

**SUBDIVISION  
AND  
DEVELOPMENT APPEAL BOARD  
AGENDA**

**Wednesday, 9:00 A.M.  
August 29, 2018**

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

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

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I	9:00 A.M.	SDAB-D-18-129	To install (1) Minor Digital On-premises Off-premises Freestanding Sign (Edmonton Truck & Auto)  14211 - Mark Messier Trail NW Project No.: 278508526-001
<hr/>			
II	10:30 A.M.	SDAB-D-18-130	To construct a Single Detached House with veranda, attached Garage (vehicle access to 111 Avenue), balcony, fireplace, Basement development (NOT to be used as an additional Dwelling), and to demolish a Single Detached House  7706 - Jasper Avenue NW Project No.: 280570374-001
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III	1:30 P.M.	SDAB-S-18-008	To create two (2) additional single detached residential lots  3645 - 106 Avenue NW Project No.: 278348922-001

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**NOTE:** *Unless otherwise stated, all references to “Section numbers” refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-18-129

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 278508526-001

APPLICATION TO: Install (1) Minor Digital On-premises Off-premises Freestanding Sign (Edmonton Truck & Auto)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: July 16, 2018

DATE OF APPEAL: August 2, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 14211 - Mark Messier Trail NW

LEGAL DESCRIPTION: Plan 4577TR Lot 7A

ZONE: DC2-Site Specific Development Control Provision (384)

OVERLAY: N/A

STATUTORY PLAN: Rampart Industrial Area Structure Plan

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*Grounds for Appeal*

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

Complaints about the brightness of the sign have been addressed by installing new light sensors that will prevent similar issues. The Freestanding "The Station Liquor Cellar" sign which is located on the same property existed when the subject sign was previously approved at the SDAB hearing and the subject sign was not deemed to have a negative impact on the appearance of the site at the time of SDAB approval. There have not been any safety incidents noted with the subject sign in the 5 years it has existed. The subject sign is located on a service road and not on Mark Messier Trail which should be considered in regards to setback. The subject sign contains both an on premises and off premises component which is preferable to two separate sign structures. Refusal of the permit will require the property owner to incur

additional expense to manufacture and erect a new sign to advertise the business on site.

*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,

- (a) in the case of an appeal made by a person referred to in section 685(1)
  - (i) with respect to an application for a development permit,
    - (A) within 21 days after the date on which the written decision is given under section 642, [...]

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

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

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

...

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

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

At the time of the creation of the subject Direct Control Site, the *City of Edmonton Land Use Bylaw 5996* was in effect. An Alberta Court of Appeal decision in *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309 concluded that section 2.7 of the *Edmonton Zoning Bylaw* only applies if there is an express cross-reference in a Direct Control Bylaw passed before 2001 to a provision of the old *Land Use Bylaw*. In the absence of an express reference in the Direct Control Bylaw to the *Land Use Bylaw 5996*, it does not prevail over section 2.4 of the *Edmonton Zoning Bylaw*.

**General Provisions from the DC2 – Site Specific Development Provision (“DC2”) and the Land Use Bylaw 5996 (“Land Use Bylaw”):**

Section DC2.384 states a **Minor Digital On-premises Off-premises Sign** is a **Discretionary Use (Class C)** in the **DC2 Site Specific Development Control Provision**.

Section DC2.384.1, the **General Purpose** of the **(DC2) Site Specific Development Control Provision** is to establish a Site Specific Development Control District for a limited range of general business and retail uses having specific site Development Criteria which will ensure compatibility with existing and proposed surrounding commercial land uses and promote the orderly development of a high quality urban environment. This District also contains Development Criteria consistent with the intent of the Major Commercial Corridor Overlay.

DC2.384.4(q) states Signs may be allowed in this District in accordance with Schedule 79E and in accordance with the general provisions of Section 79.1 to 79.9, inclusive, of the *Land Use Bylaw 5996*.

Schedule 79E.1(1) of the *Land Use Bylaw 5996* states the following Signs shall be allowed, subject to the Sign Regulations of this Schedule:

- a) ...
- b) ...
- c) Awning, Canopy, Under-canopy, Fascia, Freestanding, Projecting and Window, On-premise Business Identification Signs and On-premise Changeable Copy and Local Advertising Signs;
- d) ...
- e) ...
- f) Fascia and Freestanding General Advertising Signs;
- g) ...
- h) ...

Schedule 79E.2(1) of the *Land Use Bylaw 5996* states all On-premise Business Identification, Changeable Copy and Local Advertising Signs shall comply with the general regulations for On-premise Signs of Section 79.7, subject to the following additional regulations and exceptions:

- a) the maximum Height of a Freestanding Sign shall be:
  - i. 8 metres (26.2 feet) for a business premise or multiple occupancy business development having a frontage of at least 30 metres (98.4 feet) but not greater than 60 metres (196.8 feet);
  - ii. 10 metres (32.8 feet) for a business premise or multiple occupancy business development having a frontage greater than 60 metres (196.8 feet); and
  - iii. where a Freestanding Sign is located adjacent to a public roadway having a posted traffic speed of 70 kilometres/hour (43.5 miles/hour) or greater, the maximum allowable sign Height set out in Clauses (i) and (ii) above shall be increased by 2 metres (6.6 feet).
- b) **the allowable Sign area for a Freestanding Sign located adjacent to a public roadway having a posted traffic speed of 70 kilometres/hour (43.5 miles/hour) or greater shall be 0.4 square metres (4.3 square feet) for each lineal metre (3.3 feet) of frontage where the Sign is to be erected;**

