

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Thursday, 9:00 A.M.
April 20, 2017**

**Hearing Room No. 3
Churchill Building,
10019 - 103 Avenue NW,
Edmonton, AB**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING ROOM NO. 3**

I	9:00 A.M.	SDAB-D-16-144	Construct 6 Accessory General Industrial Use buildings - existing without permits (Kiewit Energy Canada Corp - 3 lunchroom buildings, 2 office buildings, and 1 office/lunch building) 12250 - 33 Street NE Project No.: 176035784-007
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NOTE: *Unless otherwise stated, all references to “Section numbers” refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-16-144

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 176035784-007

APPLICATION TO: Construct 6 Accessory General Industrial Use buildings - existing without permits (Kiewit Energy Canada Corp - 3 lunchroom buildings, 2 office buildings, and 1 office/lunch building)

DECISION OF THE DEVELOPMENT AUTHORITY: Approved

DECISION DATE: May 9, 2016

DATE OF APPEAL: May 19, 2016

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 12250 - 33 Street NE

LEGAL DESCRIPTION: Plan 8920191 Blk 1

ZONE: IM Medium Industrial Zone

OVERLAY: Edmonton – Strathcona County Joint Planning Study Area Secondary and Garage Suites Overlay

STATUTORY PLAN: - Aurum Industrial Business Park Area Structure Plan
- Yellowhead Corridor Area Structure Plan

Grounds for Appeal

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

1. The Development Permit issued by the City on May 9, 2016 is for six (6) existing accessory buildings which were permitted or authorized by the City pursuant to Development Permit 45277773-001 issued May 19, 2005 and Development Permit 117923387-001 issued March 21, 2012.
2. The City has included, as a condition to the Development Permit, an off-site levy for sanitary sewer trunks. Kiewit paid the sanitary sewer trunk

- assessment or charge as a condition of Development Permit 45277773-001 issued May 19, 2005. The City has no statutory or lawful authority to impose further assessments for sanitary sewer trunks.
3. The City has included, as a condition to the Development Permit, a Permanent Area Contribution ("PAC") for the Clover Bar Erosion Protection and Expansion Assessment. The City has no statutory or lawful authority to charge such assessments. In the alternative, the City included, as a condition to Development Permit 114927469-001 issued November 3, 2011, a Clover Bar Erosion Protection Assessment. Therefore, the City has no statutory or lawful authority to impose any further assessments for the Clover Bar Erosion Protection and Expansion Assessment.
 4. The City has no statutory or lawful authority under section 648 of the Municipal Government Act (the "Act"), as amended, or at all, to retrospectively impose on Kiewit an arterial roadway assessment on buildings which existed prior to the amendment of section 648 of the Act.
 5. The Alberta Court of Appeal determined, in a decision dated November 27, 2013, that the 2005 off-site levy paid to the City for sewer bars the City from collecting for arterial roads under the proposed 2011 or 2012 Servicing Agreement, as this would be an improper double collection contrary to section 648(4) of the Act.
 6. Further, the Kiewit lands are located adjacent to the boundary with the County of Strathcona; being Range Road 232. Vehicular access to the Kiewit lands is available only from Range Road 232. The City required, as a condition to the issuance of Development Permit 45277773-001, Kiewit install the permanent road access to Range Road 232, subject to obtaining an access agreement with the County of Strathcona. Kiewit contributed financially towards the future upgrade of RR 232. Accordingly, the City has no statutory or lawful authority to impose any further arterial roadway assessments or levies in relation to the Kiewit lands.
 7. The City has no statutory or lawful authority to include the Kiewit lands in the Arterial Roadway Assessment By-law as the roads for which the assessment has been levied are not required, or impacted, by the Kiewit development of its lands; and, in particular, the six (6) existing buildings which are the subject of this Development Permit do not impact the density of use or vehicular traffic to the Kiewit lands.
 8. Such further reasons and grounds at the hearing of the Appeal.

General Matters

Appeal Information:

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

Grounds for Appeal

685(1) If a development authority

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

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

Appeals

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

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

General Provisions from the *Edmonton Zoning Bylaw*:

Section 420.1 states that the **General Purpose** of the **IM Medium Industrial Zone** is:

...to provide for manufacturing, processing, assembly, distribution, service and repair Uses that carry out a portion of their operation outdoors or require outdoor storage areas. Any nuisance associated with such Uses should not generally extend beyond the boundaries of the Site. This Zone should normally be applied on the interior of industrial areas adjacent to collector and local industrial public roadways such that Uses are separated from any adjacent residential areas by a higher quality Industrial or Commercial Zone.

