



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: May 24, 2017  
Project Number: 240682366-001  
File Number: SDAB-D-17-085

**Notice of Decision**

- [1] On May 10, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **April 13, 2017**. The appeal concerned the decision of the Development Authority, issued on March 29, 2017, to approve the following development:

**Change the use of a portion of a General Industrial building to a Minor Religious Assembly (255 seats) and to construct additions in the west and south side of the existing building (vestibules, office and storage space)**

- [2] The subject property is on Plan 2570KS Blk 7 Lot 9B, located at 14705 - 116 Avenue NW (two lots), within the IB Industrial Business Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
  - The Development Officer’s written submissions;
  - The Appellant’s written submissions; and
  - Online responses.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Google Map submitted by Legal Counsel for Appellant No. 1
  - Exhibit B – Photographs of the area submitted by Appellant No. 2

**Preliminary Matters**

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”).

### **Summary of Hearing**

*i) Position of Mr. Chmelyk, Legal Counsel for Appellant No. 1, Amity Pro Ltd.*

- [8] Mr. Chmelyk referenced his submission and the reasons for the appeal.
- [9] He provided the Board with and referenced a Google earth photograph showing the subject Site, the location of the Appellant’s property, and the parking area (marked “Exhibit A”).
- [10] City Council rezoned the subject property to IB Industrial Business Zone. The rest of the neighbourhood has been Medium Industrial for a long time.
- [11] The Appellant uses the property for industrial manufacturing and fabrication for pipe insulation that creates hydrogen sulphide (H<sub>2</sub>S) gas which could be a health concern if released at higher concentrations. At lower concentrations, the gas creates a “rotten egg” smell which could be considered a nuisance.
- [12] There is no H<sub>2</sub>S being emitted at this time as there is no production until the economy picks up again. They are currently operating from another facility. The building is being used to store their material and equipment.
- [13] The exhaust air outlet for their facility is close to the air intake of the subject property which could have an impact on the subject Site.
- [14] The Board needs to consider whether this Use is appropriate given the Discretionary nature and considering the surrounding Uses are Medium Industrial and will have an impact on the health and well-being of individuals.
- [15] The parking calculation was based on the previous regulations of the *Edmonton Zoning Bylaw* of 1 parking space for 4 seats. That regulation was changed to 1 parking space for 33 square metres. The subject Site will have a reduction in the minimum parking spaces requirements.
- [16] In his opinion, the Religious Assembly will have three classrooms upstairs with a potential of 255 people with 60 parking spaces available, which will not be sufficient.
- [17] There is no transit on 116 Avenue with the closest transit stop on 149 Street which is serving an industrial area with service only during the day and not on evenings or weekends.

- [18] There are large trucks entering and exiting the property which will create issues with people parking on the street and walking to the subject Site.
- [19] The Development Permit application was for the whole building for the Religious Assembly. However, the front half of the building is being used by NAIT for classrooms for a roofing course. NAIT has a four year lease in this building.
- [20] They are changing the use on the front portion of the building with something that does not include the use that is going to continue there. They are not aware of what the approved use of that part of the building is to calculate the parking.
- [21] There is an active railroad along the back of the property with trains moving railroad cars and the potential of oil tankers and cars with hazardous materials could be parked for a long period of time. The Religious Assembly is not far from the railroad which could be a risk and hazard for the subject Site.
- [22] Since this is a Medium Industrial area some of the properties have guard dogs, security issues, extended hours of operation, and other potential nuisances that can arise and impact the proposed development.
- [23] Although City Council rezoned the subject Site, the proposed development is a Discretionary Use that can be applied to the development to make sure it is compatible with the neighbouring uses.
- [24] They would like the concerns to be addressed and if the Board approves the proposed development they would like to see additional conditions added to the approval. Some of the conditions would be the hours and days of operation, ways to mitigate potential gases being emitted, and meeting the required parking, will help mitigate their concerns.
- [25] There is the potential for the Religious Assembly to have church functions, private functions, and classes operating every day of the week.
- [26] The Board asked Mr. Chmelyk to comment on the difference between the duty of care owed to the parishioners and NAIT students. He stated that his client's property is Medium Industrial allows for hazards to escape a building and property. That is different from light industrial or IB Industrial Business Zone where hazards are expected to be contained inside a building. If there are Industrial businesses next to each other, there can be similar hazards between those businesses. However, a Religious Assembly has people and children accessing the building. The duty and responsibility did not change in the past 25 years they have been in operation but the property next door has changed so the impact has changed. He agreed that the NAIT students may be wearing protective gear during their classes but he could not confirm that.
- [27] This is more of a nuisance issue with a potential smell impacting the Religious Assembly.
- [28] Their concerns were brought before City Council during the re-zoning process.