- c) **the maximum area of a Freestanding Sign shall be 24 square metres (258.3 square feet) except that where the Sign is located adjacent to a public roadway having a posted traffic speed of 70 kilometres/hour (43.5 miles/hour) or greater, the maximum area shall be 30 square metres (322.9 square feet);**
- d) Freestanding Signs shall be allowed to rotate where the rotation is designed to expose sign faces with different copy;
- e) where a site is adjacent to a public roadway designated as a Highway Entrance Route or Limited Access Route in Section 79.5, the additional regulations of that Section for Business Identification Signs shall apply; and
- f) **Running Lights and animated graphics shall be allowed only on Fascia, Canopy or Projecting Signs on business premises used for Drive-in Food Services, Indoor Amusement Establishments, Hotels, Motels, Major or Minor Eating and Drinking Establishments and Spectator Entertainment Establishments.**

Under Section 9.2(2) of the *Land Use Bylaw 5996*, **Animated Sign** means any sign or portion of a sign having moving parts or electronically controlled colour changes which depict action or give motion to the sign. Animated Sign does not include Flashing Signs, Rotating Signs, signs with accessory running lights or flashing lights, or electronically controlled Changeable Copy Signs such as those showing time and temperature displays.

Under Section 9.2(6) of the *Land Use Bylaw 5996*, **Business Identification Sign** means a sign identifying the name, dealer, franchise association, primary function, product or service of the commercial activity conducted on the premises, and may include local advertising and changeable copy.

Under Section 9.2(8) of the *Land Use Bylaw 5996*, **Changeable Copy Sign** means a permanent On-premise Sign or portion of such a sign on which copy can be readily changed manually through the utilization of attachable characters, or automatically through the electronic switching of lamp banks or illuminated tubes. Changeable Copy Signs include mechanically controlled time and temperature displays.

Under Section 9.2(15) of the *Land Use Bylaw 5996*, **Freestanding Sign** means any sign supported independently of a building and permanently fixed to the ground.

Under Section 9.2(16) of the *Land Use Bylaw 5996*, **General Advertising Sign** means a sign which directs attention to a business, activity, product, service or entertainment which cannot be considered as the principal products sold nor a principal business, activity, entertainment or service provided on the premises where the sign is displayed

and general advertising has a similar meaning. Typical General Advertising Signs includes Billboards and Junior Panels as defined in this Bylaw.

Under Section 9.2(21) of the *Land Use Bylaw 5996*, **Local Advertising Sign** means a sign or portion of a sign on which the copy refers only to products or merchandise

produced, offered for sale or obtainable at the premises on which the sign is displayed and which are related to the principal function of such premises, and local advertising has a similar meaning.

Under Section 9.2(25) of the *Land Use Bylaw 5996*, **On-premise Sign** means a sign identifying or advertising a business, activity, service or product located on the premises where the sign is erected. On-premise Signs includes signs erected on a site to provide warning or direction to persons entering upon the site.

### *Discretionary Use - Complaints*

Section DC2.384.4(q) states that Signs may be allowed in this District in accordance with Schedule 79E and in accordance with the general provisions of Section 79.1 to 79.9, inclusive, of the *Land Use Bylaw 5996*.

Section 14, Development Classes, of the *Land Use Bylaw 5996* states that the following classes of development are hereby established:

- 1) Class O - No Development Permit Required;
- 2) Class A - Minor Permitted Use;
- 3) Class B - Permitted Use;
- 4) **Class C - Discretionary Use;** and
- 5) Class D - Design Review.

Section 14.4 of the *Land Use Bylaw 5996* states that the developments in this Class are those involving the exercise of discretion by the Development Officer. Upon receipt of an application in its final form for development within this Class, the Development Officer shall examine the application to determine its conformity with the regulations of this Bylaw and the provisions of any applicable Statutory Plan. The Development

Officer, using discretion, may refuse or approve, permanently or for a limited time period, with or without conditions, an application for development within this Class. This Class shall include:

- 1) all Discretionary Use developments; and
- 2) all major developments within Direct Control Districts except those defined as Class D.

(...)

**Class C shall also include the following sign uses and developments:**

- a) comprehensive Sign Design Plans, as defined in Section 79.6 of this Bylaw



**Development Officer’s Determination**

The proposed development, Freestanding General Advertising and On-premises Local Advertising Sign (Minor Digital On-premises Off-premises Sign) is listed as Discretionary Use (Class C)(reference DC2(384) and LUB 5996 Section 14.4).

In the opinion of the Development Officer, that the previous conditional approval with a limited time of five years was in place to monitor the impacts of the sign, during this time, the City received two complaints that the Sign adversely impacts the surrounding amenities. As such it is the opinion of the Development Officer that an approval of the same Discretionary Use will continue to negatively impact adjacent and surrounding properties.

Note: The Development Officer considers the existing sign a Freestanding General Advertising and On-premises Local Advertising Sign in accordance with the Subdivision Development Appeal Board decision (SDAB-D-13-052), and therefore the proposed Sign is also deemed to be the same Discretionary Use (Class C) [unedited]

***Illumination***

Section 79.8(1)(e) of the *Land Use Bylaw 5996* states that General Advertising Signs may be illuminated provided that the lighting is concealed or shielded to minimize glare.

**Development Officer’s Determination**

General advertising signs may be illuminated provided that the lighting is concealed or shielded to minimize glare. (Reference Section 79.8(1)(e))

During the five year time limit of the previous permit the City of Edmonton has received two complaints in regards to the excessive brightness of the existing Digital Sign. It is the opinion of the development officer that the previous limited approval of five years was granted for this purpose and that the complaints show that the proposed Sign adversely impacts the surrounding amenities. [unedited]

***Freestanding Sign Area***

Section 79E.2(1)(c) of the *Land Use Bylaw 5996* states that the maximum area of a Freestanding Sign shall be 24 square metres (258.3 sq. ft.) except that where the Sign is located adjacent to a public roadway having a posted traffic speed of 70 km/hr (43.5 mph) or greater, the maximum area shall be 30 square metres (322.9 sq. ft.).

