



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
edmontonsdab.ca*

Date: April 26, 2017
Project Number: 68508208-006
File Number: SDAB-D-17-065

Notice of Decision

- [1] On April 11, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **March 15, 2017**. The appeal concerned the decision of the Development Authority, issued on February 24, 2017, to refuse the following development:

Continue to operate a Major Home Based Business (Respite Programming – Alberta AdaptAbilities Association).

- [2] The subject property is on Plan 6151KS Blk 8 Lot 80, located at 8721 - 163 Street NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of SDAB-D-07-166 and SDAB-D-10-315;
 - A copy of the Development Permit application with attachments, the refused Development Permit; and a Canada Post Registered Mail confirmation;
 - The Development Officer's written submission;
 - The Appellant's documentation with letters and signatures of support; and
 - An on-line response from a property owner in opposition to the proposed development.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – A letter submitted by the Appellant.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Chairman outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[7] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) *Position of Ms. M. Hordal who was accompanied by Ms. S. Donogh, speaking on behalf of the Appellant, Alberta AdaptAbilities Association*

[8] Ms. Hordal is the founder of the Alberta AdaptAbilities Association (“AdaptAbilities”) which has been in operation since 2007. She lives and works in the McKernan neighbourhood.

[9] The organization is unique and provides an opportunity for families to help them cope with the challenges of caring for children and youth with disabilities.

[10] There is another location in a house in the McKernan neighbourhood and they have an agreement with the McKernan Community League to use their community hall.

[11] They are looking for more space in west Edmonton and the MacEwan West Art Centre.

[12] Last summer there were 350 children in their summer camp and now there are approximately 800.

[13] Their organization uses a school in the summer during their busy time.

[14] They keep the number of children to eight at the subject location because they respect that it is in a single family dwelling.

[15] Ms. Hordal referred to the reasons for refusal. With regard to the pedestrian or vehicular traffic, she stated that she canvassed the neighborhood and received 14 signatures in support from neighbouring properties, including the immediately adjacent neighbours to the north and the south.

[16] With regard to the business Use being secondary to the residential Use, she stated that the tenants occupying the upper level of the house work for AdaptAbilities and can access the basement as well. In her opinion, the subject Site is primarily a residential Use.

[17] With regard to the business being considered a Health Services Use by the Development Officer, she stated that they do not receive funding from Alberta Health Services or Alberta Health but do receive funding through Human Services, Persons with Developmental Disabilities.

[18] Parents who require respite care want their children to stay in the community as much as possible.

- [19] The church in the community and the schools are in support of the proposed development and work with AdaptAbilities.
- [20] In her opinion, having the respite care provided in a house setting makes the children feel like it is the same type of environment as their home.
- [21] They received a letter dated November 10, 2010 (*Exhibit A*) from the City that indicated they were exempt from applying for a Business Licence on a yearly basis as they have are deemed to be a Charitable Organization. However, they neglected to reapply for a development permit after two years. In their opinion, the organization is unique and they would like to receive an approval for five years. They are willing to comply with any conditions that are suggested by the Development Officer and imposed by the Board.
- [22] With regard to a complaint regarding their school bus idling in the rear lane, she stated that the organization does not own any vehicles and that this was a school bus picking up children. They have since redirected the bus to pick up in the front of the house.
- [23] The proposed development will not generate excess traffic as vehicles only stop for a short period of time to drop off and pick up children.
- [24] She referred to a photograph of a sign on the property that was located close to a fence which has been removed. There is a small sign located on the front door.
- [25] She stated that the doors separating the two levels of the house are only for the safety of the children and they are not separate suites.
- [26] With respect to questions from the Board, Ms. Hordal and Ms. Donogh provided the following:
- a. There are four tenants who are related that live on the upper floor of the dwelling and no one lives in the basement. All of the tenants work for AdaptAbilities.
 - b. Their central office is located on Whyte Avenue and there is a location in Meadowlark, and one in McKernan.
 - c. They can accommodate 10 to 12 children in each group but 8 children are preferred.
 - d. The subject Site is on a service road and clients access the property from the front of the house and not the rear lane. However, occasionally parents have used the rear lane as neighbours can take up the majority of the parking on the service road.

