

**SUBDIVISION**  
**AND**  
**DEVELOPMENT APPEAL BOARD**  
**AGENDA**

**Thursday, 9:00 A.M.**  
**January 12, 2017**

**Hearing Room No. 2**  
**Churchill Building,**  
**10019 - 103 Avenue NW,**  
**Edmonton, AB**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
HEARING ROOM NO. 2**

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I	9:00 A.M.	SDAB-D-17-005	Construct an Accessory Structure (pergola over deck) and to install a hot tub (2.35 metres by 2.35 metres) in the rear yard of a Single Detached House, existing without permits.  545 - Buchanan Road NW Project No.: 181229790-005
<hr/>			
II	11:00 A.M.	SDAB-D-17-006	Add a 1 Bedroom Dwelling to an existing 8 Dwelling Apartment Housing.  10130 - 121 Street NW Project No.: 229334065-001
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III	2:00 P.M.	SDAB-D-17-007	Comply with an Order to revert the building back to a Single Detached House AND acquire a Development Permit for interior alterations to complete the work AND reduce the number of occupants living in the building down to a single Household. This Order must be complied with before January 17, 2017.  9267 - 110A Avenue NW Project No.: 111305898-001
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**NOTE:** *Unless otherwise stated, all references to "Section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-17-005

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 181229790-005

APPLICATION TO: Construct an Accessory Structure (pergola over deck) and to install a hot tub (2.35 metres by 2.35 metres) in the rear yard of a Single Detached House, existing without permits

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: November 25, 2016

DATE OF APPEAL: December 15, 2016

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 545 - Buchanan Road NW

LEGAL DESCRIPTION: Plan 8923294 Blk 126 Lot 34

ZONE: RF1-Single Detached Residential Zone

OVERLAY: N/A

STATUTORY PLAN: Bulyea Heights Neighbourhood Structure Plan; Riverbend Area Structure Plan

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*Grounds for Appeal*

The Appellant provided the following reasons for appealing the decision of the Development Authority:

I received a registered letter from the City of Edmonton on November 30, 2016 indicating that the application for a minor development permit had been refused. I left a message for Jordan McArthur on Monday, November 12, 2016, asking him to return my call as I needed clarification on the reasons for refusal. He returned my call November 14, 2016 at 4:22 pm. I called the Development Appeal Board immediately after our conversation ended but they were closed.

From previous discussions with him, I was on the understanding that the location of the hot tub and the projection of the rear uncovered deck could remain "as is" with letters from the owners to the west and to the north indicating they had no issues with their current locations. We were already planning to move the pergola as the owner to the north had objected to its current location. I am making the appeal to obtain a variance to leave the hot tub and rear uncovered deck in their current locations. As mentioned, the pergola will be moved to a conforming location.

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<i>General Matters</i>
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**Appeal Information:**

**The Board is advised that the decision of approval by the Development Officer is dated November 25, 2016. The Notice of Appeal was filed on December 15, 2016.**

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

**Grounds for Appeal**

**685(1)** If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

**(2)** In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal to the subdivision and development appeal board.

**Appeals**

**686(1)** A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

- (a) in the case of an appeal made by a person referred to in section 685(1), after
  - (i) the date on which the person is notified of the order or decision or the issuance of the development permit, or

...

- (b) in the case of an appeal made by a person referred to in section 685(2), after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

### **Hearing and Decision**

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

...

- (a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;

...

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

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

- (i) the proposed development would not

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

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

and

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

### **General Provisions from the *Edmonton Zoning Bylaw*:**

Under section 110.2(4), **Single Detached Housing** is a **Permitted Use** in the RF1 Single Detached Residential Zone.

Under section 7.2(9), **Single Detached Housing** means:

development consisting of a building containing only one Dwelling, which is separate from any other Dwelling or building. Where a

Secondary Suite is a Permitted or Discretionary Use Class in a Zone, a building which contains Single Detached Housing may also contain a Secondary Suite. This Use Class includes Mobile Homes which conform to Section 78 of this Bylaw.

Section 110.1 states that the **General Purpose** of the **RF1 Single Detached Residential Zone** is:

...to provide for Single Detached Housing while allowing other forms of small scale housing in the form of Secondary Suites, Semi-detached Housing and Duplex Housing under certain conditions.

***Projections into Setbacks and Separation Spaces***

Section 44.1(b) states eaves or similar architectural features on Accessory buildings, may project into a required Setback or Separation Space, provided that such projections do not exceed 0.6 metres in the case of Setbacks or Separation Spaces of 1.2 metres or greater, and 0.46 metres for Setbacks or Separation Spaces of less than 1.2 metres.

**Development Officer's Determination:**

Accessory Building Projection - The pergola projects 0.1 metres onto the North abutting property (Section 44.1(b)).

***Projections into Setbacks and Separation Spaces***

Section 44.1(b) states eaves or similar architectural features on Accessory buildings, may project into a required Setback or Separation Space, provided that such projections do not exceed 0.6 metres in the case of Setbacks or Separation Spaces of 1.2 metres or greater, and 0.46 metres for Setbacks or Separation Spaces of less than 1.2 metres.

**Development Officer's Determination:**

Accessory Building Projection - The distance from the pergola to the side (West) property line is 0.2 metres, instead of 0.46 metres (Section 44.1(b)).

***Projections into Setbacks and Separation Spaces***

**The Board is advised** that on November 28, 2016 City Council amended section 44.3(a) of the *Edmonton Zoning Bylaw*, under Bylaw 17831.

