

Edmonton Subdivision and Development Appeal Board

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Date: January 27, 2016
Project Number: 177295660-001
File Number: SDAB-D-15-292

Notice of Decision

This is an appeal dated November 17, 2015, from the decision of the Development Authority for permission to change the Use from Professional, Financial, and Office Support Services to Bar and Neighbourhood Pubs with Outdoor patio (388 Occupants and 308.1 sq. m. of Public Space), and to construct exterior and interior alterations.

The development was approved with a variance in the required Front Setback and a deficiency in the Landscaping requirements.

The subject Site is on Condo Common Area (Plan 9020932,1522596), located at 10125 - 109 Street NW. The subject Site is zoned UW Urban Warehouse Zone.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 and was heard by the Subdivision and Development Appeal Board on December 9, 2015.

Summary of December 9, 2015 Hearing:

1. At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
2. The Board received the following documents with respect to the Appeal:
 - Approved Development Permit;
 - Development Officer's written submissions;
 - Letter from M. Semenjuk in opposition to the proposed development;
 - Email from D. Jaipaul in opposition to the proposed development;
 - Email from M. Fitton in opposition to the proposed development;
 - Email from J. Hu in opposition to the proposed development;
 - Letter from M. Panahi Akhavan in opposition to the proposed development; and
 - Respondent's written submissions.

The Board heard from the Appellant, Mr. Semenjuk, who made the following submissions:

3. Mr. Semenjuk is concerned about the process. He received notice from the City of a decision that had already been made. This is not consultation. He knows little about the proposed bar and has not spoken with the developer.
4. The Capital Centre is a building composed of three towers (the "Building"). There is vacant non-residential space on the second floor of all three towers. He lives in the south tower (10125). The ground floor is currently occupied by the Pint, a bar with music and capacity of over 200. The north tower (10175) is currently occupied by Sultan Palace Café ("Sultan"), a restaurant and "hookah bar" with live music. The central tower (10145) is currently vacant on the ground floor.

5. The address of the proposed bar as described in the letters sent by the City indicates it is in the south tower of the complex at 10125-109 Street. He and others were confused by the address and assumed the proposed development would be located in the south tower, in the location currently occupied by the Pint.
6. He contacted the City and discovered the proposed development is Hudsons and is to be located at the ground floor of the central tower at 10145-109 Street.
7. There is another bar kitty corner to the complex called Social Hall.
8. The addition of another bar to the area brings significant nuisance and disruption to the residents of the Building exponentially increasing problems and creating a "critical mass effect." With each new bar, the immediate area becomes similar to a Whyte Avenue type bar district and less suitable for residential living.
9. In contrast to the Whyte Avenue area, the Building contains mixed developments. The behaviours they endure would not be tolerated in other areas of the City. Whyte Avenue bars are not located in the same building as hundreds of residents.
10. While one bar might attract 100 people to the area, and two bars might attract 200 people to the area, three bars is likely to attract more than 500 people to the area because people like having a choice of bars to visit.
11. The development of the Arena District will also exacerbate the negative impacts as tens of thousands of people will come downtown and this area will have six bars within 120 metres of one another.
12. Residents have experienced several adverse impacts as a result of living above and near the Pint, which will be amplified if the proposed development is approved, including:
 - a. Patrons crowding in the front and rear of the Building.
 - b. Patrons "relieving themselves" in the back lane of the Building, in the area where residents access the parkade.
 - c. Patrons yelling on the street in front of the Building while waiting for taxis as security claims it cannot stop the noise occurring in public spaces.
 - d. Cigarette butts, vomit and broken bottles littering the street and sidewalk.
 - e. Double and triple parking along the street in front of the Building.
 - f. Congestion impeding the back lane access to the sole entrance for the parkade.
 - g. General nuisance from failure to control patrons. Bouncers do not call the police unless there is a serious incident such as a stabbing or shooting. There are "sketchy people," as well as fights and drug deals that occur outside the establishment. This situation has already prompted him to use the front door as he does not feel comfortable in the back lane. Once patrons leave the bars, they are in public spaces and not the bar's concern.
 - h. Garbage overflow and oil spills in the back lane attributable to the existing bar and restaurant.
13. As the proposed development is only "20 feet away" from the Pint, the incidence of fights will increase.
14. The addition of the proposed development will negatively affect the value and marketability of his residence.
15. The Appellant is also concerned about parkade security and cost of changing a fence that separates residential from public parking due to a proposed change in the Building's parking arrangement. Currently, the parkade is locked at 6 p.m. for security reasons. The condo association is considering opening the commercial portion of the parkade 24 hours/day 7days/week.
16. Asked about the parking provisions for the current bar/restaurants in the Building, the Appellant advised that there is free metred parking in the evenings, but it is insufficient and many people park in the Save-on-Foods parking lot across 109 street.
17. Mr. Semenjuk purchased his unit in 2008, at which time the commercial developments operating in the building included Norquest College and a bar called the Fox and Hound.

18. He believes the capacity of the Pint is over 200. Friday and Saturday evening line-ups in front of the Pint depend on what is happening in the City that day. Sometimes there is no line-up, and other times, the line extends for a half block and lasts two-three hours. Mr. Semenjuk passes by the line-up when he walks to his unit from Jasper Avenue.
19. He believes the Building is inhabited mostly by young people under the age of 30.

The Board heard from Mr. Flath, who provided the following submissions and responses:

20. He has lived in unit 406, next door to the Appellant for 15 years.
21. Mr. believes there are seven bars within a block and a half radius of the building.
22. He disagrees with the condo association's proposed parking scheme to open the commercial portion of the parkade to the public 24 hours/day 7 days/week as it involves additional funding from residential property owners.
23. Mr. Flath raised noise, security, and "critical mass effect" arguments similar to those of the Appellant, including his concern of increased incidents of fights because of the close proximity of the Pint's patio and the proposed development's patio.
24. Noise vibrates through the cement. He can hear noise inside his unit from the Pint, including noise at around 2:00 a.m. to 3:00 a.m. as chairs are stacked in the bar.
25. He has no concerns about the deficiency of the landscaping and the variance in the setback requirements of the proposed development.

The Board heard from Mr. Panahi, who provided the following submissions and responses:

26. Mr. Panahi lives on the ninth floor of the central tower, above the proposed development. He reiterated the Appellant's concerns about the impact of the Pint and similar increased problems with nuisance, noise and security attributable to the proposed development.
27. Mr. Panahi was confused about the address of the proposed development in the Notice of Hearing. He argued that many residents lost the opportunity to appear before the Board because they may have believed the address referred to the current location of the Pint as opposed to the central tower, which currently has vacant commercial space on the main floor.
28. He hoped that the Development Officer would clarify the address of the proposed development at the hearing. He is unclear about the exact plans for the proposed development and whether the bar is already under construction. Ongoing construction in his tower triggered his interest in this appeal.
29. Mr. Panahi's main concern, as a professional engineer and as resident of the Building, is the increased noise as a result of the proposed development. The Building was constructed in the 1980s and was not built to accommodate the noise of two bars. Mr. Panahi argued that property values of the units in the Building will decrease as a result of an increase in the number of bars on the main floor of the Building.
30. Mr. Panahi's other concern is safety. On two occasions his wife was verbally assaulted by bar patrons as she accessed the Building coming home. Access to the residential tower is near access to the Pint.
31. When asked if small children or young families live in the Building, Mr. Panahi responded that he knows people that have sold their units because the Building is unsuitable for children; he believes others will follow suit if the proposed development is approved.
32. When asked whether the noise reduction study conducted by Hudsons addressed some of his concerns, he argued that the study is unsuitable for this Building because it is based on buildings of 2012-2015 vintage and the Building in question is much older. Mr. Panahi also noted that he can hear the construction noise coming from across the street at Save-on-Foods.