- e. With regard to possibly being classified as a Child Care Service, it was their opinion that was the most accurate Use to define their care group but some of the youth are over the age of 12, which does not meet the definition.
- f. Occasionally there is one-on-one care for children that may be a flight risk and need more supervision.
- g. The staff qualifications are people who have had experience with children using respite services or university students working part time. Front line staff are not qualified under health professionals under the Health Professions Act. However, the coordinator positions with the organization require certification or a degree.

ii) Position of the Development Officer, Ms. H. Vander Hoek

[27] A Major Home Based Business requires a resident to live at the place of business and there shall be only two non-residential employees.

[28] She reviewed the different Use Classes for the proposed development and considered it to be a Health Services Use due to the rehabilitative nature of the business. However, after hearing the Appellant's submission that proposed business could be considered a Child Care Service or Group Home, she agreed that the business could fit under several Use Classes.

[29] With respect to questions from the Board, Ms. Vander Hoek provided the following:

- a. She confirmed that the main reason for refusal was that the proposed business is the primary Use for the dwelling. Even if the business was secondary to the principal dwelling, the size of the business has to be reviewed.
- b. She stated that if it was considered a Major Home Based Business, she would condition the development with a limit of 5 customer visits per day with a maximum of 2 non-resident employees.
- c. The application could be reviewed for a Child Care Service for 8 children in this location. A Child Care Service is a Discretionary Use and does not meet the locational criteria in this location.
- d. She confirmed that one complaint was received with regard to traffic in the area but not about the business itself.
- e. 163 Street is busy and with the service road there is a significant amount of traffic in the area already.
- f. The houses across 163 Street are all single detached houses.

- g. In her opinion, there is no specific Use Class for the proposed development.
- h. If the proposed development is approved, the Appellant will need to apply for a permit for the basement.

iii) Rebuttal of the Appellant, Ms. Hordal and Ms. Donogh

- [30] The organization has been operating for over 10 years since 2007. They would like to continue to operate at the subject Site since it is close to parks and the community league hall.
- [31] With regard to the traffic complaint, the neighbour who made the complaint signed in support of the proposed development and could not confirm if the vehicles that turn around on the service road are clients of their organization.
- [32] They will advise their clients not to turn around on the service road.
- [33] They confirmed that only one resident of the subject house has a vehicle and employees arriving to the subject Site take public transportation to work.
- [34] If their development is approved, they will proceed with a building permit for the basement once the appeal process is over.

Decision

- [35] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, but as a Child Care Services Use not a Major Home Based Business Use, subject to the following **CONDITIONS**:
 - 1. The business use must be secondary to the residential use of the building and shall not change the residential character of the Dwelling or Accessory Building.
 - 2. There shall be no exterior display or advertisement other than an identification plaque or sign a maximum of 20 cm (8") x 30.5 cm (12") in size located on the dwelling.
 - 3. There shall be no more than 8 children, youths or other clients at any one time and overnight stay is prohibited.
 - 4. With the exception of an outdoor play space, there shall be no outdoor business activities, or outdoor storage of material or equipment associated with the business.

5. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
6. The business use must maintain the privacy and enjoyment of adjacent residences and the characteristic of the neighborhood.
7. The Appellant shall comply with the playspace requirements of section 80.3 of the *Edmonton Zoning Bylaw*.
8. There shall be no pick-up or drop-off of clients from the rear Lane.

[36] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are waived:

1. Section 80.1(a) that states:

In addition to the requirements of Section 13, every application for a Development Permit for a Child Care Services Use shall include a Site plan and floor plan that combined, includes all information required in the Child Care Services Checklist.

2. Section 80.4(b) that states:

Where a Child Care Services Use is proposed as part of a Dwelling, or is proposed in a converted Single Detached Housing, the Use shall only be located:

- i. on a Corner Lot; or
- ii. on a Site Abutting a Site that is actively used for a Community, Educational, Recreational and Cultural Service Use Class; or
- iii. Abutting a Site with zoning that lists Apartment Housing, General Retail Stores or Convenience Retail Stores as a permitted Use.

Reasons for Decision

[37] Section 7.1(3)(b) of the *Edmonton Zoning Bylaw* states:

The following guidelines shall be applied in interpreting the Use definitions:

where specific purposes or activities do not conform to any Use definition or generally conform to the wording of two or more Use definitions, the Development Officer may, at their discretion, deem that the purposes or activities conform to and are included in that Use which they consider to be the most appropriate. In such a case, the Use shall be considered a Discretionary Use, whether or not the Use is listed as a Permitted Use or Discretionary Use within the applicable Zone.