**Section 44(3) now states**

**The following features may project into a required Setback or Separation Space as provided for below:**

- a) **Platform Structures provided such projections do not exceed 2.5 metres into a Front Setback;**
- b) **Platform Structures provided such projections do not exceed 2.0 metres into any other Setbacks or Separation Spaces with a depth of at least 4.0 metres;**
- c) **Platform Structures provided such projections do not exceed 0.6 metres into any other Setbacks or Separation Spaces with a depth of less than 4.0 metres; and**
- d) **Notwithstanding subsection 44(3)(b) and subsection 44(3)(c), Platform Structures 0.6 metres or less in Height may be constructed to the Lot lines Abutting an interior Side Yard and Rear Yard.**

**Development Officer's Determination:**

Platform Structure Projection - The rear uncovered deck projects onto the North abutting property by 0.1 metres (Section 44.3(a))

<b><i>Accessory Building</i></b>
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Section 50.3.4.b states an Accessory building or structure shall be located not less than 0.9 metres from the Side Lot Line.

**Development Officer's Determination:**


Accessory Building Setback - The hot tub is 0.5 metres from the side property line instead of 0.9 metres. (Section 50.3.4.b).

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Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing. Bylaw No. 11136 requires that a verbal announcement of the Board's decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.

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	Project Number: <b>181229790-005</b> Application Date: JUL 26, 2016 Printed: December 21, 2016 at 12:26 PM Page: 1 of 2															
<h2 style="margin: 0;">Application for Minor Development Permit</h2>																
This document is a Development Permit Decision for the development application described below.																
<b>Applicant</b>  <div style="border: 1px solid black; width: 200px; height: 40px; margin: 10px auto;"></div>	<b>Property Address(es) and Legal Description(s)</b> 545 - BUCHANAN ROAD NW Plan 8923294 Blk 126 Lot 34  <b>Specific Address(es)</b> Entryway: 545 - BUCHANAN ROAD NW Building: 545 - BUCHANAN ROAD NW															
<b>Scope of Application</b> To construct an Accessory Structure (pergola over deck) and to install a hot tub (2.35m x 2.35m) in the rear yard of a Single Detached House, existing without permits.																
<b>Permit Details</b> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">                     # of Dwelling Units Add/Remove: 0                      Client File Reference Number:                      Minor Dev. Application Fee: Accessory Buildings                      Secondary Suite Included?: N                 </td> <td style="width: 50%; border: none;">                     Class of Permit: Class B                      Lot Grading Needed?: N                      New Sewer Service Required: N                      Stat. Plan Overlay/Annex Area: (none)                 </td> </tr> </table>		# of Dwelling Units Add/Remove: 0 Client File Reference Number: Minor Dev. Application Fee: Accessory Buildings Secondary Suite Included?: N	Class of Permit: Class B Lot Grading Needed?: N New Sewer Service Required: N Stat. Plan Overlay/Annex Area: (none)													
# of Dwelling Units Add/Remove: 0 Client File Reference Number: Minor Dev. Application Fee: Accessory Buildings Secondary Suite Included?: N	Class of Permit: Class B Lot Grading Needed?: N New Sewer Service Required: N Stat. Plan Overlay/Annex Area: (none)															
I/We certify that the above noted details are correct.  Applicant signature: _____																
<b>Development Application Decision</b> Refused  <b>Reason for Refusal</b> <ol style="list-style-type: none"> <li>1. Accessory Building Projection - The pergola projects 0.1 onto the North abutting property (Section 44.1(b)).</li> <li>2. Accessory Building Projection - The distance from the pergola to the side (West) property line is 0.2m, instead of 0.46m (Section 44.1(b)).</li> <li>3. Platform Structure Projection - The rear uncovered deck projects onto the North abutting property by 0.1m (Section 44.3(a)).</li> <li>4. Accessory Building Setback - The hot tub is 0.5m from the side property line instead of 0.9 m. (Section 50.3.4.b)</li> </ol> <b>Rights of Appeal</b> The Applicant has the right of appeal within 14 days of receiving notice of the Development Application Decision, as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.																
<b>Issue Date:</b> Nov 25, 2016 <b>Development Authority:</b> McARTHUR, JORDAN <b>Signature:</b> _____																
<b>Fees</b> <table style="width: 100%; border: none;"> <thead> <tr> <th style="width: 60%;"></th> <th style="text-align: right;">Fee Amount</th> <th style="text-align: right;">Amount Paid</th> <th style="text-align: right;">Receipt #</th> <th style="text-align: right;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Dev. Application Fee</td> <td style="text-align: right;">\$0.00</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Existing Without Permit Penalty Fee</td> <td style="text-align: right;">\$0.00</td> <td></td> <td></td> <td></td> </tr> </tbody> </table>			Fee Amount	Amount Paid	Receipt #	Date Paid	Dev. Application Fee	\$0.00				Existing Without Permit Penalty Fee	\$0.00			
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<b>THIS IS NOT A PERMIT</b>																





