



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: August 3, 2018  
Project Numbers: 245489756-003 &  
245489756-004  
File Numbers: SDAB-D-18-108 &  
SDAB-D-18-109

**Notice of Decision**

- [1] On July 19, 2018, the Subdivision and Development Appeal Board (the “Board”) heard appeals that were filed on **June 22, 2018 and July 3, 2018**. The appeals concerned the decisions of the Development Authority, issued on June 26, 2018, to refuse the following developments:

**To increase seating from 44 to 88 in an existing Bar and Neighbourhood Pub (Nyala Ethiopian Restaurant)**

**To develop an outdoor patio to an existing Bar and Neighbourhood Pub (8 seats). (Nyala Ethiopian Restaurant).**

- [2] The subject property is on Plan NA Blk 17 Lots 23-24, located at 10875 - 98 Street NW, within the DC1 Direct Development Control Provision. The Boyle Street/McCauley Area Redevelopment Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit applications with attachments, proposed plans, and the refused Development Permits;
  - The Development Officer’s written submissions including a previous decision of the Subdivision and Development Appeal Board;
  - The Appellant’s written submission and photographs; and
  - One online response in opposition to the proposed developments.

**Preliminary Matters**

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

- [5] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).
- [7] The Board notes that evidence and exhibits were applicable to both SDAB-D-18-108 and SDAB-D-18-109, but separate decisions and reasons were issued in this notice.
- [8] The Chair referenced Section 685(4) of the *Municipal Government Act*, which states that 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.
- [9] The Chair asked the Appellant to describe how the Development Officer failed to follow the directions of Council in refusing these Development Permit applications.

### **Summary of Hearing**

*i) Position of the Appellant, Mr. M. Tesfay:*

- [10] The Development Officer did not follow the direction of Council because he did not consider the available on-street parking which may have provided discretion to vary the minimum required number of parking spaces for the proposed increase in seating.
- [11] The Development Officer characterized the proposed development as a Major Eating and Drinking Establishment (Nightclub) rather than a Minor Eating and Drinking Establishment. These Use Classes were provided by the *Land Use Bylaw 5996* effective at the date that Council approved the Boyle McCauley Direct Control Provision (Area 5). A Minor Eating and Drinking Establishment is a prescribed use in the DC1 Direct Development Control Provision.
- [12] A variance to allow a deficiency of 17 parking spaces was granted when the original Development Permit for a Restaurant was approved in 2012. The business is still being operated as a Restaurant.
- [13] The Restaurant operates between 5:00 p.m. and 2:00 a.m. and there is ample on street parking available during that time as illustrated in the submitted photographs.

- [14] The customer base is primarily from the ethnic community who use public transit. If they do arrive by vehicle after 5:00 p.m., ample on-street parking is available. Parking was addressed by the Board when the development permit for the Restaurant was approved in 2012. At that time, the Board found that the parking problems in this area cannot be attributed to one business but are rather a result of the close proximity of a major hospital and other medical facilities.
- [15] The Development Officer did not consider his proposal to provide 25 parking spaces at the Humpty's Restaurant that is located 89 metres from the subject site.
- [16] The development permit application was made on April 5, 2018 and he did not receive a response from the Development Officer until May 25, 2018 which is more than 40 days. He asked him to refuse the application because he had been waiting more than 3 months.
- [17] In response to a question, Mr. Tesfay advised that the Development Officer was not waiting for him to provide further information. He had been in contact with the Development Officer via email and telephone. He originally filed an appeal on the deemed refusal on June 22, 2018.
- [18] Mr. Tesfay provided the following information in response to questions from the Board:
- a) He needs to increase seating in order to make his business viable. Conditions have been placed on his business licence that he is required to have two security guards on the premises every day between 9:00 p.m. and 2:00 a.m. as well as a scanning machine and card scanner at a cost of approximately \$600.00 per month. In addition, he has five employees to pay. If he cannot increase the seating, he will be forced to close his business.
  - b) The development permit that was approved in 2012 was for 69 seats. He applied for 44 seats on the main floor and 44 seats in the basement in 2017, but the Board only approved 44 seats on the main floor and basement combined.
  - c) He has never received any complaints about street parking and is providing 25 parking spaces in the Humpty's parking lot after 10:00 p.m.
  - d) The neighbourhood is comprised of older houses and most of the neighbours are his customers. There is a laundromat located behind his site.
  - e) The Fire Department has approved 120 occupants, 60 on the main floor and 60 in the basement. He has to turn customer away on a regular basis.
  - f) He exceeded the occupancy when a special event was being held in the Restaurant.
  - g) He acknowledged the opposition of a neighbouring property owner based on a lack of parking and noise concerns. Street parking is used by hospital workers during the day and is only a problem until 3:30 p.m. After 3:30 p.m., there is lots of street parking

available. He noted that the neighbour who opposed the development is located quite a distance from the Restaurant. He goes outside when the Restaurant closes to make sure that customers are quiet when leaving the premises. A neighbour who resides closer has provided a letter of support.

