PALLISER INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

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HEARING DATE: May 18, 2021
FILE NO.: 180007-21

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority of the Village of Standard (the "Development Authority") approved a development permit (the "Development Permit") application number 180007-21 for a shop accessory building to property located at 200 9 Ave East, Standard, AB, legally described as Lot 7, Block 3, Plan 751 0877 (the "Lands"). This permit was approved on March 22, 2021.

[2] On April 20, 2021, the Palliser Intermunicipal Subdivision and Development Appeal Board (the "Board") received an Appeal Application from Brent Gates. The date the appeal was received will be discussed further under the Board's reasons.

[3] The Board heard the appeal on May 18, 2021 via videoconference in according with the Meeting Procedures (COVID-19 Suppression) Regulation, AR 50/2020.

PRELIMINARY MATTERS

A. Board Members

[4] At the outset of the appeal hearing on May 18, 2021, the Chair requested confirmation from all parties in attendance that there was no opposition to the composition of the Board hearing the appeal. None of the persons in attendance had any objection to the members of the Board hearing the appeal.

B. Exhibits

[5] At the beginning of the hearing, the Chair confirmed that everyone in attendance had the hearing package. The Board marked the exhibits as set out at the end of this decision.

[6] The Chair also noted that the Panel had received supplemental submissions of the Development Authority and three additional exhibits filed by the Appellant, all of which were received on May 18, 2021 before the hearing commenced and which are marked as exhibits. There was no objection to the inclusion of these additional exhibits.

C. Miscellaneous

[7] The Board is satisfied that it had jurisdiction to heal with this matter. There were no objections to the proposed hearing process.

[8] There were no other preliminary matters raised at the beginning of the hearing.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[9] The Board denies the appeal and confirms Development Permit 180007-21.

SUMMARY OF HEARING

[10] The following is a brief summary of the oral and written evidence submitted to the Board. At the beginning of the hearing, the Board indicated that it had reviewed all the written submissions filed in advance of the hearing.

Submissions of the Development Authority

[11] The Development Authority's submissions were presented by counsel for the Development Authority. The Development Authority, Ms. April, responded to questions.

[12] The Lands are located at 200 9 Ave East, Standard, AB, legally described as Lot 7, Block 3, Plan 751 0877. The Lands are located within the Residential Single Unit Detached District (the "R-1 District") of the Village of Standard, where properties have a residential use, as set out in section 8.3 of the Village of Standard Land Use Bylaw (the "LUB").

[13] On March 1, 2021, the Applicant, Richard Couture, applied for a development permit for a "30 [feet] x 28 [feet] shop" on the Lands. On March 22, 2021, the Development Authority reviewed and approved the Development Permit subject to two conditions:

a. That the garage be 9.84 feet from the side lot boundaries and 3.28 feet from the rear boundaries; and
b. That the garage meets the setbacks requirements under LUB section 7.7.2.

[14] The Development Authority found that, with the inclusion of the above conditions, the Development Permit complied with the requirements set out in the LUB. On March 22, 2021, the Development Authority provided a notice of decision to the Applicant. The Development Authority determined that no other landowners would be affected by this approval and therefore notice was only given to the Applicant. In its submission, the Development Authority stated that the time for appeal was then 21 days from March 22. 2021. The time to appeal expired on April 13, and the Appeal was received either April 20, or April 23, likely the date that payment was made.

[15] The Development Authority stated that under section 686 of the Municipal Government Act, RSA 2000, c M-26 (the "MGA"), the appeal period for the Applicant is 21 days after the

date on which notice is given in accordance with the LUB. Since the development fully complies with the LUB, section 4.5.3 of the LUB references the notice requirements for development permit decisions. Section 4.5.3.b provides that the Development Authority must consider who is affected. Since there were no relaxations, misinterpretations or variances of the building height as defined in the LUB, there was no affected party and so notice was not material. The information of other parties would not be relevant to the granting of the permit.

[16] The Development Authority referred to *Liquor Stores Limited Partnership v Edmonton*, 2017 ABCA 435 at para 35. The Development Authority's position was that, based on this case, an "affected" party must be a party that can give relevant information or evidence to change the outcome of the appeal before the Board. However, as the application in *Liquor Stores* was for a permitted use development that conformed to all the development standards in the land use bylaw, the applicant was entitled to the development permit as of right. Therefore, notice to other persons was not required as they were not affected parties. On this basis, the Development Authority's position is that notice was not required to be sent to any other parties besides the Applicant.

