

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Wednesday, 9:00 A.M.
August 7, 2019**

**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-19-119

To change the Use from a Bar &
Neighbourhood Pub to a Nightclub (Entendre)

10344 - 105 Street NW
Project No.: 227514182-023

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-19-119

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 227514182-023

APPLICATION TO: Change the Use from a Bar & Neighbourhood Pub to a Nightclub (Entendre)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: June 10, 2019

DATE OF APPEAL: July 1, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 10344 - 105 Street NW

LEGAL DESCRIPTION: Plan B2 Blk 5 Lot 166

ZONE: (UW) Urban Warehouse Zone

OVERLAY: Downtown Special Area

STATUTORY PLAN: Capital City Downtown Plan

Grounds for Appeal

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

The City has provided us with a permit to operate a Bar and Neighbourhood Pub and as of recent, issued our business with a cease order to stop operations immediately. The calculation provided in the reasoning for the cease order is inaccurate and not consistent with the initial calculation performed when first obtaining this permit. With this, we are compliant with Bar & Neighbourhood Pub Zoning – We operate under the permitted (allowed) use of “Bar & Neighbourhood Pub”. Zoning and Development will not give us the opportunity to rectify any of their calculation issues (ex. To make changes according to what they expect) and therefore left us with only one choice – apply for a “nightclub” development permit. The city would like for this to happen

so that we are forced to be a discretionary use and no longer a permitted use development permit.

Noise is not exclusive to the nightclub use. Operations of a bar and neighbourhood pub and even a restaurant these days will include a DJ, louder music levels, dancing, etc.

<i>General Matters</i>

The Subdivision and Development Appeal Board made and passed the following motion on July 4, 2019:

"That the appeal hearing for 227514182-023 be postponed to August 7, 2019."

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, [...]

Hearing and Decision

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

...

- (a.1) must comply with the land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;
- (a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;
- (a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;

...

- (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 910.11(1), the **General Purpose** of the **(UW) Urban Warehouse Zone** is to develop a unique mixed-use business commercial, educational and residential neighbourhood, accommodating a diversity of Uses, including residential, commercial, institutional, light manufacturing and assembly in a safe, walkable, human-scaled built environment that builds on the existing land use pattern and respects the architectural characteristics and functions of the area.

Under Section 910.11(3)(r), **Nightclubs**, but not to exceed 200 occupants and 240 m2 of Public Space if the Site is adjacent to or across a Lane from a Residential zoned Site, is a **Discretionary Use** in the (UW) **Urban Warehouse Zone**.

Under Section 7.4(39), **Nightclubs** means development where the primary purpose of the facility is the sale of alcoholic beverages to the public, for consumption within the premises or off the Site, in a facility where entertainment facilities take up more than 10% of the Floor Area. This Use typically has a limited menu from a partially equipped kitchen/preparation area and prohibits minors from lawfully utilizing the facility. Typical Uses include dance clubs, cabarets, nightclubs, lounges, neighbourhood pubs and bars, beverage rooms, and cocktail lounges. This Use does not include Cannabis Lounges.

Under Section 6.1, **Public Space** means space that is part of an establishment, which is open to the public and not restricted to only employees. Public Space includes any private non-sale hospitality area where products manufactured within the premises are provided to private groups for tasting and sampling. This definition does not include kitchens, administration offices, food or drink preparation areas.

Development Officer's Determination

1) The Capital City Downtown Plan states that "in order to protect downtown residential areas from the impacts of bars, neighbourhood pubs and nightclubs, these uses will be controlled through zoning regulations that stipulate location and maximum size." (Part 4.2, Policy 7.10 [p. 89])


It is the opinion of the Development Officer that the proposed development, described as "Liquor Service & Dancing" in the application form, is a Nightclub. A Nightclub is a Discretionary Use in the UW-Urban Warehouse Zone, and is therefore subject to the Capital City Downtown Plan.

The applicant has stated on the application form that the public space is 120 sq.m. with a seating capacity of 94. It is the opinion of the Development Officer that, based on the drawings provided in support of the application and the most recent plans examined by a Safety Codes Officer on 8 Sept. 2017, that the public space appears to be either 162.7 sq.m. or 167.6 sq.m. The Development Officer's calculation is based on the strict wording of the definition of "Public Space" in the Zoning Bylaw.

In the opinion of the Development Officer, the scale and scope of the proposed Nightclub will have an undue and negative impact to the adjacent and surrounding residential uses with respect to noise and general disruption, in contravention of the Capital City Downtown Plan. The Development Officer notes that various complaints have been received from adjacent residences regarding the subject development in the past 18 months.

Previous Subdivision and Development Appeal Board Decision

Application Number	Description	Decision
SDAB-D-19-101	Stop Order; To cease the nightclub Use immediately and cease the operation of the Bar and Neighborhood Pub until the property is in compliance	July 12; Stop Order Upheld