The Board deems the specific purposes and activities to be that of a Child Care Service.

[38] Alberta AdaptAbilities Association operates respite care for children, youths, and adults who reside with their families but require full-time supervision at all times. The organization operates like a daycare with the exception that the individuals attending the daycare are often over the age of 13.

[39] The first step in assessing any development permit application is to assess and describe the Use it is being applied for. In most cases, this is a simple task. The *Edmonton Zoning Bylaw* lists numerous Use definitions that describe almost all types of land Uses. However, occasionally, a Development Officer receives an application for a Use that does not fit any of the established and described Use definitions in the *Edmonton Zoning Bylaw*. When that happens, the Development Officer has recourse to section 7.1 of the *Edmonton Zoning Bylaw*.

[40] In particular, section 7.1(3)(b) states:

The following guidelines shall be applied in interpreting the Use definitions:

where specific purposes or activities do not conform to any Use definition or generally conform to the wording of two or more Use definitions, the Development Officer may, at their discretion, deem that the purposes or activities conform to and are included in that Use which they consider to be the most appropriate. In such a case, the Use shall be considered a Discretionary Use, whether or not the Use is listed as a Permitted Use or Discretionary Use within the applicable Zone.

[41] The Development Officer, in her submission, confirmed that there was difficulty in determining what type of Use definition best described the proposed Use. In reaching her decision, she found the closest Use definition was Health Services:

that means development used for the provision of physical and mental Health Services on an out-patient basis. Services may be of a preventive, diagnostic, treatment, therapeutic, rehabilitative, or counseling nature. Typical Uses include medical and dental office, health clinics and counselling services.

[42] This changed somewhat when questioned by the Board as she based her finding on the understanding that some rehabilitative services were being provided by the Appellant, but this understanding was challenged in the evidence provided by the Appellant to the Board at the hearing.

[43] There are four potential Use definitions that could potentially be approved as being applied for:

1. A Major Home Based Business; this is what is being applied for.

2. Health Service; this is the Use the Development Officer considered the application to be.
3. Limited Group Home; and
4. Child Care Service.

These four Uses are all defined in the *Edmonton Zoning Bylaw* as set out below.

Under section 7.3(7), Major Home Based Business means:

development consisting of the Use of an approved Dwelling or Accessory building by a resident of that Dwelling for one or more businesses that may generate more than one business associated visit per day. The business Use must be secondary to the Residential Use of the building and shall not change the residential character of the Dwelling or Accessory building. The Dwelling may be used as a workplace by a non-resident. This Use includes Bed and Breakfast Operations but does not include General Retail Sales.

Under section 7.4(24), Health Services means:

development used for the provision of physical and mental Health Services on an out-patient basis. Services may be of a preventive, diagnostic, treatment, therapeutic, rehabilitative, or counseling nature. Typical Uses include medical and dental offices, health clinics and counseling services.

Under section 7.3(4), Limited Group Home means:

a building used for Congregate Living with not more than six residents, excluding staff, who have moderate and non-severe physical, cognitive or behavioral health issues and who require on-site professional care and supervision to perform daily living tasks, improve wellness, achieve stable and harmonious tenancy, or to exit safely in the event of an emergency.

A Limited Group Home is a home which:

- a. provides continuous (24 hours, seven days a week) on-site professional care and supervision by staff licensed or certified to provide such care;
- b. can reasonably expect two or fewer visits by emergency services per month; and
- c. is located in a purpose-built freestanding structure or Single Detached Housing converted for that purpose.

This Use does not include Extended Medical Treatment Services, Detention and Correction Facilities, Fraternity and Sorority Housing, Group Homes, and Lodging Houses.

Under section 7.8(2), Child Care Services means:

a development intended to provide care, educational activities and supervision for groups of seven or more children under 13 years of age during the day or evening, but does not generally include overnight accommodation. This Use typically includes daycare centres; out-of-school care centres; preschools; and dayhomes/group family care providing child care to seven or more children within the care provider's residence.

When reviewing the four Use definitions, the Board concludes that none of them accurately describes the Use of the proposed development.

