



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: December 20, 2018
Project Number: 287222895-001
File Number: SDAB-D-18-201

Notice of Decision

- [1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on December 5, 2018, made and passed the following motion:

“That SDAB-D-18-201 is TABLED to December 13, 2018, at 9:00 a.m. Only Parties in attendance today will be notified thereof. This panel is not seized of this appeal.”

- [2] On December 13, 2018, the Board made and passed the following motion:

“That SDAB-D-18-201 be raised from the table.”

- [3] On December 13, 2018, the Board heard an appeal that was filed on November 15, 2018. The appeal concerned the decision of the Development Authority, issued on October 26, 2018, to refuse the following development:

Change the use from General Retail Stores to Cannabis Retail Sales

- [4] The subject property is on Plan 1421576 Blk 25 Lot 4, located at 4303 - 167 Avenue NW, within the CB2 General Business Zone. The Brintnell Neighbourhood Structure Plan and Pilot Sound Area Structure Plan apply to the subject property.

- [5] The following documents were received prior to the hearing and form part of the record:

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions including a brief prepared by the Law Branch;
- The Appellant’s written submissions; and
- A letter of opposition from the Edmonton Public Library.

- [6] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – List of Events at the McConachie Library submitted by the Appellant

- Exhibit B – Photograph of the interior of the McConachie Library submitted by the Appellant
- Exhibit C – A copy of the Appellant’s speaking notes

Preliminary Matters

- [7] At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [8] The Chairman outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [9] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).

Summary of Hearing

i) Position of the Appellant, Mr. M. Podmorof, representing Group Three Property Management:

- [10] An overhead aerial including the site plan overlay and photographs to demonstrate the entire development including the site of the proposed Cannabis Retail Sales and the Library were referenced to illustrate that the subject site cannot be seen from the library because of an existing building. Photograph number 2 illustrates that there are no pedestrian connections between the subject site and the library site. He has visited the site on numerous occasions and has never witnessed anyone walking across the parking lot to the subject site.
- [11] There are three liquor stores located in close proximity to the library.
- [12] It is ludicrous to conclude that a small cannabis retail store which cannot be seen by patrons of the library will somehow influence those patrons more than the readily available news and literature on the subject available through the library. A search revealed that EPL offers at least 67 titles on the subject of cannabis, including 28 eBooks which can be read anytime, anywhere, which reduces the overall relevancy of a physical library branch. Therefore, it was his opinion that the location or existence of this small eplGo branch is becoming more and more irrelevant over time as a typical book/repository library which is likely why they provide more video games, makerspaces, internet access and meeting room space.
- [13] Alberta Education’s health curriculum contains course matter on the subject of cannabis as it does for other drugs, alcohol, tobacco and sexuality. Therefore, one can conclude that the Ministry responsible for educating our children has determined that there is more wisdom in proactively educating children about the risks and helping them make their own healthy lifestyle decisions rather than burying their heads in the sand.

- [14] The notion that locating a cannabis retail store more than ¼ kilometer away from this small eplGO branch in a neighbouring shopping centre will harm children congregating at this library is ridiculous.
- [15] This seems hypocritical because there are two liquor stores allowed and located on the same site as is the sale of tobacco products. Library patrons have not been witness to the horrors of drunk, tobacco-smoking individuals loitering outside the liquor stores or the grocery store and even if they did, those doing so would be doing it unlawfully. The same principles apply for the proposed cannabis retail store because anyone consuming cannabis in these shopping centres would be committing an offense.
- [16] A list of activities and classes held at the McConachie Library and a photograph of the interior of the library, marked Exhibit A and Exhibit B, were submitted. Based on a review of these activities, most of which are for pre-school aged children or infants who cannot even read, it is very unlikely that they would be influenced by the proposed development.
- [17] Cannabis Retail Sales and Child Care Services are both Permitted Uses on this site. Although it was within the purview of City Council to address both uses and their proximity to one another at the time the *Edmonton Zoning Bylaw* was amended, they chose not to. Therefore, he questioned the inference of the Development Officer that the purpose of the separation distance requirements was to keep the proposed use away from places where children gather.
- [18] If the separation distance from a library was established to prevent adjacent cannabis retailers from using the library as an anchor tenant to draw library-destined traffic into their stores, the goal is accomplished in this case because the subject site cannot be seen from the library and the small size of this branch reduces that risk.
- [19] Cannabis retail stores have strict operating and security regulations in excess of those in place for alcohol sales to ensure that no one enters the premises under the age of 18 and that no one can see into a cannabis retail store. AGLC will not issue a license to operate unless all regulations are complied with.
- [20] The Development Officer is asking the Board to make a decision on public policy which is not something that Boards are specifically mandated to undertake. Paragraph 10.4(1) of *Planning Law and Practice in Alberta* by F. Laux cites:

