

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Wednesday, 9:00 A.M.
August 30, 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-17-157	Operate a Major Home Based Business (General contractor for landscaping company - Sunrise Lawn & Garden Renovation) 18941 - 122 Avenue NW Project No.: 244872025-001
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NOTE: *Unless otherwise stated, all references to "Section numbers" in this Agenda refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-17-157

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER BY AN ADJACENT PROPERTY OWNER

APPELLANT:

ADDRESS OF RESPONDENT: 18944 - 122 Avenue NW

APPLICATION NO.: 244872025-001

APPLICATION TO: Operate a Major Home Based Business (General contractor for landscaping company - Sunrise Lawn & Garden Renovation)

DECISION OF THE DEVELOPMENT AUTHORITY: Approved with a variance

DECISION DATE: July 24, 2017

DATE OF APPEAL: August 8, 2017

NOTIFICATION PERIOD: August 1, 2017 through August 15, 2017

RESPONDENT:

ADDRESS OF RESPONDENT: 18941 - 122 Avenue NW

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 18941 - 122 Avenue NW

LEGAL DESCRIPTION: Plan 0024535 Blk 8 Lot 17

ZONE: DC2-Site Specific Development Control Provision (369)

OVERLAY: N/A

STATUTORY PLAN: Kinokamau Plains Area Structure Plan

Grounds for Appeal

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

No new permits should be issued till enforcement of problem with compliance of existing business in Mooncrest Park are addressed and

controlled. Several permitted and non-permitted commercial style business landscaping and construction operations are reported and are on file with authorities but still operate. Examples: Well-Done landscaping 18859-122 ave. Complaint file 8016232937 no action. Coast to Coast concrete cutting 18904-122 ave. Complaint file 8016233071 no action. Colts Construction 18920-122 ave. Complaint file 8016233119 no action. Bhullar Transport 12130-184A st. Complaint file 8016233518 no action. With these problems we feel there is a lack of ability to control any of the problems associated with existing operating businesses.

<i>General Matters</i>

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.

(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority 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

...

- (b) in the case of an appeal made by a person referred to in section 685(2), after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

Designation of direct control districts

641(4) Despite section 685, if a decision with respect to a development permit application in respect of a direct control district

...

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

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*.

Hearing and Decision

687(3) In determining an appeal, the subdivision and development appeal board

...

- (a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;

...

- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;

- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

- (i) the proposed development would not

- (A) unduly interfere with the amenities of the neighbourhood, or

- (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

- (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

General Provisions from the *Edmonton Zoning Bylaw*:

Under section DC2.369.3.d, a **Major Home Occupation** is a **Listed Use** in the **DC2 Site Specific Development Control Provision**.

Under Section 10.2(6) of the *Land Use Bylaw*, **Home Occupation, Major** means development consisting of the use of an approved Dwelling or accessory building by a resident of that Dwelling for one or more business(es) which business(es) may generate more than one (1) 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 and/or accessory building. The Dwelling may be used as a workplace by a non-resident. This Use Class includes Bed and Breakfast operations but does not include General Retail Sales or Professional Offices.

Under Section 3.2(c) of the *Edmonton Zoning Bylaw*, Major Home Occupation or Homecraft is deemed to be Major Home Based Business.

Under section 7.3(7) of the *Edmonton Zoning Bylaw*, **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 such businesses 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 Class includes Bed and Breakfast Operations but does not include General Retail Sales.

Section DC2.369.4.k states **Development** in this District shall be evaluated with the respect to compliance with the General Development Regulations of Sections 50 to 79 inclusive of the *Land Use Bylaw*.

Section DC2.369.5.b states **Major Home Occupations** shall be in accordance with **Section 85** of the *Land Use Bylaw*.

Section 369.1 states the **General Purpose** of **DC2.369** is to establish a Site Specific Development Control District to accommodate rural residential development on lots a minimum of 0.4 hectares in size, without the full range of piped urban utility services. The proposed District provides an interim solution to fulfil City Council's directive that Mooncrest Park be designated as a residential development, recognizing the current rural unserviced nature of the area and the long term likelihood of neighbourhood area structure plans being prepared for the Mooncrest Park Subdivision and adjacent areas, as proposed in the Kinokamau Plains Servicing Concept Design Brief.

