Edmonton Subdivision and Development Appeal Board

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Date: December 21, 2015
Project Number: 180042332-001
File Number: SDAB-D-15-295

Notice of Decision

On December 9, 2015, the Subdivision and Development Appeal Board heard an appeal that was filed on November 24, 2015. The appeal concerned the decision of the Development Authority to approve the following development:

> Erect an over height Fence (1.83m in Height) in the Side Yard abutting Lessard Drive and the Rear Yard [unedited from the Development Permit]

The subject property is located on Plan 7722037 Blk 3 Lot 43, municipal description 408 Lessard Drive NW.

Preliminary Matter

After confirming with the parties in attendance that there was no opposition to the composition of the panel, the Presiding Officer drew the parties' attention to the potential late filing of the appeal. He referenced Section 686(1)(b) of the *Municipal Government Act*, RSA 2000, c M-26, which states:

> **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,
>
> …
>
> (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.

According to the Development Permit and the hearing agenda, the decision of the Development Officer was issued on November 2, 2015. The notification period started on November 10, 2015, and expired on November 23, 2015. The appeal was filed on November 24, 2015.

The Presiding Officer noted that the Board's jurisdiction to hear appeals is derived, in part, from Section 686(1)(b) of the *Municipal Government Act.* If the appeal was filed late, the Board has no authority to hear the matter. The Presiding Officer invited the parties to provide submissions in this regard.

i. Position of the Appellant, Ms. C. Dowbiggin

Ms. Dowbiggin indicated that she first became aware of the development approval upon receipt of a letter by mail. She was unable to clarify the exact date she received the letter. She stated that she "probably" filed her appeal on November 24, 2015, as indicated on the hearing agenda.

ii. Position of the Development Officer, Mr. Jason Xie

Mr. Xie indicated that the development approval decision was published in the *Edmonton Journal* newspaper. Publication coincides with the beginning of the notice period as stated on the Development Permit, that being November 10 to November 23, 2015. The Board noted that the notice requirements pursuant to Section 20.1 of the *Edmonton Zoning Bylaw* require notice both by mail and by publication in a newspaper. Mr. Xie requested a recess so that he could obtain information regarding the notice dates, and the Board granted his request.

After a 30 minutes recess, the Board reconvened and Mr. Xie submitted Exhibit "A", a copy of a page from the *Edmonton Journal*. Exhibit "A" showed that the advertisement for the development approval for the subject property at 408 Lessard Drive NW was published on November 10, 2015.

Mr. Xie also submitted Exhibit "B", a screenshot from an internal City of Edmonton workflow management program which showed that a Department mail clerk completed the mail notice on November 4, 2015, and that the notice was sent for mailout on November 5, 2015.

Decision on the Preliminary Matter

The appeal was filed on time and the Board has jurisdiction to hear the matter.

Reasons of the Board on the Preliminary Matter

The Board notes that Section 686(1)(b) of the *Municipal Government Act* states, in part:

> 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… after the date* on which the notice of the issuance of the permit was given in accordance with the land use bylaw. [emphasis added]

Section 20.1 of the *Edmonton Zoning Bylaw* requires notice both by mail and by newspaper publication. As such, the notification period would not have been triggered until the later of mailing the notice or publishing the notice. In this case, the later event was the publication of the notice on November 10.

The Board applied Section 22(7) of the *Interpretation Act*, RSA 2000, c I-8, which states:

> If an enactment provides that anything is to be done within a time after, from, of or before a specified day, the time does not include that day.

Since the decision was published on November 10, 2015, and in accordance with Section 22(7) of the *Interpretation Act*, the notification period would have started on November 11, 2015 rather than November 10, 2015, and would have run until November 24, 2015.

Since the Appellant filed her appeal on November 24, 2015, the appeal was filed on time and the Board therefore has jurisdiction to hear the matter.

Summary of Hearing:

The subject site is zoned RF1 Single Detached Residential Zone. The development permit application was approved, subject to conditions, and subsequently appealed by an adjacent property owner.