[44] With regard to the proposed development being a Major Home Based Business there were several issues with this classification:

1. The entity and person operating the business is not a resident of the Dwelling. The business is operated by a non-profit company known as Alberta AdaptAbilities Association.
2. The evidence before the Board is that Alberta AdaptAbilities Association is a growing and expanding operation that operates out of a number of locations.
3. The organization has four locations that are occupied for 12 months all year long including a central office and three operation locations including the subject Site.
4. In the summer, this expands by offering at least an additional four or five summer locations.
5. The evidence before the Board is that Alberta AdaptAbilities Association is planning on expanding their operation to additional locations.
6. While four employees of Alberta AdaptAbilities Association do reside in the subject location, Alberta AdaptAbilities Association and its leadership do not reside in the subject dwelling.
7. In addition, the applied for permit by Alberta AdaptAbilities Association shows an extensive operation with weekly visits of 56 to 70 clients and 28 employee visits per day. This refers to employee visits and does not include the operation and work provided by resident employees.
8. For these reasons the Board finds that the proposed development is not a Major Home Based Business.

[45] With regard to the proposed development being a Health Service:

Health Services are developments that provide for the provision of physical and mental Health Services on an out-patient basis. Services may be of a preventive, diagnostic, treatment, therapeutic, rehabilitative, or counseling nature. Typical Uses include medical and dental offices, health clinics and counseling services.

1. The evidence before the Board is that the proposed development is not a Health Services as diagnostic treatment is not provided.
2. The proposed development does not have a rehabilitative or counselling nature.
3. The funding for Alberta AdaptAbilities does not come from Alberta Health or Alberta Health Services but from Human Services.
4. The Board finds that this is not a Health Services Use as the organization does not provide physical and mental health services.

[46] With regard to the proposed development being a Limited Group Home:

Although Limited Group Homes involve people who require care and supervision due to “moderate or severe health issues” and while the users of this development are also people who require care and supervision, the main aspect of a Limited Group Home is the provision of a 24 hour residence.

1. It is for individuals with health issues for a place to reside with the appropriate care.
2. All the Development Permit regulations for a Group Home or a Limited Group Home, which are extensive, are focused on the residential nature of the Use.

The Board finds that this is not a Group Home or a Limited Group Home as the children and youth receiving respite care do not reside in the facility.

[47] With regard to the proposed development being a Child Care Service:

The Board finds that the proposed development is exactly the same as a Child Care Service with one exception; there will be children and users over the age of 13.

If all of the users of the proposed development were under 13, then the proposed development would clearly fit the definition of a Child Care Service. It does not fit that definition only because of the inclusion of youths who are 13 years and older.

The Board concludes that there is not a single Use definition that matches the proposed development.

- [48] Therefore, pursuant to section 7.1(3)(b), the Board may at its discretion deem that the purposes or activities conform to and are included in that Use which they consider to be the most appropriate.
- [49] The Board finds that despite the inclusion of youths and individuals over the age of 13, describing this as a Child Care Service is the most appropriate Use definition. However, this requires the Appellant to conform with the regulations that are listed in section 80 of the *Edmonton Zoning Bylaw* that pertain to a Child Care Service.
- [50] The Board finds that the Child Care Service conforms with the regulations with two exceptions:
1. Due to the fact that the Appellant considered this to be a Major Home Based Business they did not submit the required floor plans as required in Section 80.1(a).
 2. The Board notes, and confirmed by the Development Officer, the requirements of section 80.4(b) are not being met because the Child Care Service is located in a Residential Zone but is not on a Corner Lot; or on a Site Abutting a Site that is actively used for a Community, Educational, Recreational and Cultural Service Use Class; or abutting a Site with zoning that lists Apartment Housing, General Retail Stores or Convenience Retail Stores as a permitted Use.

The Board is waiving these requirements for the following reasons:

- a. With regard to the floor plans, the Board has before them photographic evidence that allows the Board to see the nature of the interior structure of the basement in which the Use is being proposed.
 - b. Based on the photographic evidence, if a floor plan was submitted it would have been satisfactory to the Board.
 - c. While the Dwelling is not on a Corner Lot, the location on 163 Street, which is a major road that includes a service road in front of the subject Site, facilitates the pick-up and drop-off of clients that may be problematic in a residential area.
 - d. The Board imposed a condition on the approved permit that pick-up and drop-off shall not occur in the rear Lane, which will address the concern received by an adjacent property owner regarding traffic in the rear Lane.
- [51] The Appellant provided the Board with a petition with 14 signatures from neighbouring property owners, a letter from the Annunciation Catholic School, the Hosanna Lutheran Church, and two letters from neighbouring property owners, all in support of the proposed development. One on-line response was received in opposition to the proposed development.