**Development Officer’s Determination**

The maximum area of a freestanding sign shall be 24 m<sup>2</sup> (258.3 sq. ft.) except that where the sign is located adjacent to a public roadway having a posted traffic speed of 70 km/hr (43.5 mph) or greater, the maximum area shall be 30 m<sup>2</sup> (322.9 sq. ft.); (Reference Section 79E.2(1)(c))

Proposed: 46 m<sup>2</sup>  
Exceeds by: 16 m<sup>2</sup>

There is an existing Freestanding On-premise Sign (The Station Liquor Cellar) that is 15m2 and in the opinion of the Development Officer, a variance to the area of the proposed sign does not enhance the appearance of the Site. [unedited]

***Setback***

Section DC2.384.4(c) states that the a minimum building Setback of 14 metres shall be provided adjacent to St. Albert Trail. At the discretion of the Development Officer, this minimum building Setback requirement may be reduced to the minimum applicable landscaped Yard requirement specified by this District where:

- i. the proposed development, or the proposed development in conjunction with any existing development, does not exceed a gross floor area of 1,000 sq. metres or 7 metres in Height; or
- ii. where the proposed development lies adjacent to an existing service road, provided that landscaping and building treatments minimize the perception of massing and create a high standard of building appearance.

**Development Officer's Determination**

A minimum building Setback of 14 m shall be provided adjacent to St. Albert Trail. (Reference DC2.384.4(c))

Proposed: 1.3 m  
Deficient by: 12. 7 m [unedited]

***Radial Distance***

Section 79.5(1)(c) of the *Land Use Bylaw 5996* states that the minimum radial distance between General Advertising Signs facing the same traffic direction along a Highway Entrance Route or Limited Access Route shall be 300 metres (984.0 ft.).

**Development Officer's Determination**

The minimum radial distance between general advertising signs facing the same traffic direction along a Highway Entrance Route or Limited Access Route shall be 300 m (984ft.). (Reference Section 79.5(1)(c))

Sign Location: 14229 - MARK MESSIER TRAIL NW  
Proposed Separation Distance: 224 m  
Deficient by: 76 m

Separation Distance: 14640 - 137 AVENUE NW  
Proposed Separation Distance: 249 m  
Deficient by: 51 m

The Zoning Bylaw establishes the separation distances between digital signs and off premises signs to prevent the proliferation of such signs. [unedited]

***Previous Subdivision and Development Appeal Board Decision***

<b>Application Number</b>	<b>Description</b>	<b>Decision</b>
SDAB-D-13-052	To construct a freestanding On-premises Off-premises Sign (Digital Off-premises Sign- Alberta Truck and Auto Liquidators)	April 18, 2013; The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied to the Development Authority, subject to CONDITIONS and the following two VARIANCES: The maximum allowable Sign Area was varied to allow an excess of 14.68 square metres; the minimum required Setback is varied to allow a deficiency of 13.7 metres □

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Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.

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# Application for Sign Combo Permit

Project Number: **278508526-001**  
Application Date: APR 03, 2018  
Printed: August 2, 2018 at 3:38 PM  
Page: 1 of 3

This document is a Development Permit Decision for the development application described below.

<b>Applicant</b>	<b>Property Address(es) and Legal Description(s)</b> 14211 - MARK MESSIER TRAIL NW Plan 4577TR Lot 7A
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**Scope of Application**  
To install (1) Minor Digital On-premises Off-premises Freestanding Sign (Edmonton Truck & Auto).

<b>Permit Details</b>	
ASA Sticker No./Name of Engineer: Construction Value: 30000	Class of Permit: Expiry Date:
Fascia Off-premises Sign: 0 Fascia On-premises Sign: 0 Roof Off-premises Sign: 0 Roof On-premises Sign: 0 Minor Digital On-premises Sign: 0 Minor Digital Off-premises Sign: 0 Minor Digital On/Off-premises Sign: 1	Freestanding Off-premises Sign: 0 Freestanding On-premises Sign: 0 Projecting Off-premises Sign: 0 Projecting On-premises Sign: 0 Replacement Panel on Existing Sign: 0 Comprehensive Sign Design: 0 Major Digital Sign: 0

I/We certify that the above noted details are correct.  
Applicant signature: \_\_\_\_\_

**Development Application Decision**  
Refused  
**Issue Date:** Jul 16, 2018    **Development Authority:** MERCIER, KELSEY

**THIS IS NOT A PERMIT**



Project Number: 278508526-001  
Application Date: APR 03, 2018  
Printed: August 2, 2018 at 3:38 PM  
Page: 2 of 3

## Application for Sign Combo Permit

### Reason for Refusal

1. The proposed development, Freestanding General Advertising and On-premises Local Advertising Sign (Minor Digital On-premises Off-premises Sign) is listed as Discretionary Use (Class C)(reference DC2(384) and LUB 5996 Section 14.4).

In the opinion of the Development Officer, that the previous conditional approval with a limited time of five years was in place to monitor the impacts of the sign, during this time, the City received two complaints that the Sign adversely impacts the surrounding amenities. As such it is the opinion of the Development Officer that an approval of the same Discretionary Use will continue to negatively impact adjacent and surrounding properties.