33. There is another nearby development on Jasper Avenue where it appears the City attempted to obtain feedback before the decision was made; he questioned why that consultation process was not followed in this instance.

The Board heard from the Development Officer, Ms. C. Yeung, who answered questions from the Board:

34. Asked to describe the nature of the neighbourhood in terms of concentration of existing bars and pubs, the distances between them and their sizes, the Development Officer advised that she conducted a 60 metre search around the subject Site and did not have information beyond the 60 metre range.
35. Her search indicated that three development permits have been issued for bars and pubs within that 60 metre range (one was issued a restaurant that has the ability to be converted to a bar/pub Use).
36. She did not recall the capacity of the three nearby bars and pubs and did not have those materials with her; therefore, she could not provide the Board with information about which of the development permits involved Permitted or Discretionary Uses.
37. Asked to describe the Capital City Downtown Plan (“the Plan”) and how activities on 109 Street provide “animation” to the area as described by the Plan, the Development Officer indicated that the proposed development is within the Rail Town area of the Warehouse District (Area 3 of the Plan), and that the goal within the next 15 years is for the area to be a vibrant, entertainment district, which encourages mixed use.
38. The Development Officer was asked about whether she considered other aspects of the Plan including policies about balancing mixed uses such as Policy 9.1 and Policy WC3.3 and in particular about the relevance of Policies 7.9 and 7.10 which address Concentration of Bars, Pubs and Nightclubs.” She responded that was tough to answer, as the proposed development is considered to be ‘medium intensity’ and, the area is not subject to a prohibition like Whyte Avenue.
39. Asked whether the residential component differentiates this area from Whyte Avenue, she indicated the proposed development is reasonably compatible as it is located on a major arterial roadway where you usually see more intensive commercial uses.
40. She could not provide information about the concentration of other residential uses in the immediate area.
41. The Development Officer stated it is difficult to determine the appropriate concentration for the mixed use area. While she could not answer how many bars in the area constitutes “too much”, she explained that the proposed development is a reasonable, compatible use in the area because the Site is located downtown at a major intersection of two arterial roads: Jasper Avenue and 109 Street where commercial use is more typical.
42. When asked what the priority is between the *Edmonton Zoning Bylaw* and the Capital City Downtown Plan, Ms. Yeung advised the Board that she looks at the intent, which is to encourage entertainment downtown, but not so much that it is concentrated in any one area. The Plan does not define what the concentration ought to be.
43. Asked about the “critical mass affect” of adding another bar to the area, and whether it negatively impacts the quality of life of the residents, she repeated that the Site is located on Jasper Avenue and 109 Street, a major downtown traffic node.
44. In making her decision, she tried to balance vibrancy in the area with livability of residents and she took into consideration the residents of the 240 units in the Building. She noted there are lots of locations in the downtown area that have Bars and Neighbourhood Pubs with even more residential density above.

45. To her knowledge, based on a review of POSSE records in the City, there are not huge concerns within this area about the operation of the existing Bar and Neighbourhood Pub Use, but she acknowledged that it could be causing the problems described by the residents.
46. Asked if it would be wise to have 380 bar and pub patrons in an area which is not really an entertainment zone like the Arena District, the Development officer answered she could not make assumptions, specifically she could not assume that Hudson's and the Pint will operate the same way.
47. Asked if having two bars located approximately 20 feet apart amounts to more than "medium scale intensity", the Development Officer explained:
 - a. The application in issue is for a single business use, Hudsons.
 - b. Medium scale intensity is not assessed cumulatively.
 - c. She considered Hudsons as a single commercial use and determined it to be medium scale intensity.
 - d. There is no minimum distance required between bars in the Urban Warehouse Zone (like there is, for example, between liquor stores in other zones).
 - e. The Site is downtown at a major arterial node.
48. Ms. Yeung addressed the confusion in the address described in the development permit Notice of Hearing which seems to indicate the location of the Pint as follows:
 - a. People within the 60 metre notification area received the address of the Pint, rather than the location of the proposed development (the central tower).
 - b. While there are several municipal addresses associated with the Building, the entire subject Site is one large area and one title so the address on the notices reflects that one municipal address on title, rather than the actual municipal addresses for the proposed development.
 - c. The development permit was issued for the entryway at 10171 109 Street, but the Building is 10125 109 Street.
 - d. A template used in issuing notifications within the 60 metre range generated the address of the Building which is also the location currently occupied by the Pint. This may have caused the confusion.
49. No responses from large stakeholders including the community league were received.
50. Asked about the Setback and Landscaping variances, Ms. Yeung explained:
 - a. She assessed the variances for Setback and Landscaping in the context of the whole complex, rather than for the specific proposed use or individual unit in isolation.
 - b. A variance was granted for landscaping deficiencies because Hudsons will be removing planters where the patio will be located, resulting in less total landscaped area for the entire complex.
 - c. Hudsons and the condo association will upgrade the landscaping in other areas within the subject Site, bringing it back up to the minimum standard required by the *Edmonton Zoning Bylaw*. She is unsure of specifics of these upgrades as an application for a permit for this upgrading has not yet been received.
51. There is no minimum parking requirement in this area of the Urban Warehouse Zone.
52. Asked whether the *Edmonton Zoning Bylaw* sets a middle ground to balance vibrancy in the downtown area and livability of its residents through capacity thresholds for determining whether or not bars and pubs are Permitted or Discretionary Uses, rather than setting separation regulations, Ms. Yeung answered that it is possible that that might be the intent of City Council, but she still believed that because of the location of the bar (the intersection of two major arterial roads), granting the development permit meets this middle ground.
53. Asked whether the Development Authority should go beyond 60 metres to determine whether the proposed Discretionary Use is appropriate given that the Urban Warehouse Zone contemplates balancing the interests of commercial, educational, and residential uses, the Development Officer explained:

- a. The 60 metre notification zone is determined after the decision made.
 - b. In her opinion, there are direct impacts from use on locations within 60 metres.
 - c. She did not consider the zone beyond the 60 metre perimeter.
 - d. The decision is justified based on the traffic node.
54. The other matter cited by Mr. Panahi involved an application for rezoning. This is an application for a development permit. The notification processes are different for the two types of applications.

The Board heard from the Respondent, Mr. D. Skinner, Architect for Hudsons, who made the following submissions:

55. Mr. Skinner reviewed Hudsons' written submission and spoke primarily to the structural, landscaping, and architectural plans for the proposed development.
56. The proposed development will have a combination of soft and hard landscaping. The plants will be coniferous so that they are green year-round.
57. The Site requires 380 square metres of landscaping. Hudsons will have 350 square metres of landscaping (after the removal of the original planters, and the addition of the landscaping they will put in with the construction of their new premises and patio). The complex will be improving its landscaping to add 30 square metres of new landscaping for a total of 380 square metres for the Site.
58. Other improvements, that align with the Capital City Downtown Plan include:
- a. Formal entryways will be made more inviting, well-lit, and will provide animation to the street while ensuring people feel safe.
 - b. Ramps will enhance accessibility.
 - c. The entryway will be designed such that if there are lineups, patrons can line up along the front entryway of the Building under the overhang.
59. Early in the process, Hudsons engaged the community through the condo board in designing the proposed development. They received a number of recommendations and made the following adjustments:
- a. There will be no speakers on the patio.
 - b. There will be a locked bottle storage area in the alley.
60. Beyond the requirements of the *Edmonton Zoning Bylaw* and Building Code, Hudsons conducted an acoustic study for elevated noise levels which they anticipate on Friday and Saturday nights. They incorporated the following noise-reduction provisions into their renovation plans:
- a. Seal ceiling with caulking for an acoustic barrier to break sound waves;
 - b. west facing glazing; and,
 - c. replace leaky doors.
61. The only recommendation they were unable to address was the recommendation to install carpet flooring, which is not feasible given sanitary concerns.