Under section 420.2(5), **General Industrial Use** is a **Permitted Use** in the IM Medium Industrial Zone.

Section 6.1(2) defines **Accessory** to mean, “when used to describe a Use or building, a Use or building naturally or normally incidental, subordinate, and devoted to the principal Use or building, and located on the same lot or Site”.

Section 50.1 provides in part:

50.1 Accessory Uses and Buildings: General

1. A Use shall be Accessory to a Permitted or Discretionary Use which is a principal Use on the Site, if such Use complies with the definition of Accessory in this Bylaw. Notwithstanding the

foregoing, Accessory parking may be on the same Site as the principal Use or comply with subsection 54.2(2) of this Bylaw.

2. Accessory Uses and buildings are permitted in a Zone when Accessory to a principal Use which is a Permitted Use in that same Zone and for which a Development Permit has been issued.

3. Accessory Uses and buildings are discretionary in a Zone when Accessory to a principal Use which is a Discretionary Use in that same Zone and for which a Development Permit has been issued.

...

Section 822.1 states that the **General Purpose** of the **Edmonton-Strathcona County Joint Planning Study Area Secondary, Garage and Garden Suites Overlay** is:

... to limit the expansion of Secondary Suites and to limit the creation of any Garage and Garden Suites within a portion of the Edmonton-Strathcona County Joint Planning Study Area to the Use opportunity that existed prior to the adoption of Bylaw 14750, in order to limit residential intensification in proximity to Industrial Uses until such time as more definitive criteria may be established to prescribe residential development within the Study Area, at which time this Overlay may be subject to amendment.

<i>Development Levies and Conditions</i>
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The subject permit was granted without any variances. The Applicant objects to the various fees that were imposed as a condition of this permit. Section 648 of the *Municipal Government Act*, RSA 2000, c M-26, provides in part:

Off-site levy

648(2) An off-site levy may be used only to pay for all or part of the capital cost of any or all of the following:

- (a) new or expanded facilities for the storage, transmission, treatment or supplying of water;
- (b) new or expanded facilities for the treatment, movement or disposal of sanitary sewage;
- (c) new or expanded storm sewer drainage facilities;
- (c.1) new or expanded roads required for or impacted by a subdivision or development;
- (d) land required for or in connection with any facilities described in clauses (a) to (c.1).

(3) On September 1, 1995 an off-site levy under the former Act continues as an off-site levy under this Part.

(4) An off-site levy imposed under this section or the former Act may be collected once for each purpose described in subsection (2), in respect of land that is the subject of a development or subdivision, if

(a) the purpose of the off-site levy is authorized in the bylaw referred to in subsection (1), and

(b) the collection of the off-site levy for the purpose authorized in the bylaw is specified in the agreement referred to in subsection (1).

(4.1) Nothing in subsection (4) prohibits the collection of an off-site levy by instalments or otherwise over time.

(5) An off-site levy collected under this section, and any interest earned from the investment of the levy,

(a) must be accounted for separately from other levies collected under this section, and

(b) must be used only for the specific purpose described in subsection (2)(a) to (c.1) for which it is collected or for the land required for or in connection with that purpose.

Section 650(1) provides as follows:

Condition of issuing development permit

650(1) A council may in a land use bylaw require that, as a condition of a development permit's being issued, the applicant enter into an agreement with the municipality to do any or all of the following:

(a) to construct or pay for the construction of a road required to give access to the development;

(b) to construct or pay for the construction of

(i) a pedestrian walkway system to serve the development, or

(ii) pedestrian walkways to connect the pedestrian walkway system serving the development with a pedestrian walkway system that serves or is proposed to serve an adjacent development,

or both;

(c) to install or pay for the installation of a public utility described in section 616(v)(i) to (ix) that is necessary to serve the development, whether or not the public utility is, or will be, located on the land that is the subject of the development;


(d) to construct or pay for the construction of

(i) off-street or other parking facilities, and

- (ii) loading and unloading facilities;
- (e) to pay an off-site levy or redevelopment levy imposed by bylaw;
- (f) to give security to ensure that the terms of the agreement under this section are carried out.

