
- [74] As set out in Section 687(3)(d) of the *MGA*, in determining an appeal, the Board may make an order or decision or confirm the issue of a development permit even though the proposed development permit does not comply with the land use bylaw, if, in its opinion, the development would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and, the proposed development conforms with the use prescribed for that land or building in that land use bylaw.
- [75] The proposed development would both unduly interfere with the amenities of the neighbourhood and materially interfere with or affect the use, enjoyment and value of the neighbouring parcels of land.
- [76] With respect to interference with the amenities of the neighbourhood, the Development is proposed to be located within a close proximity to the following neighbourhood amenities, which have been indicated on the map shown in Figure 2:
- i. Grovenor School (K-6);
 - ii. Grovenor Community League;
 - iii. Grovenor Spray Park;
 - iv. Grovenor Skate Park;
 - v. Grovenor Community Playground; and
 - vi. Grovenor Community Outdoor Rinks.
- [77] In addition to the listed amenities, the field located between the Grovenor Community Outdoor Rinks and 104 Avenue is a space regularly utilized by Grovenor residents for recreational activities, in addition to Community League events including, but not limited to, its annual Fall Fest event. The amenities are all utilized by children.
- [78] The proposed development will create additional traffic in the areas of 142 Street, 104 Avenue, the alley between 142 and 143 Streets, and 143 Street.
- [79] The location of the development, exacerbated by its use of an interior lot, will not only create additional traffic volume, but will create traffic into areas where it will pose safety concerns with those utilizing the amenities. As shown in Figure 1, the development is located immediately in front of a T-intersection between 142 Street and 104A Avenue, which is immediately north from a lit crosswalk. Given that 142 Street already experiences significant traffic volume, particularly during times at which children would be traveling to or being picked up from Grovenor School, a concern is that this will divert those attempting to utilize the development to use 104 Avenue, as well as the alley between 142 and 143 Street. Additional lit crosswalks have been installed along 142

Street between 104 and 106 Avenue as a result of the existing volume of traffic and pedestrian usage. There are outstanding requests to the City of Edmonton to upgrade these crosswalks to address concerns of the Community. The proposed development will exacerbate the existing concerns.

- [80] Neither of these roadways are suited for increased traffic, congestion, and the potential for the use to pick-up/drop-off those utilizing the development, and will cause additional safety concerns to residents' whose houses border these streets, as well as those who are utilizing the amenities, including children going to and from the Grovenor School.
- [81] An attempt was made to speak with all residents who live within 60 metres of the development. Of all the residents who were able to be contacted, each indicated that they had a concern regarding the potential for increased traffic and congestion that would accompany the Development in and around the neighbourhood and the safety concerns which accompanied such increased traffic and congestion.
- [82] Similar concerns were raised to the Board regarding a proposed Child Services development which would have increased the volume of vehicular traffic into a residential neighbourhood, including increased traffic within areas which posed safety concerns to the use of amenities, of children walking to and from a nearby school, and contributing to existing traffic and delays on a heavily traveled main road. As a result, the Board found that the proposed development did not satisfy the requirements of Section 687(3)(d) of the *MGA* and allowed the appeal (*D. Wilson v Development Authority of the City of Edmonton*, 2024 ABESDAB 10056).
- [83] In addition to concerns related to the increased traffic and congestion that would accompany the development, which would be exacerbated by its use of an interior lot which also borders a heavily trafficked street, every resident who was surveyed indicated that they had safety concerns with respect to the potential for increased nuisance and crime that would accompany the development, given that it can be utilized as a shelter for homeless individuals.
- [84] Anything remotely comparable to the circumstances as outlined in Schedule "A" would necessarily constitute undue interference with the amenities of the neighbourhood and materially interfere with or affect the use, enjoyment and value of the neighbouring parcels of land, especially given the proximity of the development to the amenities.
- [85] During the survey of the residents within 60 metres (in addition to a small number of residents bordering this vicinity), at least 13 residents indicated that they had experienced some form of nuisance or crime associated with individuals believed to be homeless in the area, including, but not limited to home break ins; vehicle break ins; vehicle theft; and disorderly conduct.