- [52] The support is relevant given the fact that the business has been operating since 2007.
- [53] The exterior look and nature of the property is consistent with the characteristic of the surrounding neighbourhood.
- [54] The external appearance as a residential Dwelling continues outside of the operational hours of the facility given that four employees of Alberta AdaptAbilities Association reside full-time at the subject Site. This maintains the residential character of the Dwelling limiting the impact on the Rf1 Single Detached Residential Zone.
- [55] Based on the above, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

Important Information for the Applicant/Appellant

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

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



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
edmontonsdab.ca*

Date: April 26, 2017
Project Number: 229909807-005
File Number: SDAB-D-17-066

Notice of Decision

- [1] On April 11, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **March 15, 2017**. The appeal concerned the decision of the Development Authority, issued on March 6, 2017, to refuse the following development:

Change the Use from a General Retail Store to Minor Alcohol Sales.

- [2] The subject property is on Plan 1623687 Blk 6 Lot 1, located at 3707 - 8 Avenue SW, within the DC1 (Bylaw 17351) Direct Development Control Provision. The Southeast Area Structure Plan and the Charlesworth Neighbourhood Structure Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of Bylaw 17351;
 - A copy of the Southeast Area Structure Plan and the Charlesworth Neighbourhood Structure Plan;
 - A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit; and
 - The Development Officer's written submission and a letter from a Zoning Planner.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – An aerial photograph, submitted by the Appellant;
 - Exhibit B – A map of the Decoteau Area Structure Plan, submitted by the Appellant; and
 - Exhibit C – Photographs of the area, submitted by the Appellant.

Preliminary Matters

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

- [6] The Chairman outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

At the outset of the hearing, the Chair indicated that the Appellant needs to explain to the Board how the Development Officer did not follow the directions of City Council when reviewing the Development Permit Application.

i) *Position Mr. B. Allsopp, representing the Appellant, Brian Allsopp Architect Ltd.*

- [8] In his opinion, the Development Officer misinterpreted the DC1 Direct Development Control Provision and the *Edmonton Zoning Bylaw*.
- [9] He referred to the DC1 Bylaw (Bylaw 17351) and stated that a Minor Alcohol Sales Use is a Permitted Use.
- [10] The original permit was for a General Retail Store and the proposed Development is to change the Use, which is permitted.
- [11] Minor Alcohol Sales complies with section 85 of the *Edmonton Zoning Bylaw* and the direction of City Council is in conflict with the DC1.
- [12] He referred to an aerial photograph of the new Charlesworth area that is under construction. A Minor Alcohol Sales cannot be within 100 metres of a site being used for a community recreation or park use. The subject land is on Ellerslie Road and zoned (AP) Public Parks Zone.
- [13] When City Council created the DC1 they did not consider or overlooked the proposed development which is a permitted Use in a DC1.
- [14] Section 85.4 states that any Site containing a Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 100 metres from any Site being used for community or recreation activities, public or private education, or public lands at the time of the application for the Development Permit for the Major Alcohol Sales or Minor Alcohol Sales.
- [15] Although the adjacent land is zoned (AP) Public Parks Zone, it is not being used as a park and not accessible to the public. There is no public access.
- [16] The area south of Ellerslie Road is owned by the City of Edmonton.

- [17] The maps show the potential park area, which are outside the regulations of the Bylaw as there is no intent to have a park there in the future.
- [18] The Development Officer may have taken into consideration the long term structure plans when reviewing the proposed development.
- [19] He referred to a photograph showing the parcel of land that is zoned (AP) Public Parks Zone that is not an active park site and the location of the proposed liquor store from this site.
- [20] There are no other Alcohol Sales within two and a half kilometres of the subject Site.
- [21] In his opinion, the proposed Minor Alcohol Sales will benefit the Charlesworth development.
- [22] All the adjoining lands are zoned differently.
- [23] He does not believe a park will be developed in this area.