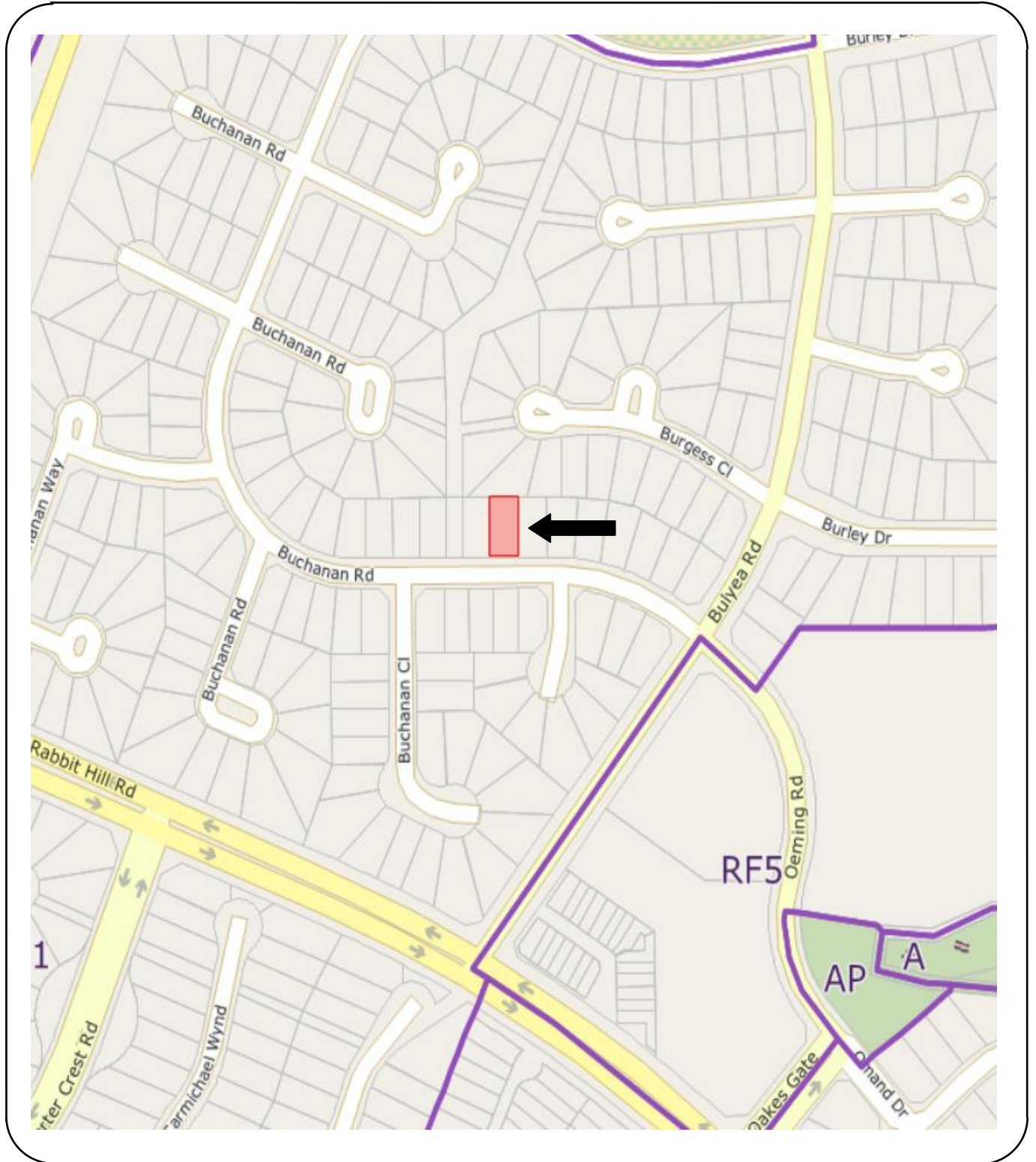
Project Number: **181229790-005**  
Application Date: JUL 26, 2016  
Printed: December 21, 2016 at 12:26 PM  
Page: 2 of 2

## Application for Minor Development Permit

**Fees**

	Fee Amount	Amount Paid	Receipt #	Date Paid
DP Notification Fee	\$41.00			
Total GST Amount:	<u>\$0.00</u>	<u>          </u>		
Totals for Permit:	\$41.00	\$0.00		
(\$41.00 outstanding)				

**THIS IS NOT A PERMIT**



**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-17-005



ITEM II: 11:00 A.M.

FILE: SDAB-D-17-006

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 229334065-001

APPLICATION TO: Add a 1 Bedroom Dwelling to an existing 8 Dwelling Apartment Housing

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: December 9, 2016

DATE OF APPEAL: December 18, 2016

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 10130 - 121 Street NW

LEGAL DESCRIPTION: Plan 8355AK Blk B Lot 7

ZONE: DC1-Direct Development Control Provision (Area 1)

OVERLAY: N/A

STATUTORY PLAN: Oliver Area Redevelopment Plan

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*Grounds for Appeal*

The Appellant provided the following reasons for appealing the decision of the Development Authority:

We submitted the application to add and legalize one extra, an already existing suite, to an 8-suite multi-family residential building that was built in 1957. Since March 2016 the building changed Ownership and it has been updated and improved significantly including new light fixtures, new plumbing fixtures, new water boiler, improved access and interior painting. Suite Number 1 was added some years ago but it does not appear on title or the original development permit. Suite number 1 is a one bedroom unit with approximately 600sqft.

It meets all the safety and code requirements (including windows to the outside) just like the other 8 existing units in the building and it has been inspected and approved by the fire department.

The addition of the one unit to the existing building does not represent a significant change in the zoning or density in the area as the building is surrounded by existing multi-family residential buildings to the North, East and West. On the other hand, if the board allows this one unit to be legalized, the overall building assessment and consequent property taxation will increase, therefore producing more revenue in property taxes for the City of Edmonton.

Since the new Ownership bought the building, we have created at least one full time job (onsite manager) and several indirect jobs by contracting local people to manage and do the repairs for us. We have ambitious plans to keep expanding our operations in the City of Edmonton, a city that we like and strongly believe in. Please allow us to legalize the existing suite so that it can be rented out to a local young professional and our company can keep contributing to the City's economic activity.

<b><i>General Matters</i></b>
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**Appeal Information:**

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

**Grounds for Appeal**

**685(1)** If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

**Appeals**

**686(1)** A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

- (a) in the case of an appeal made by a person referred to in section 685(1), after

- (i) the date on which the person is notified of the order or decision or the issuance of the development permit, or

...

**Designation of direct control districts**

**641(4)** Despite section 685, if a decision with respect to a development permit application in respect of a direct control district

...

- (b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

Section 2 of the *Edmonton Zoning Bylaw* concerning Repeal, Enactment and Transition Procedures states the following:

2.4 Subject only to the provisions in the Municipal Government Act respecting legal non-conforming Uses and notwithstanding the effect it may have on rights, vested or otherwise, the provisions of this Bylaw govern from the Effective Date onward. In particular, no application for a Development Permit shall be evaluated under the procedural or substantive provisions of the previous Land Use Bylaw after the Effective Date, even if the application was received before the Effective Date.