- [86] Residents are concerned that the development, given the limited information provided suggesting it may be used as a shelter, will only serve to exacerbate these concerns which are already present in the Community.
- [87] With respect to the effect on the value of neighbouring parcels of land, the Appellants are concerned that the development will lower the value of the parcels of land immediately adjacent to the development, as well as throughout the neighbourhood, especially when taking into consideration the circumstances surrounding the two shelters as depicted in Schedule "A", the Appellants respectfully submits a common sense conclusion can be drawn that property values will be negatively impacted in similar circumstances.
- [88] In Schedule "C" of his submission is a letter authored by L. Yule, a Grovenor resident and longtime residential realtor. L. Yule's opinion was that this type of development could negatively impact property values by as much as 15 percent.
- [89] The Appellants have not had any contact with the Responses regarding the proposed development except for the initial letter that was sent to the Grovenor Community League Board. The Appellants requested additional information from the City representatives on multiple occasions but have not received anything from E2SS.
- [90] Given the lack of information provided and the broad nature of the Community Services zoning, the Appellants took the only recourse available to them at the time and filed the appeal.
- [91] The Respondent's submission indicates that R. Smart, the property owner of two properties directly south of the development agreed to the variances prior to the development permit being approved, which is incorrect. R. Smart provided information that he is in opposition to the proposed development.
- [92] The proposed development is zoned RS - Small Scale Residential which is to provide certain types of residential housing, which this building is not, or to provide the community and commercial development to local residents.
- [93] The submissions from E2SS indicate that they take the position that this building is not open to the public at any time. The proposed development would not be providing any services to the residents of Grovenor.
- [94] E2SS also makes comparisons to other Community Services and events which are not relevant to the matters before the Board.
- [95] With respect to the comparison with the Faith Community Church, the Church is located in Glenora, not Grovenor. The Church contributes to both traffic and pedestrians which only adds to the points raised in his submissions that there is already sufficient traffic around this area and to add more would create safety issues. Especially those using the amenities of the neighbourhood as referenced in his submissions.

- [96] E2SS makes a comparison between the proposed development and Grovenor Fall Festival, which should not be considered as the Festival occurs on one portion of one day each year. It is specifically intended to be attended by the residents of Grovenor who live within walking distance of the park located at 104 Avenue and 143 Street. The festival has been taking place for several years and is well supported by the community and no residents have taken issue with the event.
- [97] With regard to E2SS submissions, they claim that the development is only 12 metres from the corner, which is incorrect. R. Smart indicated that the three lots that separate the proposed lot and 104 Avenue total at least 125 feet, which is 38.1 metres.
- [98] The developer takes a position to that of E2SS that the use of the facility would be for the residents in the community, despite E2SS stating that this facility would not be open to the public.
- [99] In his opinion, the Use is not compatible with the surrounding land, and is inappropriately zoned and does not meet the test as set out in Section 687(3)(d) of the *MGA*.
- [100] This is due to the fact that the development, especially given its location within an interior lot, will unduly interfere with the amenities of the neighbourhood and materially interfere with and/or affect the use, enjoyment and/or value of the neighbouring parcels of land. This is due to the fact that the development will increase traffic and congestion in and around the neighbourhood, particularly in areas which are unsuitable and/or create safety concerns for residents, and particularly children utilizing the amenities. This is already an existing problem which has required the Appellant to make requests of the City for additional resources regarding crosswalks. The development will create and increase incidents of crime and nuisance, a problem which is already existing in the community. All residents who have been able to be consulted on this issue have confirmed that they share these concerns and are in opposition to the proposed development on these and other grounds.
- [101] Given the potential Uses of the development, it is likely that there will potentially be a decrease in value of neighbouring parcels of land.
- [102] A. McDaniel provided the following information in response to questions by the Board:
- a) Up to this point, they have not received additional information after requesting it.
 - b) Based on the fact that the subject site is zoned in a way that provides for a Temporary Shelter use, this has brought concerns to the residents and they would like to take action to prevent that potentially from happening.
 - c) They cannot be sure if the proposed development will have a negative impact on the community. In his opinion, the information provided has not been accurate. The Respondent indicated they reached out to R. Smart for his support but that was not

true. To his knowledge, the Respondent has not reached out to the community to discuss the proposed development.