The Board heard from Mr. J. Borle, District Manager for Hudsons, who made the following submissions:

62. Hudsons prides itself in being a good neighbour and tenant, and intends to work with the condo board for the Building to ensure success of the proposed development.
63. They canvassed the condo association as a whole, but did not canvass each individual unit regarding potential support or objection to the proposed development.
64. The proposed development is a "Hudsons 2.0" which is rebranded as a more sophisticated version of the chain, focusing on an older demographic (ages 25-29); it is a hybrid between a restaurant and a pub.

65. There will be no DJs on the patio. They will only have a DJ on Friday and Saturday nights between 10pm and 2am.
66. They stopped hosting “industry nights” which involve deeply discounted drinks. They no longer participate in pub crawls.
67. They moved speakers away from doorways, and placed them in strategic locations to ensure minimal projection of noise outside the bar. They tested the sound in an acoustic study up to the third floor of the Building. The noise that carried was traffic noise. Once all of the work is completed, they plan to conduct a follow-up noise test to ensure there is no noise.
68. To address security concerns, Hudsons works with “Best Bar None”, an organization that promotes bar safety. To that end, they have implemented effective security measures including “soft closings”, where they turn on the lights and turn off the music in tiers from 2:00 a.m. - 2:15 a.m. to encourage patrons to exit the bar in stages, decreasing the number of people on the street at any given time.
69. While they have speakers inside and on the patios, the music is turned down during the day. The music is elevated on Friday and Saturday nights from 10:00 p.m. till 2:00 a.m.
70. The capacities and hours of operation of Hudsons and similar nearby establishments vary. They are not cramming the streets Fridays and Saturdays and they do not anticipate that hockey games will impact residents inside the Building.
71. Absolutely no construction for Hudsons is going on now. Their building permit application is on hold pending this appeal.
72. Asked about the impact of sound from the proposed development, they explained:
 - a. Sound is hard to measure.
 - b. There is a cumulative effect of traffic and other developments.
 - c. They tested sound at the third level and their consultants state there is no risk of interference as long as the residents’ windows are kept closed.
 - d. Traffic sound will drown out the restaurant noise.
 - e. They cannot accurately measure the sound level of smokers outside and this factor was not modeled into the sound study.
 - f. They have a similar development in Calgary with residential uses above a pure pub, without the second floor buffer and noise has not been an issue.
73. Their patrons rely primarily on pedestrian access, taxis, Uber, and public transportation.
74. There are no applicable development regulations requiring them to obtain on-site parking, While they intend to go beyond the bylaw requirements and obtain some stalls, they are not in a position to make that a condition of the development permit at this point.
75. One of the letters of objection received by the Board was sent by the owner of the Pint, a potential competitor of the proposed development.
76. Asked whether there will be an increase in street traffic as a result of the proposed development, Mr. Borle advised that this particular location is comparable in size to the West Edmonton Mall location (proposed development: 388 capacity; West Edmonton Mall: 308 capacity). They have not had lines outside the bar at the West Edmonton Mall location since the grand opening in 2006. There will be an increase in traffic to the area, but they believe it will not be as significant as the Board might envision.
77. They would consider a condition requiring them to comply with the Noise Policy for the Condo as a whole.
78. While they generally will only have live music on Friday and Saturday, they cannot agree to a condition that limits live music to those days.
79. They could not agree to a condition that speakers be located indoors only.
80. On the busiest nights, they have a 16-20 person staff, most of whom use public transportation to travel to and from work.

81. Using the notification a map as a guide, Mr. D. Kostash, from Hudsons, provided the following information to the best of his knowledge about existing Bars and Neighbourhood Pub Uses and other uses in the surrounding area:
- a. Central Social Hall, Bar and Neighbourhood Pub, located at the south west corner of the intersection of Jasper and 109 with capacity over 100;
 - b. Avenue, Bar and Neighbourhood Pub, located at the north east corner of the intersection of Jasper Avenue and 109 Street, with capacity under 100;
 - c. The Pint, Bar and Neighbourhood Pub, located at the Site, with capacity over 100;
 - d. Sultan, Restaurant with live music, located at the Site, with capacity under 100;
 - e. Knoxville, Bar and Neighbourhood Pub located at Jasper Avenue between 108 and 107 Street, with capacity over 100;
 - f. Mongolian grill, Restaurant, located at the south side of 109 street at Jasper Avenue;

The Board heard from Mr. K. Petterson, Landlord and Condo Board Member, who made the following submissions:

82. He is a part of a group that purchased the first and second floors of Capital Centre and a portion of the parkade. He will be Hudson's landlord. He is also a member of the condo board for Capital Centre.
83. There is a single condo board comprised of seven seats and two subcommittees: a residential committee with five seats and a commercial committee with two seats. He is member at large. Four of the five members on the residential committee reside in the Building.
84. As a condo board member, commercial unit owner and landlord, he does not want people in this space to cause problems; it is critical that uses coexist peacefully.
85. He is part owner of the largest portion of the condominium and is paying a proportionate share to transform the Site which has been neglected. They are paying more than their proportionate share for some improvements to make it a better place for everyone.
86. The second floor is office space, not residential. It buffers the main floor uses.
87. They have re-divided and reconfigured some of the commercial space to make it more saleable and leasable.
88. In his opinion, an office use on the ground floor facing an arterial roadway does not work well and attracts homeless activity.
89. The condo association devised a sound policy to protect its residents. From a condo board perspective, they are comfortable excessive noise will not be an issue.
90. Mr. Petterson provided the condo association's sound policy, marked Exhibit "A". In the event the Board grants the development permit, Hudsons have indicated they are prepared to accept, as a condition, the definition of noise in the condo's sound policy.
91. There are 500 underground parking stalls. His partnership owns 254 of them; the other spaces are owned by residents of the Building. A chain link fence separates the two sides. Theft has been a problem in the parkade.
92. They plan to unlock the commercial side 24 hours/day 7 days/week to provide paid parking to accommodate the bar and pub traffic and other social traffic. The new system will cost approximately \$250,000.
93. Sultan is the only tenant with ongoing noise complaint; it prompted the noise policy.
94. It is the homeless demographic, not the bar patrons, causing the problems with respect to needles behind the Building. Further, the proposed development may alleviate the problem because there will be more lights on and "people like to commit crimes in dark corners."
95. Asked about the unit re-division of the condominium under plan 1522596, Mr. Petterson confirmed that the first two floors were re-divided to make better use of the space after the last fairly large tenant moved out. He intends to lease or sell the re-divided units. The first floor is commercial and the second floor will be office space. Hudson's would lease two of the re-divided