[17] The decision was issued on March 22, 2021 and 21 days following this is April 13, 2021. As the appeal was filed after April 13, 2021, it should be dismissed as being out of time.

[18] The Development Authority commented upon the *Coventry Homes* case submitted by the Appellant, noting that the Court of Appeal did not discuss the issue of permitted uses, and confirmed that the Board does not have jurisdiction to extend the statutory time to file an appeal. The Development Authority also commented on the *Thomas* case submitting that it is not relevant because in *Thomas*, there was a variance, where none existed here.

[19] The Development Authority's position was that there were no grounds for appeal. Where there is a permitted use that meets all the requirements of the LUB, the Development Authority does not have the right to deny that permit.

[20] The development permit application adheres to the standards required under the LUB for an R-1 District. These include the following requirements:

a. A minimum 7.9 ft separation between the principal and detached accessory building pursuant to LUB section 7.6.1, and the approved distance was 31.5 ft;
b. A 24.6 ft separation within a triangle formed by a straight line drawn between two points on the exterior boundaries of the proposed site, 7.5 m from the point where they intersect pursuant to section 7.7.2, which was met;
c. A minimum 650.40 sq ft area pursuant to section 8.4.5.1, and the approved area was 8,632 sq ft, which was later corrected to 9,769.33;
d. A minimum width of 65.61 ft pursuant to s 8.4.5.2, and the approved width was 74.96 ft;
e. A minimum distance from front yard of the property line to the building of 13.12 ft pursuant to s 8.4.5.3(a), and the approved distance was 24.93 ft;
f. A minimum distance from the side yard to the accessory building to the street corner of 9.84 ft pursuant to section 8.4.5.4(b), which was an imposed condition of the approval;

g. A minimum distance from the rear yard to the accessory building of 3.28 ft pursuant to section 8.4.5.5(b), which was an imposed condition of the approval;
h. A maximum coverage of site by all buildings, including the accessory building, of 40% pursuant to section 8.4.6.1, and the approved coverage was 29% lot coverage; and
i. A maximum height of the accessory building of 16.40 ft pursuant to section 8.4.6.2, and the approved wall height was 16 ft.

[21] The Development Authority emphasized that the height of the building is measured, under section 8.4.6.2 of the LUB, as from the ground to the ceiling excluding the roof.

[22] The Development Authority further emphasized the following calculation to demonstrate that the lot coverage by buildings was under 40% as required by LUB section 8.4.6.1(a): The garage covers 840 sq ft, the shed covers 90 sq ft, and the house covers 1,608.88 sq ft. This totals 2,468.52 sq ft, which is 29% coverage when divided by the total area of 9,769.33 sq ft.

[23] The Development Authority added that the following calculation demonstrates that the coverage of all accessory buildings is below 10% as required by LUB section 8.4.6.1(b): The garage covers 840 sq ft and the shed covers 90 sq ft for a total of 930 sq ft. 930 sq ft divided by the total area of 9,769.33 sq ft gives a value of 9.52% and is under the maximum allowed accessory coverage of 10%. The Development Authority indicated that she had done a site inspection the morning of the hearing and there was no greenhouse on the property.

[24] The Development Authority cited the decision *Love v Flagstaff*, 2002 ABCA 292 at paras 72-74. This case holds that where a use is permitted under a land use bylaw, and the requirements of that permitted use are met, the permit must be granted subject to there being no change in the bylaw occurring before a decision is made on the application. Counsel also cited the MGA at section 640(2)(d) in support of this position.

[25] The Development Authority noted that on April 21, 2021, Council for the Village of Standard gave a first reading to Bylaw 04-2021 to amend the LUB. However, the proposed changes have not been finalized or given effect as of the date of the hearing, therefor the Board must use the LUB in place at the time of the hearing.

[26] The Development Authority's position was that the LUB had been interpreted correctly by the Development Authority, and therefore an appeal could not proceed on this basis. The Development Authority further added that the variance test outlined in the MGA at section 687(3) did not arise, as the permit was granted as of right and met the requirements of the LUB.