- d) The subject site is in the middle of a heavily traffic road. 142 Street at various times of the day, especially when kids are being dropped-off or picked-up or children are walking is a concern. Drivers would stop in the middle of the road rather than stopping at the corner. Cars would have to go to the alleyway between 142 Street and 143 Street which is narrow and not designed for an increase in traffic. To get to that roadway, vehicles would have to use 104 Avenue roadway which is immediately in front of the Community League and leads to the school.
- e) If the development was on an interior lot it would exacerbate the potential for congestion instead of being on a corner lot with more space. R. Smart's properties are included on the corner lot and that will increase traffic congestion, parking and safety concerns on that corner. Despite this development not being on that corner, it will interfere with the use and enjoyment of R. Smart's land.
- f) The photographs shown in Schedule "A", both of those facilities have good intentions but you see that the intention and the outcome do not go hand in hand. If that is the case, he does not believe the intention being good, inclusive, or compassionate, or otherwise allows for the fact that the outcome might be the one that he is speaking about. The community is concerned about the outcome.
- g) The proposed development could be in any other place that is not in an interior lot in a residential area where the outlined concerns are not present.
- h) His understanding from reading the development permit is that the proposed development was zoned as a Discretionary Use.
- i) The Chair referred to the *Zoning Bylaw* and indicated that a Community Service was listed as a Permitted Use.
- j) Further to his submission, as listed under the definition of Community Service, a Seasonal Shelter and Year-round Shelter are the main concerns of the Appellant and they could contribute to not meeting the test in Section 687 of the *MGA*.
- k) He cannot speak how the proposed development fits under the definition of Community service as he has not received all the information needed. He is not certain what the proposed development will be used for. The uses described in the Respondents submissions would fall under those uses.
- l) The back lane lane is narrow and additional traffic could be diverted to the back lane due to traffic congestion on the street, which would create concerns with the bike setback.

m) The Appellants main concern is the subject site being located on an interior lot and the locational criteria.

vii) Position of Affected Property Owners in Support of the Appellant

R. Smart

[103] R. Smart owns properties adjacent south of the subject site.

[104] There was not enough information provided to the residents regarding the proposed development.

[105] His main concern is parking as there is no on-site parking. Parking on the street is already congested and parking will become more congested with the proposed development.

[106] In his opinion, there are several inaccuracies in the Respondent's submission. He did not provide support for the proposed development.

[107] The Respondents believe there is 12 metres from the corner of the property but it is closer to 40 metres from the corner.

[108] The proposed development is in a high children area with foot traffic with the crosswalks. There is a seniors' home across the street that utilizes the crosswalk and have issues with parking. There is a liquor store across the street and the proposed development does not fit in with the neighbourhood.

[109] In the Respondent's response submission, they indicated they would not post signage for the safety and concerns of the residents. In his opinion, there will be a safety issue for the community. If the development is associated with the Jasper Wellness Centre, there is no wellness in granting the proposed development and will decrease the residents property value.

[110] If several people are staying at the subject site and the majority of them drive, there will be an increase in traffic and parking in the area.

[111] R. Smart provided the following information in response to questions by the Board:

- a) The subject site is not on a corner so they do not have the extra parking that a corner lot would provide.
- b) The proposed development is in the middle of the neighbourhood and does not fit in a residential neighbourhood. There are no commercial developments on that side of the street.
- c) He is more concerned with vehicle parking than bicycle or employee parking. People park in the field as there is no parking in the neighbourhood.

J. Chambers

- [112] J. Chambers owns the property directly behind the subject site. Her daughter resides in the house.
- [113] Traffic and parking in that area is non-existent and the rear lane is narrow.
- [114] Accessing that location on 143 Street is busy and there is no place to park. It is hard to cross the street at 104 Avenue, traffic does not stop.
- [115] She is not against housing but she did not receive any information on what they are proposing and what the Use will be at the subject site.
- [116] There are residential developments on both sides of the development.
- [117] There is no place for cars to park at the subject site and parking should have been provided.
- [118] The rear lane is already busy with traffic.

J. Guevara

- [119] J. Guevara is concerned with the safety of the area.

K. Wagner

- [120] K. Wagner mainly had questions that came regarding the consolidation of the land.
- [121] In her opinion, the proposed development will not benefit the community.
- [122] She is concerned with safety due to an excess of traffic in the area and the individuals using the proposed development.

viii) Position of the Development Planner, I. Welch

- [123] I. Welch indicated that there is a proposal for a future residential development on this site but that development permit application has not been submitted.
- [124] He believes that the proposed development will be integrated into a future residential development.
- [125] A Community Service Use has a broad definition. Under Section 7.1.20 of the *Zoning Bylaw*, it requires a separate development permit. In the event that the Community Service building was turned into a Temporary Shelter, that would require a separate development permit. They are applying for a Community use that would qualify as a Community Service.