...In hearing a development appeal, the principal task of an appeal board is to determine the facts of the case before it, to decide what relevant provisions of the Act, the Land Use Policies, the regulations, a statutory plan, or the land use bylaw are applicable, and to render a decision accordingly. In a given case a board may have a considerable amount of discretion in making a decision such as where a discretionary use application is an issue or where a board is asked to exercise its variance power.... It must restrict itself to considering only relevant planning criteria, and generally must avoid taking on the role of arbiter of social policy. In

exercising its variance power, the principles that a board must look to, and by which it is governed, are set out in the *Municipal Government Act*....

- [21] The *Municipal Government Act* provides variance power to the Board.
- [22] The Development Officer cited SDAB-D-18-133 and reminded the Board that although the Board is not bound by precedent, consistency is important. A variance was granted for the proposed Cannabis Retail Sales use largely based upon practical interpretation of the circumstances and the findings of the *Thomas* case. This appeal is even simpler because the Appellant is not appealing the radius between the proposed development and any use restricted in the *Alberta Gaming, Liquor and Cannabis Regulations*. Consistency can be achieved by granting a variance due to practicalities in the circumstances including the physical characteristics of the retail sites, buildings, layouts and distances involved. There is sufficient distance between the proposed development and the “library” use, and, given the two cannot be physically seen from the premises of the other, a variance would still uphold the consistency issue and demonstrate the bylaw regulations can still be interpreted intact with the provincial legislation.
- [23] It was his opinion that not enough attention was paid to interpreting the true meaning of the Public Engagement Summary. Only 600 stakeholders were canvassed and less than 10 percent provided a response. Clearly, purporting this document as a representative of the opinions of the populace could be challenged.
- [24] Based upon a review of the City Law Brief, it was his opinion that it bolsters the appropriateness of the request for a variance to allow the proposed development.
- [25] Section 70(2)(a) of the *Edmonton Zoning Bylaw* clarifies the term “public library” for the purposes of the special land use provisions for Cannabis Retail Sales and states:
- The term “public library” is limited to the collection of literary, artistic, musical and similar reference materials in the form of books, manuscripts, recordings and films for public use, and does not include private libraries, museums or art galleries...
- [26] Therefore those uses within the eplGo premises which are not the collection of literary, artistic, musical and similar reference materials in the form of books, manuscripts, recordings and films for public use, are not library uses. The portions of the 3,100 square foot premises which are being utilized for public computer stations, makerspaces, public printing and photocopying, PS4 video games, sound cones, meeting spaces and spaces to house other programs cannot be characterized as being a “library”. A photograph, marked Exhibit B, was submitted to illustrate how some of the space is being used and that it does not comply with the definition of “public library”, pursuant to section 70(2)(a). The size of the actual library component is much smaller than 3,100 square feet in size and as a result, the proposed development will have no impact whatsoever on this location.
- [27] Mr. Podmorof submitted a copy of his speaking notes, marked Exhibit C.

[28] In response to a question, Mr. Podmorof confirmed that there is a drive aisle between the two sites located at the northern most portion of the site.

ii) *Position of the Development Officer, Mr. I. Welch and Legal Counsel, Mr. M. Gunther:*

[29] Upon review of the application, it was determined that the proposed development did not comply with the minimum setback requirement from a library. The proposed development is on a property which abuts another property, containing the McConachie EPL branch and the current regulation requires a 200 metre setback from a site containing a public library.

