



**EDMONTON
TRIBUNALS**

*Community
Standards &
Licence Appeal
Committee*

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March 24, 2022

WITHDRAWAL NOTICE

Lavotti Restaurant and Lounge Inc.

Attn: M. S.
10511 - 82 Avenue NW
Edmonton, AB T6E 2A3

RE: Decision to Impose Conditions on Business Licence 385388357-002, Issued to Lavotti Restaurant and Lounge Inc. (Lavotti Restaurant and Lounge), at 10511 - 82 Avenue NW Edmonton, File: CSLAC-22-001

We confirm that the appeal regarding the above matter was withdrawn by Legal Counsel for the Appellant at the hearing on March 15, 2022 with the Appellant in attendance due to the outcome of File CSLAC-22-003 (Decision to Cancel the Alcohol Sales (Consumption On Premises/Minors Prohibited) Category from Business Licence 385388357-002).

Accordingly the hearing was cancelled and our file has been closed.

If you require further assistance, please contact Business Licensing & Vehicle for Hire by calling 311.

Community Standards and Licence Appeal Committee

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: Lavotti Restaurant & Lounge Inc. v Development Services (City of Edmonton), 2022 ABESLAC 10003

Date:	March 24, 2022
Business Licence Number:	385388357-002
CSLAC File Number:	CSLAC-22-003

Between:

Lavotti Restaurant & Lounge Inc.

and

The City of Edmonton, Development Services

Committee Members

Kathy Cherniawsky, Chair
Don Fleming
Joel McDonald

DECISION

- [1] On March 15, 2022, the Community Standards and Licence Appeal Committee (the “Committee” or “CSLAC”) heard an appeal that was filed on January 20, 2022. The appeal concerned the decision of Development Services to Cancel the Alcohol Sales (Consumption On Premises/Minors Prohibited) Category from Business Licence #385388357-002, issued to Lavotti Restaurant and Lounge Inc., pursuant to Section 7(a) and 7(c) of the *Business Licence Bylaw 13138*.
- [2] The subject property is located at 10511 - 82 Avenue NW, Edmonton.

[3] The appeal hearing on March 15, 2022 was held through a combination of written submissions and video conference. The following documents were received prior to the hearing and form part of the record:

- The Appellant's written request for appeal and submission from Legal Counsel
- Record from the Program Manager, Business Licensing and Vehicle For Hire
- Written Submission from Law Branch, City of Edmonton

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 30(1) of the *City of Edmonton Bylaw 20002 Business Licence Bylaw*.

[7] All parties agreed the Committee proceed with hearing CSLAC-22-003 (Decision to Cancel the Alcohol Sales (Consumption On Premises/Minors Prohibited) Category from Business Licence #385388357-002 prior to hearing CSLAC-22-001 (Decision to Impose Conditions on Business Licence 385388357-002).

Summary of Hearing

i) Position of the Appellant, Lavotti Restaurant and Lounge Inc.

[8] K. Goodman of KGPC Law appeared to represent Lavotti Restaurant and Lounge Inc. He was accompanied by M. S., the business owner as well as L. A., the Landlord.

K. Goodman

[9] The decision to cancel the Alcohol Sales (Consumption On Premises/Minors Prohibited) section of Lavotti's business licence was made based on an irregularity that occurred back in 2007 and was recently discovered by the Program Manager of Business Licensing (in December, 2021). The cancellation was based on a 2007 change of use that was made to the Development Permit. Neither the Appellant or the Appellant's landlord were aware of this change.

[10] His clients have been issued fines as a result of this irregularity and have a hearing scheduled tomorrow with Alberta Gaming Liquor and Cannabis (AGLC).

[11] The submitted videos showed inspections that occurred in 2021. These inspections occurred primarily after the nightclub portion of the business was being closed down. There was no detrimental conduct or instances of impeding the investigation on the part

of the Appellant. Some of the citations received by the Appellant were as a result of patrons being belligerent towards the inspectors and police which was out of his client's control. His client was trying to exit the patrons. It is clear the inspectors and officers had full control of the situation and were able to investigate without impediment.