- [126] Even though there are concerns about the nature of this transitional temporary housing, there is a fundamental difference between a facility that is residential that provides a temporary shelter to those leaving violence and a shelter. That is different from a transitional housing facility and that is not what is being applied for one.
- [127] Community consultation is not required under the *Zoning Bylaw* and he did not receive any calls asking for additional information regarding the proposed development.
- [128] Even if a Community Service is not open to the public, it is providing a service to the members of the general public and the community. It is each person's opinion what constitutes a local community or who is part of the public. Once members of E2SS are in that community they are part of the community.
- [129] All developments must be in conformance with both the *Zoning Bylaw* and the Statutory Plans in effect. The City Plan provides some additional guidance on development such as this.
- [130] The City Plan, Policy 2.3.3 is to promote gathering spaces for culture, sports, recreation and entertainment opportunities to support both formal and informal uses.
- [131] Policy 2.3.3.3 is to provide gathering and event spaces for hosting indigenous cultural and ceremonial practices. The Community Centre will be providing such practices as part of their community work. Along with the other elements of The City Plan, this Policy should be taken into consideration.
- [132] The proposed development is a Discretionary Development, not because of the Use but because of the location and the placement of the bicycle parking variances.
- [133] With regard to a previous SDAB decision mentioned by the Appellant, that decision discusses facts that are different from the proposed development. The site is in the middle of the block but is also abutting an arterial road on 142 Street. In the previous SDAB decision, the development was for a Child Care Service on a corner lot, on a local road in the middle of the subdivision. That is different from a Community mid-block on an arterial road.
- [134] I. Welch provided the following information in response to questions by the Board:
- a) He confirmed that the proposed development would be a Class A Permit if the bicycle rack was not in the setback and on a corner lot.
 - b) The site is designed to appear residential. The intention for a corner site is to allow for less congestion. The site is on a road that allows for a higher level of traffic.
 - c) In his opinion, the subject site being in the middle of the block will not negatively impact the neighbourhood.

- d) The correspondence regarding the proposed development took place at the beginning of the *Zoning Bylaw* transition and the Development Authority was hesitant to grant variances at that time. There are provisions in granting variances in the *Zoning Bylaw*. Due to the timing of the review it was determined that a variance could be granted.
- e) Section 7.120.5 of the *Zoning Bylaw* provides a list of criteria for residential changes of Use and states that a change of Use for a Community Service that is not a Year-round Shelter or Seasonal Shelter does not require a development permit
- f) In the past, there have been development permits to change the use from general industrial to general industrial/cannabis production. He has issued permits that were for Personal Service to a Body Rub Centre and there are provisions for doing that.
- g) He would not object if the proposed development imposed a condition that it is not to be used as a Year-round Shelter or a Seasonal Shelter.
- h) A factor in his decision was that the proposed development was abutting a collector or arterial road.
- i) He could not comment on why the locational criteria for a development is to be on a corner lot and also abut an arterial or collector road.
- j) Certain community use services and general community uses can, and do, have some impact on the community and locational criteria is designed to limit that. This was not a non-variable requirement. Some developments have criteria that cannot be varied.
- k) People are allowed to park on 142 Street and the assumption is people will park and stay in the area for long periods of time. However, people might park for short periods of time to pick-up or drop-off individuals. For any events in the area there could be parking or traffic issues. That is not something that is taken into consideration during the development review.
- l) Transportation Services did not have a concern with traffic or parking in the neighbourhood and supported the proposed development.

ix) *Position of the Respondent, P. Gibson, representing Lumia Enterprises Inc.*

[135] P. Gibson indicated that the Respondents, Q. Wade and B. Spencer will provide the summary to the Board.

Q. Wade

[136] Q. Wade indicated that he is the Housing Manager for Edmonton 2 Spirit Society and B. Spencer is the Executive Coach and the Elder Resident for Edmonton 2 Spirit Society (E2SS).