Note: The Development Officer considers the existing sign a Freestanding General Advertising and On-premises Local Advertising Sign in accordance with the Subdivision Development Appeal Board decision (SDAB-D-13-052), and therefore the proposed Sign is also deemed to be the same Discretionary Use (Class C).

2. General advertising signs may be illuminated provided that the lighting is concealed or shielded to minimize glare. (Reference Section 79.8(1)(e))

During the five year time limit of the previous permit the City of Edmonton has received two complaints in regards to the excessive brightness of the existing Digital Sign. It is the opinion of the development officer that the previous limited approval of five years was granted for this purpose and that the complaints show that the proposed Sign adversely impacts the surrounding amenities.

3. The maximum area of a freestanding sign shall be 24 m<sup>2</sup> (258.3 sq. ft.) except that where the sign is located adjacent to a public roadway having a posted traffic speed of 70 km/hr (43.5 mph) or greater, the maximum area shall be 30 m<sup>2</sup> (322.9 sq. ft.); (Reference Section 79E.2(1)(c))

Proposed: 46 m<sup>2</sup>  
Exceeds by: 16 m<sup>2</sup>

There is an existing Freestanding On-premise Sign (The Station Liquor Cellar) that is 15 m<sup>2</sup> and in the opinion of the Development Officer, a variance to the area of the proposed sign does not enhance the appearance of the Site.

4. A minimum building Setback of 14 m shall be provided adjacent to St. Albert Trail. (Reference DC2.384.4(c))

Proposed: 1.3 m  
Deficient by: 12.7 m

5. The minimum radial distance between general advertising signs facing the same traffic direction along a Highway Entrance Route or Limited Access Route shall be 300 m (984 ft.). (Reference Section 79.5(1)(c))

Sign Location: 14229 - MARK MESSIER TRAIL NW  
Proposed Separation Distance: 224 m  
Deficient by: 76 m

Separation Distance: 14640 - 137 AVENUE NW  
Proposed Separation Distance: 249 m  
Deficient by: 51 m

The Zoning Bylaw establishes the separation distances between digital signs and off-premises signs to prevent the proliferation of such signs.

### Rights of Appeal

The Applicant has the right of appeal within 21 days after the date on which the decision is made, as outlined in Section 683 through 689 of the Municipal Government Act.

### Fees

**THIS IS NOT A PERMIT**



**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-18-129



ITEM II: 10:30 A.M.

FILE: SDAB-D-18-130

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 280570374-001

APPLICATION TO: Construct a Single Detached House with veranda, attached Garage (vehicle access to 111 Avenue), balcony, fireplace, Basement development (NOT to be used as an additional Dwelling), and to demolish a Single Detached House

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: July 30, 2018

DATE OF APPEAL: August 1, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 7706 - Jasper Avenue NW

LEGAL DESCRIPTION: Plan 2282AN Blk 1 Lot 13

ZONE: DC1-Direct Development Control Provision (Area 3 Viewpoint)

OVERLAY: N/A

STATUTORY PLAN: N/A

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*Grounds for Appeal*

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

The development officer refuses the application because: 1) discretionary development; 2) The side setbacks are 1.5m instead of 2m. The reason we want to appeal are:

1. We have checked a few newly built house in the same ave within 200 meters, some of them are obviously over 7.5 meters in height but their side setbacks are less than 2m (about 1.5m) too. These houses include: 7736, 7802, 7826 and 7850 Jasper Ave. We will have the photos and site measurement for review in the appeal hearing.

2. That requirement is in the Zoning Bylaw, which is about 20 years ago, it is not that easy to find it in the City's website. The current is Zoning bylaw 12800, and our design follow all the requirements in bylaw 12800

*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,

- (a) in the case of an appeal made by a person referred to in section 685(1)
  - (i) with respect to an application for a development permit,
    - (A) within 21 days after the date on which the written decision is given under section 642, [...]

**685(4)** Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

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



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

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

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

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

At the time of the creation of the subject Direct Control Site, the *City of Edmonton Land Use Bylaw 5996* was in effect. An Alberta Court of Appeal decision in *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309 concluded that section 2.7 of the *Edmonton Zoning Bylaw* only applies if there is an express cross-reference in a Direct Control Bylaw passed before 2001 to a provision of the old *Land Use Bylaw*. In the absence of an express reference in the Direct Control Bylaw to the *Land Use Bylaw 5996*, it does not prevail over section 2.4 of the *Edmonton Zoning Bylaw*.

**General Provisions from the DC1 (Area 3) – Viewpoint Direct Development Control District (Section 710, Land Use Bylaw) (“the DC1”):**

Under Section 11.17.2, the **Rationale**, for the DC1:

It is the intent of this Plan to provide a district to preserve and protect the low density family oriented housing function the area serves, and to recognize and protect the heritage resources and low density family-oriented residential functions which exist in this Sub-Area, to recognize the unique geography of the Viewpoint community, and to provide guidelines to stabilize and protect the character of this neighbourhood, in order to achieve the intent of Section 3.4 of this Plan. To accomplish this last objective, guidelines are set forward in this District which will control the design of new development and additions to

existing development in a manner that ensures common design elements and building materials are utilized throughout the area.

*Use*

Under section 11.17.3.1, **Single Detached Housing**, is a **listed Use** in the DC1.

Single Detached Housing means development consisting of a building containing only one Dwelling, which is separate from any other Dwelling or building. Where a Secondary Suite is a Permitted or Discretionary Use Class in a District, a building which contains Single Detached Housing may also contain a Secondary Suite. This Use Class includes Mobile Homes which conform to Section 89 of this Bylaw (Land Use Bylaw Section 10.1.7)

**Development Officer's Determination**

Discretionary Development - The Site is designated as a Direct Development Control Provision (DC1 - Bylaw 12800 and 6931). (Section 12.4 of Bylaw 12800 and Section 11 of Bylaw 5996).