[27] In response to the Appellant's submissions, the Development Authority stated:

a. Despite the Appellant's comments that the garage will have adverse effects on neighbourhood, Council has determined use is permitted and if the development meets the standards of the district, then it is permitted as of right. Thus the submissions about the impact on the neighbourhood are irrelevant;
b. The garage has not been built, and so comments that its use are for commercial purposes are speculation. The presumption is that the garage is to be used for a

garage purpose. If the Applicant uses the garage for purposes which are not in conformance with the LUB, this is a separate matter which will be dealt with by enforcement action. It is not appropriate to presume what the Applicant will do.

c. The Development Authority is the person who decides whether the development meets the regulations of the R1 district and the calculations show it does;
d. The Development Authority determined that there were no affected parties as a result of it being a permitted use without misinterpretation, relaxation or variance.

[28] In response to Board questions, the Development Authority clarified that the revised lot size of 9,769.33 sq ft came from the real property report. She had originally measured the distance using the distances on the "short side" and the "long side" of the property, but since it is an odd shaped parcel, she clarified lot size from the total set out on the real property report. The Development Authority also clarified that the floor area of the garage was calculated by taking the dimensions 28 feet by 30 feet and that the calculation was taken from the exterior walls.

Submissions of the Appellant – Brett Gates

[29] The Appellant was represented by counsel, and the Appellant provided further oral submissions to the Board.

[30] The Appellant's position was that:

a. the proposed development is inconsistent with the character of the surrounding area, and contrary to the intended purpose of this district;
b. the accessory building is a shop and not permitted under the LUB provisions for an R-1 district;
c. the proposed development exceeds the permitted coverage allowed under the LUB; and
d. the Development Authority failed to provide notice to the appropriate parties.

On these grounds, the Appellant asked the Board to overturn the Development Permit.

[31] In response to the question of whether the appeal was filed in time, the Appellant advised that Mr. Gates first learned of the permit on April 15, in response to his inquiry to the Development Authority. He filed his appeal April 20, and not April 23, but even if it had been received on April 23, it would still be within 21 days as permitted by the MGA. The appeal period starts to run when sufficient notice has been given to trigger the appeal period and this is dependent upon the facts. The Appellant referenced the *Coventry Homes v. Beaumont* case. Where notice of the permit is not given, the appeal period starts when the appellant first has knowledge. The Appellant's position was that section 4.5.3 of the LUB requires notice of the issuance of any permit, and it does not exclude notice for permitted uses.

[32] With respect to the proposed development being inconsistent with the character of the surrounding area, the Appellant noted that the proposed garage will be unusually tall and large relative to other properties' garages in the area. At its peak, the structure will be over 20 feet tall. This height will block light from reaching surrounding properties and will impact the Applicant's neighbours land and ability to enjoy their property.

[33] The Appellant also stated that under section 2.3.3 of the LUB, accessory buildings must be subordinate or incidental to the use. The Appellant noted that the permit application has the proposed use listed as "30 [feet] x 28 [feet] shop". The Appellant's position is that the Applicant had indicated a desire to install a hoist and mezzanine, and the shop will be a commercial or unauthorized home business which is not a permitted use in the R-1 District.

[34] With respect to the permitted coverage, the Appellant referred to LUB section 8.4.6.1:

> Maximum Limits:
>
> 8.4.6.1 Coverage of Site
>
> (a) All buildings together including accessory buildings: 40% of the area of the site.
>
> (b) All accessory buildings: 10% of the area of the site.

[35] The Appellant's position was that the total site size was 8,712 sq ft. The proposed accessory building's area will be 840 sq ft, in addition to a 7' by 12' shed and a 10' by 10' greenhouse under construction in the backyard. Collectively, these items will exceed 10% of the lot coverage as accessory buildings, and not be compliant with LUB section 8.4.6.1(b).

[36] Finally, on the issue of notice, the Appellant's position is that pursuant to LUB section 4.5.3, Brett Gates was entitled to notice from the Development Authority as his property would be affected by the proposed development.

[37] The Appellant relied upon *Thomas v Edmonton*, 2016 ABCA 57 at para 53 for the proposition that failure to give appropriate notice is a breach of procedural fairness. When this breach arises, the permit must be overturned. The Appellant argued that he had a legitimate expectation of notice under the clear and unambiguous language of the LUB. The Development Authority cannot waive notice. *Thomas* stands for the proposition that the Development Authority cannot waive fair process including notice and that attendance at the hearing and notice are separate rights and that the appeal is not curative of the lack of notice.