...

2.6 Any Direct Control Districts that were in effect immediately prior to the Effective date are hereby deemed to continue in full force and effect and are hereby incorporated into Part IV of this Bylaw.

2.7 Unless there is an explicit statement to the contrary in a Direct Control District or Provision, any reference in a Direct Control District or Direct Control Provision to a land use bylaw shall be deemed to be a reference to the land use bylaw that was in effect at the time of the creation of the Direct Control District or Provision.

At the time of the creation of the subject DC site, the *City of Edmonton Land Use Bylaw 5996* was in effect. An Alberta Court of Appeal decision in *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309 concluded that section 2.7 of the *Edmonton Zoning Bylaw* only applies if there is an express cross-reference in a Direct Control bylaw passed before 2001 to a

provision of the old *Land Use Bylaw*. In the absence of an express reference in the Direct Control Bylaw to the *Land Use Bylaw 5996*, it does not prevail over section 2.4 of the *Edmonton Zoning Bylaw*.

### **Hearing and Decision**

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

...

- (a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;

...

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

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

- (i) the proposed development would not

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

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

and

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

### **General Provisions from the DC1 (Oliver ARP – (15.2) Area 1) Direct Development Control Provision**

**Apartment Housing** is **not** a listed Use in the DC1 (Oliver ARP – (15.2) Area 1) Direct Development Control Provision.

Under Section 15.2(2), the DC1 – Direct Development Control - Area 1, states the Rationale is to provide for a mixed use area that encourages the retention of existing older residential structures by providing opportunity for the conversion of these older structures to small scale, low impact commercial uses. New development and

conversions will be of a scale and design that is complementary to the existing low density residential dwellings in the area.

**General Provisions from the *Edmonton LAND USE BYLAW 5996***

Under section 10.1(1) of the Edmonton Land Use Bylaw 5996, **Apartment Housing** means:

development consisting of one or more Dwellings contained within a building in which the Dwellings are arranged in any horizontal or vertical configuration, which does not conform to the definition of any other Residential Use Class.

Under section 9.1(19) of the Edmonton Land Use Bylaw 5996, **Dwelling** means:

one or more self-contained rooms provided with sleeping and cooking facilities, intended for domestic use, and used or intended to be used permanently or semi-permanently as a residence for a Household and either up to two lodgers, roomers, or boarders; or four foster children.

**General Provisions from the *Edmonton Zoning Bylaw***

Under Section 7.2(1) of the *Edmonton Zoning Bylaw*, **Apartment Housing** means:

development consisting of one or more Dwellings contained within a building in which the Dwellings are arranged in any horizontal or vertical configuration, which does not conform to the definition of any other Residential Use Class.

Under Section 6.1(27) of the *Edmonton Zoning Bylaw*, **Dwelling** means:

a self contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household.

**Development Officer's Determination**

On April 4, 2016, Section 15.2 of DC1- Direct Development Control- Area 1, was amended and approved by Council under Bylaw 17594. This approval did not include Apartment Housings in the listed Uses.

710.3 Uses

A Development Permit may be issued for those Uses prescribed for the land, in an approved Area Redevelopment Plan or Area Structure Plan, or those Uses consistent with its designation under the Historical Resources Act.

The Apartment does not conform to the Uses prescribed in DC1 (Area 1).


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Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing. Bylaw No. 11136 requires that a verbal announcement of the Board's decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.

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	Project Number: <b>229334065-001</b> Application Date: AUG 26, 2016 Printed: December 19, 2016 at 8:04 AM Page: 1 of 2		
<h2 style="margin: 0;">Application for Major Development Permit</h2>			
This document is a Development Permit Decision for the development application described below.			
<b>Applicant</b>  <div style="border: 1px solid black; height: 50px; width: 100%;"></div>	<b>Property Address(es) and Legal Description(s)</b> 10130 - 121 STREET NW Plan 8355AK Blk B Lot 7  <b>Specific Address(es)</b> Suite: 1, 10130 - 121 STREET NW Suite: 2, 10130 - 121 STREET NW Suite: 3, 10130 - 121 STREET NW Suite: 4, 10130 - 121 STREET NW Suite: 5, 10130 - 121 STREET NW Suite: 6, 10130 - 121 STREET NW Suite: 7, 10130 - 121 STREET NW Suite: 8, 10130 - 121 STREET NW Suite: 9, 10130 - 121 STREET NW Entryway: 10130 - 121 STREET NW Building: 10130 - 121 STREET NW		
<b>Scope of Application</b> To add a 1 Bedroom Dwelling to an existing 8 Dwelling Apartment Housing.			
<b>Permit Details</b>  <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">                             Class of Permit: (none)                              Gross Floor Area (sq.m.): 32.52                              New Sewer Service Required: Y                              Site Area (sq. m.): 420.59                         </td> <td style="width: 50%; border: none;">                             Contact Person:                              Lot Grading Needed?: N/A                              NumberOfMainFloorDwellings:                              Stat. Plan Overlay/Annex Area: Oliver                         </td> </tr> </table>		Class of Permit: (none) Gross Floor Area (sq.m.): 32.52 New Sewer Service Required: Y Site Area (sq. m.): 420.59	Contact Person: Lot Grading Needed?: N/A NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: Oliver
Class of Permit: (none) Gross Floor Area (sq.m.): 32.52 New Sewer Service Required: Y Site Area (sq. m.): 420.59	Contact Person: Lot Grading Needed?: N/A NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: Oliver		
I/We certify that the above noted details are correct.  Applicant signature: _____			
<b>Development Application Decision</b> Refused  <b>Reason for Refusal</b> On April 4, 2016, Section 15.2 of DC1- Direct Development Control- Area 1, was amended and approved by Council under Bylaw 17594. This approval did not include Apartment Housings in the listed Uses.  710.3 Uses 1. A Development Permit may be issued for those Uses prescribed for the land, in an approved Area Redevelopment Plan or Area Structure Plan, or those Uses consistent with its designation under the Historical Resources Act. - The Apartment does not conform to the Uses prescribed in DC1 (Area 1)			
<b>THIS IS NOT A PERMIT</b>			