- [12] The entire investigation was undertaken due to prejudicial beliefs and was not based on evidence. The allegations that M. S. and patrons of the lounge had a history of performing illegal activities were not based on reasonable and probable grounds.
- [13] The Appellants do not believe the cancellation is fair and they should have an opportunity to remedy the defect which was not discovered until the Appellant was already operating as a lounge with the sale of alcohol not allowing minors. There is no impact to the community based on the fact that this use has been there since at least 2007.
- [14] His client intends to comply with all reasonable conditions should this appeal be upheld. He voluntarily complies with many of them now.
- [15] K. Goodman is raising objections as to the manner in which the error was discovered and how it is being dealt with.

L. A., Landlord

- [16] L. A. owns the subject building and both floors have been licenced to operate as a Bar and Neighbourhood Pub for the past 20 years. The main floor was leased to M. S. in October, 2020; however, due to COVID-19 delays, M. S. did not get his licence until March or April of 2021.
- [17] In August, 2021, L. A. was advised by S. Exner with City Business Licensing that his tenant was no longer properly operating under the licence that had been granted by the City.
- [18] Sometime in 2007, the Development Permit for the business conducted on the main floor of the building had been changed to a Restaurant use. L. A. was never made aware of this change which was done without his permission. Despite this change, the City issued a licence to M. S. to operate as a Bar and Neighbourhood Pub. The second floor is still licenced to operate as a pub.
- [19] Early in the 2000's, landlords and business owners supported restrictions being introduced to control the proliferation of licenced premises in the Strathcona area. L. A.'s understanding at the time was that if you already had a building that operated as a licensed premise you would retain that.

- [20] In 2007, an application was allowed to operate the main floor as a Restaurant and he has become liable for a change he did not authorize and which has produced problems for his current tenant.
- [21] L. A. was not aware that there was an appeal process until November, 2021 when he received a letter from S. Exner from City of Edmonton, Business Licensing.
- [22] The error made in 2007 has led to today's situation. His tenant is being harassed by police for no longer complying with what should have been permitted.

M. S. Business Owner

- [23] It is untrue that he is not complying with the requirements of his licence. He had provided all of the necessary documents when he made his application to the City of Edmonton and there were no problems with AGLC when they issued his alcohol licence.
- [24] It is incorrect to say no minors are allowed on his premises. They are allowed until 10:00 p.m. It is not logical to permit minors after that time on Whyte Avenue. This area is oriented more towards adults after that time.
- [25] He had no problems until last year when the harassment started. He felt the officers from the Edmonton Police Service were racist and lied to AGLC to get him into trouble. He had over 30 visits from S. Exner of the City of Edmonton who always showed up with a police officer. The AGLC confirmed he was doing nothing wrong at the time.
- [26] Everything has since escalated and they have been receiving fines every weekend from police officers for no reason. They have complied with everything they have been asked to do. Now M. S. has received a fine from the AGLC because of the actions of the Edmonton Police Service.
- [27] He received two different permits from A. Adetunji of Business Licensing within an hour. The second permit said his liquor licence no longer exists. This was very confusing. He has done nothing wrong and has not broken any laws.
- [28] K. Goodman stated that the decision issued on January 13, 2022, references the licensing error and it is not fair that this be applied retroactively and be strictly implemented.
- [29] The Appellants provided the following responses to questions from the Committee:
 - a) L. A. explained why Origin India's Development Permit was to change the Use from a Retail Store to a Restaurant. In 2000, an upstairs tenant was running a licensed premise and had plans to expand the operation to the main floor. Plans changed, the business was sold a year later and the tenant who took over the upstairs space subleased the main floor to a Dollar Store. One of the partners that

ran the Dollar Store subsequently converted the space back to a Restaurant and Pub.