Prior to the hearing, the following information was provided to the Board, copies of which are on file:

- Copy of the Development Application and the Approved Permit;
- Written submissions of the Development Officer, dated December 2, 2015, with the following documents:
  - Response from EPCOR, dated October 8, 2015;
  - Response from Atco, dated Oct 16, 2015;
  - Response from Drainage, dated October 21, 2015;
- Respondent's PowerPoint Presentation, received December 9, 2015;
- Petition letters in support of the development; and
- One online response from a neighbouring property owner in support of the development.

i. Position of the Appellant, Ms. C. Dowbiggin

1. Ms. Dowbiggin stated that she has no problems with her neighbours wishing to have privacy in their yard.
2. Her concern is with the development's design, which she believes will detract from the beauty of the neighbourhood, and could affect the resell value of her own home.
3. Rather than the proposed 6 foot tall fence which will protrude beyond the length of the front door and create a sense of a fortress, she would prefer that other options be considered.
4. She suggested several alternatives, including a 4 foot tall front fence, which would be more characteristic of the neighbourhood.
5. The Board referenced a photograph which had been attached to the Minor Development Application. The photograph depicted the street view from the north yard of the subject site
6. The Board noted that one of the properties in the photograph appeared to have a 6 foot tall fence, which may be indicative that such fences are typical of the neighbourhood.

7. The Appellant acknowledged the height was indeed 6 foot tall; however, she pointed out that the fence in the photograph did not protrude as much as the proposed development.
8. She also stated that she had no objections to the tall fence installed at 394 Lessard Drive because the property is beautifully landscaped and decorated.
9. The Board drew her attention to the portion of the proposed fence that does not protrude into the side yard, and noted that the applicants are permitted to install a 6 foot tall fence in this section.
10. Ms. Dowbiggen acknowledged her understanding that this portion does not require a variance, but she reiterated that installing a 6 foot tall fence next to a low-lying brick fence that has been in place since 1979 gives people the impression that the neighbourhood is not friendly.
11. In conclusion, she stated that she did not conduct a neighbourhood consultation because she felt it would be too divisive. She sees the appeal as an opportunity to express how she feels about the development.

ii. Position of the Development Officer, Mr. J. Xie

1. He noted that on the original permit, the "Scope of Permit" section stated that the development was for an "over height Fence (1.83m in Height) in the Side Yard". He stated that the Development Permit is, in fact, for the Side Yard, Front Yard and Rear Yard.
2. He clarified that he has no other recommended conditions for the Board's consideration, other than those already included in the Development Permit.
3. He confirmed that anything beyond the foremost edge of the house and garage on either side of the lot must be 1.2 m, with a variance of up to 1.85 m permitted.
4. He did not believe that the subject site poses an undue hardship.

iii. Position of the Respondent, Ms. E. Markus

1. She expressed her appreciation for the Appellant's opinions.
2. The proposed fence will provide privacy and increase security and safety. It is also located well within the property lines and will not affect driver sightlines.
3. No neighbours have objected to the development, and in fact, she had discussed the development with her immediate neighbours long ago.
4. There is no privacy in her existing back yard. There is considerable bicycle and foot traffic that goes past her property on the way to and from the neighbouring ravine. Even in the winter, pedestrians will walk by with their dogs.
5. The proposed fence will not interfere with access to the trails because it is within property lines.
6. She explained that the street grade is below the patio grade. All the properties within the keyhole crescent are two-storey homes, so the grade difference allows her neighbours to look down into her yard. The proposed fence will reduce visual access.
7. Another key concern is safety and security: her patio is completely open, and patios are a target for petty theft. In addition, her grandchildren will play in the west yard, and a 6 foot tall fence is less "climbable".

8. She drew attention to the slope of the property and the 1 foot tall retaining wall. A regular 4 foot fence would result in the bottom 1 foot effectively "disappearing", leaving only 3 foot of visual screening above the patio.
9. She referred to a Google Maps image showing her house from the perspective of the property across the street. From that angle, it is evident that the spruce tree on her property will block most of the side fence; the neighour to her rear has also planted many shrubs that will block part of the fence.
10. She showed photos of neighbouring properties with tall, dense fences.
11. With respect to the Appellant's concerns about aesthetics, she noted that surrounding backyards have wire fences, but hers will be paneled cedar and completely finished. There will also be flowers and shrubs to beautify the fence.

iv. Rebuttal of the Appellant, Ms. C. Dowbiggin

1. She questioned why the front and side yards are being developed now, after so many years.
2. Although it may appear that all neighbours are in support, she believes there is sometimes social pressure to go along with things for the sake of the community and maintaining good relations.

Decision:

The appeal is **DENIED** and the decision of the Development Authority is **UPHELD**. The development is **GRANTED** as applied for to the Development Authority, subject to the **CONDITIONS** as set out in the Development Permit.