Outdoor Storage

Section 75(5) of the *Edmonton Zoning Bylaw* states there shall be no outdoor business activity, or outdoor storage of material or equipment associated with the business. Indoor storage related to the business activity shall be allowed in either the Dwelling or Accessory buildings.

Development Officer's Determination:

On-site Storage – Outdoor storage for a trailer and indoor storage for a bobcat are allowed in related to this Major home based business. (Section 75.5)

Major Home Based Business Regulations – Edmonton Zoning Bylaw

75. Major Home Based Business

A Major Home Based Business shall comply with the following regulations:

- 1) there shall be no exterior display or advertisement other than an identification plaque or Sign a maximum of 20 centimetres by 30.5 centimetres in size located on the Dwelling.;
- 2) there shall be no mechanical or electrical equipment used that creates external noise, or visible and audible interference with home electronics equipment in adjacent Dwellings;
- 3) the Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located;
- 4) the number of non-resident employees or business partners working on-site shall not exceed two at any one time;
- 5) there shall be no outdoor business activity, or outdoor storage of material or equipment associated with the business. Indoor storage related to the business activity shall be allowed in either the Dwelling or Accessory buildings;
- 6) the Major Home Based Business shall not change the principal character or external appearance of the Dwelling or Accessory buildings;
- 7) a Bed and Breakfast Operation, operating as a Major Home Based Business shall have a maximum of two Sleeping Units. Cooking facilities shall not be located within the Sleeping Units. In addition to any other parking requirements of this Bylaw, one additional parking space shall be provided for each Sleeping Unit;
- 8) in addition to the information requirements of subsection 13.1 of this Bylaw, each application for a Development Permit for the Use Class Major Home Based Business shall include a description of the business to be undertaken at the premises, an indication of the number of business visits per week, provision for parking, and where any materials or equipment associated with the business use are to be stored; and
- 9) the Major Home Based Business shall not be allowed if, in the opinion of the Development Officer, such Use would be more appropriately located in a Commercial or Industrial Zone having regard for the overall compatibility of the Use with the residential character of the area.

Major Home Based Business Regulations – Land Use Bylaw

85. Major Home Occupation

A Major Home Occupation shall comply with the following regulations:

- 1) 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;
- 2) there shall be no mechanical or electrical equipment used which creates external noise, or visible and audible interference with home electronics equipment in adjacent Dwellings;
- 3) the Major Home Occupation shall not, in the opinion of the Development Officer, generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the District in which it is located;
- 4) the number of non-resident employees or business partners working on-site shall not exceed two (2) at any one time;
- 5) **there shall be no outdoor business activity, or outdoor storage of material or equipment associated with the business. Indoor storage related to the business activity shall be allowed in either the Dwelling or accessory buildings;**
- 6) the Major Home Occupation shall not change the principal character or external appearance of the Dwelling or accessory buildings;
- 7) a Bed and Breakfast Operation, operating as a Major Home Occupation shall have a maximum of two (2) Sleeping Units. Cooking facilities shall not be located within the Sleeping Units. In addition to any other parking requirements of this Bylaw, one additional parking space shall be provided for each Sleeping Unit;
- 8) in addition to the information requirements of Section 15.1 of this Bylaw, each application for a Development Permit for the Use Class Home Occupation, Major shall include a description of the business to be undertaken at the premise, an indication of the number of business visits per week, provision for parking, and where any materials or equipment associated with the business use are to be stored; and
- 9) the Major Home Occupation shall not be allowed if, in the opinion of the Development Officer, such use would be more appropriately located in a Commercial or Industrial District having regard for the overall compatibility of the use with the residential character of the area.

- 10) a Major Home Based Business shall not be allowed within the same principal Dwelling containing a Secondary Suite or within the same Site containing a Garage Suite or a Garden Suite and an associated principal Dwelling, unless the Home Based Business is a Bed and Breakfast Operation and the Secondary Suite or the Garage Suite or the Garden Suite is an integral part of the Bed and Breakfast Operation.