- [137] The Appellant's submission has photographs of an organization that is a shelter. The proceed development is not a shelter.
- [138] The concerns should be about variances. The development should be how the proposed should be impactful to the other uses and enjoyment of the land.
- [139] The development permit was issued with a variance for the bicycle rack and the site not being on a corner lot. In their opinion, the proposed development will not negatively impact the use, enjoyment, or value of neighbouring parcels of land.
- [140] During the design phase, at least 13 attempts were made to contact the Grovenor Community League.
- [141] The main concern is the building is not on a corner lot. That does impact the Use of the development, but the placement of the building.
- [142] The proposed development is not open to the general public and will not be used by the public and will have the capacity of 50 people and will be used for the residents. If the development was not on its own lot it would be used as amenity space for an apartment type development.
- [143] There will only be 24 residents and the amenity space will only be used by the residents.
- [144] The bicycle rack will hold six bicycles. The subject site is on a transit-oriented development and parking will not be an issue.
- [145] The proposed development will only be used for programming purposes. There will be no on-site intake, and no access to the public. There is no reason to be concerned where the bicycle rack is located.
- [146] The bicycle racks can be seen from the building so they can be monitored to ensure bicycles are not abandoned in the area.
- [147] With regard to the site location variance. As an Indigenous organization following traditional cultural ways of healing; drugs and alcohol will not be permitted on the site. Ceremonial activities will be the only event that takes place at the subject site.
- [148] E2SS is not a harm reduction site. All individuals will be referred and screened.
- [149] The foot and vehicular traffic to this building would be no more than an apartment building, which would include parking.
- [150] The amenity space only has the capacity for 50 people with 24 of which will be residents of the building. The rest of the space would be for employees. There will be approximately 30 to 35 people in the building at any given time.
- [151] The development is within permitted guidelines of the City of Edmonton.

- [152] Given the small number of people that will be entering the building who are not residents, it is expected that the Community Service building will have little or no impact on parking in the area.
- [153] The Grovenor Park Recreation building is located on 143 Street and 104 Avenue, which is in close proximity to the E2SS property.
- [154] The proposed development is not a shelter situation where they are permitting harm reduction practices to continue because that is not their mandate.
- [155] The location of the building being in the middle of the block will make no difference if it was on a corner lot.
- [156] They have spent a significant amount of time on the project attempting to ensure that they were conducive to the communities concerns. However, without being able to meet with the community they could not address their concerns.

B. Spencer

- [157] The definitions are interpreted differently for everyone. The proposed development is not a harm reduction community resource and there are no plans within the Society to do that.
- [158] The offices for the Society are not at the subject site. The amenity space is a place for herself, as the Elder, other colleagues, and Elders on their Council who come to the site to participate in ceremonies and the healing work to help their kin recover from gender-based violence and to move forward.
- [159] Her bundle and sacred items will be at the amenity space. It is not a place for individuals to just come, bring in alcohol, or arrive under the influence. It is considered a sacred space when they bring their bundles and put them there and to do the work they need to for the community.
- [160] They have separate offices and separate community resources where they do education, work, and provide ceremonies for the ETSS community at large. That is separate and will never be at the subject site.
- [161] Q. Wade and B. Spencer provided the following information in response to questions by the Board:
- a) Q. Wade indicated that there is a development agreement with their funders that the development has to be for affordable housing for at least 20 years.
 - b) There was no agreement to do community consultation in the funding agreement or otherwise.

- c) He confirmed that the subject site will not be used for a shelter and will only be used for ceremonies for the Elders.
- d) B. Spencer indicated that condominium complexes have several amenities for those living in the complex. Their purpose for the amenity space in the proposed development is for them to have that space for programming and ceremonies and help individuals get connected with independence and live in a healthy way.
- e) The goal and the role for the Elders and using their traditional knowledge in teaching, is teaching their residents how to be good stewards in a community, how to build a healthy community, how to pay it forward and how to contribute to a community.
- f) There has been a lot of miscommunication. When information is considered about the variance and the use issue, a lot of information can get conflicted when accepting or considering the information.
- g) The four lots north of the subject site are for the residents of the two future apartment buildings.
- h) They attempted to communicate with the community league to provide them with information that the lots were part of the larger development. There will be 24 small scale residential units and that would be amenity space for those units.
- i) If the lot were consolidated into one lot it would have just been an amenity space. There will be 24 units over the four lots. He agreed that if the lots were consolidated into one lot there could only be 8 units.
- j) He agreed that it is a private amenity space for the residents on the adjacent lots.

x) *Rebuttal of the Development Planner, I. Welch*

- [162] I. Welch indicated that what they currently have is Community Service. If their intent is to have a future amenity area for their neutral affordable housing development, you cannot have an amenity area for something that does not exist.
- [163] Since they have chosen to apply for the facility first, they have decided on a Use class. Based on what the Respondent has submitted, that qualifies as a Community Service Use.
- [164] With regard to the term, open to the public, ultimately they are serving members of the public, which is a Community Service.
- [165] From a land use perspective, he could argue that even if it is an amenity area, it can still qualify as a distinct Community Service use on the lot. There is no prohibition on having multiple primary uses on a property.
- [166] This is a Community Service and if they want to make changes in the future they can apply for a development permit.