Reasons for Decision:

The Board finds the following:

1. The Appellant demonstrated no neighbourhood support for the appeal. On the other hand, the Respondent demonstrated overwhelming neighbourhood support, with 17 neighbours indicating verbal support during the consultation, or in writing, and with no objection from the community league.
2. The Appellant failed to indicate that she would suffer demonstrable loss from the development. For example, she provided no appraisal showing that the value of her property would be negatively impacted.
3. The Appellant confirmed that the appeal is solely based on her opinion of the development's proposed design.
4. The Board accepts the security concerns highlighted by the Respondent regarding the grading of her corner lot and how a shorter fence will be more "climbable".
5. The Respondent expressed clear plans for significant landscaping to mitigate the appearance of fence, which will be constructed of cedar wood, rather than less natural looking materials such as plastics or metals.

6. The Board finds that the development poses no impact to traffic, sightlines or safety concerns.
7. The Board accepts the submissions of the Development Officer in his written report, and incorporates the recommended conditions contained in the Permit.
8. The Board is satisfied that, based on the above reasons, the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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 5th Floor, 10250 – 101 Street, Edmonton.

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*, RSA 2000, c S-1;
   c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
   d) the requirements of any other appropriate federal, provincial or municipal legislation; and
   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 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 5th Floor, 10250 – 101 Street, Edmonton.

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.

Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

c.c.

Edmonton Subdivision and Development Appeal Board

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Date: December 21, 2015
Project Number: 177925991-001
File Number: SDAB-D-15-296

Notice of Decision

On December 9, 2015, the Subdivision and Development Appeal Board heard an appeal that was filed on November 23, 2015. The appeal concerned the decision of the Development Authority to approve the following development:

> Construct a Single Detached House with front attached Garage (6.04m x 8.38m), front veranda, rear uncovered deck (4.07m x 2.74m), fireplace and Basement development (NOT to be used as an additional Dwelling). [unedited from the Development Permit]

The subject property is located on Plan 1320980 Blk 21 Lot 53, municipal description 16544 - 133 Street NW.

Summary of Hearing:

At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

The subject site is zoned RSL Residential Small Lot Zone. The development permit application was approved, subject to conditions and a variance granted in the minimum required distance from the house to the Side Lot Line, the property line shared with 16548 – 133 Street. The approved development permit application was subsequently appealed by a neighbouring property owner.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- Copy of the Development Application and the Approved Permit;
- Written submissions of the Development Officer, dated December 4, 2015;
- An email from the City of Edmonton's Building Permits and Inspection Services dated October 8, 2015;

- Copies of Site photographs showing the framing of the development and a Stop Work sticker;
- Respondent's written submissions and supporting documentation, received December 4, 2015; and
- Copy of the Oxford Neighbourhood Structure Plan.

i. Position of the Appellant, Ms. J. Rondeau

1. She does not expect the development to be torn down, but she has safety concerns about the alcoves now being closer to her property. She would therefore like reassurances that all safety requirements have been met.
2. The Board acknowledged her concerns but clarified that the Board's jurisdiction does not permit it to deal with Safety Codes or Building Code matters.

ii. Position of the Development Officer, Ms. E. Lai

1. In response to the Respondent's submitted documents which state that the architectural drawings were wrong, she clarified that they are, in fact, correct; it is the plot plan that is wrong.
2. In response to the Appellant's safety concerns, she stated that it is her understanding that the Applicant has set up a meeting with a Building Codes officer. They will engage in further discussions regarding potential fire hazards.

iii. Position of the Respondent, Mr. K. Saleh

1. They will comply with all safety requirements.
2. He noted that at no point is there less than 8 feet separating his property from hers. It is simply that there is more space on her side of the property line because her house is at an angle.
3. They acknowledge that they made a mistake when they submitted their development application, and missed the two inches difference.
4. He reiterated information from his written submissions, including his assertion that the City did not catch the error between the plot plan and architectural plan.
5. He clarified that they have stopped construction and have met all the lot drainage requirements.

iv. Rebuttal of the Appellant, Ms. J. Rondeau

1. She disagreed with the Respondent's statement that there is at least 8 feet separating her property from his. Her pictures demonstrate that the distance from her eaves trough to the alcove protruding from the Respondent's property is less than 8 feet.

The Board clarified that the separation distance is not measured from eaves, but from the foundation. In addition, even if a development permit is granted, the Respondent must still comply with Building Code requirements and various inspections.

Decision:

The appeal is **DENIED** and the decision of the Development Authority is **UPHELD**. The development is **GRANTED** as applied for to the Development Authority, subject to the **CONDITIONS** as set out in the Development Permit.