Project Number: 229334065-001  
Application Date: AUG 26, 2016  
Printed: December 19, 2016 at 8:04 AM  
Page: 2 of 2

## Application for Major Development Permit

**Rights of Appeal**

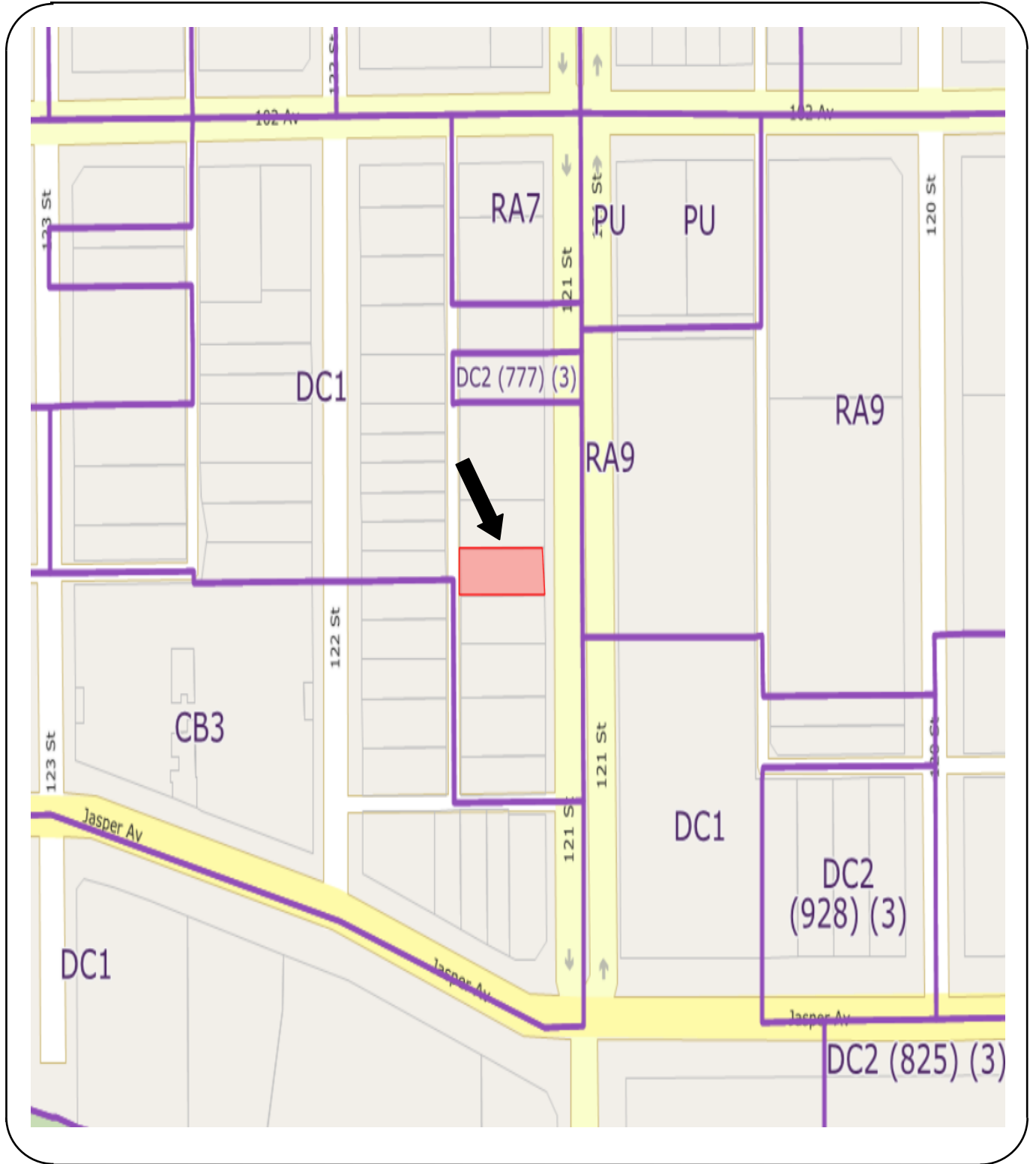
The Applicant has the right of appeal within 14 days of receiving notice of the Development Application Decision, as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.

**Issue Date:** Dec 09, 2016    **Development Authority:** ANGELES, JOSELITO    **Signature:** \_\_\_\_\_

**Fees**

	<b>Fee Amount</b>	<b>Amount Paid</b>	<b>Receipt #</b>	<b>Date Paid</b>
Major Dev. Application Fee	\$786.00	\$786.00	03554788	Aug 26, 2016
Sanitary Sewer Trunk Fund 2012+	\$1,118.00			
Total GST Amount:	\$0.00			
Totals for Permit:	\$1,904.00	\$786.00		
( \$1,118.00 outstanding )				

**THIS IS NOT A PERMIT**



**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-17-006



ITEM III: 2:00 P.M.