[167] I. Welch provided the following information in response to questions by the Board:

- a) In his opinion, the proposed development is a Community Service.
- b) The *MGA* implies some impact to the community and to a surrounding area can be expected for certain types of development. That is okay from a land use bylaw perspective, it is a question of degree. The Board would need to determine whether or not, based on the evidence at hand, is the degree of the potential impact acceptable.
- c) If there is a concern about impact, it does not reach the threshold that is discussed in the *MGA*.
- d) The proposed development could turn into an amenity facility after the Respondent obtains a residential development permit.
- e) Even if it was considered an amenity area, it does not necessarily mean it is an amenity area in the *Zoning Bylaw* or there can be cases where it can be more than one use. All the information would need to be provided for the proposed residence in question.
- f) Based on what was submitted at the time of application and in the plans, this is a Community Service. It cannot be an amenity area because an amenity area is inherently accessory in nature.

xi) *Rebuttal of A. McDaniel, Agent for the Appellant, A. McDaniel*

[168] A. McDaniel indicated that this building is not properly zoned as a Community Services building. It is not open as a public amenity. What they are describing is a private empty space that is going to be in conjunction with two 12 unit residences that are going to be built at a later date.

[169] They are applying for one thing but it will be for something different.

[170] In his opinion, it cannot be considered a Community Service building if it is not open to the public.

[171] E2SS claims that the situation is the same if the development were on a corner lot opposed to an interior lot. This is an issue that is expressly considered in the *Zoning Bylaw*. If the variances made no difference as E2SS submitted, the bylaws would not be there. This is the specific intention of the *Zoning Bylaw* is to address the difference.

[172] With regard to the nature of the traffic and parking on 142 Street. Although there are two lanes in the southbound direction, the lane immediately west bordering these residences is always used for parking, especially during rush hour traffic. The proposed development will be situated next to a crosswalk where there will not be parking. Vehicles will stop

there to try and find parking or go around the corner to the alley which will create congestion in that area.

- [173] The excess in traffic and parking in the area will create safety issues in the neighbourhood.
- [174] The Development Planner indicated that a separate SDAB decision was on a corner lot which mitigated the concerns raised by the Appellants in that case. Despite the mitigation, the appeal was allowed. With the appeal today, the Appellants' concerns are exacerbated by the fact that the proposed development will be on an interior lot. That is one of the reasons why a variance is required.
- [175] The concerns in both situations are the same and even being mitigated by a corner lot, in a separate SDAB decision, they were sufficient for the appeal not to be allowed given the concerns with respect to children arriving and departing from the school nearby.
- [176] The proposed development does not meet the test set out in Section 687(3)(d) of the *MGA*, it is not suitably zoned as a Community Services building as it will not be open to the public.
- [177] There may be the potential that the permit may be varied to include the caveat that it is not to be used as a Temporary Year-round Shelter would be an alternative to the appeal being allowed.
- [178] E2SS maintained that the Community Services building as it is currently being proposed will have an occupancy of 50 individuals, 24 which potentially would be housed in the proposed residential buildings that may or may not be built next to it. That would still leave an occupancy of 26 individuals who have to travel to and from the building.
- [179] There are already concerns about traffic and congestion from parking. An additional 26 people with vehicles support the traffic and safety concerns of the neighbourhood.
- [180] A. McDaniel provided the following information in response to questions by the Board:
- a) The written submission from E2SS is that the development will not be open to the public. A Community Services building includes the public and the proposed development will not be open to the public.
 - b) The building will not be used for anyone in the community.
 - c) Even if the Respondent had canvassed the neighbourhood, the proposed development will not be used by the public.
 - d) There will still be parking issues in the area if an 8 dwelling development was constructed in the area.