- h) The Humpty's parking lot is located 89 metres away from the subject site if you access it by cutting through an empty parking lot. He talked to the owner of that lot who does not object to that proposal.
- i) The Travel Agency is open between the hours of 9:00 a.m. and 5:00 p.m.

[19] The outdoor patio is beautifully landscaped and he would like to be able to allow his customers to use it.

[20] The most affected neighbours who reside immediately north and south of the subject site support the proposed outdoor patio. The patio has been sited closer to the south property line.

[21] The neighbour to the north is a Travel Agency and has provided a letter of support. The neighbour to the south was going to attend the hearing today but could not make it.

*ii) Position of Affected Property Owners in Support of the Appellant, Mr. Currie:*

[22] He told the Board that the Nyala Restaurant is the nicest property in a not so nice neighbourhood. There are flower planters at the front of the building and it is well maintained.

[23] He acknowledged that street parking is limited during the day because hospital workers park their vehicles on this street but after 3:30 p.m. there is lots of street parking available.

[24] In response to a question, he advised that he has never experienced any problems because of excess noise.

[25] Mr. Tesfay pays Mr. Currie's roommate to sweep up litter and pick up broken glass after the business closes at night.

*iii) Position of the Development Officer, Mr. P. Adams and Mr. J. Lallemand, Coordinator, Community Standards:*

[26] Mr. Adams acknowledged that it did take quite a while to review this application because of a heavy work load. He requested more information from the Applicant on May 25, 2018. Some of the information was provided but he still required a revised Site Plan that did not contain the patio and maintained some onsite parking as per previous approvals. The amended Site Plan was submitted on June 18, 2018 prior to the appeal of the deemed

refusal that was filed on June 22, 2018. He was able to complete the refusal with the reasons around the same time that the appeal was filed on the deemed refusal.

- [27] In response to a question from the Board, Mr. Adams indicated that he had not considered the legalities of the deemed refusal versus a typical refusal that includes full reasons. However, in the case of a deemed refusal, a report would be provided to the Board and he assumed that the Board would consider the development in its totality and, as such, the reasons for refusal would provide some guidance to the Board.
- [28] He referenced a copy of his report that was provided to the Board in 2017. In this definition, it was a deemed refusal for the Bar and Neighbourhood Pub Use and while that appears in the scope of the job as per the application and the Board's previous approval in 2017, this application was still considered a Nightclub based on the previous testimony of Mr. Doyle and an EPS Sergeant who was involved in the appeal in 2017. In their respectful opinion, this business is operating as a Nightclub. He calculated the Floor Space as per the definition of a Nightclub in the *Edmonton Zoning Bylaw* that looks for a threshold of 10 percent entertainment area to be considered a Nightclub. He determined that close to 10 percent of the floor space is being used as an entertainment area. There are planters marked on the floor plan and this area could be used as a dance floor or entertainment area. He noted that the Board disagreed because the planters were in the way and did not consider this area as an entertainment area in the appeal that was held last year. This area was included in the calculation to determine the amount of entertainment space because of the video evidence provided.
- [29] In response to a question by the Board, he referenced the definition of a Nightclub contained in the *Edmonton Zoning Bylaw* and clarified that the calculation for the 10 percent threshold would be rounded up to the whole number. He provided the Board with the actual calculation that would be rounded up to 10 percent. He acknowledged that the definition does require more than 10 percent of the floor area to be used as entertainment space but, based on his review; it was his determination that a Nightclub is the best Use Class for this development.
- [30] He calculated the entertainment space being used based on a review of the videographic evidence provided and the testimony of the EPS, Community Standards and the Compliance team. The videos show that people are dancing in a variety of areas which makes it difficult to determine the actual entertainment area. He based his calculation on the areas that could be used and that were shown to be used as entertainment spaces. He acknowledged that the 10 percent is a hard test but the actual use of the space needs to be considered. He took all of this evidence into consideration when determining the appropriate Use Class.
- [31] In response to a question, Mr. Adams advised that he had not reviewed the Court of Appeal decision, *Sihota v Edmonton (City)*, 2013 ABCA 43, but could contact Legal Counsel to obtain an opinion if that was the wish of the Board. He acknowledged that the Board previously approved this development as a Bar and Neighbourhood Pub and it was not his intention to override that decision. However, he did want to make it clear that the