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*.



Project Number: **244872025-001**
 Application Date: APR 03, 2017
 Printed: August 8, 2017 at 10:19 AM
 Page: 1 of 3

Home Occupation

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>Applicant</p> <div style="border: 1px solid black; height: 40px; width: 100%;"></div>	<p>Property Address(es) and Legal Description(s) 18941 - 122 AVENUE NW Plan 0024535 Blk 8 Lot 17</p> <hr/> <p>Specific Address(es) Suite: 18941 - 122 AVENUE NW Entryway: 18941 - 122 AVENUE NW Building: 18941 - 122 AVENUE NW</p>
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Scope of Permit
 To operate a Major Home Based Business (General contractor for landscaping company - Sunrise Lawn & Garden Renovation).

<p>Permit Details</p> <p># of business related visits/day: 0 Administration Office Only?: N Class of Permit: Class B</p> <p>Do you live at the property?: Y Outdoor storage on site?: Y</p>	<p># of vehicles at one time: 0 Business has Trailers or Equipment?: Y Description of Business: paperwork at home, outdoor storage for a trailer, indoor storage for a small size bobcat. Expiry Date: 2018-07-24 00:00:00</p>
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I/We certify that the above noted details are correct.

Applicant signature: _____

Development Permit Decision
 Approved

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



Project Number: **244872025-001**
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Home Occupation

Subject to the Following Conditions

Variances were granted to this Development Permit. Subject to the right of appeal, this Development Permit is NOT valid until the Notification Period expires in accordance to Section 21.1. (Reference Section 17.1)

Unless otherwise stated, all references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw #12800, as amended.

1. The business owner must live at the site. 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 (Section 7.3(7)).
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 (Section 75.1).
3. The Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located (Section 75.3).
4. The number of non-resident employees or business partners working on-site shall not exceed two at any one time (Section 75.4).
5. The number of visits associated with the business shall not exceed the number approved with this application.
6. Unless a variance has been granted, there shall be no outdoor business activities, or outdoor storage of material or equipment associated with the business (Section 75.5).
7. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
8. The business use must maintain the privacy and enjoyment of adjacent residences and the characteristic of the neighbourhood.
9. All parking for the Dwelling and Home Based Business must be accommodated on site unless a parking variance has been granted for this Major Home Based Business.
10. The business use shall not involve the use of commercial vehicles or vehicles weighing over 4500 kg.
11. Unless a variance has been granted, the use of semi-trailer truck for deliveries or pick-ups is prohibited.
12. The site shall not be used as a daily rendezvous for employees or business partners.
13. The site shall not be used by employees or business partners as a parking or storage location.
15. Fabrications of business related materials are prohibited.
16. Unless a variance has been granted, all commercial and industrial equipment, including but not limited to Bobcats, are not permitted at the site. The equipment shall be stored at an approved storage facility.
17. All commercial, industrial and overweight vehicles shall be parked at an approved storage facility. The Development Permit may be revoked if any commercial, industrial and overweight vehicles are parked or stored at the residential site.
18. All allowed equipment and tools that related to this business shall be stored inside a storage room and shall not be visible from the street view.
19. This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details changes (Section 17.2).
20. This approval is for a ONE(1) year period from the date of this decision. A new Development Permit must be obtained to continue to operate the business from this location. This Development Permit expires on Jul 25, 2018.

NOTES:

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



Project Number: **244872025-001**
 Application Date: APR 03, 2017
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Home Occupation

NOTES:

1. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the Edmonton Building Permit Bylaw or any caveats, covenants or easements that might be attached to the Site (Section 5.2).

2. This Development Permit is not a Business License.

Variances

On-site Storage – Outdoor storage for a trailer and indoor storage for a bobcat are allowed in related to this Major home based business. (Section 75.5)

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.