Decision

[181] The appeal is **ALLOWED IN PART** and the decision of the Development Authority is **AMENDED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **ADDITIONAL CONDITIONS** to the approved Development Permit:

1. The Community Service shall not be used as a Seasonal Shelter nor a Year-round Shelter.
2. The proposed development shall not be used as an Accessory Private Amenity Space for any future adjacent developments. Any such change would require a new development permit.

Reasons for Decision

I. Introduction

[182] The proposed development is for a Community Service Use in the Small Scale Residential (RS) Zone. Pursuant to section 2.10.2.9 of the *Edmonton Zoning Bylaw 20001* (the “*Bylaw*”), Community Service is a Permitted Use in the RS Zone.

[183] In granting the application, the Development Planner identified 2 variances required to support the proposed development. The are:

- 1) Use of a Setback Area - The bike parking is located in the setback, 2.65m from the property line facing 142 Street (Section 2.10.4.3.1).
- 2) Location of a Use - The Community Service is sited in an interior lot, instead of a Corner Lot (Section 2.10.3.5.1).

[184] In considering an appeal of this nature, the Board’s test is found at section 687(3)(d) of the *Municipal Government Act* (the “*MGA*”). Specifically, the Board needs to be satisfied that the proposed development which does not comply with the regulations in the *Bylaw* would not generate any negative effects in the manner contemplated by that test.

[185] For the reasons that follow, the Board is of the opinion that proposed development satisfies this test.

II. Analysis

[186] Counsel for the Appellant argued that the proposed development is for a Discretionary Use and that the Board can also consider whether the Use is reasonably compatible with the surrounding Uses.

- [187] The Board rejects this argument. The Use is very clearly a Permitted Use as identified in section 2.10.2.9 of the *Bylaw*. Where, such as here, a proposed development requires a variance, that does not change the characterization of the Use.
- [188] Instead it creates a situation where the development is discretionary - not the Use. Accordingly, the Board gives all arguments with respect to the reasonable compatibility of the Use no weight in its analysis.
- [189] Counsel for the Appellant also raised concerns that the proposed development would, or could, be used as a Seasonal or Year-round Shelter given the definition of a Community Service Use in the *Bylaw*.
- [190] However, the Board heard evidence from both the Applicant and the Development Planner that this is not what is contemplated under the development application. Moreover, that is not what is being authorized. The Board has imposed an additional condition to make that abundantly clear.
- [191] The application for the proposed development is for a Community Service Use and must be constructed in accordance with the approved drawings as noted on the conditions to the Permit. The analysis by this Board on this occasion is through that lens. No Shelter use is contemplated and this Board makes no findings on the impacts that a Shelter use would generate.
- [192] Moreover, the proposed development, and the activities which occur on the site, must conform to the definition of a Community Services Use. That definition reads:
- Community Service means a development used for institutional, cultural, recreational, religious, spiritual, social, arts, and educational activities that provide a service to the public and may involve people gathering at peak times and creating intermittent impacts such as noise and traffic. This Use does not include Child Care Services, Libraries, or Schools.
- [193] While the Applicant expressed that the intention for the space is to one day become a private amenity for adjacent property owners, that is not authorized by the wording of the Use either.
- [194] The Applicant is therefore cautioned that any activities on the Site which do not conform with this definition, or the privatization of the development as an amenity space for other nearby developments, is not captured within the purview of this decision. Any such changes in the nature of the Use would necessitate a new development permit application.
- [195] Turning then to the variances, the proposed development requires two - one to the location of the bicycle parking and the other with respect to the locational criteria for Community Service developments in the RS Zone.