ii) Position of the Development Officer, Mr. Kowal

- [24] Mr. Kowal spoke to the Zoning Planner to review the proposed development and the property zoned (AP) Public Parks.
- [25] He based his decision on the Zoning Planner's recommendation that the property was zoned (AP) Public Parks and the development could not be approved.
- [26] He looked at what the park would be used for and he found that it was going to be a natural park.
- [27] If the Zoning Planner said the site was not for a public park he may have approved the proposed development.
- [28] He had to follow the input he received from the Zoning Planner who was involved in writing that section of the Bylaw.
- [29] In response to questions by the Board, he could not confirm that park area is not going to be developed.
- [30] If it was a straight Area Structure Plan he would have had more discussion with the Zoning Planner. He did not pursue it past the zoning stages.
- [31] With regard to the 500 metre separation distance. He stated that there can be more than one Minor Alcohol Sales within 500 metres if they are separated by an arterial road.

However, this is a unique situation because the 500 metre separation distance is surrounded by fields and not property that is developed.

iii) Rebuttal of the Appellant, Mr. Allsopp

- [32] He reiterated that the Development Officer had a difficult time making a decision and interpreting section 85.
- [33] When creating the DC1 Direct Development Control Provision, Minor Alcohol Sales was a listed Use and section 85 has to be considered. The direction of City Council would be for this Use on this site.
- [34] There is matter of natural justice with regard to what the direction of City Council was.
- [35] The arterial road and evolution of the site to put this restriction on the application would be a hardship.

Decision

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

Reasons for Decision

- [37] This is an appeal of a decision of the Development Officer pertaining to a site that is in a DC1 Direct Development Control Provision.
- [38] The Board finds that because the land is in a DC1 Direct Development Control Provision, the Board's authority is set out in section 641 of the *Municipal Government Act*:

Despite section 685, if a decision with respect to a development permit application in respect of a direct control district

(a) ...

(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.

- [39] Accordingly, the Board's role is to determine whether or not the Development Officer followed the directions of City Council as set out in the DC1 Bylaw.

- [40] The DC1 Bylaw allows Minor Alcohol Sales; however, Bylaw 17351, dated August 24, 2015, states in section 4.1 that “Minor Alcohol Sales shall comply with Section 85 of the Zoning Bylaw”. As a result, there is a clear direction from City Council for any Minor Alcohol Sales will comply with the regulations in section 85 of the *Edmonton Zoning Bylaw*.
- [41] The Board must refer to section 85.4 that states:
- any Site containing a Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 100 metres from any Site being used for community or recreation activities, public or private education, or public lands at the time of the application for the Development Permit for the Major Alcohol Sales or Minor Alcohol Sales. Sites that are greater than 2.0 hectares in size and zoned either CSC or DC2, are exempt from this restriction.
- [42] The proposed site is within 100 metres north of land that is zoned (AP) Public Parks.
- [43] The Appellant argues that the direction of City Council was not followed because the land south of the subject Site is zoned AP but is not used for a Park; therefore, section 85.4 was not applicable as he argued the word “used for” “public lands” at the time of the application. It is not clear that the word “used for” in section 85.4 are applying to Public Lands, but simply referencing the phrase “community or recreation activities, or private education”.
- [44] Section 85.4 did not say “or use as a public park”. The term Public Lands has a special definition in section 85.4 as outlined above.
- [45] The Appellant referred to the Area Structure Plan and stated that the future plan Use of the land zoned (AP) Public Parks appears to be residential. The Board considered the arguments; however, the Board disagrees with the Appellants interpretation.
- [46] Public Lands, when referring to the North Saskatchewan River Valley and Ravine System, refer to those areas that are active recreation areas. No such distinction is applied to those sites zoned (AP) Public Parks, those lands are defined to sites “Zoned AP”.
- [47] As a result, the Board finds that the land zoned (AP) Public Parks is within 100 metres of the site area “public lands” within the meaning of section 85.4, and as a result the development regulations set out in section 85 have not been complied with.
- [48] The Board notes that section 85.5 states that “notwithstanding section 11 of the *Edmonton Zoning Bylaw*, a Development Officer shall not grant a variance to subsection 85(4).”
- [49] As a result by referencing section 85 of the *Edmonton Zoning Bylaw* to Bylaw 17351, which included a specific revision to section 85.4, the Development Officer followed the directions of City Council in refusing the proposed development.

[50] The Board concludes that the Development Officer followed the directions of City Council and the Board does not have the authority to interfere with the decision.

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

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.
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.