*Side Setback*

Section 11.17.4 Development Criteria

The following development criteria shall apply to the prescribed uses pursuant to Section 710.4 of the Land Use Bylaw:

11.17.4.11

The minimum site and yard requirements shall be in accordance with the provisions of Section 140.4, Clauses (6) to (8), of the Land Use Bylaw. Notwithstanding this, the Development Officer may, at his discretion, reduce the minimum yard requirements further where one or more adjacent properties exhibit similar variations from the RF3 District regulations (Section 140, Land Use Bylaw), providing this creates no adverse impact on these properties, in accordance with Section 51.2 of the Land Use Bylaw.

Section 140.4(8)(a) of the *Land Use Bylaw* states Side Yards shall total at least 20 percent of the site width, but the requirement shall not be more than 6.0 metres (19.7 feet) with a minimum Side Yard of 1.2 metres (3.94 feet) except that the minimum Side Yard for buildings over 7.5 metres (24.6 feet) in Height shall be 2 metres (6.6 feet);

**Development Officer's Determination**

Reduced Side Setback - The distance from the house to the property line shared with 7712 Jasper Avenue NW (west side lot line) is 1.5m instead of 2.0m. The distance from


the house to the property line shared with 7702 Jasper Avenue NW (east side lot line) is 1.5m instead of 2.0m (Section 11.17.4.11).

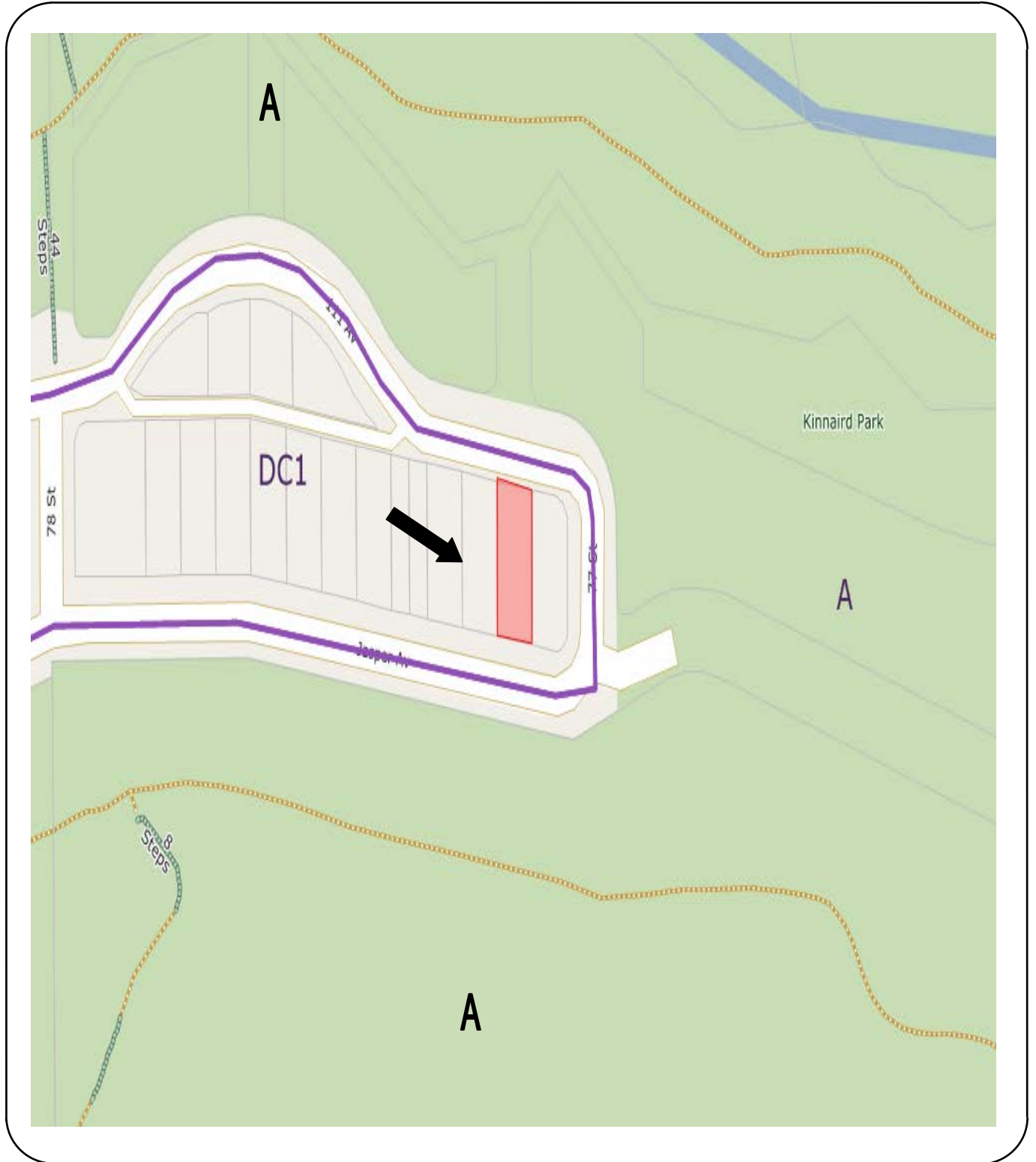
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Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.