- b) L A. was not aware that there was a distinction between a Pub and a Restaurant. He also did not realize that a Development Permit could be issued to change a business use from a Bar and Neighbourhood Pub to a Restaurant, but could not go the other way around.
- c) The bylaw that was passed in about 2004 to control the proliferation of licenced premises in the Strathcona area was good at the time as City police thought things were getting out of control. However, times have changed and there are now “for lease” signs everywhere and the economy is hurting.
- d) The issues today are the result of a simple clerical error and if the original Development Permit could be reinstated the problems being faced today would be eliminated.
- e) Origin India Restaurant operated on the building’s main floor from approximately 2007 to 2016. The Origin India owner had two restaurants on Whyte Avenue and when he decided to merge them, another restaurant opened on the main floor in 2017. That restaurant was given the same licence as the one M. S. has with restrictions on minors after 10:00 p.m.
- f) It doesn’t make sense that a restaurant can operate 24 hours a day and allow minors the entire time. The whole implication of a licensed premises is to restrict minors and prevent underage drinking. It does not make sense that because of the 2004 bylaw change, the Development Permit cannot be changed back to restrict minors when the whole intent of the bylaw was to control the proliferation of licensed premises.
- g) All of the tenants following the tenancy of the Dollar Store served liquor.
- h) M. S. is not aware of a Section 645 Stop Order being issued in August, 2021. He has received one letter after another and complied with everything that was requested of him.
- i) Although K. Goodman has not seen the Stop Order, he assumed it was issued in August, 2021 at the time his client was made aware that the current bylaw was no longer being complied with. The landlord was contacted by S. Exner in November, 2021 and was told that the Stop Order must be complied with by December, 2021. As family illness forced M. S. to leave the City, the compliance date was extended to January 10, 2022. After that date, L. A. began receiving \$1,000 tickets from the City.

j) Although he was not in town, M. S. promptly replied to any emails he received.

ii) Position of the Decision Maker, Development Services

[30] C. Hodgson, City of Edmonton Law Branch, appeared to represent the decision maker. The original decision maker, V. Ghomashchi, is no longer with the City.

[31] The City's Business Licensing Department generally conducts Business Licence reviews based on complaints or information that comes from enforcement or other employees who are on the ground. This includes the Public Safety Compliance Team (PSCT) which is an amalgamation of a number of enforcement agencies including City Bylaw Officers, as well as Edmonton Police Service (EPS) and AGLC officers.

[32] The structure of both decisions (Decision to Impose Conditions on Business Licence 385388357-002, and Decision to Cancel the Alcohol Sales (Consumption On Premises/Minors Prohibited) Category from Business Licence #385388357-002 was designed to keep the issues very separate and to ensure the decision makers chosen were not biased and there was no bad faith in either of the decisions made.

[33] The timing of this business licensing review regarding the error is not unusual. Errors often come to light when other enforcement work is occurring. The PSCT proposal alleging public safety concerns was not shared with V. Ghomashchi, the person who made the Cancellation Decision. There was a very clear line between the public safety concerns that were listed for the Conditions Decision and what was considered for the Cancellation Decision.

[34] As per Paragraph 3 of the Appellant's Affidavit, when he purchased his business, "there was an existing liquor licence and the business operated as a restaurant primarily during the day, and a lounge and traditional bar in the evenings with service and consumption until 3:00 a.m., and minors being allowed at all times".

[35] Where minors are allowed at all times, but liquor service exists, the specific licence that is issued under business licensing is an alcohol consumption minors allowed licence. They are here today for the cancellation of the Alcohol Sales (Consumption On Premises/Minors Prohibited) licence which does not appear to meet the previous licence. With his existing development permit, M. S. could potentially apply for an alcohol consumption minors allowed licence and if granted would need to fix his AGLC licence.

[36] M. S.'s characterization of the previous business is unusual. The Respondents are not sure if AGLC would ever allow an establishment to operate as a traditional bar or lounge with minors prohibited on the premises at all times.

[37] The Development Permit for the main floor of this location was granted in 2007 and is for a Restaurant. It appears that the upper floor of the building has a Bar or Neighbourhood Pub designation. The previous Business Licence for the main floor of

the building from February, 2018 was minors allowed but AGLC granted a minors prohibited Liquor Licence which is in conflict with the minors allowed Business Licence. AGLC normally goes into a business once it is running to determine what their operations are and that is how they decide which Liquor Licence to grant. They do not look at the Business Licence that has been granted or the Zoning that has been granted.