[30] A records search for the library site confirmed that a development permit for a public library and cultural exhibit was issued in July 2015. In November 2015, the library received a separate development permit for exterior alterations, specifically a drop box for books. The site therefore did contain a library. The definition of a public library includes a variety of functions as well as a variety of methods to deliver those functions and the fact that computers are available on site is not an indication that this is not a library.

[31] The separation distance map was referenced to illustrate that the sites virtually abut each other which results in a 0 metre separation distance. The Development Officer does not have the authority to vary the minimum separation distance requirements which resulted in an automatic refusal of this development permit application.

[32] In response to a question, Mr. Welch clarified that the site is comprised of a variety of different types of development including several strip malls as well as mixed office buildings with retail space on the main level. It is primarily an auto centric development but is also walkable.

[33] Mr. Gunther indicated that he would address the legal framework, provisions of the *Edmonton Zoning Bylaw* and the *Municipal Government Act*. Mr. Gunther agreed with the Appellant that neither the Board nor the Development Officer can dictate public policy. In this case before cannabis was legalized, City Council held public hearings and accepted submissions from citizens who were concerned about the new use and its impact on sensitive land uses. It is a legal land use but there are concerns given the fact that the full effect of the new land use is not yet known. Sixty-eight percent of those consulted expressed concern about locating Cannabis Retail Sales close to sensitive land uses. Based on this feedback, City Council made a public policy decision regarding the separation distance regulations.

[34] Mr. Gunther agreed with the Appellant that the Board has the power to vary a development regulation contained in the land use bylaw and that the *Thomas v Edmonton (City)*, 2016 ABCA 57 (“*Thomas*”) Court of Appeal decision is the most instructive and current on how that should be dealt with. Mr. Gunther prepared a brief in response to *Newcastle Centre GP Ltd. v Edmonton (City)*, 2014 ABCA 295 (“*Newcastle*”) because

the City is of the view that in the past the Board has taken an overly restrictive view of when a variance can be refused.

- [35] It is the City's position that there is a lot more law to be considered from the Court of Appeal than simply the *Newcastle* decision that is often referenced at these hearings. In order to be entitled to a variance, the party must demonstrate that they are not going to materially impact the use and amenities of the neighbourhood, but also the Board has a role to play in determining whether or not a particular use is appropriate as proposed. It is Development Authority's view that Council has imposed a property line to property line setback between a public library and a Cannabis Retail Sales use of 200 metres. In this case, that is inconsequential because the variance being requested is really a dispensation, because a 0 metre setback is required, a substantial variance from the setback requirement that is imposed in the *Edmonton Zoning Bylaw* and it is not simply an alleviation of hardship or overlooking a technicality. This is a variance that even if each building on this site was on an individually titled lot and the measurement was taken from building to building as opposed to site to site it still would not comply with the setback requirements. The scope of the variance is a concern for the City. The EPL will address the impacts of having the library in close proximity to a Cannabis Retail Sales or even the perceived impacts. The City expresses concern that this is not a hardship imposed by firm line drawing but rather a request for the Board to dispense with a City Council imposed setback that has been prescribed in the *Edmonton Zoning Bylaw*.
- [36] Setbacks or separation distances are a difficult issue to address from a public policy perspective because one can never prove that a child walking past a cannabis retail store, 50 metres, 100 metres or 500 metres away from their school, is going to see that cannabis retail store and that they are going to be more inclined to use cannabis. There is a great deal of difficulty in proving the exact impact of a sensitive land use being in close proximity to a cannabis retail store and tying that back to risk. However, City Council is in a position where they have to give effect to the wishes of the community, to best practices in other jurisdictions and ensure that these sensitive land uses and cannabis retail stores, at least until more information is available, are situated in accordance with the generally accepted principles of the City.
- [37] Separation distances for liquor stores have evolved over time after receiving feedback from retailers and the community regarding the impacts. This is an evolving process and exceptions have been made. However, given how new and how much of a public issue cannabis is, Council has imposed setbacks that may be described as cautious but are routed in the will of the community and are intended to protect youth and vulnerable persons from interaction with a land use that Council has determined is not to be located close to these sensitive sites.
- [38] The Chairman thanked Mr. Gunther for preparing his brief and asked him to respond to several questions regarding *Newcastle*.
- a) The Chair noted that three Court of Appeal decisions have dealt with the Board's variance power in different situations, including *Newcastle* that dealt with the