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	Project Number: <b>280570374-001</b> Application Date: APR 26, 2018 Printed: August 2, 2018 at 9:14 AM Page: 1 of 1																														
<h2 style="margin: 0;">Application for Minor Development Permit</h2>																															
This document is a Development Permit Decision for the development application described below.																															
<b>Applicant</b>	<b>Property Address(es) and Legal Description(s)</b> 7706 - JASPER AVENUE NW Plan 2282AN Blk 1 Lot 13  <b>Specific Address(es)</b> Suite: 7706 - JASPER AVENUE NW Entryway: 7706 - JASPER AVENUE NW Building: 7706 - JASPER AVENUE NW																														
<b>Scope of Application</b> To construct a Single Detached House with veranda, attached Garage (vehicle access to 111 Avenue), balcony, fireplace, Basement development (NOT to be used as an additional Dwelling), and to demolish a Single Detached House.																															
<b>Permit Details</b> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">                     # of Dwelling Units Add/Remove: 1                      Client File Reference Number:                      Minor Dev. Application Fee: Single Detached House                      Secondary Suite Included?: N                 </td> <td style="width: 50%; border: none;">                     Class of Permit:                      Lot Grading Needed?: Y                      New Sewer Service Required: N                      Stat. Plan Overlay/Annex Area: (none)                 </td> </tr> </table>		# of Dwelling Units Add/Remove: 1 Client File Reference Number: Minor Dev. Application Fee: Single Detached House Secondary Suite Included?: N	Class of Permit: Lot Grading Needed?: Y New Sewer Service Required: N Stat. Plan Overlay/Annex Area: (none)																												
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I/We certify that the above noted details are correct.  Applicant signature: _____																															
<b>Development Application Decision</b> Refused <b>Issue Date:</b> Jul 30, 2018 <b>Development Authority:</b> ROBINSON, GEORGE  <b>Reason for Refusal</b>  1. Discretionary Development - The Site is designated as a Direct Development Control Provision (DC1 - Bylaw 12800 and 6931). (Section 12.4 of Bylaw 12800 and Section 11 of Bylaw 5996).  2. Reduced Side Setback - The distance from the house to the property line shared with 7712 Jasper Avenue NW (west side lot line) is 1.5m instead of 2.0m. The distance from the house to the property line shared with 7702 Jasper Avenue NW (east side lot line) is 1.5m instead of 2.0m (Section 11.17.4.11).  <b>Rights of Appeal</b> The Applicant has the right of appeal within 21 days after the date on which the decision is made, as outlined in Section 683 through 689 of the Municipal Government Act.																															
<b>Fees</b> <table style="width: 100%; border: none;"> <thead> <tr> <th style="width: 60%;"></th> <th style="text-align: right;">Fee Amount</th> <th style="text-align: right;">Amount Paid</th> <th style="text-align: right;">Receipt #</th> <th style="text-align: right;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Dev. Application Fee</td> <td style="text-align: right;">\$485.00</td> <td style="text-align: right;">\$485.00</td> <td style="text-align: right;">04970484</td> <td style="text-align: right;">Apr 26, 2018</td> </tr> <tr> <td>Development Permit Inspection Fee</td> <td style="text-align: right;">\$204.00</td> <td style="text-align: right;">\$204.00</td> <td style="text-align: right;">04970484</td> <td style="text-align: right;">Apr 26, 2018</td> </tr> <tr> <td>Lot Grading Fee</td> <td style="text-align: right;">\$143.00</td> <td style="text-align: right;">\$143.00</td> <td style="text-align: right;">04970484</td> <td style="text-align: right;">Apr 26, 2018</td> </tr> <tr> <td>Total GST Amount:</td> <td style="text-align: right;">\$0.00</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Totals for Permit:</td> <td style="text-align: right; border-top: 1px solid black;">\$832.00</td> <td style="text-align: right; border-top: 1px solid black;">\$832.00</td> <td></td> <td></td> </tr> </tbody> </table>			Fee Amount	Amount Paid	Receipt #	Date Paid	Dev. Application Fee	\$485.00	\$485.00	04970484	Apr 26, 2018	Development Permit Inspection Fee	\$204.00	\$204.00	04970484	Apr 26, 2018	Lot Grading Fee	\$143.00	\$143.00	04970484	Apr 26, 2018	Total GST Amount:	\$0.00				Totals for Permit:	\$832.00	\$832.00		
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<b>THIS IS NOT A PERMIT</b>																															



**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-18-130



ITEM III: 1:30 P.M.

FILE: SDAB-S-18-008

AN APPEAL FROM THE DECISION OF THE SUBDIVISION AUTHORITY

APPELLANT:

APPLICATION NO.: 278348922-001

APPLICATION TO: To create two (2) additional single detached residential lots

DECISION OF THE SUBDIVISION AUTHORITY: Refused

DECISION DATE: July 12, 2018

DATE OF APPEAL: August 2, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 3645 - 106 Avenue NW

LEGAL DESCRIPTION: Plan 2058HW Blk 25 Lot 7

ZONE: RF1Single Detached Residential Zone

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: N/A

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*Grounds for Appeal*

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

Reasons to be presented prior to the appeal.

*General Matters*

**Appeal Information:**

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

**Appeals**

**678(1)** The decision of a subdivision authority on an application for subdivision approval may be appealed

- (a) by the applicant for the approval,

- (b) by a Government department if the application is required by the subdivision and development regulations to be referred to that department,
- (c) by the council of the municipality in which the land to be subdivided is located if the council, a designated officer of the municipality or the municipal planning commission of the municipality is not the subdivision authority, or
- (d) by a school board with respect to
  - (i) the allocation of municipal reserve and school reserve or money in place of the reserve,
  - (ii) the location of school reserve allocated to it, or
  - (iii) the amount of school reserve or money in place of the reserve.