Notice to Applicant/Appellant

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

	<p>Project Number: 176035784-007 Application Date: NOV 27, 2015 Printed: April 13, 2017 at 11:16 AM Page: 1 of 3</p>		
<h2 style="margin: 0;">Major Development Permit</h2>			
<p>This document is a record of a Development Permit application, and a record of the decision for the undertaking described below, subject to the limitations and conditions of this permit, of the Edmonton Zoning Bylaw 12800 as amended.</p>			
<p>Applicant</p> <div style="background-color: black; width: 100%; height: 40px; margin-top: 10px;"></div>	<p>Property Address(es) and Legal Description(s) 12250 - 33 STREET NE Plan 8920191 Blk 1</p> <hr/> <p>Specific Address(es) Entryway: 12222 - 33 STREET NE Entryway: 12224 - 33 STREET NE Entryway: 12234 - 33 STREET NE Entryway: 12244 - 33 STREET NE Entryway: 12248 - 33 STREET NE Entryway: 12254 - 33 STREET NE Building: 12222 - 33 STREET NE Building: 12224 - 33 STREET NE Building: 12234 - 33 STREET NE Building: 12244 - 33 STREET NE Building: 12248 - 33 STREET NE Building: 12254 - 33 STREET NE</p>		
<p>Scope of Permit To construct 6 Accessory General Industrial Use buildings - existing without permits (Kiewit Energy Canada Corp - 3 lunchroom buildings, 2 office buildings, and 1 office/lunch building).</p>			
<p>Permit Details</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> Class of Permit: Class A Gross Floor Area (sq.m.): 2010 New Sewer Service Required: N Site Area (sq. m.): 10000 </td> <td style="width: 50%; border: none;"> Contact Person: Lot Grading Needed?: Y NumberOfMainFloorDwellings: 0 Stat. Plan Overlay/Annex Area: (none) </td> </tr> </table>		Class of Permit: Class A Gross Floor Area (sq.m.): 2010 New Sewer Service Required: N Site Area (sq. m.): 10000	Contact Person: Lot Grading Needed?: Y NumberOfMainFloorDwellings: 0 Stat. Plan Overlay/Annex Area: (none)
Class of Permit: Class A Gross Floor Area (sq.m.): 2010 New Sewer Service Required: N Site Area (sq. m.): 10000	Contact Person: Lot Grading Needed?: Y NumberOfMainFloorDwellings: 0 Stat. Plan Overlay/Annex Area: (none)		
<p>I/We certify that the above noted details are correct.</p> <p>Applicant signature: _____</p>			
<p>Development Permit Decision Approved</p>			
<p>The permit holder is advised to read the reverse for important information concerning this decision.</p>			



Project Number: **176035784-007**
 Application Date: NOV 27, 2015
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Major Development Permit

Subject to the Following Conditions

- 1) PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Lot Grading Fee of \$220.00.

- 2) PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the owner must enter into a Servicing Agreement with the City of Edmonton for the payment of the ARA. This lot is within the Aurum and Clover Bar Industrial Arterial Roadway Assessment (ARA) catchment area. The outstanding amount of ARA using the 2016 rate totals \$2,554,014 for the entire site. The proposed development represents a 22.3% increase in development on the property, therefore 22.3% of the ARA for the entire property in the amount of \$569,545 is owing with this development application and payable under this Agreement. Upon future development or subdivision of the site, the deferred amount will be collected. Notwithstanding the entire ARA amount as cited above, the assessment amount owing may be adjusted to reflect the current ARA rate at the time the Servicing Agreement is signed. The Servicing Agreement must be entered into PRIOR to the release of the drawings for Building Permit review. The owner must contact Dan-Christian Yeung (780-496-4195) of Sustainable Development for more information on the Servicing Agreement and ARA owing. The owner must enter into a Servicing Agreement with the City of Edmonton for the payment of the ARA owing on the portion of the property being developed.

- 3) All access locations and curb crossings shall have the approval of the City Transportation and Streets Department prior to the start of construction. Reference Section 53(1).

- 4) All activities or operations of the proposed development shall comply to the standards prescribed by the Province of Alberta pursuant to the Environmental Protection and Enhancement Act and the regulations pertaining thereto.

- 5) Any indoor sales, display, or office area, shall not exceed 33% of the gross floor area per tenant. (Reference Section 95.1).

- 6) The development shall comply to the Performance Standards for the IM District in accordance to Section 57 of the Edmonton Zoning Bylaw. (Reference Section 400.4(6)).

- 7) No parking, loading, storage, trash collection, outdoor service or display area shall be permitted within the required 3.0 m yards. (Reference Section 420.4(3).)

- 8) An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

Notes:

- i) Signs require separate Development Applications.
- ii) A Building Permit is Required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.
- iii) The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this 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.

Rights of Appeal

This approval is subject to the right of appeal as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.