[38] The Appellant also raised a concern that the Development Authority must remain neutral in proceedings and not advocate for a particular result, pursuant to *Springfield Capital Inc v Grande Prairie (City) Subdivision and Development Appeal Board*, 2018 ABCA 203 at para 19. The Appellant's position was that the Development Authority must remain neutral with respect to what the result of the Board's decision should be. To the extent that the Development Authority has made submissions contrary to this obligation, those submissions should not be considered by the Board.

[39] Brett Gates stated that an accessory building of this height does not belong in a residential area. He noted that the garage will prevent sunshine from surrounding properties. In response to Board questions, he clarified that he was referring to his neighbour to the north of the Applicant's property and not his own property.

[40] In response to Board questions, the Appellant advised that page 21 of the materials shows the perimeter to be 118.44 feet, which means that the dimensions cannot be 28 x 30 feet.

Submissions from Those Speaking in Favour of the Appeal

[41] Susan Winyard and Barbara Zeldenrust live immediately behind the Applicant's property. They stated that that their property will have three feet of separation from the Applicant's backyard, and that he currently has more than enough space to change his tires and oil. They felt the structure was too close and too high. They were concerned about it being an eyesore and a fire risk.

[42] Susan Moncks is a neighbour east of the Appellant and she considers herself a neighbour to the Applicant. She stated that her opposition to the development was not personal, but she was merely asking the Applicant to consider the impact of his decision on his neighbours. She was concerned about the height of the garage and how it would change the esthetic of the community. She would lose her view and believes that her sunlight would be affected.

Submissions of the Applicant

[43] Richard Couture, the Applicant, submitted that any noise arising from his work in the garage would not be significant. He also submitted that any interference with the surrounding properties would be minimal. He stated that his garage would not affect the neighbours to the north, since the garage will be built on the opposite side of where their area with plants and birds is located. Further, he took down trees which blocked more light than the proposed garage. He stated that the garage will match the siding on his house. The garage is for his personal use and he will park his cars inside to prevent hail damage.

[44] The Applicant advised that there will be 6 feet from the north fence, and there is currently a 10 foot gap between his fence and the fence at the Winyard/Zeldenrust yard. He is a member of the Standard Fire Department and safety is important and has been considered.

Submissions of those speaking in favour of the Applicant

[45] Arnold Leighton advised that he is a resident of Standard. He stated that there were rumours being spread about the proposed use, but at the end of the day, the Applicant has followed the rules and the development should proceed as a result.

FINDINGS OF FACT

[46] The Lands are located at 200 9 Ave East, Standard, AB and legally described as Lot 7, Block 3, Plan 751 0877.

[47] The Lands are located within the Residential Single Unit Detached District (the "R-1 District") of the Village of Standard.

[48] The Appellant, the Applicant, and all those who spoke at the hearing, are affected by the development.

[49] On March 22, 2021, the Development Authority approved the Development Permit.

[50] The Development Authority did not provide notice of the Development Permit to neighbouring properties.

[51] On April 15, 2021, Brett Gates became aware of the proposed accessory building.

[52] The appeal was filed April 20, 2021 and was filed in time.

[53] The total area of the Lands is 9,769.33 sq ft. Site coverage for the proposed accessory building (840 sq ft), plus the shed (90 sq ft) and house (1,608.88 sq ft) is less than the maximum site coverage of 40%. The site coverage for the proposed accessory building (840 sq ft), plus the shed (90 sq ft) is less than the maximum site coverage for accessory buildings of 10%.

REASONS

Jurisdiction

[54] The Board notes that its jurisdiction is found in section 687(3) of the MGA. In making this decision, the Board has examined the provisions of the LUB and has considered the oral and written submissions made by the Development Authority, the Appellant, the Applicant and those who spoke in favour of and in opposition to the appeal.

> ***687(3)*** *In determining an appeal, the subdivision and development appeal board*
> *(a) repealed;*
> *(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 clause (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.*

Affected Persons

[55] The first question the Board must determine is whether those appearing and speaking before the Board are affected persons. The Board notes that there was no objection made to those making submissions to the Board. However, for completeness, the Board will address this issue in its reasons.

[56] As the Applicant whose Development Permit is under appeal, the Richard Couture is affected by this appeal.

[57] The Board notes that the Appellant is a neighbour to the Lands. Due to his proximity to the Lands, the Board finds the Appellant to be affected by the Development.