- first floor units and part of the common property of Plan 9020932 for the patio. The development permit describes the location of the proposed development as Condo Common Area (Plan 9020932,1522596). However, the two units involved in the application appear to be Units 854 & 855, Plan 1522596.
96. They have other potential tenants, including a day care located on the second floor.
97. Asked about a possible disconnection between the residential and commercial parts of the Building, Mr. Petterson noted that he is only one member of a seven person condo board and that he cannot speak to the other members on the residential side, but advised that they have a “wide-reaching network”.
98. Asked whether he or other condo board members spoke with residents about the proposed development, he explained
- a. The fact that only three people showed up in opposition to the hearing suggests people are excited about the proposed development.
 - b. No notices were given to the other condo units by the condo board.
 - c. There may have been discussions between unit owners and members of the residential committee of the condo board. He does not know what they did.
 - d. As a landlord, his group owns 40 commercial units and does not go to the condo board for permission for what they do.
 - e. Typically real estate deals are confidential and even at this point they do not have a finalized deal with Hudsons, the deal is conditional.
99. The face of Capital Centre is changing and property values will increase with upgrades to elevators, businesses and amenities to increase lighting and security on the ground floor.
100. Asked how, as landlord of Sultan’s, the Pint and Hudsons, he plans to deal with the cumulative effects of the tenant’s businesses (i.e. music, incidental sounds, etc.), Mr. Petterson explained they have done as much as they can in advance of encountering any real problems and peaceful coexistence is their primary goal:
- a. As a member of the condo board, it is a long term proposition they want to be successful so the condo board introduced a sound policy to eliminate sound transference and the tools to measure sound levels.
 - b. As a landlord, the condo sound policy was incorporated into the leases as an enforcement tool.
101. They have a complaints email address. The Board received only one complaint about the Pint related to transferring bottles across the potholes in the back alley. He is working actively to relocate their storage to get a solution that works for the whole Building.
102. He does not have magic solutions and cannot control people honking horns and revving engines. This is a downtown area where people congregate bringing those cars and that life. Noise is just a part of what it means to live downtown.

The Board heard from Mr. M. Semenjuk, the Appellant, who made the following submissions in Rebuttal:

103. Mr. Peterson is the landlord for the commercial space on the ground and second floor. A year and a half ago the main tenant, Norquest vacated and the landlord is now scrambling to fill the space.
104. Mr. Peterson is in a conflict of interest and does not speak for the condo board.
105. The Appellant has not seen minutes of the condo board’s meetings and a board member indicated he could not discuss the matter with the Appellant.
106. Hudsons is a good operator, but this decision will affect many people for a long time. If Hudsons leaves, the permit is still valid and any type of operator may step in.
107. His property value has fallen since he purchased his unit and will continue to fall with the addition of Hudsons.

108. He has had to pay special assessments and will be forced to pay more money including for landscaping costs necessitated by the proposed development.
109. He doubts the independence of the professional sound study as the landlord and Hudsons commissioned it.
110. The Appellant is not a sound expert, but he knows what he hears with his own ears. "Boom, boom, boom" emanates from the Pint up through the concrete to his unit and this will be made worse by adding a new development, especially with a live music or a DJ.
111. People got the wrong address of the subject property and that is why only three people appeared in opposition to the hearing.
112. Mr. Semenjuk is skeptical that there will only be two nights that are busy and loud (Fridays and Saturdays), given that there are 80 hockey games per season.
113. The Development Officer made her decision without knowing all the facts.
114. He concurred that the information presented on behalf of Hudson at the hearing about the size and proximity to the Site of other Bars and Neighbourhood Pubs is accurate, but he also believes there is another bar with capacity over 300 located 2.5 blocks from the Site.

Decision:

The appeal shall be adjourned and reconvened on January 12, 2016. In the interim, new notices of hearing for this appeal shall be re-issued to property owners within the 60 metre notification area identifying the location for the proposed development as: Entryway 10171-109 Street (located at Main Floor, Central Tower, 10145-109 Street).

Reasons for Decision:

The Board finds the following:

The Notices to Property Owner will be re-issued and the hearing continued for the following reasons:

1. The Application for Development Permit states: "Property Address(es) and Legal Description(s) 10125 - 109 STREET NW Condo Common Area (Plan 9020932,1522596)" and "Specific Address(es) Entryway: 10171 - 109 STREET NW Building: 10125 - 109 STREET NW."
2. The Notices to Property Owners distributed for this appeal hearing sent out by the Development Officer on November 24, 2015 indicate a location for the proposed development of 10125 - 109 Street NW And a LEGAL DESCRIPTION: Condo Common Area (Plan 9020932,1522596).
3. Based on the submissions and evidence before the Board, the proposed development has an entryway municipally described as 10171 – 109 Street and is located on the main floor of the central tower, which is located at 10145 – 109 Street.
4. During the hearing, the Appellant and other parties opposed to the proposed development raised concerns regarding the accuracy and sufficiency of the address listed in notices of this hearing, particularly given the three tower configuration of the Building, the empty spaces in the Building and the existence of the Pint, also a Bar and Neighbourhood Pub Use located on the ground floor of the tower located at 10125 - 109 Street.
5. The Development Officer explained the listed address on the Notices to Property Owners of this appeal was for the entire Site and concurred that it could have been confusing.
6. The Board finds that there may have been confusion about the exact location of and therefore consequential impacts of the proposed development.
7. In the interest of fairness, the Board finds that parties within the 60 metre notification zone must be sent Notices to Property Owners to correctly identify the location of the proposed development to enable them to determine whether their interests might be adversely affected by the proposed development and provide them with an opportunity to be heard by the Board in this appeal should they have an interest in doing so.

8. The appeal hearing will be continued on January 12, 2016 at 9:00am at which time:
 - a. Notified persons who have not previously made submissions in this appeal may do so.
 - b. The Applicant for the development permit will be given the opportunity to respond to any new submissions.
 - c. The Appellant will have the final right of reply to address any new submissions.

Summary of January 12, 2016 Hearing:

1. At the outset of the continuation of the hearing, the Presiding Officer confirmed with the Appellant and Hudsons that there were new directly affected parties in attendance who wished to speak and that additional documents had been received from new directly affected parties and from both the Appellant and Hudsons. All persons present were asked whether or not there were any objections to the Board receiving all the documents, continuing the hearing process and hearing from everyone in the room who wished to speak with the Appellant speaking last to all issues.
2. The Appellant indicated he was not feeling well and that he preferred to adjourn the hearing to a later date as he suspected it would take all day to complete.
3. Legal counsel for Hudsons stated in his view the Board had ensured that the process was procedurally fair and that any further delay would result in hardship to his client.
4. One party in attendance in favour of the appeal had no preference with respect to the procedural matter.
5. All others in attendance preferred to have the matter heard by the Board that day following the procedure set out by the Presiding Officer.
6. The Board considered all of the submissions and decided to continue the hearing that day in accordance with the outlined procedure.
7. The Board received the following additional documents with respect to the appeal:
 - Affected Property Owners Report (online responses from people within the 60 metres notification radius);
 - Email from M. McKnight in opposition to the proposed development;
 - Email from B. Lloyd in opposition to the proposed development;
 - Letter in opposition to the proposed development (recipient ID #182958614);
 - Email and Petition against the proposed development, from M. Semenjuk;
 - Email from M. Panahi in opposition to the proposed development;
 - Letter from P. Antosh and M. Burstow in support of the proposed development; and
 - Written submissions from J. Murphy, Legal Counsel for the Respondent.

The Board heard from Mr. M. McNight, who made the following submissions:

8. He is a resident and owner in the Building. He works for the Pint.
9. He has owned his unit for six years and is concerned about the value of his property as a result of the addition of another bar with a 400 person capacity when the Pint has a capacity of 400 and Sultans, a “hookah bar” has a capacity of 150.
10. Allowing three bars in one building is excessive, given that most buildings only have one bar in the lower level commercial space.
11. He was not aware of the hearing until Mr. Semenjuk came to his door.
12. He shares Mr. Semenjuk’s concern that there will be an increase in bar-related nuisances, including broken bottles, late night noise, vomit, and parking issues. Having read the letters in opposition, he believes most residents agree with him. He is also concerned that construction associated with the proposed development is proceeding without a permit.