- [29] His client's business has a sign for parking but the sign is not currently installed. There is a separate entrance accessing their property and there is a concern that parishioners will use that parking if it is not assigned to their business.
- [30] His client's business operates seven days a week, twenty four hours a day when they are in production.
- [31] The Board asked what mitigation is used to protect their own employees. The product is an asphalt based product used to bond insulation. When it is cut and moved, H<sub>2</sub>S gas is released. The concentration is minimal as it is the amount contained in each cell. H<sub>2</sub>S is not stored on site or used in large quantities. The gas being released may cause eye irritation but there is not enough concentration to make an individual sick. The concentration is not life threatening, but more of a nuisance than a hazard.
- [32] He confirmed that his client's building is adjacent to the subject Site and has been in operation for several years. The only employees of the business are those who load containers on trucks. The front portion of the building is rented out to a Staffing Agency that is open 9:00 a.m. to 5:00 p.m. and is used for office administration only.
- [33] The building is used to store equipment and finished materials and ready when production increases. They moved to a larger facility ten years ago but kept his location for when they get busier.
- [34] They are not currently manufacturing so there is no odour that will affect the Staffing Agency.
- [35] The odour will last as long as production is taking place. There is a special make up air unit that allows fresh air into the building through the ceiling and helps remove the gas out of the warehouse.
- [36] There is a portion of a chain link fence that separates the railroad from the subject Site. The train runs every day but they could not confirm what is loaded on the rail cars.
- [37] With regard to parking, 1 parking space is required for 4 seats; therefore they are required to have 56 parking spaces. Based on the 255 seats, they are now required to have 51 parking spaces. The Development Permit was for the entire building to be used as the Religious Assembly but the front part of the building is used by NAIT, which is a different use. In his opinion, the parking calculation is not correct.
- [38] There are no sidewalks along 116 Avenue for people to walk on to the subject Site.
- ii) *Position of Appellant No. 2, Mr. McGrandle, representing R. W. Gibson Holdings Ltd.*
- [39] He is speaking on behalf of himself and several businesses in the area. He is the landlord for the adjacent property as well as R. W. Gibson personally owns the property and has tenants in the area that have been operating business since 1975.

- [40] He is concerned with this Development Permit and the operation of the businesses so the tenants are not interrupted.
- [41] They would like to maintain the relationship with the proposed development but have some safety concerns.
- [42] Within the Medium Industrial Zone, the operations are not just warehousing, they include manufacturing, processes and a heavy duty truck shop. Their main concerns are safety and parking.
- [43] The parking is congested and there is high traffic, and this Development Permit would bring even more traffic.
- [44] He referred to the aerial photograph showing their business and the subject Site.
- [45] Large trucks accessing the property have a small turning radius and there are traffic delays on 116 Avenue with vehicles trying to get into to the warehouse bays.
- [46] He believes NAIT has a three and a half year lease in the subject Site.
- [47] He agreed that there is not enough parking for the 255 seat Religious Assembly which will be an issue. There is limited public transportation in the area.
- [48] There are security guards that direct traffic regularly and they have seen vehicles that access from the street to their lot.
- [49] He referred to the aerial photograph showing parking that is close to their parking lot. He stated that there is a chain link fence around their property where the dogs are kept and able to roam their property and are visible to the public.
- [50] He referred to an aerial photograph showing the corner of the subject property that is not fenced and close to the railroad and the parking area, which is a concern.
- [51] He referred to a photograph showing two locomotives that were parked on the railroad in the morning. There can be from 3 to 4 trains that go through the area in a given day. He could not confirm but believes the rail cars are loaded with lumber.
- [52] He reiterated that he has the same concerns as indicated by Appellant No. 1.
- [53] In his opinion, the Discretionary Use is up for the Board to determine today.
- [54] The parking, imposing restrictions on the operating hours, and the Use for the subject Site, would address some concerns.

- [55] His business operates Monday to Friday, 7:00 a.m. to 6:00 p.m. When they are busy, there is an extra half shift until 10:00 p.m. They are open on Saturdays from 8:00 a.m. to 12:00 noon. When business demands they will operate 24 hours a day, 7 days a week, but for now they operate Monday to Friday and on Saturdays.
- [56] Submissions provided show a photograph at 3:00 p.m. on a Saturday where the parking area and street are vacant, and he accepted that submission.
- [57] They would not have an issue if the Religious Assembly operated Wednesday evenings and Sundays; however, with anything with potential marketable space there is a concern with the hours being extended.
- [58] If parking was maintained and general safety not a concern they would not have a concern with extra functions running at the Religious Assembly. However, he would not want the parishioners extending into their parking lots and blocking trucks.
- [59] The typical clientele using the proposed development are families that may visit on the site for some time after leaving the Religious Assembly. There could be a potential of safety issues with regard to the dogs and the trains.
- [60] In response to questions by the Board, the business is located across the parking lot from the subject Site and is a welding and fabrication business. When employees are welding the bay doors are open, there is proper ventilation, and employees wear safety gear for their protection.
- [61] With regard to the trucks turning radius. The stated that there are regular truck deliveries to the site that enter from 116 Avenue along the parking lot. When trucks back out of the parking lot, they block part of the road for a short period of time. Additional traffic in the area will be a concern for large trucks entering and exiting the site.
- [62] There is signage on their property warning the public there are guard dogs protecting their property.