FILE: SDAB-D-17-007

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 111305898-001

APPLICATION TO: Comply with an Order to revert the building back to a Single Detached House AND acquire a Development Permit for interior alterations to complete the work AND reduce the number of occupants living in the building down to a single Household. This Order must be complied with before January 17, 2017

DECISION OF THE DEVELOPMENT AUTHORITY: Order Issued

DECISION DATE: November 28, 2016

DATE OF APPEAL: December 14, 2016

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 9267 - 110A AVENUE NW

LEGAL DESCRIPTION: Plan 3816P Lot 11

ZONE: DC1-Direct Development Control Provision (Area 6)

OVERLAY: N/A

STATUTORY PLAN: Boyle Street / McCauley Area Redevelopment Plan

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*Grounds for Appeal*

The Appellant provided the following reasons for appealing the decision of the Development Authority:

We are solicitors for Darcy Severin and 1223382 Alberta Ltd. for the matter above and this appeal is sent to the Subdivision and Development Appeal Board (the "Board") with their express direction and on their behalf.

Our client received an order (the "Order") pursuant to section 645 of the Municipal Government Act, RSA 2000, c M-26, (the "Act") ordering our clients to take certain actions at 9267— 110A Avenue NW, and legally described as Lot 11, Block, Plan 3816P (the "Premises"). Our client, 1223382 Alberta Ltd., is the registered owner of the Premises.

The Order was dated November 28, 2016, and was sent by regular mail, so it did not come to our clients' attention until December 1, 2016. Pursuant to section 686 of the Act, our clients bring this appeal within 14 days after the date he was first notified of the Order.

The Order demands that our client reverts the Premises back to a Single Detached House, to acquire a Development Permit for interior alterations, and to reduce the occupants to that of a single Household. The Premises have undergone significant alterations and renovations to allow six dwellings (the "Tenants") to be located within the Premises.

In bringing this appeal, we request that the Board make an order, decision, and/or issue a development permit to effectively allow our clients to continue operating the Premises with multi-family dwellings under one roof.

We are seeking these actions in our appeal to the Board on the basis that the proposed development would not interfere with the amenities of the neighbourhood. For example, the Premises has six designated stalls at the rear of the Premises to minimize the need for the Tenants to use street parking. Further, the proposed development would not interfere with the enjoyment or value of neighboring parcels. This is because the immediate vicinity currently has multi-family apartments on both sides of the Premises (e.g. 9263 110A Avenue NW and 9271 110 A Avenue NW). There is also a low rise apartment building across the street from the Premises (RA7).

In the alternative, we would request that the Board grant an order or decision to extend the Order to give our clients additional time to apply for a development permit and/or rezoning of the Premises. This would enable our clients to continue renting to the Tenants in six dwellings, so that they are not forcibly evicted from their residence during the middle of winter.

The Board has jurisdiction to hear this matter pursuant to section 687 of the Act. This appeal is brought on the basis that an order pursuant to section 645 of the Act was issued against our clients, because he did not have a development permit. Section 687 of the Act gives the Board the discretion to make an "order or decisions or issue... a development permit even though the proposed development does not comply with the land use bylaw".

In summary, we therefore request that you grant an order, decision, and/or issue a development permit to allow our clients to continue operating the Premises with multiple family dwellings. Granting this on appeal will not interfere with the neighborhood amenities nor should it affect neighboring parcels that already contain multi-family dwellings. In the alternative, we

request that you provide our clients with an extension to have a reasonable opportunity to apply for the necessary permits and/or zoning to operate the Premises as a multi-family dwelling.

***General Matters***

**Appeal Information:**

**The Board is advised that the date of the Stop Order is November 28, 2016. The Notice of Appeal was filed on December 14, 2016.**

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

**Grounds for Appeal**

**685(1)** If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

**Appeals**

**686(1)** A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

- (a) in the case of an appeal made by a person referred to in section 685(1), after
  - (i) the date on which the person is notified of the order or decision or the issuance of the development permit,

**Determining an Appeal**

The *Municipal Government Act* states the following:

**Hearing and decision**

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

- (a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;

...

- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
  - (i) the proposed development would not
    - (A) unduly interfere with the amenities of the neighbourhood, or
    - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
  - and
  - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

**Stop order**

**645(1)** Despite section 545, if a development authority finds that a development, land use or use of a building is not in accordance with

- (a) this Part or a land use bylaw or regulations under this Part, or
- (b) a development permit or subdivision approval,

the development authority may act under subsection (2).

**(2)** If subsection (1) applies, the development authority may, by written notice, order the owner, the person in possession of the land or building or the person responsible for the contravention, or any or all of them, to

- (a) stop the development or use of the land or building in whole or in part as directed by the notice,
- (b) demolish, remove or replace the development, or
- (c) carry out any other actions required by the notice so that the development or use of the land or building complies with this Part, the land use bylaw or regulations under this Part, a development permit or a subdivision approval,

within the time set out in the notice.

(3) A person who receives a notice referred to in subsection (2) may appeal to the subdivision and development appeal board in accordance with section 685.

**General Provisions from the *Edmonton Zoning Bylaw*:**

Section 5 provides the following with respect to **Approval Required for Development:**

5.1 **No Person:**

1. shall commence, or cause or allow to be commenced, a Development without a development Permit therefor issued under the provisions of Section 12 of this Bylaw; or
2. shall carry on, or cause or allow to be carried on a development without a Development Permit therefor issued under Section 12 of this Bylaw.

Under Section 7.2(9) of the *Edmonton Zoning Bylaw*, **Single Detached Housing** means:

development consisting of a building containing only one Dwelling, which is separate from any other Dwelling or building. Where a Secondary Suite is a Permitted or Discretionary Use Class in a Zone, a building which contains Single Detached Housing may also contain a Secondary Suite. This Use Class includes Mobile Homes which conform to Section 78 of this Bylaw.

Under Section 7.2(1) of the *Edmonton Zoning Bylaw*, **Apartment Housing** means:

development consisting of one or more Dwellings contained within a building in which the Dwellings are arranged in any horizontal or vertical configuration, which does not conform to the definition of any other Residential Use Class.

Under Section 6.1(27) of the *Edmonton Zoning Bylaw*, **Dwelling** means:

a self contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household.