The Board heard from Mr. C. Kostiuk, who made the following submissions:

13. Mr. Kostiuk addressed the Board in multiple capacities: Vice President of the Board of Directors of the condominium association for the Building, Chair of the Security Committee for the Building (a volunteer committee he created six years ago to address security issues), and a resident of the Building. He has been a resident and owner for thirteen years and on the Board of Directors for 10 years.
14. The Building is a mixture of residential and commercial owners. One side cannot be considered to the exclusion of the other. As Vice President, he represents the residential owners, but not to the exclusion of the commercial owners. Accordingly, he votes for propositions he favours overall.
15. He has seen an evolution of bars in the space currently occupied by the Pint. The condo board has a good relationship with the Pint and considers it a better tenant than its predecessors.
16. As the Vice President of the condo board and as the owner of a third floor unit in the south tower, Mr. Kostiuk advised that the Sultan is the worst tenant in the Building. Interior and exterior noise associated with the Sultan has been a serious problem.
17. Recently, the commercial part of the Building was purchased by new owners who, unlike their predecessors, have actively engaged with the residential component of the Building.
18. As a result, they are making needed improvements and addressing issues together before they become problems, including resident security and the condo's Sound Policy, which enables the condo association to issue fines for excessive noise.
19. He has had no personal dealings with Hudsons as they are not yet a tenant of the Building.
20. There is misinformation in the Appellant's petition including the allegation that Hudsons has been doing things in the Building. This is not true. The condo board and owners know there are various overdue capital projects which are now proceeding. The order in which the projects are being undertaken has been adjusted at the request of the commercial owners who are paying extra amounts over and above their share in order to be accommodated.
21. He has dealt with security issues over time and many of them come from homeless individuals who are trying to stay warm, not bar patrons.
22. Hudsons and the Pint patrons share a similar demographic, they are in their late 20s/early 30s. He sees no security issue arising from this. There is no evidence that drugs or crime will be an issue as a result of the proposed development. He conceded that there may be times when patrons get "carried away," creating noise and causing disruption in and around the Building, but noted that it is in the business interests of the bars to keep the property clean and orderly.
23. The subject Site is not a suburban cul de sac. He chose it because he wants to live in a place that is vibrant with an active nightlife. He believes this development, along with the development associated with the Arena District, is a step in that direction.
24. He supports Hudsons' plan to invest three million dollars in the proposed development, a plan which he believes will improve the Building and all unit values.
25. Asked about the impact of external noise from the proposed development, Mr Kostiuk stated he keeps his windows open in summertime irrespective of bar use. He chooses to accept the noises that accompany living downtown: early morning garbage trucks and graders, ambulances and traffic. Residents adjust and noise from the proposed development will be part of regular exterior noise and from patrons who do what they do after having a couple too many.
26. Asked to consider the cumulative impact on quality of life for people living above the proposed development from the addition of Hudsons to the existing mix of bars and the potential for a total of 700 or 800 bar patrons, some of whom may be drinking excessively Mr. Kostiuk advised:
 - a. Not many families live in the Building; most residents are post-secondary students who can leave due to adverse impacts.
 - b. He is more concerned with impacts on long time residents and owners like himself.

- c. Given the similar clientele of the Pint and Hudsons, it is possible patrons will go back and forth from one bar to the next.
 - d. He expects a bump in attendance at the opening, and that it will be loud for a while and then the noise factor will fall over time.
 - e. There will be impacts as this is a bar, but it will not have the same impact as Sultans as it is a different type of establishment.
 - f. Given the demographic of the residents, an expensive bar catering to a clientele that creates less impact is not commercially viable at this location.
27. He confirmed that the residential committee did not attempt to contact the residential unit owners about the proposed development because the condo association does not control any owners choice of tenants and because it is the City's decision whether or not the proposed development is allowed. Any residential or commercial tenant can be bad or good.

The Board heard from Mr. M. Schulz, who made the following submissions:

28. Mr. Schulz is an owner and resident of the Building. He has become accustomed to the downtown noise and considers it a small inconvenience or cost of living downtown.
29. The noise he hears on weekends from the bars is relatively minor compared to other common noises such as sirens of emergency vehicles, scraping of graders and banging of garbage trucks. Noise is the price for convenience and part of life downtown. He has no issue with the proposed development as many other noises will surpass the noise it will generate. He doubts it will add substantially to the current noise levels.
30. The proposed development contributes to the vibrancy of the area and is preferable to another empty space, an important factor given that it is difficult to find commercial tenants in this economy.
31. He believes the property values of the condos above the proposed development will increase because of the improvements to the common areas and with its success condo fees may fall.
32. He believes residential owners are really upset by recent assessments.
33. Normally he is not so outspoken, but he came today due to an encounter with the appellant. He was at home ill when the Appellant knocked persistently at his door until he answered. The Appellant aggressively stated that he needed to sign the petition, that the bar will bring crime and more noise, needles and puke. The Appellant "commanded" him to sign, but Mr. Schultz refused as he does not agree with statements in the petition.
34. He noted the absence of residents appearing in person to oppose the development.

The Board heard from Ms. C. Yeung, from the Sustainable Development Department, who answered questions from the Board:

35. She submitted updated information about the immediate area:
 - a. In December 2015, City records show a Class A permit application is proceeding to convert the Avenue from a Neighbourhood Bar and Pub to a Restaurant Use with 65 square metres of public space.
 - b. She was unable to find a development permit or a business license for the Sultan. According to City records the Sultan has been the subject of many complaints which show it as unlicensed. She could not provide information about whether the business is operating or about the existence or status of any enforcement action.
36. She confirmed her opinion that having three bars in one building constitutes "medium intensity commercial use" as contemplated in the Plan because each use is considered on its own and each use is medium intensity commercial use. She measures intensity as medium based on the fact Use classes for Bars and Neighbourhood Pubs are listed in CB1 Low Intensity Business Zone where

the proposed development would be a Discretionary Use. Therefore, Hudsons itself is a medium intensity commercial use.

37. Asked whether she considered the impact of the proposed development on the area, Ms. Yeung cited examples of similar use configurations in the downtown area which “work.” The MacLeod Building has mixed use with residential above and bars and pubs within 60 metres. The Icon Building on Jasper Avenue and 104 Street is a similar example of a single building with bars on the bottom and residential space on the top, but not quite the magnitude of the proposed development.
38. Ms. Yeung stated that in making her decision about whether the proposed development fits she considered other bars, pubs and restaurants, including the Pint, Avenue (which now is being converted to a restaurant), and the Mongolie Grill.
39. As the Sultan has no record in the City of Edmonton POSSE system (because it is operating without a development permit) it is not considered.
40. The proposed development is appropriate because of its location at 109 Street and Jasper Avenue.
41. She agreed that the Special Area Downtown has five different zones, each with different listed uses and different thresholds for Permitted, Discretionary and unlisted Uses for the classes Neighbourhood Bars and Pubs, Restaurants and Nightclubs.
42. She could not provide any examples of similar situations located specifically in the Urban Warehouse Zone.
43. Ms. Yeung was asked about the application of Section WC 3.3 of the Downtown Plan, which provides that the Commercial Focus along 109 Street and 104 Avenue is to “encourage the development of the 109 Street Corridor as a medium intensity commercial area with neighbourhood and local scale retail, with business activity fronting onto 109 Street and 104 Avenue.” She responded with an example: there are many art galleries on 124 Street, each one must be looked at individually, not cumulatively. The existence of these multiple developments together do not transform the situation to cumulatively create a “major intensity commercial use”. She aims for consistent decision making and made the decision under appeal based on the same principles. In this (and each) case, she looked at the proposed development on its own to determine if it is a medium intensity commercial use.