Development Authority has determined that the proposed development is a Nightclub because they could not see that anything had changed for the previous refusal.

- [32] There is nothing specific in the definition of a Bar and Neighbourhood Pub that prohibits dancing. However, in this case, it was determined by Bylaw Enforcement that this business was operating as a Nightclub and not a Bar and Neighbourhood Pub because they saw customers dancing and strobe lights being used.
- [33] The floor plans were referenced to illustrate the area that was used to calculate the amount of floor area being used as entertainment space. Space on the main floor and the basement were considered, specifically, the area outside of the seats, tables and walkways as well as the music playing and the security desk on the main floor. The area within the seating was not considered, although this area was shown to be used on the videos that were provided.
- [34] Allowing an increase in occupancy from 44 to 88 exceeds the occupancy of 69 seats that was approved by the Subdivision and Development Appeal board in 2012. The parking variance would also have to be reviewed because it was granted based on the approval of 69 seats. Therefore, it was his opinion that the increase in occupancy may not be appropriate based on the decision of the Board in 2012 to limit the number of seats in order to mitigate the impact of the proposed development. The increased number of seats would also impact parking which has been addressed by neighbouring property owners.
- [35] In response to a question, he indicated that it was difficult to calculate the actual number of seats in this establishment because benches are used. It was his opinion that it is reasonable to assume that there are 88 seats. Occupancy is enforced by Community Standards, the Development Compliance team and EPS.
- [36] The decision was made not to use discretion to vary the requirements of section 90 because it would result in patrons of the business travelling down rear alleys that are not well lit, behind residential properties which could cause some safety concerns. The Applicant's proposed route would also take patrons through a privately owned site and without a cross lot access agreement on the title would be considered trespassing.
- [37] He did not consider granting a variance to the parking requirements because street parking is congested based on a review of aerial photographs provided. There is some residential housing in the area but the street is transitioning to include more commercial developments which may result in an increase in traffic and parking that will conflict with the existing residential uses.
- [38] The Boyle Street/McCauley Area Redevelopment Plan designates this area a low density commercial zone but that development should protect residential areas from conflicts with commercial uses.
- [39] Mr. Lallemand indicated that the main concern of Community Standards and Neighbourhoods is the patron count.

- [40] The Public Safety Compliance team had concerns that resulted in a business licence review which led to conditions being placed on the business licence, one of them limiting the number of patrons to 44 in accordance with the previous decision of the Subdivision and Development Appeal Board.
- [41] A hearing was scheduled with the Community Standards and Licence Appeal Committee on June 14, 2018, to appeal the conditions imposed on the business licence. The hearing was adjourned with the condition that the interim stay of conditions be lifted immediately.
- [42] Multiple maintenance inspections have been conducted since June 14, 2018, resulting in enforcement or pending enforcement. The most recent inspection resulted in the owner ordering the DJ to turn the lights on, the music off and announced that the bar was closing. This caused a disturbance with some patrons swarming authorities. Some had to be held back by other patrons. This occurred with a maximum occupancy of 44 patrons and it was his opinion that doubling the occupancy to 88 seats is unacceptable. A business should be run to meet the conditions of the business licence as well as the required zoning requirements
- [43] In response to a question, Mr. Lallemand advised that the maximum allowed occupancy of 44 patrons has not been exceeded since June 14, 2018 when the stay was lifted. However, the maximum occupancy was exceeded on many occasions prior to June 14, 2018.
- [44] Since June 14, 2018, every inspection by the Public Safety Compliance team has resulted in discovery of violations of the business licence conditions and charges being laid.
- [45] The Appellant has not shown that the business can be run safely with 44 patrons. Therefore, it was his opinion that more safety problems will result with 88 patrons.
- [46] Mr. Adams indicated that pursuant to the requirements of Section 710.4(5) of the *Edmonton Zoning Bylaw*, the development regulations contained in Section 90 apply to the proposed outdoor patio.
- [47] The proposed outdoor patio does not comply with the requirements of Section 90 because it abuts a Single Detached House to the north and an Apartment House to the south. There is an Apartment House to the rear of the subject site across the lane and a Semi-detached House across the street. The area in general is characterized by residential and low intensity commercial uses. A patio cannot be developed in the front or the rear without varying this regulation.
- [48] Mr. Adams confirmed that a Development Permit was approved in 2012 to change a dwelling, main floor, within an existing 3 dwelling Apartment House to a Professional, Financial and Office Support Use, Orient Travel and Tour Centre.