- [38] In 2018, the business at the subject location was operating as a minors prohibited bar which was not in compliance with their minors allowed licence.
- [39] On September 6, 2019, the previous business was warned verbally by a Municipal Enforcement Officer during an inspection by the PSCT that the AGLC licence they held and their operations put them in non-compliance with both Zoning and their Business Licence.
- [40] On September 7, 2019, a secondary inspection was done by Development Compliance Officers and PSCT and the Development Compliance Officer noticed several indications that the business was still operating as a minors prohibited bar, so on September 10, 2019, a violation notice was issued. Subsequent inspections by PSCT from October 18, 2019, determined that the business was no longer operating; therefore, the Business Licence was cancelled on February 18, 2020.
- [41] Based on the conflict between the Business Licence and the Development Permit issued for the property, as well as the enforcement work undertaken, the Appellant has no reason to believe that he would be entitled to run a Nightclub (either under zoning rules or business licensing rules). There may, however, be a claim against the previous business owner for misrepresenting the business's legal standing.
- [42] Regarding the Appellant's assertion that he should have further opportunity to remedy the deficiencies related to the cancellation of the licence, the Business Licensing process and the Zoning process are separate and distinct processes. This separation was made stronger with the passing of the current *Business Licence Bylaw 20002*. Business licensing does have an interest in keeping Business Licences consistent with other regulatory bodies to ensure there is clarity for business owners on what is permitted and to ensure no defense of *Officially Induced Error* is created. It is not an effort to affect the outcomes of other regulators and decision makers.
- [43] Had the Development Permit been examined when the Appellant first submitted his application, the City would have denied the application for the minors prohibited licence leading to a potential licence review for a refusal to issue the licence. The City would have had the right to deny the licence based on the application criteria in the bylaw.
- [44] Pursuant to the Appellant's claims that the category granted in error allows him to make a better living, he has been in essence unjustly enriched by the City's mistake on his Business Licence.

- [45] The City did not make this error in bad faith. As soon as they learned of the error through Zoning, they initiated a Business Licence review to correct it, providing M. S. with all opportunities to respond. The City took all steps possible to mitigate the risk of legitimate expectation and *Officially Induced Error*.
- [46] The City's authority to revoke a licence is granted in Section 24 of *Business Licence Bylaw 20002*. The obligation to meet mandatory licensing eligibility requirements set out in a bylaw is a continuing one. Failure to meet such requirements constitutes valid grounds for a licence to be revoked.
- [47] At this point, the Chair mentioned that some of the information being brought forward by the Respondent was not included in her written submission. The Respondent stated she only received the Appellant's documents on March 9, 2022 and as such had no time to return her arguments and was actually expecting the Appellant to request an adjournment. The Respondent provided the following clarifications to questions from the Chair.
 - a) C. Hodgson confirmed that the current Business Licence expires at the end of March, 2022. It is her understanding that no renewal application had been received yet. The Appellant cannot get a licence renewal at this time because the current licence is under appeal. The Appellant would have to apply for a new Business Licence at this time which could result in another appeal if the application were to be refused.
 - b) She understands that the business is currently operating.
- [48] Counsel for the Appellant declined the opportunity for an adjournment; however, he objected to any case law being introduced by the Respondent that he has not had an opportunity to review. He also indicated he did not require a written copy of the Respondent's submission at this time.
- [49] C. Hodgson continued her presentation by re-stating the submissions she made in Items 43 to 46 above.
- [50] The Respondent provided the following responses to questions from the Committee:
 - a) There was a *Municipal Government Act* section 645 Stop Order issued on August 31, 2021 with a compliance date of November 21, 2021. The compliance date was extended to January 10, 2022. As per the most recent inspections, the business is still operating illegally as a Bar and Neighbourhood Pub.
 - b) The City is currently enforcing through Zoning by way of tickets as the Business Licensing Decisions are stayed.