**(2)** An appeal under subsection (1) may be commenced by filing a notice of appeal within 14 days after receipt of the written decision of the subdivision authority or deemed refusal by the subdivision authority in accordance with section 681

- (a) with the Municipal Government Board
  - (i) if the land that is the subject of the application is within the Green Area as classified by the Minister responsible for the Public Lands Act,
  - (ii) if the land that is the subject of the application contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site, or
  - (iii) in any other circumstances described in the regulations under section 694(1)(h.2),

or

- (b) in all other cases, with the subdivision and development appeal board.

**(2.1)** Despite subsection (2)(a), if the land that is the subject-matter of the appeal would have been in an area described in subsection (2)(a) except that the affected Government department agreed, in writing, to vary the distance under the subdivision and development regulations, the notice of appeal must be filed with the subdivision and development appeal board.

(3) For the purpose of subsection (2), the date of receipt of the decision is deemed to be 7 days from the date the decision is mailed.

(4) A notice of appeal under this section must contain

- (a) the legal description and municipal location, if applicable, of the land proposed to be subdivided, and
- (b) the reasons for appeal, including the issues in the decision or the conditions imposed in the approval that are the subject of the appeal.

(5) If the applicant files a notice of appeal within 14 days after receipt of the written decision or the deemed refusal with the wrong board, that board must refer the appeal to the appropriate board and the appropriate board must hear the appeal as if the notice of appeal had been filed with it and it is deemed to have received the notice of appeal from the applicant on the date it receives the notice of appeal from the first board.

#### **Hearing and decision**

**680(1)** The board hearing an appeal under section 678 is not required to hear from any person or entity other than

- (a) a person or entity that was notified pursuant to section 679(1), and
- (b) each owner of adjacent land to the land that is the subject of the appeal,

or a person acting on any of those persons' behalf.

**(1.1)** For the purposes of subsection (1), "adjacent land" and "owner" have the same meanings as in section 653.

**(2)** In determining an appeal, the board hearing the appeal

- (a) must act in accordance with any applicable ALSA regional plan;
- (a.1) must have regard to any statutory plan;
- (b) must conform with the uses of land referred to in a land use bylaw;
- (c) must be consistent with the land use policies;
- (d) must have regard to but is not bound by the subdivision and development regulations;



- (e) may confirm, revoke or vary the approval or decision or any condition imposed by the subdivision authority or make or substitute an approval, decision or condition of its own;
- (f) may, in addition to the other powers it has, exercise the same power as a subdivision authority is permitted to exercise pursuant to this Part or the regulations or bylaws under this Part.

**Approval of application**

**654(1)** A subdivision authority must not approve an application for subdivision approval unless

- (a) the land that is proposed to be subdivided is, in the opinion of the subdivision authority, suitable for the purpose for which the subdivision is intended,
- (b) the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan and, subject to subsection (2), any land use bylaw that affects the land proposed to be subdivided,
- (c) the proposed subdivision complies with this Part and Part 17.1 and the regulations under those Parts, and
- (d) all outstanding property taxes on the land proposed to be subdivided have been paid to the municipality where the land is located or arrangements satisfactory to the municipality have been made for their payment pursuant to Part 10.

**(1.2)** If the subdivision authority is of the opinion that there may be a conflict or inconsistency between statutory plans, section 638 applies in respect of the conflict or inconsistency.

**(2)** A subdivision authority may approve an application for subdivision approval even though the proposed subdivision does not comply with the land use bylaw if, in its opinion,

- (a) the proposed subdivision would not
  - (i) unduly interfere with the amenities of the neighbourhood, or
  - (ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

- (b) the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.

(3) A subdivision authority may approve or refuse an application for subdivision approval.

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

Section 41.1(3) states the Subdivision Authority may not approve the subdivision of a Lot zoned RF1, as it existed on March 16, 2015 into more than two lots, notwithstanding the Site Width in the RF1 Zone. Subdivision into more than two Lots may only be approved where the proposed subdivision:

- a. is supported by one or more City Council approved Statutory Plans or City Council approved Policies; or
- b. has a Site Width deemed by the Subdivision Authority to be in character with Lots on the same block.

Section 110.1 states that the **General Purpose** of the **(RF1) Single Detached Residential Zone** is to provide for Single Detached Housing while allowing other forms of small scale housing in the form of Secondary Suites, and Garden Suites, as well as Semi-detached Housing and Duplex Housing under certain conditions.

Section 110.4(1) states:

- 1. Site regulations for Single Detached Housing:
  - a. the minimum Site area shall be 250.8 square metres
  - b. the minimum Site Width shall be 7.5 metres; and
  - c. the minimum Site depth shall be 30.0 metres

Section 814.1 states that the **General Purpose** of the **Mature Neighbourhood Overlay** is to regulate residential development in Edmonton's mature residential neighbourhoods, while responding to the context of surrounding development, maintaining the pedestrian-oriented design of the streetscape, and to provide an opportunity for consultation by gathering input from affected parties on the impact of a proposed variance to the Overlay regulations.

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Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.