separation distances between liquor stores, *Thomas*, that dealt with whether or not variance power could extend beyond development regulations toward procedural aspects of the Bylaw and the Court of Appeal said that it could not and *Garneau Community League v Edmonton (City)*, 2017 ABCA 374 (“*Garneau*”) which dealt with the nature of a variance in a Direct Control area. All of these decisions have an interesting interplay. *Newcastle* has been relied upon by the Board because it dealt with separation distances and the variance power of the Board. The Chair agreed with Mr. Gunther that the Court of Appeal had problems with the reasons provided by the Board but it was more than that. The reasons were sparse and the Court was critical but from reading it all they tried to determine what the Board was saying and if it was right. Paragraph [6] states:

An attempt to try to reconcile the Reasons’ internal conflicts would be to interpret the Reasons as follows. We, the Board, have a power to grant variances, but the bylaw creates a presumption of harm to the public, and we the Board cannot intervene unless that presumption is rebutted by the applicant. That is an error.

- b) The Board was told that an error was made, that City Council went through a lengthy procedure for liquor stores which has also been done for Cannabis Retail Sales and there is a presumption of harm because a separation distance was established by the *Bylaw*. That is what the Court, from the sparse reasons provided by the Board, concluded and advised the Board that an error was made. When the Court addressed the deficiency in the reasons, it was indicated that they wanted reasons that demonstrated harm. Paragraph [11] states:

Were the Board’s Reasons adequate? Was the result of applying the proper tests in s 687(3)(d) so obvious as to require no explanation in the Reasons? No. It is not self-evident that or how two liquor stores within 500 meters would interfere with neither neighbourhood amenities, nor that or how they interfere with or affect use, enjoyment, or value of neighbouring pieces of land. This is not a boiler factory in a residential neighbourhood. The problem only arises because there would be two liquor stores in the area. One alone is a permitted use.

- c) While the reasons were deficient, the deficiency included not providing reasons for the harm, reasons that the test was not met. Paragraph [14] states:

Does that possibility of future harm to the tenant relate to the neighbourhood or its amenities? Does it affect the use, enjoyment, or value of any other parcels? Or does it relate instead to the other business or its owner? The Board made no fact findings to link the respondent’s permit-for-a-move concern with any test in s 687(3)(d).

- d) The deficiency in the reasons was not giving reasons why the section in section 687(3) of the *Municipal Government Act* was met, implying that it has to be met.
- e) So, in light of these rulings, particularly *Newcastle*, the Chair asked the City to explain what reasons could be provided by the Board other than that City Council undertook community consultation, there is a presumption of harm at 200 metres, and the impacts of a Cannabis Retail Sales use are not yet known but should be presumed.

This is exactly what happened in *Newcastle* and the Court of Appeal slapped the Board's hands.

[39] Mr. Gunther responded:

- a) In terms of the presumption, the notion that the Bylaw creates a presumption of harm to the public, he did not disagree with the conclusion as quoted by the Chair. However, presumption of harm is not the test nor is it necessary for the Board to come to a reasonable conclusion not to grant a variance. The test in section 687 does not amount to harm to the public, it amounts to the impact on the use and amenities of the neighbourhood. It is important to recognize what was being argued before Justice Cote in *Newcastle* was whether or not they could infer from the sparse reasons that they had gone through the test contained in section 687 of the *Municipal Government Act*. There was no argument over whether there was any residual discretion to deny a variance even with the test contained in section 687 was not satisfied or that there was limited information on how that test would be applied. This is important because that is, in effect, where the Board draws its ability to look at public policy, interpret what has been done from a public policy perspective and attempt to reach a reasonable outcome in the circumstances.
- b) He agreed with the Court of Appeal that the reasons were inadequate and it was difficult to determine what the Board actually meant. In this case, in terms of harm to the public and setbacks, if you take this case to its logical extension, what comes out of it is that unless you can actually prove why City Council made a decision that involved both policy and planning considerations, unless you can prove a specific and direct harm, that policy and planning decision can never be applied by the Board. That is the flaw and that cannot be the case in light of City Council's broad ability to legislate on issues of public policy and planning. If you follow the logic and say that it is an error to say that there is a presumption of harm in the Bylaw and he did not disagree, but to disregard the entire policy element and to say that unless you come to the Board and prove why Council made the decision it did and prove that it is founded on a valid harm to the public, then the Board cannot give effect to this legislative decision of Council and is almost reducing it to absurdity.