*iii) Position of the Development Officer, Mr. Welch*

- [63] The Development Officer assisted in the process to update the parking regulations applying to Religious Assemblies. For some Religious Assembly uses, parking is not enough, so they distinguished between Minor Religious Assemblies and Major Religious Assemblies. Larger Religious Assemblies require a more individualized set of parking requirements and strategies. The proposed development is a Minor Religious Assembly, thus parking will be sufficient.
- [64] With regards to NAIT classes, this use has been classified as a General Industrial Use. Considering the Religious Assembly Use and General Industrial Use together, the parking requirements have been met.

- [65] In only the rarest of circumstance, will the City impose conditions regulating hours or days in use. They regulate the use not the user. Different types of General Industrial Uses can have varying hours, so they want flexibility.
- [66] They are providing 60 parking spaces for both uses and this is sufficient. Since this is a multi-use site, parking is shared. The Religious Assembly use requires 25.2 parking spaces based on their floor area and the General Industrial Use requires 7.8 parking spaces.
- [67] The Development Officer is not aware of any parking restrictions on the street.
- [68] The Development Officer took the industrial nature of the area into account, including neighbouring business. It is not uncommon for an IB Industrial Business Zone to be surrounded by IM Medium Industrial Zone or for Religious Assemblies to be located in Industrial Zones.
- [69] The Development Officer agrees that full fencing around the rail tracks is appropriate.
- [70] The Development Officer accessed the rezoning documents. He does not believe any nuisance problems will be an issue. A risk assessment was conducted by an APEGA professional and he accepted their professional opinion.

*iv) Position of the Respondent, Dr. Wahab, who was accompanied by Reverend Yirenkyi*

- [71] The Church has been operating on another site the last 12 years in Edmonton.
- [72] They have 60 parking stalls available.
- [73] They are designed for 255 seats, but in fact only have 205 seats.
- [74] On a good day, they regularly have 150 people attend services. For events such as Christmas, Easter, baby dedications, they have between 200 and 220 people attend services.
- [75] They do use a Transportation Ministry, which drives people to church using trucks, SUVs, carpools. They hope to purchase a bus soon. They also control where people can park.
- [76] They are intending to complete the fence near the rail tracks and are advised to consult with CN prior to doing so.
- [77] They have met all City requirements, including a Phase 2 assessment, which deals with hazards, emissions, smells and have also obtained a hydrogen sulphide smell report.

- [78] NAIT has been operating for 10 years with no issues. They have a lease until 2019. They are allowed to stay for 1 additional year if they do not renew. The Church and NAIT do not operate at same time.
- [79] One night a week, they hold Bible study for about 25 people – 30 people from 6:30 p.m. to 8 p.m. On Sunday, they have a service from 10 a.m. to– 12:30 p.m. and then from 6:30 p.m. to 8:30 p.m. On Saturday, their youth group meets from 3:30 p.m. to 5 p.m.
- [80] They do not believe they will blocking roads or traffic. They submitted pictures taken on a Saturday as evidence of no activity.
- [81] They consider themselves a Community Church. In the spirit of being good neighbours, they asked their leaders to contact operating business to introduce themselves and schedule a meeting. They want to be part of the community. They understand that given the industrial nature of the area, parishioners need to be aware of surroundings.
- [82] Their Children ministry and Safety Ministry have strict check in and check out procedures for their children. They have safety procedures and mock safety drills as part of their insurance requirements.
- [83] The nuisance issues are not life threatening. They previously submitted an expert report that notes minimal nuisance because of wind direction. If it becomes a problem, they will hire an environmental scientist to mitigate issues.
- [84] They would not object to the condition of extending the fence. They have not looked at a permit for the fence but waiting for the appeal to be completed.
- [85] The Pastor has an office which will be used during the week with an office support person. The classrooms are used for Sunday School or for a Church Board meeting.

v) *Rebuttal of Appellant No. 1, Mr. Chmelyk*

- [86] Mr. Chmelyk appreciates that the Development Officer was on the panel that revised regulations for parking. However, for a congregation of 255 seats, the parking requirement is 25 stalls, which is approximately 10 people per car. This means the use of several passenger vans. This is not realistic using common sense. There is no transit especially on Sundays. It does not matter if this is a Major Religious Assembly or a Minor Religious Assembly. He hopes the Board can condition the permit to help manage the situation.
- [87] He does not believe the proposed use is compatible in the industrial area.
- [88] Even if the City does not condition hours of operation, the Board can certainly do so. In the future, the Religious Assembly can be used more fully. This is not unexpected and something should be done to manage expectations.