- [196] The Board heard evidence from the Appellant and the neighbours in opposition that their main concern was with the Use itself, and the location of the Use. Accordingly, the variance required to accommodate the bicycle parking in the Front Setback appears to be less of a concern.
- [197] Based on the drawings and the submissions tendered, the Board is satisfied that the bicycle parking variance will have no negative effects in the manner contemplated by this Board's *MGA* test. In fact, providing parking in the Front Setback, instead of in the Rear Yard, appears to address concerns which were raised in relation to the congestion of the alleyway.
- [198] With respect to the variance relating to the locational criteria for a Community Services Use, the Board notes that these Uses are allowed as of right:
- 3.5.1.1. on Corner Sites that Abut a Collector Road or Arterial Road, except
...
 - 3.5.1.2. in an existing non-residential building; or
 - 3.5.1.3. on a Site where an Interior Side Lot Line Abuts a Site in a non-residential Zone,
- [199] Reading the section in its entirety is helpful in understanding the purpose served by a particular development standard and assists this Board in assessing the relative impacts (*Edmonton (City of) Library Board v Edmonton (City of)*, 2021 ABCA 355 at para 51).
- [200] Based on a plain reading of this section, and the submissions of the Development Planner, this section seems to be concerned with issues of congestion and impacts on adjacent residential properties associated with the intensity of a Community Services Use.
- [201] The Board heard evidence from the Development Planner that 142 Street is a busy Arterial Road and that any potential congestion would not be a factor given that individuals could be dropped off and picked up directly on 142 Street where stopping is permitted.
- [202] Moreover, the Board heard evidence that many of the users of the proposed development would be community members who would not depend on vehicular transportation in order to access the Community Services Use.
- [203] While the Board appreciates the concerns raised by the Appellants, they have little to do with the variance in question and are more so concerned with the Use in general. Issues relating to increased crime and safety concerns are not related to the fact that the proposed development is on an interior lot, nor was the Board presented with any

evidence on how this departure from a permitted location would create crime and safety concerns.

- [204] Moreover, any impacts on the amenities of the neighbourhood identified by Counsel for the Appellant, insofar as they relate to the Use itself, are irrelevant. It has already been established that the Use is Permitted. The proposed development will have identical impacts on the noted amenities of the neighbourhood regardless if it is located on a Corner Lot or on an Interior Lot. City Council has determined that those impacts are acceptable by making the Use a Permitted Use (albeit in specific locations).
- [205] The proposed development would be permitted as of right if it was located 2 lots south on the Corner Lot (assuming the bicycle parking variance was not in play as well). Moreover, the development would also be permitted as of right if either of the Lots immediately north or south of the Subject Site were zoned non-residential.
- [206] These hypotheticals assist the Board in assessing the relevancy of the potential impacts alleged by the Appellant and neighbours in opposition. Clearly, as indicated by the Development Planner, the intention of these regulations is to limit vehicular congestion in the middle of a residential block which a Corner Site on a Collector or Arterial Road seem to address.
- [207] Accordingly, the Board is persuaded by the Development Planner's submission that the proposed development will not generate any negative effects because of its location in the middle of the block due to the ability of 142 Street to accommodate large amounts of traffic and the ability for the public to access the Community Services Use directly off 142 Street.
- [208] The Board finds that any potential impacts are further mitigated by the fact that the Subject Site is in close proximity to the Corner Lot (where the development would be Permitted) and this proximity provides additional opportunities for drop off areas to address any potential congestion that may arise as a result of the Community Services Use being located on an Interior Lot.
- [209] The Board is therefore satisfied that the proposed development will not generate any of the negative effects contemplated by this Board's *MGA* test when the context of the proposed development is fully considered in light of the objectives of the regulation being varied.

III. Conclusion

- [210] In consideration of the foregoing, the Board is of the opinion that the proposed development ought to be allowed as it will not generate any negative effects in the manner contemplated by this Board's test at section 687(3)(d) of the *MGA*.

- [211] However, the Board is of the opinion that additional conditions should be attached to the permit to address some of the stated concerns of the Appellant and to provide further clarity on the scope of the Permit which may have not been entirely obvious.
- [212] Specifically, the Board imposes a condition that the proposed development cannot be used as a Year-round or Seasonal Shelter, irrespective of the language contained in the Use definition for a Community Services Use.
- [213] If such a Use is contemplated by the applicant at some time in the future, another development permit will be required.
- [214] Moreover, the proposed development must conform with the definition of a Community Service Use in the *Bylaw*. It must provide institutional, cultural, recreational, religious, spiritual, social, arts, and educational activities that provide a service to the public.
- [215] This expressly prohibits the use of the proposed development as a private amenity space for any adjacent landowners as was suggested by the operators of the proposed development. If this is the intention of the landowners in the future, it too would require an additional development permit to re-classify the Use.
- [216] Accordingly, the Appeal is allowed in part to allow for the imposition of additional conditions. The permit is therefore granted subject to these additional conditions.

A handwritten signature in black ink, appearing to read 'Rohit Handa', with a stylized flourish at the end.

Rohit Handa, Chair
Subdivision and Development Appeal Board

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development 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 with the provisions of Section 7.190 of the *Zoning Bylaw 20001*, 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 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.