[40] The Chair acknowledged the points being made by Mr. Gunther. Before *Newcastle*, the general thought was that because section 687(3)(d) is permissive, the Board could grant a variance and demonstrate by providing reasons as to how the test was met. If the Board decided not to grant a variance, the Bylaw regulations could be relied upon. However, following *Newcastle*, the Board was directed that refusing a variance had to be supported by reasons that the test in section 687 was not met. The deficiency of reasons cuts both ways. On one hand you have to provide reasons and cannot just presume harm unless it was demonstrated. The Court of Appeal decision is binding on the Board. If you want to deny a variance, reasons must be provided as to how the test in section 687 has not been met. In this case, what would those reasons be?

[41] Mr. Gunther provided the following information in response to that question:

- a) The Edmonton Public Library will provide information regarding the impacts of the proposed development on this library branch that is geared towards servicing families and children.
- b) The entire policy goal is to separate these incompatible uses and users through the imposition of separation distances. This is a classic example of where that interaction has a very substantial risk of occurring. The Applicant is requesting a dispensation of the minimum required separation distance from 200 metres to 0 metres from a library that is targeted towards the very people that City Council, through public policy is attempting to shield. Therefore, it would be reasonable to conclude that a variance is not appropriate in this circumstance.
- c) The live question remains - is there residual discretion in light of section 687 and what does that discretion look like. It does not mean that *Newcastle* has pushed that question away entirely. At some point, the Court will consider that question again. It is still a live issue and *Newcastle* does not answer that question.
- d) *Newcastle* does not limit the Board to determining harm and then refusing a variance on that basis. *Thomas* tempers *Newcastle* because the Court of Appeal went through an analysis of when a variance is appropriate. The two cases have to be read harmoniously. If you read *Thomas* and then look at *Newcastle* through the lens of *Thomas*, it would be reasonable to reach a conclusion that gives effect to both cases. *Thomas* directed that there are cases where a hard line is drawn by Council that creates hardship, the Board should give effect to the Court of Appeal analysis in that case (which follows *Newcastle* in time) and use the *Thomas* reasons as a basis for reasons in a case where the Board elects not to grant a variance.
- e) The degree of hardship is a relevant factor. If the variance arises as a result of a technicality or an unusual circumstance, that is going to be a relevant factor in the application of section 687. If the variance is extreme or so substantial that it is a dispensation of what has been prescribed in the Bylaw that is at the other end of the spectrum. It is not a hardship test per se because that is not what the law says but it is going to be a spectrum and it is a relevant factor for the Board to consider.
- f) One issue that has not been determined by the Supreme Court is the concept of vertical binding on administrative tribunals by Court decisions. If a Court decision goes back to the same tribunal with instructions, it is binding on that tribunal. Standard of review is up in the air in light of the three recent Supreme Court hearings. Ultimately the Alberta Court of Appeal has to decide to what degree and how a superior court decision binds an administrative tribunal vertically as opposed to horizontally, tribunal to tribunal. The *Newcastle* and *Thomas* decisions are instructive to this tribunal. They are both indicative of the mindset of two different Court of Appeal panels and highly relevant to the issues of this case and most appeals that come before the Board. In terms of one being binding because it is right on point

where as the other is not, the situation for the Board is not necessarily the same as it would be to the Court of Appeal or the Court of Queen's Bench.