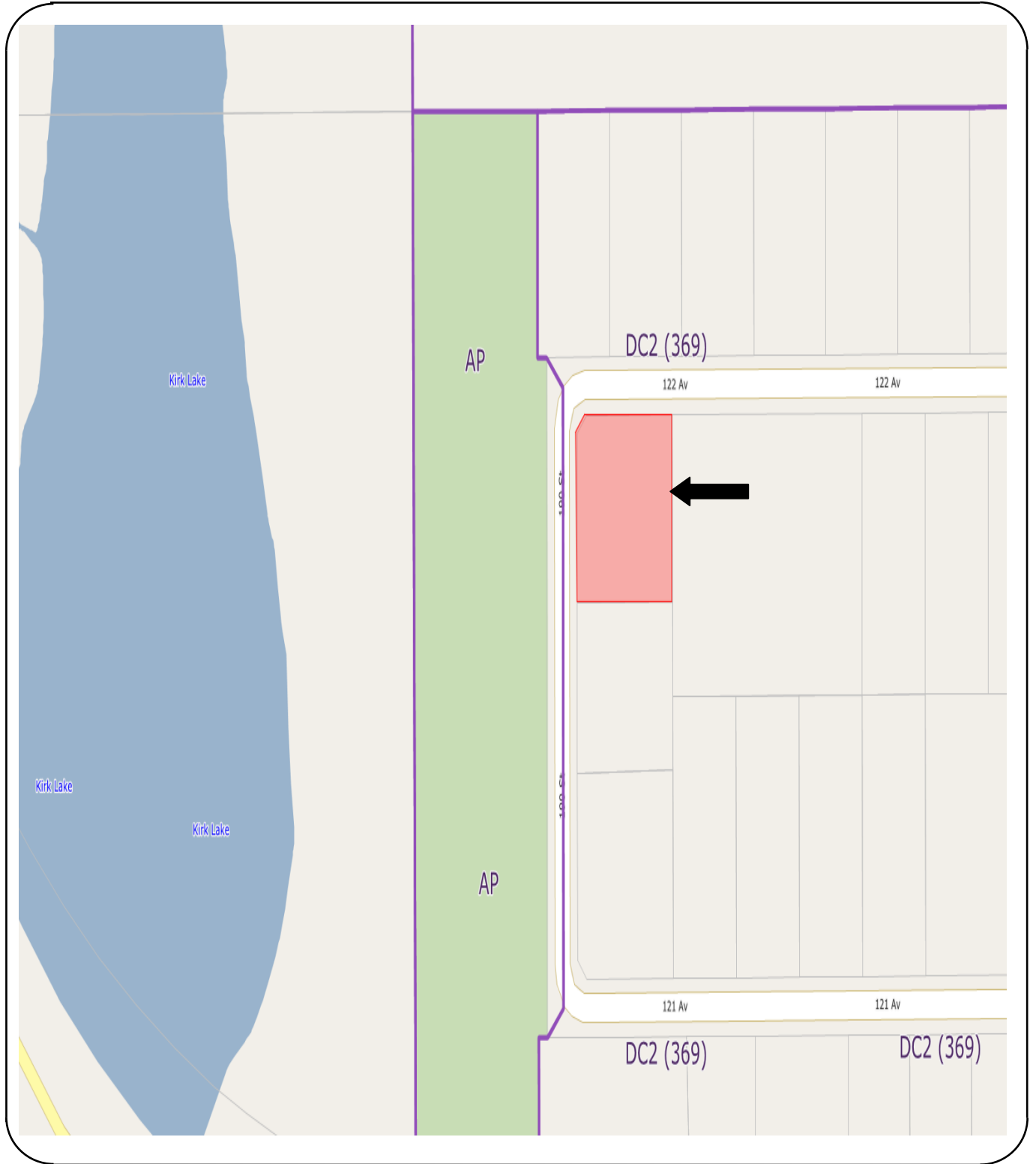
Issue Date: Jul 24, 2017 **Development Authority:** LAI, ECHO **Signature:** _____

Notice Period Begins: Aug 01, 2017 **Ends:** Aug 15, 2017

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Dev. Application Fee	\$309.00	\$309.00	04026729	Apr 03, 2017
Total GST Amount:	\$0.00			
Totals for Permit:	\$309.00	\$309.00		

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



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-17-157