- c) The previous Business Licence Bylaw listed the requirement for a Development Permit in Section 6.1. The current bylaw lists that requirement in Section 6.2.
- d) *Completed Application* is defined in the new *Business Licence Bylaw 20002* as “an application with all requirements under section 6 received by the City Manager”.
- e) This application would not have been considered complete had the Decision Maker not made the error.
- f) The Development Permit allowed for a minors allowed licence and that would have been approved with no issue but it would not have allowed for a minors prohibited licence which is what was granted in error.
- g) *Officially Induced Error* is a defense to all bylaw offenses. By the City mistakenly granting a Business Licence that does not conform to the Development Permit, an absurdity situation has been created. Because of the mis-match between Business Licensing and Zoning, enforcement could potentially face challenges to tickets they issue due to lack of clarity.
- h) The City realized that this cancellation decision was a major decision for this business owner and could potentially change the entire way he runs his business. For that reason it was treated as a very separate decision and was based only on the non-compliance with the Development Permit. The Decision Maker was not aware of any of the other issues that were going on with this business and based the cancellation decision solely on the fact that the Development Permit does not match the Business Licence that was granted. His task was to resolve the error.
- i) There is a public interest in fixing the clarity issue between the Development Permit and the Business Licence because this leads to clarity issues in the courts in the future.
- j) Section 6.2 of *Business Licence Bylaw 20002* states that a completed application must be “in compliance with the *Zoning Bylaw, Bylaw 12800*, the *Safety Codes Act RSA 2000 c. S-1*, and any provincial or federal acts as required by Schedule B”.
- k) Because an error was made, the City is going back to the initial decision where the error occurred.
- l) In their view, the licence review would be conducted under the authority of *Business Licence Bylaw 20002* - Section 24(e)(v) - “any other public interest reason”.

- m) *Licence Review* is defined as “review of the application or licence to determine if the issuance or renewal will be refused, if the existing licence will be suspended or cancelled, or if conditions will be imposed on the licence”.
- n) The City will take forward whatever direction this Committee provides as a new licence will be required at the end of the month and changes can be made at that time.
- o) It is the Respondent’s opinion that the Committee can either cancel the category or allow it. They cannot change the category based on the definition of licence review.
- p) Ms. Hodgson confirmed that the decision should be made under the new bylaw (*Business Licence Bylaw 20002*) and referred to the case law in her submissions to support this point. (*698114 Alberta Ltd. v. Banff (Town of)*, 2000 ABCA 237)

iii) Rebuttal of the Appellant

- [51] The facts in the case law referred to by the Respondent are much different than the matter before the Committee today. That was a hotel development application and the hotel was not operating. In today’s hearing, the Appellant is operating his business and has been for quite some time.
- [52] The unjust enrichment argument made by the Respondent should not be considered.
- [53] K. Goodman also objects to the *Officially Induced Error* argument. The Appellant is not seeking damages in this forum or trying to place any liability on the City other than relying on the fact that a simple mistake was made and it is unfair to bring that forward retroactively into the current decision making process.
- [54] The Respondent’s claim that the Applicant misrepresented the Business Licence in September of 2019 is not fair or applicable. His client was not in possession of the premises nor did he purchase the business until November, 2020. It is unfair to hold the Appellant liable for past actions and past violations of previous tenants.
- [55] K. Goodman confirmed that the Appellant is asking the Committee to overrule the decision and to not cancel the Alcohol Sales (Consumption On Premises/Minors Prohibited) Category from the Business Licence.

iv) Rebuttal of the Respondent

- [56] Pursuant to the renewal process, the renewal does allow for the City Manager to change the categories pursuant to Section 23(d) of *Business Licence Bylaw 20002*.

- [57] She is not speaking to *Officially Induced Error* as the tort. In her line of work, *Officially Induced Error* is a quasi-criminal defense used in Court for fines and tickets and this is the only scope she is using that term in.
- [58] In her submissions, she was not suggesting that M. S. was being misleading. She was stating that the previous tenant could have misled M. S.

v) *Final Statement of the Appellant*

- [59] If the Committee decides that this licence is cancelled, the Appellant requests some guidelines as to what the City could properly consider moving forward as part of the renewal application.

Decision

- [60] The Decision to Cancel the Alcohol Sales (Consumption On Premises/Minors Prohibited) Category from Business Licence #385388357-002 is Upheld.

Reasons for Decision

- [61] On January 13, 2022, the City Manager's Delegate working in Business Licensing and Vehicle for Hire (the "Delegate") canceled the Alcohol Sales (Consumption On Premises/Minors Prohibited) Business Category of the Appellant's Business Licence #385388357-002 based on sections 7(a) and (c) the *Business Licence Bylaw 13138*. The decision provides the following reasons for decision:

The decision is based on the bylaw requirement for a valid and subsisting Development Permit to hold a licence, where valid means a Development Permit that allows the activity under the business licence category held; which the licensee does not have in this case. The Alcohol Sales/Consumption on Premises (Minors Prohibited) category is not permitted in the business location based on Zoning regulations and the existing Zoning Overlay.