Under Section 6.1(51) of the *Edmonton Zoning Bylaw*, **Household** means:

- i. one or more persons related by blood, adoption, foster care, marriage relationship; or



- ii. a maximum of three unrelated persons;

all living together as a single social and economic housekeeping group and using cooking facilities shared in common.

For the purposes of this definition, two people living together in an adult interdependence relationship shall be deemed to be in a marriage relationship and each of the relatives of the parties to an adult interdependence relationship shall be considered to be related to the partners and to the other relatives thereof. One domestic worker or one boarder may be deemed the equivalent of a blood relative.

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Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing. Bylaw No. 11136 requires that a verbal announcement of the Board's decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.

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MAILING ADDRESS:  
5th Floor, 10250 - 101 Street NW  
Edmonton, AB T5J 3P4

REGULAR MAIL

November 28, 2016

Our File: 111305898-001



Dear Sir/Madam:

A check with the Land Titles Office discloses that you are the registered owner of the property located at 9267 - 110A AVENUE NW, legally described as Plan 3816P Lot 11. This property is zoned DC1 Area 6 (McCauley Direct Development Control District) in accordance with Section 710 of the Edmonton Zoning Bylaw.

On November 9, 2016 Development Compliance Officer Brendan Bolstad from the City of Edmonton having Authority to exercise development powers under Section 542 of the Municipal Government Act R.S.A. 2000, conducted an interior land-use inspection of the building noted above.

**LAND USE INFRACTION:**

Our investigation revealed that an Apartment House with 6 dwellings has been developed. The City of Edmonton has not issued a development permit for an Apartment House at this property, which is contrary to Section 683 of the Municipal Government Act, R.S.A. 2000, c.M-26.1 and Section 23.2(2) of the Edmonton Zoning Bylaw 12800.

According to section 7.2(1) of the Edmonton Zoning Bylaw 12800: Apartment Housing means development consisting of one or more Dwellings contained within a building in which the Dwellings are arranged in any horizontal or vertical configuration, which does not conform to the definition of any other Residential Use Class. Apartment Housing is not a listed use in this DC1 Zone, which means that a development permit may not be issued for this use at the property.

**ORDER:**

Pursuant to Section 645 of the Municipal Government Act, R.S.A. 2000, YOU ARE HEREBY ORDERED TO:

1. Revert the building back to a Single Detached House.

AND

2. Acquire a Development Permit for interior alterations to complete the work.

AND

3. Reduce the number of occupants living in the building down to a single Household.

This Order must be complied with before January 17, 2017.

**CONSEQUENCES FOR NON-COMPLIANCE:**

In the event that a person fails to comply with an Order issued under Section 645, Section 646 of the Municipal Government Act authorizes the City to enter on the land and take any action necessary to carry out the Order. Section 553(1)(h.1) of the Act provides that the costs and expenses of carrying out and order may be added to the tax roll of the property and Section 566(1), subject to subsection (2), a person who is found guilty of an offence under this Act is liable to a fine of not more than \$10,000.00 or to imprisonment for not more than one year, or to both fine and imprisonment.

The property will be inspected on January 18, 2017 to determine compliance with this Order.

Failure to comply will result in action as described in Section 646.

YOU ARE HEREBY NOTIFIED THAT IF YOU HAVE NOT:

- 1) ACQUIRED A DEVELOPMENT PERMIT FOR INTERIOR ALTERATIONS

AND,

- 2) REVERTED THE BUILDING BACK TO SINGLE DETACHED HOUSING

AND,

- 3) REDUCED THE NUMBER OF OCCUPANTS IN THE BUILDING TO A SINGLE HOUSEHOLD;

By January 17, 2017, The City of Edmonton may carry out the Order by entering onto the land and performing remedial actions pursuant to Section 646, and all the costs and expenses in doing so will be added to the tax roll pursuant to Section 553(1)(h.1) of the Municipal Government Act R.S.A. 2000.

Following are Sections 553, 645, 646, 683, 685 and 686 of the Municipal Government Act, R.S.A. 2000, c.M-26.1, which provides you with the right to appeal this Order and enables the City to add all costs associated with this action to the tax roll of the property.

If you have any questions in regards to this matter, please contact the writer at 780-442-7190.

Regards,

Brendan Bolstad  
Development and Zoning  
Development Services  
Phone Number: 780-442-7190  
Email Address: [Brendan.Bolstad@edmonton.ca](mailto:Brendan.Bolstad@edmonton.ca)

**Adding  
Amounts  
Owing to tax  
roll**

- 553(1)** A council may add the following amounts to the tax roll of a parcel of land:
- (a) unpaid costs referred to in section 35(4) or 39(2) relating to service connections of a municipal public utility that are owing by the owner of the parcel;
  - (b) unpaid charges referred to in section 42 for a municipal utility service provided to the parcel by a municipal public utility that are owing by the owner of the parcel;
  - (c) unpaid expenses and costs referred to in section 549(3), if the parcel's owner contravened the enactment or bylaw and the contravention occurred on all or a part of the parcel;
  - (d), (e) repealed 1999 c.11 s.35;
  - (f) costs associated with tax recovery proceedings related to the parcel;
  - (g) if the municipality has passed a bylaw making the owner of a parcel liable for expenses and costs related to the municipality extinguishing fires on the parcel, unpaid costs and expenses for extinguishing fires on the parcel;
  - (g.1) if the municipality has passed a bylaw requiring the owner or occupant of a parcel to keep the sidewalks adjacent to the parcel clear of snow and ice, unpaid expenses and costs incurred by the municipality for removing the snow and ice in respect of the parcel;
  - (h) unpaid costs awarded by a composite assessment review board under section 468.1 or the Municipal Government Board under section 501, if the composite assessment review board or the Municipal Government Board has awarded costs against the owner of the parcel in favour of the municipality and the matter before the composite assessment review board or the Municipal Government Board was related to the parcel;
  - (h.1) the expenses and costs of carrying out an order under section 646;
  - (i) any other amount that may be added to the tax roll under an enactment.