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Subdivision Authority

7th Floor, Edmonton Tower  
10111 – 104 Avenue NW  
Edmonton, Alberta T5J 0J4

July 12, 2018

File No. LDA18-0176

Hagen Surveys (1982) Ltd.  
8929 20 Street NW  
Edmonton, AB T6P 1K8

ATTENTION: Cynthia Robinson

RE: Tentative plan of subdivision to create two (2) additional single detached residential lots from Lot 7, Block 25, Plan 2058 HW, located south of 106 Avenue NW and east of 38 Street NW; **BEVERLY HEIGHTS**

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The Subdivision by Plan is **REFUSED** on July 12, 2017 for the following reason(s):

1. The proposed subdivision does not comply with the Development Regulations identified in Section 41.1(3) of the City of Edmonton Zoning Bylaw 12800:

“The Subdivision Authority may not approve the subdivision of a Lot zoned RF1, as it existed on March 16, 2015 into more than two lots, notwithstanding the Site Width in the RF1 Zone. Subdivision into more than two Lots may only be approved where the proposed subdivision:

has a Site Width deemed by the Subdivision Authority to be in character with Lots on the same block.”

The application proposes to subdivide the subject lot, which is zoned RF1, into two (2) additional single detached residential lots for a total of three (3) lots. This is one (1) lot more than is allowed in Section 41.1(3) of the City of Edmonton Zoning Bylaw 12800.

The proposal will result in a site width that is uncharacteristically small when compared to adjacent properties. For example the width of the all properties on the block face are approximately 15.24 m. The proposed lot widths for Lots 7A, 7B, and 7C is 7.62 m which is 50% smaller than the lots on the block face. Lot widths for surrounding properties range from 14.63 m to 22.92 m. A 7.62 m lot width is at least 47% smaller than the smallest surrounding property. Therefore, the proposal is out of character with the existing block face and surrounding properties.

2. Charter Bylaw 18413 to rezone the subject property from RF1 to RF3 was refused by City Council on May 28, 2018. The intent of the rezoning application was to allow for the proposed subdivision. Section 41.1(3), quoted in reason 1, is not applicable to the RF3 Zone. At the Public Hearing for Charter Bylaw 18413, City Council expressed that the rezoning application appeared to be an attempt to circumvent Section 41.1(3). City Council voted unanimously to refuse Charter Bylaw 18413. City Council's decision clearly indicates that they are not in favour of the creation of two (2) additional lots at this location. The refusal of this subdivision application is consistent with City Council's direction.

Please be advised that an appeal may be lodged in accordance to Section 678 of the Municipal Government Act with the Subdivision and Development Appeal Board, 10019 – 103 Avenue NW, Edmonton Alberta, T5J 0G9, within 14 days from the date of the receipt of this decision. The date of receipt of the decision is deemed to be seven (7) days from the date the decision is mailed.

If you have further questions, please contact Marco Beraldo at marco.beraldo@edmonton.ca or 780-496-6092.

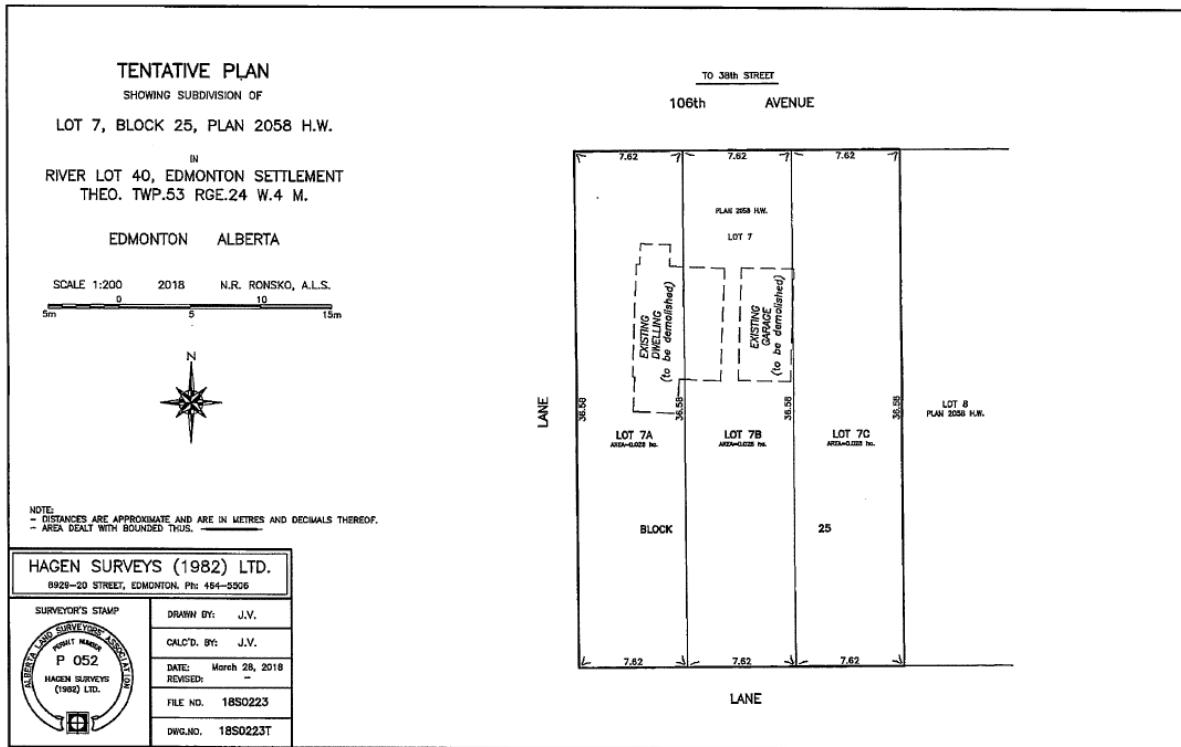
Regards,

A handwritten signature in black ink, appearing to read "Blair McDowell". The signature is written in a cursive style with a large initial "B" and "M".

Blair McDowell  
Subdivision Authority

BM/mb/Posse #278348922-001

Enclosure





**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-S-18-008