Issue Date: May 09, 2016 **Development Authority:** KOWAL, PAUL

Signature: _____

The permit holder is advised to read the reverse for important information concerning this decision.



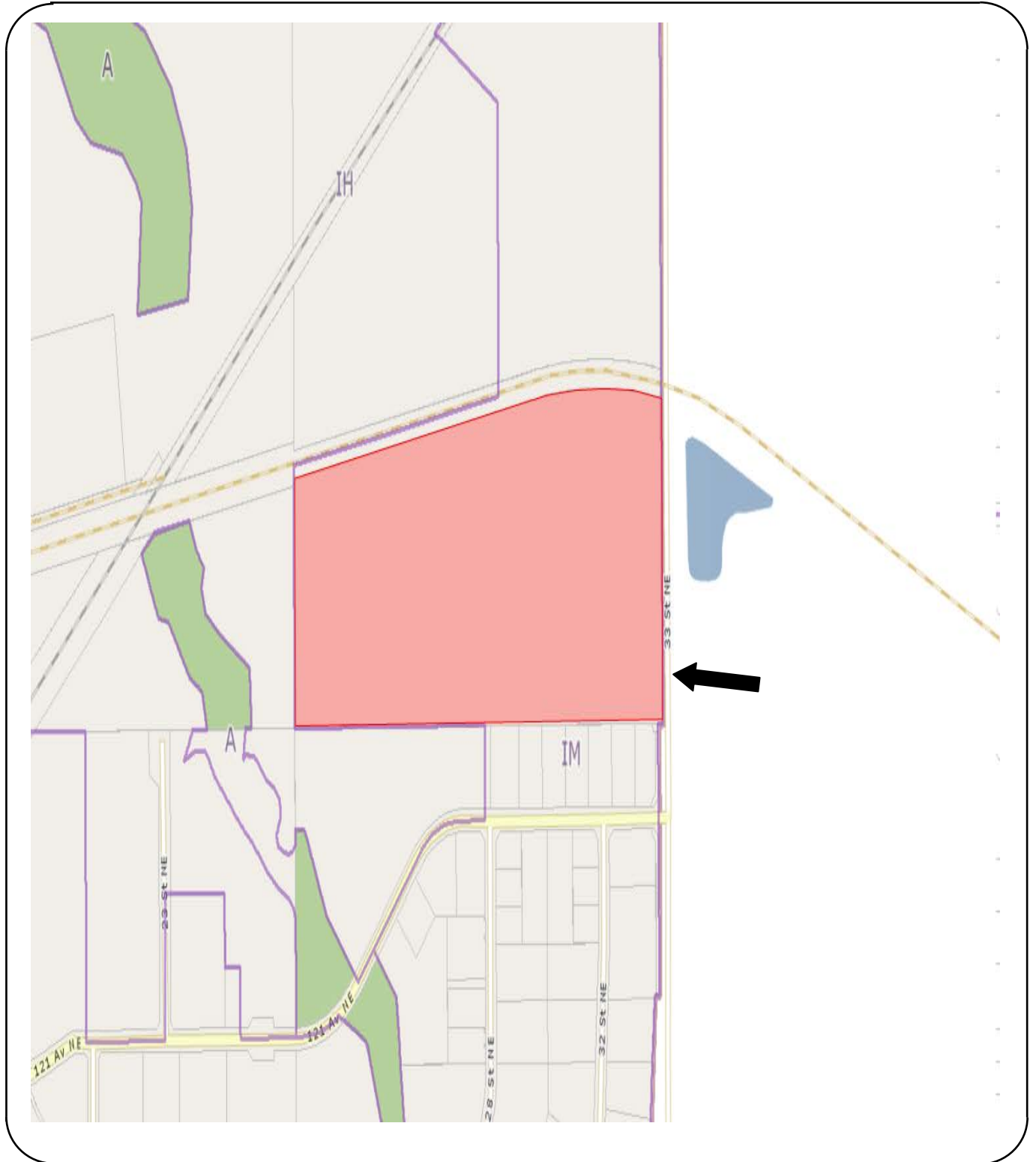
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Major Development Permit

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$1,622.00	\$1,622.00	02920541	Nov 27, 2015
Dev. Application Fee for GFA	\$2,816.00	\$2,816.00	02920541	Nov 27, 2015
Lot Grading Fee	\$220.00			
Total GST Amount:	<u>\$0.00</u>	<u></u>		
Totals for Permit:	\$4,658.00	\$4,438.00		
((\$220.00 outstanding))				

The permit holder is advised to read the reverse for important information concerning this decision.



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-16-144