*iv) Rebuttal of the Appellant*

- [49] It was his opinion that the Development Officer was waiting for the outcome of his business licence appeal hearing on June 14, 2018, before making a decision on his development permit application.
- [50] He did receive a ticket for exceeding the maximum occupancy on March 5, 2017 when a special event was being held on the premises.
- [51] The Public Safety Compliance team has visited the premises every Friday and Saturday night since June 14, 2018, and each time made a finding that conditions were not being adhered to. They came to the premises on June 20, 2018, at approximately 9:20 p.m. but the Restaurant was closed. He was there with a few friends watching a soccer game. They questioned why the conditions were not being followed as there was no security guard, waitresses and the scanning machine was not operational and issued a \$4,000.00 ticket. He maintained to the Compliance team that he was closed.
- [52] It was his opinion that they are doing everything to shut down his business but he does not know why.
- [53] The Public Safety Compliance team visited the site last weekend at approximately 1:30 a.m. He shut down the music and turned on the lights so that they could complete the inspection. He showed them the scanner and the security measures that were in place. A few of the customers were frustrated and politely asked the Police why they felt they had to visit the premises every day. The Police Officers objected to being questioned by his customers.
- [54] There is no dance floor at all since the Board approved the Bar and Lounge in 2017. Nothing has been changed since then and the business is being run exactly as it was.
- [55] He has been in Canada for 27 years and served in the Military for 20 years. He is ready to sell the building if the development is not approved.
- [56] He has been losing money ever since he was approved for 44 occupants last year. The establishment is now only open on Fridays and Saturdays.
- [57] The maximum allowed occupancy of 44 patrons was exceeded on one occasion but the count included himself and all of his staff.



**Decision SDAB-D-18-108**

[58] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **REFUSED**.

**Reasons for Decision SDAB-D-18-108**

[59] The first issue to be determined is the nature of this appeal and what is being appealed. The Appellant initially filed the appeal before the development permit was refused and the decision and reasons for refusal were issued by the Development Authority. The Appellant filed the appeal on the grounds that the development permit was deemed to be refused pursuant to sections 684(1) and 684(3) of the *Municipal Government Act*.

[60] Section 684(1) of the *Municipal Government Act* states:

The development authority must make a decision on the application for a development permit within 40 days after the receipt by the applicant of an acknowledgement under section 683.1(5) or (7) or, if applicable, in accordance with a land use bylaw made pursuant to section 640.1(b).

[61] Section 684(3) of the *Municipal Government Act* states:

If the development authority does not make a decision referred to in subsection (1) within the time required under subsection (1) or (2), the application is, at the option of the applicant, deemed to be refused.

[62] These sections were significantly amended in 2016 and then again more recently. For many years, the *Act* stated that a development permit application that had not been decided upon by the Development Authority within 40 days of the application was deemed to be refused. This is no longer the case. A development permit is deemed refused if a decision is not made within 40 days after receipt by the Applicant from the Development Authority of an acknowledgement that the application is in fact complete. The *Act* now creates a regime by which development permit applications are determined to be complete or incomplete.

[63] The evidence before the Board was not entirely complete with respect to the history of Permit No. 245489756-003. However, there was evidence that on May 25, 2018 the Development Authority requested several documents from the Applicant including an updated Site Plan. It is clear that no acknowledgement of completeness was issued by the Development Officer pursuant to section 683.1(5) or (7). In fact, to the contrary, the Development Authority made a written request for additional information that was required to properly review the application. The Development Authority did not receive a response to that request for additional information until June 18, 2018 and the appeal

was filed on June 22, 2018. As a result, the Board finds that the development permit should not be deemed to be refused, pursuant to section 684(3) of the *Municipal Government Act*.