[58] The Board noted that all of the other individuals speaking at this appeal lived in proximity to the Lands. As a result of their proximity to the Lands, the Board finds them to be affected by the Development.

Issues to be decided

[59] The Board has determined that the following issues need to be addressed:

a. Was the appeal filed in time?

b. If the appeal was filed in time, is the Development Authority's failure to provide notice of the Development Permit grounds to deny the Development Permit?

c. Is the proposed development a permitted use in the R1 District?

d. Did the Development Authority vary, misinterpret or relax any provisions of the LUB?

a. Was the Appeal Filed in Time?

[60] The Development Authority argued that the appeal was filed out of time and the Board has no jurisdiction to extend the appeal period. The Appellant argued that it did not have notice of the Development Permit until he made inquiries to the Village and once he knew, he filed his appeal within the required 21 day period.

[61] There is no dispute between the parties that the Development Authority did not provide notice of the Development Permit and the Board makes this a finding of fact. Further, the only evidence before the Board was that the Appellant became aware of the Development Permit on April 15, 2021, and the Board also finds this as a finding of fact. The Board notes that there was some question as to the date the appeal was filed. The agenda package notes at page 7 that the appeal received April 20, 2021.

[62] The Development Permit was issued on March 22, 2021. Twenty one days after March 22 is April 12, 2021. Since the appeal was filed on April 20, 2021, the question is whether the appeal was filed outside of the time for appeal.

[63] The Board examined section 686 of the MGA.

> **686(1)** A development appeal is commenced by filing a notice of the appeal, containing reasons, with the board hearing the appeal
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> . . .
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> (b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

[64] Since everyone agreed that the Development Authority did not provide notice, the Board has examined *Coventry Homes Inc v Beaumont (Town of) Subdivision and Development Appeal Board*, 2001 ABCA 49. That case stands for the proposition that the Appellant may file an appeal from when an appellant knew or reasonably ought to have known about the approved permit and proposed development. Since the Appellant became aware of the Development Permit on April 15, 2021 and filed his appeal on April 20, 2021, the Board finds as a fact that the Appeal was filed within the 21-day period and was filed on time.

[65] The question of whether notice ought to have been given under the LUB is discussed below.

b. If the appeal was filed in time, is the Development Authority's failure to provide notice of the Development Permit grounds to deny the Development Permit?

[66] The Development Authority indicated that since the Development Permit was for a permitted use that complied in all regards, the case of *Liquor Stores Limited Partnership v. Edmonton* , 2017 ABACA 435 at para 35 supports the proposition that any neighbours are not affected persons, and, therefore, under section 4.5.3 of the LUB, they are not entitled to notice. The Development Authority's position is that it is entitled to determine who is affected by the granting of the permit and, if it determines that no one is affected, then no notice needs to be delivered by virtue of section 4.5.3.b.

[67] By contrast, the Appellant argued, citing *Thomas v Edmonton*, 2016 ABCA 57 at para 53, that the obligations of notice were a mandatory procedural requirement and the failure to notify was fatal to the development permit. The Appellant argued that there was a legitimate expectation of notice under the LUB which was not followed.

[68] Section 4.5.3 of the LUB provides for notice.

> 4.5.3 When a permit has been granted, the Development Officer shall:
>
> (a) immediately post a notice of the decision conspicuously on the property for which the application has been made and/or;
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> (b) a notice in writing shall be immediately mailed to all registered owners of land who in the opinion of the Development Officer may be affected and/or;

(c) a notice shall be immediately published in a newspaper circulating in the municipality stating the location of the property which the application has been made and the use approved.

[69] Despite the submissions of the Appellant that the terms of section 4.5.3 are clear, the Board notes that the meaning of the section is not particularly clear, especially due to the use of the "and/or" as well as the inclusion of the words giving discretion to the Development Officer as to who is affected.