- g) A shift to reasonableness with respect to the Board has been noted. Ultimately the more factual the Board's decision making is and the more discretionary factors involved, the more likely that its decisions will be reviewed on a more deferential standard by the Court of Appeal. Taking that into account, the circumstances will be different and ultimately every case will involve an issue of mixed fact and law to some degree. The Board needs to explain its decision if it takes a position that is not directly on point with *Newcastle*. If the Board is to make a decision dealing with these issues it has to explain the decision by providing reasons to satisfy the Court of Appeal.
- h) Based on public feedback, most people do not think that Cannabis Retail Sales should be located in the suburbs. There is a concern about locating Cannabis Retail Sales near places where children and youth gather. If the proposed location is somewhere where children and youth gather, the way to acknowledge the policy outcome of City Council is to not grant a variance.
- i) Magnitude and impact go hand in hand. Allowing two stores side by side completely disregards and eliminates the policy objective that City Council has put in place in response to public feedback.
- j) If the reason for the decision is to prohibit sensitive uses from being in close proximity, and to prevent two users from interplay with each other, a setback of 199 metres still gives effect to the legislative aims.
- k) Site to site can be a blunt instrument and that goes back to *Thomas*. If it is a situation that does not make sense then that would be a case, in the absence of any other situation, when the variance could be granted.
- l) The Edmonton Public Library made submissions to City Council. Child Care as a Use is not one particular entity, it is a collection of small businesses or individuals that are operating in an unconnected fashion and are not an effective lobby group.
- m) There have been several cases where Child Care Services and Cannabis Retail Sales have been approved in close proximity to each other and the situation is currently being reviewed to determine if separation distances should be imposed.
- n) Mr. Welch clarified that there was debate at Council regarding the method that should be used to measure separation distances. The standard method used in the *Edmonton Zoning Bylaw* is property line to property line because it is consistent and has been found to be the fairest.

- o) Public feedback was a relevant consideration for Council when determining the required separation distances and they were established in an attempt to reduce harm. The Public Engagement was before Council when the decision was made.
- p) Alberta Health Services provided medical information and public health experts spoke to the relevance of children being exposed to cannabis advertising and stores. Bringing these experts to each hearing to address the harm that exists by having youth exposed to a Cannabis Retail Sales use would be the ultimate goal of the City but it cannot reasonably be done. Therefore, City Council tried to reach a reasonable conclusion and imposed the setback requirements in an attempt to address the issues that were raised.
- q) The library is 275.83 metres away from the front door of the proposed Cannabis Retail Sales use.
- r) City Council has elected to calculate the separation distance by using the site to site measurement. This is a vehicular type site, a power centre with additional office buildings. People do travel across both sites, they are interconnected and the Board needs to consider the impacts of the proposed Cannabis Retail Sales on the library.

iii) Position of Affected Parties in opposition to the Appellant, Mr. J. Nielsen and Ms. Garvin, representing the Edmonton Public Library:

- [42] The Edmonton Public Library does not support the proposed Cannabis Retail Sales use at 4303 – 167 Avenue because it does not comply with the minimum required separation distance from the public library.
- [43] The McConachie Library is very much a “real” library.
- [44] The mission of the Edmonton Public Library is to share with the city, the community, and customers. Stories, ideas and many different experiences are shared in a space that is always seeking to be expanded and improved.
- [45] The library strengthens neighbourhoods and communities by creating connections by going beyond traditional and physical boundaries to foster relationships and build dynamic, responsive library services.
- [46] Key Performance Indicators of activity at each location which include memberships, the number of visits, computer usage, and the number of and attendance at programs is tracked in order to demonstrate value to their stakeholders. There is concern that given the number of young families in this area, these numbers at the McConachie location will be reduced by such close proximity to a Cannabis Retail Sales use.