	Project Number: 227514182-023 Application Date: MAY 31, 2019 Printed: July 2, 2019 at 8:19 AM Page: 1 of 2
<h2 style="margin: 0;">Application for Major Development Permit</h2>	
This document is a Development Permit Decision for the development application described below.	
Applicant	Property Address(es) and Legal Description(s) 10344 - 105 STREET NW Plan B2 Blk 5 Lot 166 Specific Address(es) Suite: 101, 10344 - 105 STREET NW Suite: 102, 10344 - 105 STREET NW Entryway: 10344 - 105 STREET NW Building: 10344 - 105 STREET NW
Scope of Application To change the use from a Bar & Neighbourhood Pub to a Nightclub (Entendre).	
Permit Details	
Class of Permit: Class B Gross Floor Area (sq.m.): New Sewer Service Required: Site Area (sq. m.): 697	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none)
I/We certify that the above noted details are correct. Applicant signature: _____	
Development Application Decision Refused Issue Date: Jun 10, 2019 Development Authority: WELCH, IMAI Reason for Refusal 1) The Capital City Downtown Plan states that "in order to protect downtown residential areas from the impacts of bars, neighbourhood pubs and nightclubs, these uses will be controlled through zoning regulations that stipulate location and maximum size." (Part 4.2, Policy 7.10 [p. 89]) It is the opinion of the Development Officer that the proposed development, described as "Liquor Service & Dancing" in the application form, is a Nightclub. A Nightclub is a Discretionary Use in the UW-Urban Warehouse Zone, and is therefore subject to the Capital City Downtown Plan. The applicant has stated on the application form that the public space is 120 sq.m. with a seating capacity of 94. It is the opinion of the Development Officer that, based on the drawings provided in support of the application and the most recent plans examined by a Safety Codes Officer on 8 Sept. 2017, that the public space appears to be either 162.7 sq.m. or 167.6 sq.m. The Development Officer's calculation is based on the strict wording of the definition of "Public Space" in the Zoning Bylaw. In the opinion of the Development Officer, the scale and scope of the proposed Nightclub will have an undue and negative impact to the adjacent and surrounding residential uses with respect to noise and general disruption, in contravention of the Capital City Downtown Plan. The Development Officer notes that various complaints have been received from adjacent residences regarding the subject development in the past 18 months.	
THIS IS NOT A PERMIT	



Application for Major Development Permit

Project Number: **227514182-023**
Application Date: MAY 31, 2019
Printed: July 2, 2019 at 8:19 AM
Page: 2 of 2

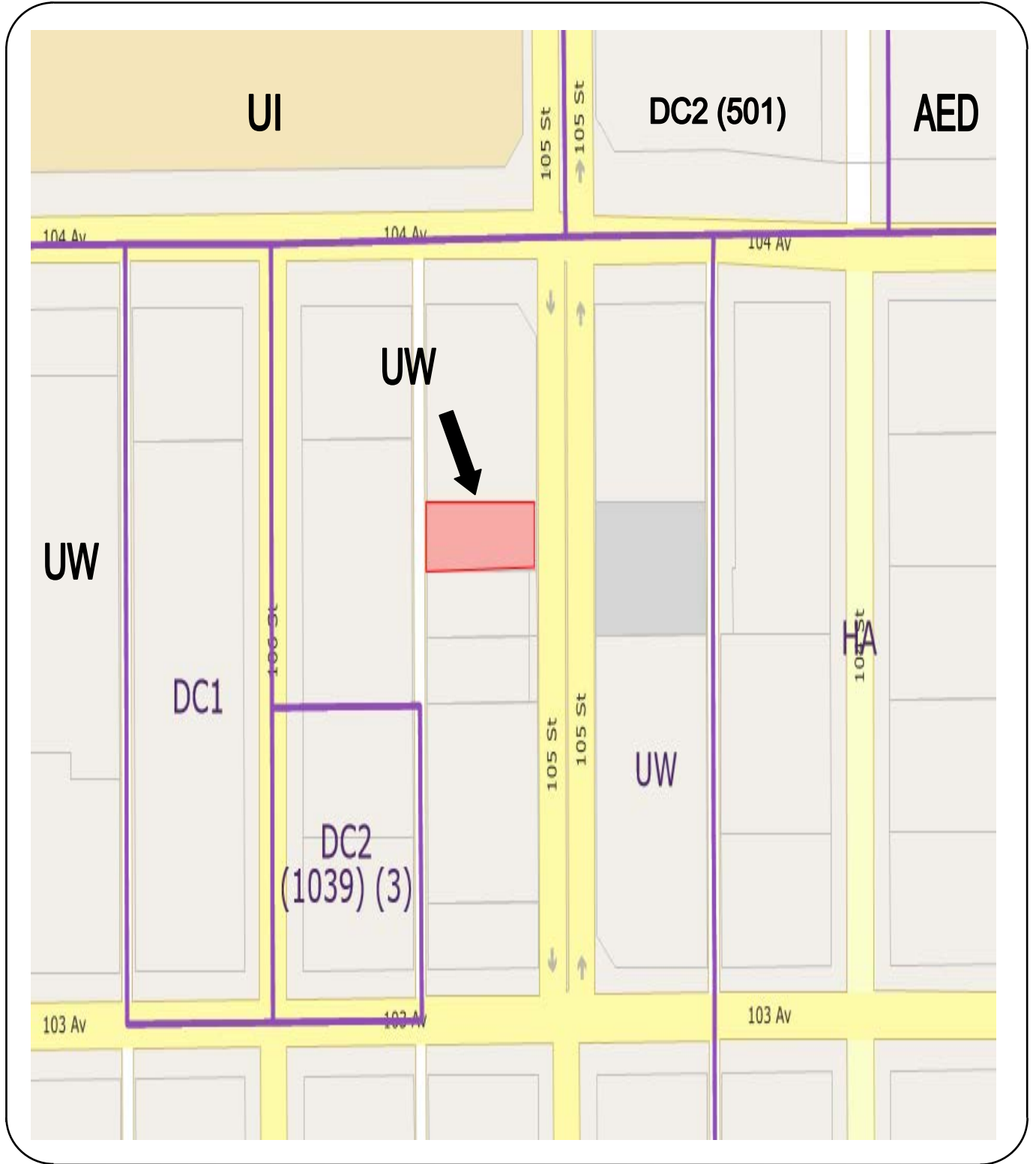
Rights of Appeal

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

	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$518.00	\$518.00	05890166	May 31, 2019
Total GST Amount:	\$0.00			
Totals for Permit:	<u>\$518.00</u>	<u>\$518.00</u>		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-19-119