- [64] The Development Authority did, however, issue a written refusal for Permit No. 245489756-003 and Permit No. 245489756-004 on June 26, 2018. On July 3, the Appellant filed an appeal on the decision to refuse the development of an outdoor Patio to an existing Bar and Neighbourhood Pub (8 seats) and amended the written reasons for appeal already filed on Permit No. 245489756-003 to increase seating from 44 to 88 in an existing Bar and Neighbourhood Pub (Nyala Ethiopian Restaurant).
- [65] The Board, therefore, considers both of these appeals to be appeals of the written refusals issued by the Development Authority on June 26, 2018.
- [66] The Board then considered the development permit application to increase seating from 44 to 88 in the existing Bar and Neighbourhood Pub.
- [67] The subject site is located within the Boyle Street McCauley Area Redevelopment Plan (Area 5), and is therefore in a Direct Control district.
- [68] Section 685(4) of the *Municipal Government Act* states (in part) that:
- if a decision with respect to a Development Permit application in respect of a direct control district is made by a council, there is no appeal to the subdivision and development appeal board, or 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.
- [69] The Board must determine whether or not the Development Authority followed the directions of Council as set out in this provision.
- [70] Pursuant to DC1 (Area 5), Section 3(5) (Section 8.4.16.3.5), a Minor Eating and Drinking Establishment is a Listed Use but a Major Eating and Drinking Establishment is not a listed Use Class.
- [71] It was the opinion of the Development Officer that the Use is best defined as a Nightclub Use (Major Eating and Drinking Establishment) which is not a listed Use in the DC1 Zone.

- [72] However, the Board does not accept this opinion. A previous decision of the Board (SDB-D-17-149) was issued on September 7, 2017. As outlined in paragraphs 91 through 112 of that decision, the Board found that the proposed development is, in fact, a Bar and Neighbourhood Pub, not a Nightclub and complies with Section 7.2.3 of the ARP, Sub-Area 1 of the Chinatown North Special Commercial Sub-Area. This Board makes the same findings in this appeal for the reasons outlined in the previous Board decision. Furthermore, the Board finds that it would be estopped from making a decision that is contrary to the previous decision made in 2017 by virtue of the Court of Appeal decision, *Sihota v Edmonton (City)*, 2013 ABCA 43. The proposed development is a Use which is allowed in this Direct Control Zone.
- [73] However, the proposed increase from 44 seats to 88 seats will necessitate the provision of additional parking spaces. The Development Authority found that the required parking variances were not in keeping with the direction of City Council as provided in this Direct Control Zone. The Development Authority correctly determined that the required off-street parking must comply with Section 66 of the *Land Use Bylaw* pursuant to Section 8.4.16.4.4 of the Boyle Street McCauley Area Redevelopment Plan. The development as a whole would require 25 parking spaces with the addition of 44 seats, an increase of 11 spaces from the previous approval by SDAB-D-17-149, and a total deficiency of 22 spaces. The Development Authority also noted that the rear of the site has been developed without a development permit and three parking spaces originally approved have been removed. The remaining three parking spaces are enclosed within a fence and are inaccessible. This increased the proposed deficiency to 25 parking spaces which is contrary to Section 66 of the *Land Use Bylaw*.
- [74] Section 4(9) of the Boyle Street/McCauley Area Redevelopment Plan (Section 8.4.16.4.9) states that:
- the Development Officer may grant relaxations to the regulations contained in Sections 50 through 79 of the *Land Use Bylaw* and the provisions of this District, if, in his opinion, such a variance would be in keeping with the general purpose of this District and would not adversely affect the amenities, use and enjoyment of neighboring properties.
- [75] The Development Authority did not grant a variance to the parking requirements because it was not in keeping with the general purpose of this District and would adversely affect the amenities, use and enjoyment of neighbouring properties. The Development Authority determined that granting a variance would be contrary to Section 7.2.3 objective 4 of the Boyle Street/McCauley Area Redevelopment Plan to “protect residential areas from conflicts with commercial uses”. The Development Authority noted that the subject site is surrounded by residential uses.
- [76] Pursuant to Section 8.4.16.2 of the Boyle Street/McCauley Area Redevelopment Plan, the Rationale of the Direct Control Zone (DC1) states that the intent of the Zone is to:

provide for a District which will promote the conservation and rehabilitation of the existing housing stock until this area is redeveloped for low intensity business uses in order to achieve the intent of Section 7.2.3 of this plan.