- [47] Ms. Garvin clarified that the McConachie location is very much a real library that offers a diverse variety of materials and services. In addition to traditional books, recordings, and films, it offers an exciting and educational makerspace, public computers, video games and classes for the community.
- [48] The McConachie Library is open seven days a week and opens to the public 8 hours daily between Monday to Saturday and 4 hours on Sundays. The hours are similar to standard business hours with evening hours offered on Tuesdays and Thursdays to accommodate customers visiting after a typical work day.
- [49] Ms. Garvin reviewed the usage report on the McConachie Branch between January 1, 2018 and September 30, 2018, including total visits, usage in hours for public computers, the total number of classes and events, the total number of juvenile classes and events. A juvenile is defined as a customer between the ages of 0 and 18 years.
- [50] Based on information obtained from Environics Analytics, the percentage of households with children at home in McConachie indexes at 138, indicating this demographic is over represented relative to the benchmark, higher in this area than the average for the city. The top profile for McConachie is younger families with pre-school children, with the majority of the children, at the time of this report, being under the age of 15 years.
- [51] A photograph was referenced to illustrate that the proposed location of the cannabis retail store is visible if patrons of the library walk a few metres north when exiting the front door of the library.
- [52] The area between the library and the proposed cannabis retail store is walkable and is surrounded by dense residential housing. The proposed development is accessible by travelling from one parking lot to the other without the need to exit to a major roadway. There are no large roadways separating the library from the proposed store. The parking lot is highly used by library patrons and does not have any dedicated parking stalls pushing the need for patrons to potentially park near the proposed cannabis retail store.
- [53] The Edmonton Public Library is on a long term lease with options to renew up to 15 years. Edmonton Public Library is committed to this location and as noted in the usage statistics it is a well-used branch.
- [54] Maps were referenced to illustrate that there are other leasing opportunities for the Applicant to develop in the area outside of the required 200 metre separation distance.
- [55] The Board should consider the original intent of City Council and the implications of interpreting and formulating the Board's own policy on locating cannabis retail stores.
- [56] The difference between Liquor Stores and cannabis retail stores is that it is illegal to consume alcohol in public while cannabis can be consumed within 10 metres of the Library. This supports the rationale for the setback from libraries with a goal of discouraging an environment of purchasing and consuming cannabis in the same area.

There is a concern that someone can purchase cannabis at the proposed cannabis store and then smoke it in the parking lot in close proximity to the library where children gather.

[57] An aerial photograph was referenced to illustrate the dense population of residential homes surrounding the complex where the Library is situated.

[58] Mr. Nielsen and Ms. Garvin provided the following information in response to questions from the Board:

a) The parking lot is used by library patrons. Juveniles do come to the library on their own during lunch breaks or after school. A number could be provided based on program attendance. However, information could not be provided regarding the number of children who are driven to the library by their parents.

b) The main concern is that cannabis could be consumed within 10 metres of the entrance to the library which is much different than a liquor store because of the consumption component. They are also concerned about individuals smoking tobacco close to the front door of the library. Intoxicated individuals have entered the library on occasion. There is no security on site but there is a mobile security service that will attend if there is a problem.

c) In most instances, a school is buffered by a large school yard which mitigates the impacts of a variance to the minimum separation distance. However the proposed cannabis retail store is not separated from the library by a major roadway or any type of greenspace.

iv) Rebuttal of the Appellant

[59] Based on the information provided by the Edmonton Public Library, it was his opinion that they are not complying with the development permit that was issued for this location.

[60] The site is vehicle oriented and is not walkable based on the evidence provided at the front door of very building on this site faces the parking lot. A pedestrian oriented development usually provides pedestrian connections which do not exist on this site.

[61] The Board should not try to interpret the intentions of City Council, pursuant to Laux.

[62] The Development Officer calculated the separation distance from site to site to ensure consistency.

[63] The subject site is located more than a ¼ of a kilometre away from the library. At some point in the future, the developer of the library site could subdivide the site and the separation distance would no longer be an issue.

- [64] It was his opinion that the library has not demonstrated how they will be negatively impacted by granting the required variance.
- [65] A sign could be installed by the library to address problems with people smoking to close to the entrance.
- [66] In Kelowna, every Cannabis Retail Sales use is subject to a rezoning application that brings the development to a public hearing and takes the onus off the Board to consider social policy.
- [67] In this case, using a site to site measurement is a blunt instrument and it was his opinion, given the distance between the two sites, it is within the purview of the Board to consider granting the required variance.
- [68] The library indicated that most of its patrons arrive by vehicle and if this is the case those patrons will not walk over 275 metres to reach the proposed Cannabis Retail Sales use.