The Board heard from Mr. J. Murphy, Legal Counsel for the Respondent, who provided the following submissions:

44. Concerns that the proposed development will somehow add to or exacerbate issues caused by other commercial tenants or poor business operators bring the character of the operator of the proposed development into question. It is not open to the Board to determine that Hudsons will operate in a similarly poor manner. In any event, this concern is more appropriately addressed by City of Edmonton Bylaw Enforcement and through the Building’s bylaws.
45. The owners of the Building are trying to avoid repeating mistakes made by other commercial tenants. The landlord selected a tenant who can invest in the Building and provide a type of Neighbourhood Bar or Pub that will be commercially viable. The proposed development brings the benefit of long overdue improvements to this Building which is currently an eyesore. Further, given this level of investment, Hudsons is unlikely to pull out of the development.
46. Problems do not emanate from the use of the Building *per se* (this particular use is encouraged by the Capital City Downtown Plan), but rather from leasing to poor commercial tenants without the requisite money, reputation or experience.
47. People choose to live downtown because they enjoy the liveliness of it and will support an establishment of this nature.
48. Until very recently, he believed that the character of the applicant, Hudsons, to be an irrelevant consideration in this appeal. However, in the week prior to the hearing, the Alberta Court of Appeal issued its leave to appeal decision in *Dennis McGinn Holdings Ltd. v Brazeau (County)*,

2016 ABCA 3, which in his view, changed the legal situation on precisely this issue by ruling that the consideration of the character of an appellant is not prohibited as a proper ground for planning considerations.

49. In this case, character is important. He submitted a series of positive letters of recommendation from Hudsons' landlords across the province.
50. The proposed development exceeds a capacity of 100. It is a Discretionary Use. Therefore, Hudsons is not entitled to a development permit as of right, but they are entitled to a development permit as a result of good planning reasons which exist here:
 - a. The zoning for this Building allows for the operation of six bars as Permitted Uses as long as each development's occupancy is less than 100. Those bars would be allowed as of right and, collectively, they would cause a lot of problems for the Building. The proposed Discretionary Use creates a better situation. Allowing a Permitted Use in this case (6 bars each with capacity of under 100 persons) is more dangerous than allowing a single Discretionary Use because the Board cannot place conditions on or control the Permitted Use.
 - b. A single development of the proposed scale also brings significant capital investment in long overdue improvements, which will benefit the Building as a whole.
51. Mr. Murphy submitted a series of maps to show that the concentration of facilities, such as the proposed development, has not changed much in this area since 2009. In 2009 there were six, now there are five.
52. The Downtown Plan came into effect in 2010. It encourages "vibrancy and life" in the area. If there was a concentration issue, changes could have been made to the Urban Warehouse zone adding limits such as separation distances or building quotas. The Downtown Plan was last amended in 2015 and no changes were made to policies 7.8, 7.9 or 7.10 which deal with entertainment uses and concentration of bars, pubs and nightclubs.
53. Historically, where City Council finds an over-concentration of something, they have acted on it, for example: separation distances between liquor stores, group homes, and bars on Whyte Avenue. City Council has not acted in respect of an over-concentration in the downtown area because the Downtown Plan is working as planned. This shows that the proposed use is appropriate at this time.
54. Based on the information provided by the Development Officer, Sultan's has no development permit and therefore should not be taken into consideration in the Board's decision.
55. Through the Downtown Plan and other self-regulating governmental agencies, the City has indicated its interest in promoting vibrancy in the downtown core. He submitted letters of support for the proposed development from: Responsible Hospitality Edmonton; Best Bar None International; Alberta Safer Bars Council; and the Downtown Edmonton Community League.
56. The Building is very large. It spans nearly one block. It is reasonable to have three bars absorbed along a block.
57. The proposed development may bring additional patio noise; however, patios in Edmonton are open for up to five and a half months each year and people are excited when they open each summer. While it may be louder, it is something Edmontonians will support.
58. This area balances competing interests; no one interest can dominate the others.
59. He confirmed there are no external speakers in the proposed plans. Clarifying earlier representations, he confirmed Hudsons is agreeable to a condition prohibiting outside speakers.
60. In response to the proposition that, although this zone lacks required separation distances found elsewhere, it is possible that Council has looked at people management (keying on in the evening hours) through thresholds in occupancy and public space footage for bars, pubs and nightclubs and also for restaurants and specialty food services, Mr. Murphy agreed, but added City Council:
 - a. seems to be saying that there is a higher Permitted Use threshold in the downtown area; and that there will be Discretionary Uses;
 - b. is supportive of lots of entertainment in the downtown area; and,

- c. has not addressed what constitutes “over-concentration.”
61. There is no planning reason to take the development permit away from Hudsons because, as shown in maps of the area, the same circumstance that existed previously with respect to concentration of uses remains, but less intensely.

The Board heard from Mr. M. Semenjuk, who provided the following submissions in rebuttal:

62. Mr. Semenjuk started a petition against the proposed development which he submitted to the Board. During two attempts, he knocked on approximately 238 doors in the Building reaching 119 residences and he received 98 signatures of support. In sum 78.4% of residents agreed with the petition 12.5% disagreed and roughly 10% simply did not care one way or the other.
63. He asked people to sign, he was not aggressive, and if they did not wish to sign he simply thanked them for their time and moved on.
64. Residents included young adults, seniors and children. Some were extremely upset and very happy that this hearing was to occur. Many residents questioned how this development could have gone through and were surprised to hear the condo board supported it.
65. Former condominium board members told him that the current commercial tenants are a problem and they have been woken up in the night to deal with complaints.
66. He questions the independence of the current condo board and how they were convinced to sign the letter of support for the proposed development.
67. The proposed development is located on common areas and he wants to know how that can be possible when he cannot even rent the common room for the Building
68. He is not questioning the business practices of Hudsons and may visit the development if it is approved. The problem is not Hudsons, it is the concentration of bars.
69. Nowhere else other than West Edmonton Mall has so many bars in one building.
70. It is not sustainable to have three bars in one building.
71. There will be 800 seats in the area. No matter how well Hudsons operates this development will bring congestion and 100s of people, drunk people and noise. The development will not reduce crime.
72. If the development is approved as a bar \$3,000,000.00 will be spent on renovations which will ensure the space will always be used as a bar whether or not Hudsons remains in business. No other type of business will pay to change it again.
73. Examples provided by the Development Officer are not similar. One involves a restaurant, not a pub, on the ground floor in a building with residential suites on the top floors. The other involves 124 Street which is totally different. Examples cited by Mr. Schultz also involve restaurants and are not comparable. He would not oppose a family restaurant that closes by midnight.
74. It does not matter that Sultans has no permit, it is currently operating in the Building.
75. Mr. Semenjuk is not confident that the City will act appropriately with respect to security issues unless it is something very serious, like a shooting or a stabbing.
76. If the development is approved, he and others are likely to move out in the next few years.

The Board heard from Mr. J. Murphy, who provided the following submissions in sur-rebuttal:

77. Mr. Murphy clarified that the petition includes the signatures of 98 individuals, not 98 units. In some cases, more than one resident of a single unit signed the petition.