Further, the City finds that it is contrary to the public interest for a business to hold a licence that conflicts with its Development Permit. Not only would the current licence facilitate a breach of the Permit by the business but it would also create inconsistent expectations from the public towards permits, licences and other authorizations issued by the City. It is also in the public interest to correct licence issuance errors to ensure that business activities are approved or permitted for the location.

- [62] On January 17, 2022, the *Business Licence Bylaw 13138* was replaced by the *Business Licence Bylaw 20002*.

[63] On January 20, 2022, the Appellant sent the CSLAC written notice by email of his intention to appeal the cancellation triggering an automatic interim stay of the Cancellation Decision which remains in place pending the outcome of this appeal.

[64] The CSLAC's authority to hear this appeal is found in section 8 of the *Community Standards and Licence Appeal Committee Bylaw (19003)* (the “*CSLAC Bylaw*”):

- a. Section 8(1)(a) of the *CSLAC Bylaw* provides that this Committee may decide appeals of “licensing decisions” which by definition in section 2(2)(e) of the *CSLAC Bylaw* includes the cancellation decision under appeal.
- b. Section 8(2) of the *CSLAC Bylaw* states that when deciding an appeal of a licensing decision, CSLAC has the same authority that has been granted to the City Manager under the applicable bylaw (in this case the *Business Licence Bylaw*).

[65] The Committee considered which version of the *Business Licence Bylaw* it should apply as the City argued that *Bylaw 20002* should apply to this hearing and the Appellant disagreed. In the Committee’s view, the City Bylaws in effect at the time of this decision constitute the operative law for the purpose of the Committee’s decision about cancellation. The Committee has applied the provisions of *Business Licence Bylaw 20002*, and all references are to it unless otherwise indicated. However, for the reasons below, the change is of no practical consequence as the result would be the same under either version of the *Business Licence Bylaw*.

[66] The Appellant requested the following relief, asking:

The Respondent, Business Licensing, their affiliates, successors, and officers, partners, agents and employees thereof not impose conditions on my license, and enjoin them from concurrently examining the cancellation of my business license, the cancellation of any previous fines issued (if applicable), and a declaration permitting me to remedy any alleged errors in the development permit, or in the alternative any applicable bylaws should be relaxed or varied.

[67] The Appellant gave several reasons why the Committee should reverse the cancellation:

- a. The Alcohol Sales (Consumption On Premises/Minors Prohibited) Business Category is correct because it is not appropriate to allow minors on the premises after 10 pm.
- b. The Appellant purchased the business “as is” in 2020 and intends to operate it within compliance and not in a manner contrary to community standards. Other businesses previously operated selling liquor and its continued operation will not negatively impact the community or surrounding businesses.

- c. The Appellant disputed the allegations made by the City and argued that the officials have acted with improper purposes or may have been mistaken. He was treated unfairly and singled out by racist officials who are not telling the truth and he should not be responsible for how other individuals act when the police enter his premises.
- d. It is unreasonable to impose conditions on the Appellant or to cancel his Business Licence based on irregularities that have been missed by City officials as cancellation will impact his ability to earn a livelihood.
- e. The Appellant clarified that he was not arguing that the City has a duty to issue the licence, rather that he should have an opportunity to remedy or cure any defects, in particular to remedy errors within the Development Permit.

[68] The City asked CSLAC to dismiss the appeal and uphold the Delegate's decision arguing that the Licence Review and decision to cancel the Business Category were proper under the current and former *Business Licence Bylaws* for several reasons:

- a. The Licence Review was the only option available to correct the error and cancellation was not made for an improper purpose.
- b. It was conducted internally after notice was received of an inconsistency between the Business Licence Categories and the Development Permit granted for the premises.
- c. The Delegate made this decision separately from the other concurrent investigations concerning the Business conducted at the premises. No other agencies were involved in this Licence Review.
- d. The Business Licence was issued in error because there is no Development Permit authorizing the Alcohol Sales (Consumption On Premises/Minors Prohibited) Business Category which is contrary to the *Zoning* and *Business Licencing Bylaws* and contrary to public policy.
- e. The Appellant's arguments concerning the suitability of allowing minors on the premises and in the immediate area are irrelevant.