Decision

- [69] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:
1. The development must commence within nine (9) months of the date when AGLC removes its temporary suspension for accepting and issuing applications for Cannabis Retail licensing.
 2. There shall be no parking, loading, storage, trash collection, outdoor service or display area permitted within the required 4.5 metres setback. (Reference Section 340.4(3) & (5)).
 3. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. (Reference Section 54.1.1.c).

ADVISEMENTS:

1. This Development Permit is NOT a Business Licence. A separate application must be made for a Business Licence. Please contact the 311 Call Centre (780-442-5311) for further information.
2. Signs require separate Development Applications.

[70] In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. The minimum required 200 metres separation distance between the Cannabis Retail Sales Site and any Site containing a public library, pursuant to section 70(2) is waived.

Reasons for Decision

[71] The proposed development is to change the Use from a General Retail Stores Use to Cannabis Retail Sales. The subject Site is located in the (CB2) General Business Zone. Pursuant to section 340.2(6) of the *Edmonton Zoning Bylaw*, Cannabis Retail Sales is a Permitted Use in this zone.

[72] The Board is mindful of section 687(3)(a.4) of the *Municipal Government Act*. This section directs that in making this decision, the Board must comply with 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. Based on the submissions of the parties, the Board finds that requirements of those regulations have been satisfied and this Board has met its obligation under section 687(3)(a.4) of the *Act*.

[73] The issue before the Board is whether a variance of 200 metres could be granted in respect of the regulations in section 70(2) of the *Edmonton Zoning Bylaw*.

[74] Section 70(2) requires a 200 metre separation distance between the Site of a Cannabis Retail Sales and any Site being used as a public library. Despite submissions to the contrary, provided by the Appellant, the Board finds that this branch of the Edmonton Public Library is in fact a public library. Section 70.2(b) states:

the term “public library” is limited to the collection of literary, artistic, musical and similar reference materials in the form of books, manuscripts, recordings and films for public use, and does not include private libraries, museums or art galleries.

[75] The Board has waived the minimum required 200 metre separation distance for the following reasons:

- a) The proposed Cannabis Retail Sales Use is, in fact, located 275.83 metres away from the site of the Public Library. Both the library and the proposed Cannabis Retail Sales Use are located on very large lots. As a result, despite the fact that there is a significant physical separation between the proposed Cannabis Retail Sales Use and the Library, the application of the site to site nature of the development regulation creates a hardship situation for anyone trying to develop a Cannabis Retail Sales Use within this large Power Centre development.

- b) Based on an analysis of the site, the Development Officer conceded that it is vehicular oriented. All store fronts face towards a parking lot located in the centre of the site. There is no pedestrian access provided between the proposed Cannabis Retail Sales Use and the library. In fact, there is only one access provided between the two sites, a vehicle only drive aisle that connects the two parking lots at the northern property line. Therefore, it is highly unlikely that there will be any pedestrian traffic between the proposed Cannabis Retail Sales Use and the library which is located more than 275 metres away.
- c) Based on a review of the photographic evidence provided by the Appellant, the proposed Cannabis Retail Sales Use is not visible from the front entrance to the library because the sight lines are blocked by a building located between the two locations.
- d) The submissions from the Edmonton Public Library revealed that their primary concern is that customers of the proposed Cannabis Retail Sales use, who most likely will arrive by vehicle, would purchase cannabis and then walk over 275 metres through drive aisles, over curbs, around buildings and other physical barriers to within 10 metres of the entrance to the Edmonton Public Library to consume cannabis. The Board finds that this scenario is very unlikely.

[76] Based on all of the above, the Board finds, based on a preponderance of evidence, that the proposed development with the required variance, will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

Board Members in Attendance:

Ms. K. Cherniawsky, Ms. L. Gibson, Mr. R. Hachigian, Ms. G. Harris

Important Information for the Applicant/Appellant

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

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