[70] The Board is aware that it must interpret legislation using a purposive interpretation, having regard for the words of the bylaw to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the legislation, the object of the legislation and, and the intention of the Legislature. The Board notes that section 4.5.3 deals with notice of development permit decisions. The words of the section do not contain any limitation for notice depending on whether the use is permitted or discretionary. Rather, in the first part of the section, it provides, using mandatory language, that once a development permit is issued, that notice shall be given. Further, that notice may be given in three ways, either by notice posting, by notice by mail, or by notice by way a newspaper publication. The word "shall" governs the remainder of the terms as it comes first. At minimum, at least one of the three provisions must be completed. While the Board notes that the use of the words "and/or" are not as clear as might be hoped, the Board finds that the intention of the section is to have the Development Authority provide notice of development permit decisions. The Board interprets the section as requiring a minimum of one type of notice, and perhaps two types or perhaps all three. Given the language of section 4.5.3 and its purpose to provide notice of approved developments, the Board cannot accept the argument of the Development Authority that section 4.5.3.b. overrides the main proviso that notice shall be given, thus enabling the Development Authority to provide no notice of the development permit approval at all. This does not seem to accord with the language in section 4.5.3 that states that notice must be given.

[71] Having determined that notice had to be given, the question is what impact does the failure to provide notice under section 4.5.3 have. The Development Authority argues that the *Liquor Stores* case supports their position and that no notice is required. However, the Board notes that the *Liquor Stores* case is dealing with section 686(3)(c). In that case, the Board itself did not notify the person who sought to challenge the permit. The Court was interpreting section 686(3)(c) and found that the Board did not err by not giving notice to someone outside of the 60 m notification distance in that land use bylaw. The Board does not find that *Liquor Stores* assists in the question before this Board.

[72] The Appellant argues that *Thomas* applies and that because the obligations of notice (both in *Thomas* and in this case) are mandatory, the appeal must succeed as the failure to notify is fatal to the development permit.

[73] The Board has carefully reviewed *Thomas.* In that case, the developer was seeking a variance to the development standards. Under Edmonton's land use bylaw, in circumstances where the developer was seeking a variance there was a requirement for community consultation by the developer, which the developer did not do. The Court in *Thomas* found that where a development standard variance was required and the land use bylaw mandated a community consultation by the developer, that consultation was a condition precedent to a valid development

permit. In other words, the neighbourhood expected there would be a community consultation if there would be a variance. The Court of Appeal held that the failure to have a community consultation was fatal, as the hearing before the Board could not cure the lack of a consultation.

[74] The Board here concludes that the decision in *Thomas* is not applicable to the circumstances of this case. In this case, no variances were sought or given (for further discussion on this point see below). Further, the Board notes paragraph 64 of *Thomas* where the Court states:

> [64] The inability to waive a community consultation means that the validity of a development permit remains vulnerable so long as an affected party as defined by s 814.3(24) is not consulted in accordance with the procedure in the *Zoning Bylaw*, and the time to appeal has not expired. But **this is no different than a development permit being open to appeal until such time as sufficient notice is given to all affected parties: see *1694192 Alberta Ltd. v Lac La Biche (Subdivision and Development Appeal Board)***, 2014 ABCA 319, 584 AR 112. **That a development permit remains open to challenge so long as a community consultation remains outstanding is all the more incentive for City officials – and developers – to ensure compliance with the *Zoning Bylaw*.** (emphasis added).

[75] In this case, the notice requirements under the LUB were not met. The question for the Board is whether this falls under *Thomas* or whether the effect of the lack of notice means that the Appellant could file an appeal as referenced in *1694192 Alberta Ltd.*

[76] The Board concludes that the effect of the Development Authority's failure to notify is not like that in *Thomas* where the neighbours had an expectation that the developer would consult with them. In *Thomas,* the hearing could not cure the absence of consultation. The neighbours expected a consultation and an appeal hearing was not a consultation. However, under this LUB, the only expectation that the neighbours might have is that they would get notice of the decision and then be able to file an appeal, which would be dealt with in accordance with the provisions of the MGA and the LUB. Any appeal would have to be dealt with having regard for the provisions of the LUB before the Board.

[77] Based upon *1694192 Alberta Ltd,* the Board finds the failure to notify is not fatal, since the Appellant obtained the remedy that he would be entitled to had he received notice, which is to appeal to this Board. The Board, therefore, rejects the argument that an appeal to the SDAB is not curative of the lack of notice. Had the Development Authority sent notice, the Appellant would have filed his appeal to this Board. The Board would deal with the appeal in accordance with the "rules" set out in the LUB and the MGA. That is what has happened here – the Appellant filed an appeal. The Appellant has received the "remedy" that he would have been entitled to, had notice been given by the Development Authority. Therefore, the Board finds that in this case the failure to give notice is not fatal to the permit.

c. Is the proposed development a permitted use in the R1 District?