[69] The Committee makes the following findings based on the written and oral submissions, including the affidavit and video evidence submitted by the Appellant.

[70] In the early 2000s, a Bar & Neighbourhood Pub Use was operating in the subject building on the second floor and on the first floor until the tenants replaced the Bar & Neighbourhood Pub with a Dollar Store Use on the first floor (the subject premises). Consequently, a Development Permit for a Retail Sales Use was issued for the subject premises.

- [71] On June 21, 2007, Development Permit 68018721-001 was issued for the subject premises in the normal course. The scope of the Development Permit is “To operate a Restaurant (Origin India – 40 seats) Change of Use from a Retail Store to a Restaurant.”
- [72] Based on the evidence before the Committee, no further Development Permits have been issued for the subject premises since 2007.
- [73] Since 2007, licenced restaurant and restaurant/lounge type businesses operated at the subject premises.
- [74] The landlord was not aware of these Development Permit changes, nor did he consent to them, as his practice is to leave the issue of Development Permits to tenants as shown in the lease agreement with the Appellant.
- [75] The Appellant leased the premises in 2020 and applied for the Business Licence in 2021.
- [76] The City issued a Business Licence, valid for a one year term from April 1, 2021 to March 31, 2022 authorizing two Business Categories: Restaurant or Food Service; and, Alcohol Sales (Consumption On Premises/Minors Prohibited). The City admits it erred and should not have issued the Business Licence for the second category because the Appellant does not have a Development Permit that would authorize the Alcohol Sales (Consumption On Premises/Minors Prohibited) Business.
- [77] During 2021, various municipal and provincial inspectors and officers attended the subject premises. Some of those visits are shown on the videos submitted by the Appellant.
- [78] On August 31, 2021, a section 645 *Municipal Government Act* Stop Order was issued against the premises by the City’s Development Compliance Unit. The order required compliance by November 2021. The compliance date was extended to January 10, 2022 and enforcement commenced after that date.
- [79] The visits prompted a Licence Review by another delegate of the City Manager working in Business Licensing and Vehicle for Hire resulting in a Licencing Decision which has also been appealed to this Committee.
- [80] Concurrently, the same department received notice of inconsistency between the Business Licence and the Development Permit prompting a separate Licence Review by the Delegate respecting only the Development Permit issue.
- [81] On November 24, 2021, the Delegate issued a Notice of Proposal to Cancel the Alcohol Sales (Consumption On Premises/Minors Prohibited) category. The Notice set out the Delegate’s authority, the reasons for potential cancellation, and gave the Appellant the opportunity to respond as required under the *Business Licence Bylaw*. The Notice

suggests the proposed cancellation would take effect January 10, 2022 to align with the section 645 *Municipal Government Act* Order issued by the City's Development Compliance Unit.

- [82] The reviewed Business Licence authorized two Business Categories: Restaurant or Food Service and Alcohol Sales (Consumption On Premises/Minors Prohibited) for a one year term from April 01, 2021 to March 31, 2022.
- [83] Restaurant or Food Service is defined in Schedule A of the Bylaw as "A Business that sells prepared food or non-alcoholic beverages ready for immediate consumption on, or off the Premises. Does not include Food Truck/ Food Cart, or Food Processing/ Catering Service." That Business Category is not at issue in this appeal.
- [84] Alcohol Sales (Consumption on Premises/ Minors Prohibited) is defined under the Old Bylaw 13138 as "Selling alcoholic beverages for consumption on the premises in which minors are prohibited from at least some portion of the premises during at least some portion of the hours."
- [85] Alcohol Sales (Consumption on Premises/Minors Prohibited) is defined in Schedule A of the Current *Business License Bylaw 20002* as: "A Business that sells or provides alcoholic beverages for consumption on the Premises where minors are prohibited from at least some portion of the Premises during some portion of the hours of operation. Does not include the production of alcoholic beverages."
- [86] Based on the records before it, the Committee finds that the only Development Permit in effect for the subject premises is DP68018721-001 issued June 21, 2007 "To operate a Restaurant (Origin India – 40 seats) Change of Use from a Retail Store to a Restaurant."
- [87] Restaurant is a defined Use in section 7.4(45) of the *Edmonton Zoning Bylaw 12800*:

7.4(45) Restaurants mean development where the primary purpose of the facility is the sale of prepared foods and beverages to the public, for consumption within the premises or off the Site. **Minors are never prohibited from any portion of the establishment at any time during the hours of operation.** This Use typically has a varied menu, with a fully equipped kitchen and preparation area, and includes fast food and family restaurants. [Emphasis added]

- [88] The Committee finds that the Use class Restaurant does not capture the activities in either the former or current *Business Licence Bylaw* for the Business Category Alcohol Sales (Consumption On Premises/Minors Prohibited).
- [89] The Committee was not persuaded of the existence of any improper motive or reasons for the Cancellation Decision. The Committee took note that steps were taken to ensure proper evaluation for the Licence Review and it was conducted separate and apart from

any of the other investigations or Licence Reviews. Based on the presented evidence, the Committee is satisfied that the Licence Review leading to Cancellation Decision was authorized under section 7(a) and (c) and correctly decided based on the requirements of section 6(e) of the former *Business Licence Bylaw*.

[90] However, given the enactment of the new *Business Licence Bylaw*, CSLAC also considered whether the Committee ought to allow the appeal based on the provisions of the current *Business Licence Bylaw* and determined it should not for the following reasons:

- a. While the wording of the current *Business Licence Bylaw* has changed, the requirement for a valid and subsisting Development Permit authorizing all proposed Business Categories has been brought forward in substance based on the wording of sections 6(2) and 17(1)(a).
- b. Per Section 2(l) of the current *Business Licence Bylaw*, a Licence Review is defined as a review of the application or license to determine if the issuance or renewal will be refused, if the existing license will be suspended or canceled, or if conditions will be imposed on the license;
- c. The Committee's authority to conduct a Licence Review and suspend, cancel or place conditions upon the Appellant's Business Licence comes from sections 17(1)(b) and 24 of the current *Business Licence Bylaw*. Section 24 provides in part that Licence Reviews may be conducted if ...
 - d) there have been violations of other City of Edmonton bylaws related to the Business activities, whether or not they have been prosecuted; or
 - e) in the opinion of the City Manager, based on reasonable grounds, it is in the public interest to review the licence under one or more of the following reasons: ... (v) any other public interest reason.
- d. Based on the evidence, the conditions in subsections 24(d) and (e)(v) are both met.
- e. There is no valid Development Permit authorizing the Business Category Alcohol Sales (Consumption On Premises/Minors Prohibited) which is occurring on the premises. This violates the *Business Licence Bylaw* and the *Edmonton Zoning Bylaw 12800*. The Committee heard that a section 645 Stop Order was also issued against the premises in August, 2021 with a compliance date extended to January 10, 2022. The Appellant indicated that he did not appeal the Stop Order and has continued with his business and enforcement on that Stop Order is ongoing.
- f. The Committee agrees with the reasons stated in the initial cancellation decision that it is generally contrary to the public interest for a business to hold a Business Licence that conflicts with its Development Permit. Conflict facilitates a breach of

the Development Permit and creates inconsistent expectations from the public towards permits, licences and other authorizations issued by the City.

- [91] The Committee considered the Appellant's request for the opportunity to remedy the Development Permit issue. In the Committee's view, there is no authority as part of a Licence Review as defined in section 2(l) of the *Business Licence Bylaw* for CSLAC to grant Development Permits, to authorize variances or exceptions to either the *Business Licence Bylaw* or the *Edmonton Zoning Bylaw 12800*, or to provide relief from fines as requested by the Appellant.
- [92] The Committee also notes as a practical matter that all business licences are reviewed regularly; the Appellant's Business Licence under appeal expires in any event on March 31, 2022. The Appellant may apply to renew the Business Licence if he so chooses and at that time the City is required to review a Complete Application which would include a review of all current Development Permits.
- [93] For all of these reasons, the Committee declines the Appeal and upholds the cancellation of the Business Category: Alcohol Sales (Consumption On Premises/Minors Prohibited) from the Appellant's Business Licence.

A handwritten signature in blue ink, appearing to read "Kathy Cherniawsky".

Kathy Cherniawsky, Chair
Community Standards and Licence Appeal Committee