Decision:

The appeal is DENIED and the decision of the Development Authority is UPHeld. The Development is GRANTED subject to the following conditions:

1. External speakers are not permitted.
2. Hudsons agrees to comply with the Building's Sound Policy.
3. Prior to the release of drawings for building permit review, the applicant or property owner shall pay a notification fee of \$100.
4. Prior to the release of drawings for building permit review, the applicant or property owner shall provide a guaranteed security to ensure that landscaping is provided and maintained for two growing seasons. The Landscape Security may be held for two full years after the landscaping has been completed. This security may take the following forms:
 - a. cash to a value equal to 100% of the established landscaping costs; or
 - b. an irrevocable letter of credit having a value equivalent to 100% of the established landscaping costs.
5. Any letter of credit shall allow for partial draws. If the landscaping is not completed in accordance with the approved Landscape Plan(s) within one growing season after completion of the development or if the landscaping is not well maintained and in a healthy condition two growing seasons after completion of the landscaping, the City may draw on the security for its use absolutely. Reference Section 55.6.
6. Major entry way shall be designed and oriented to face 109 Street NW.
7. Exterior lighting shall be developed to provide a safe lit environment in accordance with Sections 51 and 58 and to the satisfaction of the Development Officer.
8. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51 of the *Edmonton Zoning Bylaw* 12800).

The following variances are granted:

1. Section 910.11(4)(d)(i) is relaxed by 0.59 metres to permit a reduction in required Front Setback from 1.5 metres to 0.91 metres .
2. Section 55.4(7) is relaxed to permit a reduction in the number of required trees from two to zero.
3. Section 55.8(3) which provides that the proportion of deciduous to coniferous trees and shrubs shall be approximately 50:50 is relaxed to permit 100% coniferous shrubs.

Reasons for Decision:

The Board finds the following:

1. This is an appeal of the approval of a development permit for a Bar and Neighbourhood Pub with an outdoor patio (388 occupants and 308.1 square metres of public space) and exterior and interior alterations to be located in the Capital Centre building (the "Building").
2. The Board finds that the proposed Bar and Neighbourhood Pub is located on the ground floor of the central tower of the Building within two Units 854 & 855 of Condominium Plan 1522596 and that the outdoor patio will be within the Condominium common property within plans 9020932 and 1522596.
3. The Pint, a Neighbourhood Bar and Pub with capacity in excess of 100 and Sultans, an unauthorized Restaurant and "hookah bar," currently operate in commercial space on the ground floor of the Building.
4. The Building is located in the UW Urban Warehouse Zone of the Downtown Special Area governed by Section 910 of the *Edmonton Zoning Bylaw*. It also falls within the Railtown Area, known as Sub-area 3, of the Warehouse Campus Area of the Capital City Downtown Plan (the "Downtown Plan").

5. A Bar and Neighbourhood Pub, with a capacity for more than 100 occupants and 120 square metres of Public Space is a Discretionary Use in the UW Zone.
6. The Development Officer approved Hudsons' the proposed development as a Discretionary Use as she determined it fits within the Plan's vision for 109 Street; it represents medium scale commercial intensity based on the allowed Use Class definitions in the CB1 Low Intensity Business Zone; and, due to its location at a major transportation node at the intersection of 109 Street and Jasper Avenue. She also made this decision based on a consideration of the existence of three other Bar and Neighbourhood Pub Uses within the 60 metre zone.
7. The Board received many submissions for and against the proposed development from the Appellant, Hudsons, several notified parties, the condo association for the Building and the Edmonton Downtown Community League:
 - a. Two Building residents spoke in favour of the development and three spoke against it.
 - b. The Board received a letter of support and several letters of opposition from residents of the Building and other notified parties.
 - c. The Appellant provided a petition with 98 signatures of residents of the Building opposing the development.
 - d. Two condo board members (the commercial owner and a residential owner) spoke in support of the development.
 - e. The Board received a letter of support for the development signed by all but one member of the condo board.
 - f. The Board received a letter of support from the Downtown Edmonton Community League.
8. Opponents of the proposed development are concerned about the significant nuisance impacts associated with existing and former bars, including safety, noise, litter, and the inappropriate behavior of patrons in public spaces adjacent to these bars. They contend that adding the proposed development to the current situation will create a critical mass effect, drastically increasing these negative consequences and reducing enjoyment of their properties and their property values.
9. Proponents of the development consider it a welcome improvement that enables much needed capital improvements to the old Building, increases property values throughout the Building and adds positive vibrancy to the area. They argue that many of the nuisance impacts are simply part of living within the Downtown Special Areas that exist regardless of the proposed development. They believe noise impacts of the proposed development will not be significant given proposed changes to the Building, and the preexisting sound scape associated with downtown living at this location.
10. Hudsons submits that it is a "responsible operator" and provided much evidence to support its good character and past practices at other locations. It took steps to mitigate nuisance impacts, particularly with respect to noise attenuation during the design phase and contends that those adjustments will ameliorate the impact on other Building residents going forward. However, Hudsons recognizes that it cannot be responsible for the behavior of all its patrons in nearby public areas and while the proposed development will bring some negative impacts, they will be reasonable given the area.
11. In deciding whether the proposed Discretionary Use is reasonably compatible with neighbouring uses, the Board must comply with the Downtown Plan per section 687(3)(a.1) of the *Municipal Government Act* and, subject to its variance authority, with the provisions of the *Edmonton Zoning Bylaw*.
12. The policy framework of the Downtown Plan envisions a vibrant downtown Mixed Use area with three components: housing, commercial, retail and educational facilities; and, diverse entertainment and culture. The Downtown Plan recognizes a trend away from the strict segregation of land uses and towards a more dynamic mix of residential, institutional, and

commercial land uses within the confines of the downtown. In other words, a single area for people to work, live, play, and learn.

13. The development intent for the Railtown Area is “to continue to develop as a medium to high-density residential area with supporting retail, service, and commercial uses. New development is to reinforce the character of the Warehouse Neighbourhood by providing a pedestrian focused commercial environment. Connections with adjacent areas are to be achieved through improved pedestrian crossings of 104 Avenue and 109 Street.” (Downtown Plan at 175)
14. Land Use and Development Policy WC3.3 for Sub-area 3 states: “Encourage the development of the 109 Street Corridor as a medium intensity commercial area with neighbourhood and local scale retail, with business activity fronting onto 109 Street and 104 Avenue.” (Downtown Plan at 176)
15. The overall purpose of the UW Zone under Section 910.11.1 is similar to the purposes and policies in the Downtown Plan: “to develop a unique mixed-use business commercial, educational and residential neighbourhood, accommodating a diversity of uses, including residential, commercial, institutional, light manufacturing and assembly in a safe, walkable, human-scaled built environment that builds on the existing land use pattern and respects the architectural characteristics and functions of the area.”
16. The Board finds that the proposed development is consistent with the overall goals and policies of the Downtown Plan for this portion of the Special Downtown Area and with the overall purpose of the UW Zone where it is a Discretionary Use.
17. The Board accepts the Development Officer’s classification of the proposed development as a medium intensity commercial use based on the Use Classes listed in the CB1 Zone. The Board notes that this interpretation is consistent with other parts of the *Edmonton Zoning Bylaw*, specifically the CO Commercial Office Zone (Section 360); the CB3 Commercial Mixed Business zone (Section 370); and the CMU Commercial Mixed Use Zone (Section 910.6). The purposes of all three of these zones includes the provision of “medium intensity commercial developments” and a Bar and Neighbourhood Pub such as the proposed development would qualify as Permitted or Discretionary Uses in all three zones.
18. Based on the wording of the Downtown Plan and Policy WC 3.3, the Board accepts the determination of the Development Officer that the intersection of two major arterial roadways 109 Street and Jasper Avenue is an appropriate location for a Bar and Neighbourhood Pub Use.
19. The Board finds that potential for unwanted noise spilling out of the proposed development to the detriment of the residents does not preclude this Discretionary Use for the following reasons:
 - a. The proposed development is located in a mixed use area fronting a major arterial roadway and commercial corridor. Significant levels of ambient sound created by traffic, increased density and other commercial uses are inherent at this location and necessarily impact reasonable expectations about the soundscape.
 - b. The Board has imposed a condition that there be no external speakers associated with the development. This condition will reduce the potential for unwanted noise.
 - c. The Board accepts Hudsons’ evidence that the proposed development includes physical improvements to the Building and design elements not required by the *Edmonton Zoning Bylaw* which will mitigate unwanted noise transference.
 - d. Hudsons has consented to a condition requiring it to agree to abide by the Building’s Sound Policy.
20. The Board received conflicting evidence about both the causes of other significant nuisances (such as needles and unwanted intruders) and about the severity and likelihood of increases in these nuisances as a result of the proposed development.
21. Based on the evidence and submissions, the Board is not able to determine that all these nuisances are attributable exclusively to Bar and Neighbourhood Pub Uses.