[78] The Development Authority submitted that the shop, as an "accessory building" is a permitted use in the R1 District (se section 8.4.2. of the LUB). The Appellant argued that the use

was not accessory and stated that the Applicant had indicated a desire to install a hoist and mezzanine, and the shop will be a commercial or unauthorized home business. The Applicant indicated that the shop was to be used for personal uses only, including for the storage of his vehicles.

[79] The Board notes that there is no evidence that the shop will be used for commercial purposes, and the direct evidence of the Applicant is that it will be used for personal uses. In light of the evidence of the Applicant, who is in the best position to know what he will be using the garage for, the Board finds that the use of the shop will be personal use, and will be accessory to the residential purpose of the Applicant's house.

[80] The Board notes that should there be any allegations of use contrary to the Development Permit, these complaints should be made to the Development Authority for investigation and follow up.

d. Did the Development Authority vary, misinterpret or relax any provisions of the LUB?

[81] Having determined that the use is a permitted use, the question is whether the Development Authority varied, relaxed or misinterpreted any provisions of the LUB. If not, then under section 685(3), the Board must dismiss the appeal.

> **685(3)** Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under section 683.1(8).

Site Coverage

[82] The Appellant argued that the proposed development exceeds the permitted site coverage allowed under the LUB.

[83] Section 8.4.6.1 of the LUB provides that the maximum site coverage for all buildings is 40% of the area of the site, and 10% for accessory buildings.

> Maximum Limits:
>
> 8.4.6.1 Coverage of Site
>
> (a) All buildings together including accessory buildings: 40% of the area of the site.
>
> (b) All accessory buildings: 10% of the area of the site."

[84] The Board has considered the evidence of the Development Authority that the area of the Lands is 9,769.33 sq ft and not the 8,632 sq ft which was included in their initial submissions. The Board notes that the Development Authority stated that the area was derived from a real property report, prepared by a land surveyor.

[85] The Appellant argued that the area of the Lands is 8,632 sq ft.

[86] The Board accepts the evidence of the Development Authority that the area of the Lands is 9,769.33 sq ft, over the submission of the Appellant that the area of the Lands is 8,632 sq ft. The Board notes that the Lands are irregularly shaped. They are shaped as a rectangle, with a small triangle removed from the south west corner. If one takes the distance of the east lot line to the point of the triangle (35.10 m/115.157 ft) multiplied by the north width (22.85m/74.967 ft), that is 8,632 sq ft. which is the Appellant's area. However, this calculation does not include the polygon at the south. This is noted when one determines that the east property line is not 35.1 m but rather 39.72 m (see page 22 of the agenda package).

[87] The Appellant did not argue that the 40% site coverage was exceeded, but only the site coverage for accessory buildings. There was a question as to the size of the garage. The dimensions are listed on the development permit application as 28 x 30 ft for an area of 840 sq ft. At page 21, there is a notation that the permeter is approximately 118 ft. The application clearly sets out the dimensions of the garage as 28 x 30 and the Board finds that that is the size of the approved garage. The Board rejects the calculations found on page 21, likely as being in error.

[88] The Appellant has argued that there is a greenhouse on the site which should be included in the calculations. The Board notes that the photos submitted by the Appellant do not show a greenhouse (see page 102). The Board notes a metal frame, but given the other items stored in the yard, cannot conclude that is a green house at this time. Further, the evidence of the Development Authority was that she conducted an inspection of the Lands the morning of the hearing and did not see any greenhouse. The Board accepts that evidence and so does not included in the calculation of site coverage the area for the "greenhouse" identified in exhibit E.

[89] Given the area of the Lands (9,769.33 sq ft) and the area of the garage and shed (840 sq ft and 90 sq ft = 930 sq ft), the Board finds that the total area of the accessory buildings does not exceed 10% of the area of the Lands (976 sq ft). Therefore, there has been no relaxation or variance of the site coverage requirements for accessory buildings.

Height

[90] The Appellant argued that the height of the building was too large for the district. "Building height" is defined.

> "Building Height" means the vertical distance between the existing or proposed finished grade and the highest point of a building, excluding: a roof, stairway entrance, elevator shaft, a venting fan, a skylight, a steeple, a chimney, a smoke stack, a fire wall or parapet, a flagpole, or similar devices not structurally essential to the building.