**Stop order**

- 645(1)** Despite section 545, if a development authority finds that a development, land use or use of a building is not in accordance with
- (a) this Part or a land use bylaw or regulations under this Part, or
  - (b) a development permit or subdivision approval,
- the development authority may act under subsection (2).
- (2)** If subsection (1) applies, the development authority may, by written notice, order the owner, the person in possession of the land or building or the person responsible for the contravention, or any or all of them, to
- (a) stop the development or use of the land or building in whole or in part as directed by the notice,
  - (b) demolish, remove or replace the development, or
  - (c) carry out any other actions required by the notice so that the development or use of the land or building complies with this Part, the land use bylaw or regulations under this Part, a development permit or a subdivision approval, within the time set out in the notice.
- (3)** A person who receives a notice referred to in subsection (2) may appeal to the subdivision and development appeal board in accordance with section 685.

**Enforcement of  
stop order**

- 646(1)** If a person fails or refuses to comply with an order directed to the person under section 645 or an order of a subdivision and development appeal board under section 687, the municipality may, in accordance with section 542, enter on the land or building and take any action necessary to carry out the order.
- (2)** A municipality may register a caveat under the Land Titles Act in respect of an order referred to in subsection (1) against the certificate of title for the land that is the subject of the order.

- (3) If a municipality registers a caveat under subsection (2), the municipality must discharge the caveat when the order has been complied with.

**Permit**

- 683** Except as otherwise provided in a land use bylaw, a person may not commence any development unless the person has been issued a development permit in respect of it pursuant to the land use bylaw.

**Grounds for appeal**

- 685(1)** If a development authority
- (a) fails or refuses to issue a development permit to a person,
  - (b) issues a development permit subject to conditions, or
  - (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

- (2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal to the subdivision and development appeal board.
- (3) Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted.

**Appeals**

- 686(1)** A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

- (a) in the case of an appeal made by a person referred to in section 685(1), after
  - (i) the date on which the person is notified of the order or decision or the issuance of the development permit, or
  - (ii) if no decision is made with respect to the application within the 40-day period or within any extension under section 684, the date the period or extension expires,

or

- (b) in the case of an appeal made by a person referred to in section 685(2), after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

- (2) The subdivision and development appeal board must hold an appeal hearing within 30 days after receipt of a notice of appeal.

- (3) The subdivision and development appeal board must give at least 5 days' notice in writing of the hearing

- (a) to the appellant,
- (b) to the development authority whose order, decision or development permit is the subject of the appeal, and
- (c) to those owners required to be notified under the land use bylaw and any other person that the subdivision and development appeal board considers to be affected by the appeal and should be notified.

- (4) The subdivision and development appeal board must make available for public inspection before the commencement of the hearing all relevant documents and materials respecting the appeal, including

- (a) the application for the development permit, the decision and the notice of appeal, or
- (b) the order under section 645.

- (5) In subsection (3), "owner" means the person shown as the owner of land on the assessment roll prepared under Part 9.



**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-17-007



**BUSINESS LAID OVER**

SDAB-D-16-294	An appeal by <u>Wigalo Holdings Ltd.</u> to comply with a Stop Order to CEASE the Non-Accessory Parking, REMOVE all meters, signage, and material related to parking and REFRAIN from allowing Non-Accessory Parking. This Order is to be complied with on or before September 28, 2016. <b><i>January 18, 2017</i></b>
SDAB-D-16-295	An appeal by <u>Wigalo Holdings Ltd.</u> to comply with a Stop Order to CEASE the Non-Accessory Parking, REMOVE all meters, signage, and material related to parking and REFRAIN from allowing Non-Accessory Parking. This Order is to be complied with on or before September 28, 2016. <b><i>January 18, 2017</i></b>
SDAB-D-16-316	An appeal by <u>Superior Buildings &amp; Design Ltd.</u> to construct an addition and exterior alterations to an existing Religious Assembly (250-seat addition to 250-seat building and parking lot expansion) (Ethiopian Church). <b><i>January 19, 2017</i></b>
SDAB-S-14-001	An appeal by <u>Stantec Consulting Ltd.</u> to create 78 Single Detached residential lots, 36 Semi-detached residential lots, 31 Row Housing lots and three (3) Public Utility lots from SE 13-51-25-4 <b><i>January 25, 2017</i></b>
SDAB-D-16-144	An appeal by <u>Kiewit Energy Canada Corp</u> construct 6 Accessory General Industrial Use buildings - existing without permits (Kiewit Energy Canada Corp - 3 lunchroom buildings, 2 office buildings, and 1 office/lunch building) <b><i>February 15, 2017</i></b>

**APPEAL HEARINGS TO BE SCHEDULED**

230469969-001	An appeal by <u>Pattison Outdoor Advertising / Ogilvie LLP</u> to install (1) freestanding Minor Digital Off-premises Sign (14.6m x 4.3m digital panel facing South, and static panel facing North); and to remove an existing Freestanding Off-premises Sign on 2920-101 Street, existing Freestanding Off-premises Signs on 2303 Gateway Boulevard NW, and existing Freestanding Off-premises Sign on 2950 Calgary Trail NW as shown on plans submitted. (PATTISON - KBR CANADA LTD.) <b><i>January 26, 2017</i></b>
152674334-001	An appeal by <u>A&amp;E Architectural &amp; Engineering Group Inc.</u> to construct an Auctioneering Establishments building and operate an Auctioneering Establishment on the entire Site (including existing storage building and shed), and demolish an existing storage building (Osman Auction Inc.) <b><i>February 22, 2017</i></b>