- [89] He acknowledges the use of a Transportation Ministry. But they would need vans or a bus, but this would cut into the parking.
- [90] The fence should have been addressed initially.
- [91] He did provide sample of product (not marked as an Exhibit). Even with a pin sized hole, there is a notable smell for some time. Although not life-threatening, the report indicated some risk. The asphalt has tar smell like industrial flat roof being re-done.
- [92] He reiterated the parking bylaw minimums are not enough
- [93] He does not believe there is a school close to site. He is assuming some additional uses associated with a Religious Assembly will start appearing. Currently the regular church services are compatible, but a full array of religious assembly may pose a problem.

*vi) Rebuttal of Appellant No. 2, Mr. McGrandle*

- [94] Mr. McGrandle has experienced the odor as well.
- [95] He provided a photograph of his guard dogs (marked "Exhibit B"). They are visible from the perimeter. They are released from 6 p.m. to 6:30 a.m. On Saturday, they are released at 12:00 p.m. and all day Sunday. He wants to be proactive and prevent any issues. He does not want to deal with Bylaw Enforcement issues regarding barking dogs.
- [96] He appreciates the Church is willing to address any nuisance smells.
- [97] He concedes they will be able to co-exist and would appreciate being notified of any significant operational changes.
- [98] There is parking available on street and on Sunday it is quiet. He is concerned about potentially changes in uses, such as an addition for a gymnasium.
- [99] It was clarified that the Youth Ministry of approximately 25 children meet on Saturday between 3:30 p.m. and 5 p.m.

**Decision**

- [100] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority.

**Reasons for Decision**

- [101] The proposed development is a Discretionary Use in the IB Industrial Business Zone.

- [102] The proposed development complies with the General Purpose of the IB Industrial Business Zone which is to provide for industrial businesses that carry out their operations such that no nuisance is created or apparent outside an enclosed building and such that the Zone is compatible with any adjacent non-industrial Zone, and to accommodate limited, compatible non-industrial businesses. This Zone should normally be located on the periphery of industrial areas and adjacent to arterial or major collector roadways.
- [103] City Council rezoned the property recently to allow for a proposed development such as this.
- [104] The proposed development will border a General Industrial Use with businesses that have existed for several years that may emit noxious fumes but are within the prevue of the allowances for those Zones.
- [105] Counsel for Amity Pro Ltd. acknowledged that their client is not currently producing anything on their property and is being used for storage of their equipment and materials. They may continue to produce materials if the economy rebounds.
- [106] Based on the evidence submitted, the release of H<sub>2</sub>S is at most a nuisance and both the Appellants concurred with this in their submissions. The Respondent is aware of the types of businesses that operate next to their proposed church facility and the external physical conditions of those businesses.
- [107] An engineer risk assessment was submitted with the Respondent's material. The risk assessment did not address any safety issues with the release of chemicals.
- [108] The Appellants have the duty of care to their neighbours, or any member of the public who would reasonably expect to be present at these properties. As such, this appeal does not preclude the use of a Religious Assembly at the site due to safety concerns. The use of the proposed development is reasonably compatible with the area and the surrounding businesses. The Board notes that there does not appear to be significant overlap between when each party is most likely to be using their respective lands. Indeed, counsel for the Appellants accepted the current hours of operation and days in use submitted by the Respondent and indicated this will likely not impact their business to an unreasonable degree.
- [109] One concern of both Appellants is the close proximity of the railroad. The Board accepts the evidence submitted by the Respondent that they will install a fence on the rear of the property within a reasonable time frame following the issuance of this decision.
- [110] The Board notes that a parking variance is not required and the minimum parking threshold exceeds the minimum by some 25 parking stalls.

- [111] The Respondent indicated that they have a Safety Ministry that will coordinate the loading and unloading of patrons and children. They also have a Children's Ministry with detailed procedures and a log to track the movement of children and keep them supervised so they are safe from the parking lot.
- [112] The Board accepts the submission of the Development Officer that it is not uncommon for IB Industrial Business Zones to border an IM Medium Industrial Zone and for such properties to be located in close proximity to each other.
- [113] Finally, the Board also accepts the submission of the Development Officer that it is unreasonable to condition the Religious Assembly Use with restrictions on hours of operation and days in use. The Board cannot regulate future unknown uses of the subject property.



Mr. W. Tuttle, Presiding Officer  
Subdivision and Development Appeal Board

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
  - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
  - b) the requirements of the *Alberta Safety Codes Act*,
  - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - d) the requirements of any other appropriate federal, provincial or municipal legislation,
  - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

*NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.*