[91] Section 8.4.6.2.b. provides that an accessory building can be no higher than 5 m/16.4 feet. The evidence (which was not contested by anyone at the hearing) was that the height of the walls of the garage was 16 feet (see page 1 of the agenda package). The Board notes that the neighbours are not happy with the height of the garage, but given the current definition of height, there is no variance, misinterpretation or relaxation of the LUB.

Character of the Building

[92] The Appellant has argued that the proposed development is inconsistent with the character of the surrounding area. The Board notes the concerns of the neighbours, but has no authority to address concerns of character since the Development Permit complies with the requirements of the LUB and there are no variances so the Board's power to consider such matters under section 687(3)(d) is not engaged.

[93] While the Board is not imposing a condition about the exterior of the building, the Board heard the Applicant state that he would be siding the garage to match his house and the Board urges him to do so. The Board also confirms that the use of the garage is not for any commercial purposes and that the Applicant must construct the garage in accordance with the approved development permit.

Other Comments

[94] The Board noted the submissions of the Appellant that *Springfield* requires that the Development Authority not provide submissions advancing a position and that the Board should not take into account the submissions of the Development Authority as a result. The Board notes the submissions of the Appellant. The Board considered the facts provided by the Development Authority in making its decision.

[95] The Board finds that the use is permitted and the Development Authority did not misinterpret, relax or vary the provisions of the LUB. As a result, under section 685(3), the Board has no authority to grant the appeal. The Board recognizes the concerns of the neighbours, but notes that the rights of appeal in such circumstances are very limited.

[96] Issued this 1st day of June, 2021 for the Palliser Intermunicipal Subdivision and Development Appeal Board.

M. Simpson, Clerk of the ISDAB, on behalf of T. Vockeroth, Chair
PALLISER INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

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

APPENDIX "A"
REPRESENTATIONS

	PERSON APPEARING
1.	Alifeyah Gulamhusein, Counsel for the Development Authority
2.	Yvette April, Development Authority
3.	Hong Feng & Jennifer D. Sykes, Counsel for Brett Gates
4.	Brett Gates, Appellant
5.	Richard Couture, Applicant
6.	Susan Winyard
7.	Barbara Zeldenrust

8.	Susan Moncks
9.	Arnold Leighton

APPENDIX "B"
DOCUMENTS RECEIVED AND CONSIDERED BY THE ISDAB:

No.	Description	Date	Pages
1.	Notice of Decision on Application for a Development Permit of the Village of Standard Development Authority	March 22, 2021	6
2.	Notice of Hearing	May 6, 2021	2
3.	Submissions of the Development Authority	May 12, 2021	79
4.	Submission of the Appellant Brett Gates	May 12, 2021	42
5.	Submission in support of the Appellant by Cathy and Tim Christensen	May 11, 2021	1
6.	Submission in support of the Appellant by Jason Gauthier	May 11, 2021	1
7.	Submission in support of the Appellant by Susan Winyard	May 11, 2021	1
8.	Submission in support of the Appellant by Stuart Johnstone	May 10, 2021	1
9.	Submission in support of the Appellant by Darren Firkus	May 10, 2021	1
10.	Submission in support of the Appellant by Shaunna Duguay	May 10, 2021	2
11.	Submission in support of the Appellant by Randy and Susan Moncks	May 10, 2021	2
12.	Submission in support of the Appellant by Dwayne and Lucille Story	April 27, 2021	1
13.	Submission in support of the Appellant by Mark Clark	May 11, 2021	1
14.	Submission in support of the Appellant by Susan Winyard and Barbara Zeldenrust	May 10, 2021	2
15.	Submission in support of the Appellant by Lance and Angela Loeffler	May 11, 2021	1
16.	Submission in support of the Appellant by Dale Beingessner	May 11, 2021	1
17.	Submission in support of the Appellant by Dennis Johnston	May 10, 2021	1
18.	Supplemental Submissions of the Appellant – Exhibit E (Calculations)	May 18, 2021	1

No.	Description	Date	Pages
19.	Supplemental Submissions of the Appellant – Exhibit F (*Coventry Homes Inc v Beaumont (Town of) Subdivision and Development Appeal Board*, 2001 ABCA 49)	May 18, 2021	12
20.	Supplemental Submissions of the Appellant – Exhibit G (*Springfield Capital Inc v Grande Prairie (City) Subdivision and Development Appeal Board*, 2018 ABCA 203)	May 18, 2021	6
21.	Supplemental Submissions of the Development Authority	May 18, 2021	2