- [77] The Board agrees with the finding of the Development Authority that granting an additional variance to the parking requirements would not be in accordance with the low intensity business Uses and, therefore, did not comply with the variance power set out in Section 4(9) of the Direct Control Zone.
- [78] The required variance in the parking requirements would negatively impact neighbouring property owners because of the excess noise occurring during the late night hours.
- [79] The Board finds that the Development Authority did follow the direction of Council set out in Section 4(9) (Section 8.4.16.4.9) of the Boyle Street McCauley Area Redevelopment Plan by not relaxing the requirements of Section 66 of the *Land Use Bylaw* because it would adversely affect the amenities, use and enjoyment of neighbouring properties.
- [80] The Development Authority noted that the Applicant proposed alternative parking at a parking lot located at 9910 – 108 Avenue. Section 54.2.2.b of the *Edmonton Zoning Bylaw* states:
- For all other Uses, parking spaces may be provided on a Site located remotely, but no further than 120 metres from the Site. Such a distance shall be measured along the shortest public pedestrian route from the nearest point of the parking area to the nearest point of the site where the building or Use is located.
- [81] The Development Authority calculated that the distance to the alternate parking along the shortest public pedestrian route was 135 metres, which does not comply with Section 54.2.2.b. The Development Officer was not prepared to allow the Appellant's proposed shorter alternate route through private property. He noted that there may be security concerns with patrons travelling through back alleys without the eyes on the street and lighting associated with busier public roadways. The Board finds that the Development Officer's exercise of his discretion was reasonable and that he followed directions of Council in refusing to grant a variance.
- [82] Based on all of the above, the appeal is denied and the development is refused.

**Decision SDAB-D-18-109**

[83] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **REFUSED**.

**Reasons for Decision SDAB-D-18-109**

[84] This was an application to develop an outdoor patio to an existing Bar and Neighbourhood Pub (8 seats) (Nyala Ethiopian Restaurant).

[85] As the subject property is located in a Direct Control District, Section 685 of the *Municipal Government Act* sets out the scope of appeal as follows:

Designation of direct control districts

685(4) Despite section subsections (1), (2) and (3), 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.

[86] The Board must determine whether the Development Authority followed the directions of Council set out in the Direct Control provisions.

[87] Section 710.4(5) of the *Edmonton Zoning Bylaw* states that "all regulations in this Bylaw shall apply to development in the Direct Development Control Provision, unless such regulations are specifically excluded or modified in a Direct Development Control Provision."

[88] Accordingly, this application must be assessed pursuant to terms of section 90 of the *Edmonton Zoning Bylaw* which are as follows:

**Section 90 states the following:**

*Outdoor Seating Associated With Specialty Food Services, Restaurants, Bars and Neighbourhood Pubs, and Nightclubs*

[1] If any Specialty Food Service, Restaurant, Bar and Neighbourhood Pub or Nightclub abuts or is across a Lane from a Site zoned residential or a Site with a residential development, the Development Officer shall draw a line parallel to the boundary or Lane separating each such residential development or Zone

and bisecting the Site containing the Specialty Food Service, Restaurant, Bar and Neighbourhood Pub or Nightclub Uses and shall not allow any outdoor seating on the side of any such line that is closest to the Residential Zone or development.

- [89] The evidence before the Board was that there are residential developments abutting the subject site on both the north and south boundaries. During the submissions of the Appellant, a letter of support was submitted from Orient Travel, located at 10873 – 98 Street, the immediately adjacent property to the south. The Development Authority confirmed that there are, in fact, four different approved Uses at 10873 – 98 Street, three of which are residential housing. Based on that evidence, the Board finds that there are residential developments abutting the subject site on both the north and south boundaries. As a result section 90 forbids the construction of outdoor seating area on either the north or south sides of the subject site and the proposed outdoor seating area does not comply with section 90. As a result, the Development Officer followed the directions of Council by denying the application for the Outdoor Patio.
- [90] Based on all of the above, the appeal is denied and the development is refused.

Mr. I. Wachowicz, Chairman  
Subdivision and Development Appeal Board

Board members in attendance: Mr. D. Fleming, Mr. A. Peterson, Ms. C. Van Tighem, Mr. M. Young

**Important Information for the Applicant/Appellant**

1. 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.
  
2. 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.*