22. Both the appellant and Hudsons agree that there will be some unavoidable adverse nuisance impacts associated with the operation of the proposed development. The Board finds the proposed development will also bring vibrancy and capital improvements beneficial to the entire Building.
23. Therefore, the Board finds that these impacts on balance are not unreasonably incompatible with the surrounding uses including the residential uses in the Building at this location.
24. The Board received mixed opinions, but little if any evidence, about the net impact on neighbouring residential property values within the Building given that the proposed development brings positive capital improvements and vibrancy together with negative nuisances. In the absence of evidence, the Board cannot conclude the development will cause material negative financial impacts to the owners of residential units in the Building.
25. To determine if the proposed development will create an unacceptable concentration of bars, the Board considered policies within the Downtown Plan which apply specifically to the proposed Bar and Neighbourhood Pub Use and address the concentration of bars, pubs and nightclub uses under the heading Vibrant Downtown (Downtown Plan at 88-89):

Concentrations of Bars, Pubs and Nightclubs - 7.9 Bars, neighbourhood pubs and nightclubs are encouraged in the Downtown but consider limiting concentrations to prevent overcrowding and public disturbances from concentrating in any one area.

Managing the Location of Bars, Pubs and Nightclubs -7.10 In order to protect downtown residential areas from the impacts of bars, neighbourhood pubs and nightclubs, these uses will be controlled through zoning regulations that stipulate location and maximum size.


26. The Board notes that within the UW Zone, a threshold capacity of 100 and 120 square metres of Public Space separates Bar and Neighbourhood Pubs into Permitted and Discretionary Uses. There is no upper threshold level of capacity or floor area where Bars and Neighbourhood Pubs become a prohibited Use. Further, there are no development regulations which specify separation distances applicable to Bars and Neighbourhood Pubs in the UW Zone. Other zones within the Downtown Special Area include specific use prohibitions and separation distance regulations for bars, neighbourhood pubs and nightclubs. Concentration is left to the discretion of the Development Authority.
27. The Development Officer made her determination about concentration based on consideration of three existing similar developments that lie within the 60 metre notification zone. The Board considered a larger area to determine if the proposed Discretionary Use is appropriate at this location. The Board considered uses within easy pedestrian access of the Site in the area bounded to the south by 100 Avenue, the north by 102 Avenue and between 110 Street and 107 Street.
28. Given the Development Officers evidence that according to City records Sultans does not have a valid development permit, it has not been considered in making this determination.
29. Evidence concerning the existence of other nearby Bars and Neighbourhood Pubs, Nightclubs and Restaurants within this area changed over the course of the hearing.
30. Based on all the presented evidence, the Board finds six currently approved establishments are potentially relevant to the issue of concentration:
 - a. The Pint, Discretionary Use, Bar and Neighbourhood Pub, capacity over 100, located in the Building;
 - b. Avenue, Bar and Neighbourhood Pub, capacity under 100 currently converting to a Restaurant Use, located at the northeast corner of the intersection of Jasper Avenue and 109 Street;
 - c. Mongolie Grill, currently operating as a Restaurant with unknown capacity and the ability to convert to a Bar and Neighbourhood Pub, located at the northwest corner of intersection of Jasper Avenue and 109 Street;

- d. Central Social Hall, a Bar and Neighbourhood Pub or Nightclub Use, with capacity over 100 located at the southwest corner of the intersection of Jasper Avenue and 109 Street;
 - e. Boulevard, a Bar and Neighbourhood Pub or Nightclub Use, with unknown capacity, located on the northeast corner of the intersection of Jasper Avenue and 108 Street
 - f. Knoxville, a Bar and Neighbourhood Pub or Nightclub Use, with capacity over 100 located on the north side of Jasper Avenue between 108 and 107 Street.
31. The Board accepts Hudsons' evidence that the concentration of these Uses has not changed substantially since 2009.
 32. Given the uncertain status of Mongolie Grill, the proposed development will add either a fifth or sixth bar, pub or nightclub to this area.
 33. The Board also recognizes that the Pint is located within the same Building as the proposed development. However, the Building is very large. It incorporates three separate residential towers, spans two thirds of a lengthy downtown city block and fronts on to a major arterial road.
 34. Given the size and location of the Building, the locations of existing nearby similar developments and the evidence of constant concentration over the past 6 years, the Board finds that the addition of Hudsons will not result in an unreasonable concentration of bars, pubs and nightclubs in the area.
 35. For the reasons above the Board finds that the proposed development, with the imposed conditions, is in accordance with the *Edmonton Zoning Bylaw* and the Downtown Plan. It is an appropriate Discretionary Use for the area in the circumstances.
 36. The Board notes that some Building residents raised concerns about on-site parking. As there are no on-site parking requirements for the proposed development under the *Edmonton Zoning Bylaw* the Board has not considered this issue to determine whether the proposed development is an appropriate Discretionary Use. Further, condominium assessments levied to cover costs of parkade improvements are a private matter beyond the jurisdiction of this Board and unrelated to to this development permit appeal.
 37. Much evidence was adduced about poor business practices of other bar operators and of Hudsons exemplary business practices.
 38. The Board accepts Hudsons' submission that it is open to the Board, in its discretion, to consider character evidence per *Dennis McGinn Holdings Ltd. v Brazeau (County)*, 2016 ABCA 3. In this case, the Board has disregarded character evidence because, as noted by the Appellant, once this development permit is issued, it runs with the land. While Hudsons may have excellent practices and a financial incentive to remain in operation to obtain a return on its capital investment, the issuance of the development permit is not conditional upon Hudsons' involvement.
 39. The Board accepts the reasoning of the Development Officer concerning the requested variances.
 40. The Front Setback variance is allowed because the overall Landscape plan, which includes planters and benches within the required Setback, will enhance pedestrian friendliness and improve the streetscape along 109 Street. The proposed Front Setback is also consistent with the existing block face Setback to the south.
 41. The two variances concerning Landscaping are allowed for the following reasons:
 - a. Given the site conditions, shrubs may be more suitable than trees.
 - b. While two trees will be removed, they will be replaced by nineteen coniferous shrubs, a number which far exceeds the four required shrubs.
 - c. In addition, increasing the percentage of coniferous shrubs from 50 percent to 100 percent will add to year round greenery providing a positive impact.
 42. Therefore the Board also concludes that the granted variances will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Important Information for Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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.



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