Reasons for Decision:

The Board finds the following:

1. The Board was not provided with compelling evidence to overturn the decision of the Development Authority.
2. The Appellant advised the Board that her primary concerns were not of a planning nature, but concerned safety and Building Code compliance.
3. Accordingly, the Board advised that such concerns are for Building Codes or a Safety Compliance Officer to follow up with.
4. The Board notes that the required variance to Side Setback is very minor, less than 3 inches.
5. The Board is satisfied that, based on the above reasons, the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Important Information for the Applicant/Appellant

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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*, RSA 2000, c S-1;
   c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
   d) the requirements of any other appropriate federal, provincial or municipal legislation; and
   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 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 5th Floor, 10250 – 101 Street, Edmonton.

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Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

c.c.

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Date: December 21, 2015
Project Number: 176775290-001
File Number: SDAB-D-15-294

Notice of Decision

On December 9, 2015, the Subdivision and Development Appeal Board heard an appeal that was filed on November 16, 2015. The appeal concerned the decision of the Development Authority to approve the following development:

> Change the Use from Professional, Financial and Office Support Services to Child Care Services (max 94 children, 12 -12-18 months, 30 -19 Months-3yrs, 32 - 3yrs-4.5yrs, 20 - 4.5yr-7yrs) and to construct interior and exterior alterations (rooftop on-site outdoor playspace) (College Plaza, Childcare Facility) [unedited from the Development Permit]

The subject property is located on Plan 5384RS Blk 158 Lot 1A, municipal description 8440 - 112 Street NW.

Summary of Hearing:

At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

The subject site is zoned DC2 Site Specific Development Control Provision. The development permit application was approved subject to conditions, and subsequently appealed by an adjacent property owner.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- Written submissions of the Appellant, received December 9, 2015;
- Copy of the Approved Development Permit;
- Written submissions of the Development Officer, dated November 25, 2015;
- Fire Services Memorandum, dated Oct 27, 2015;
- Copy of DC2 Site Specific Development Control Provision, Section 2.732; and

- Copy of the Garneau Area Redevelopment Plan.

i. Position of the Appellant, Alberta Health Services

1. The Appellant was represented by Mr. S. Alexander, who stressed that the appeal is limited to the approved rooftop playspace.
2. As of the date of the appeal, there had been 399 helicopters land at the heliport in 2015.
3. He referenced a letter from Transport Canada dated December 7, 2015. The letter stated:

> If a decision is made to move ahead and build the child care facility a thorough Transport Canada safety assessment will be carried out…. Once completed a determination would then be made to allow the continued operation, restricted operation or complete closure of the heliport all together.

4. He referred to the "Transitional Surface", which provides space for helicopters to hover and situate themselves prior to landing. Part of this area is directly above the subject property, and the rotor wash (the local air circulation or wind caused by a helicopter's spinning rotors) will be felt on the rooftop of the subject property where the proposed playspace will be developed.
5. He referred to Policy 325.5 from Standard 325 – *Heliports*, a document that outlines the minimum technical specifications at a heliport necessary for compliance with Part III of the *Canadian Aviation Regulations*, SOR/96-433, in particular, Section 305.23(2) of the Regulations.
6. Policy 325.5 of the Standards document includes an Information Note, which states:

> Rotor downwash can cause a safety hazard to people and equipment on the ground in the immediate vicinity of a helicopter. The size and weight of the helicopter, as well as the ambient wind direction and speed, have a significant effect on the extent of this hazard. A protection area around the helicopter rotor(s), measured from the tip of the rotor blade, *that is approximately 3 times the overall length of the largest helicopter using the heliport*, is considered suitable in most weather conditions. [emphasis added]

7. The Appellant provided a list of helicopters that use the heliport, including a U.S. Army Sikorsky Black Hawk (UH-60L), with an empty weight of 4,819 kg (10,624 lbs) or a gross weight of 9,980 kg (22,000 lbs).
8. Approximately once a year, the U.S. Army uses the heliport to land a Black Hawk for a military exercise. In addition, the Canadian Armed Forces have unfettered access to the heliport, and are not required to notify any party prior to making use of the heliport.
9. While a helicopter hovers within the Transitional Surface, debris will be blown around.
10. If children are in the play space that is within this Transitional Surface, it is possible that debris from the play space as well as debris from the rooftops of surrounding buildings could land within the play area.
11. The use of the Transitional Surface on a day-to-day basis is unknown, therefore, it is simply safest to leave the area empty.

12. He believes that the heliport is essential to the operation of the hospital as well as the provision of emergency services.
13. He acknowledged that helicopter accidents can happen at any time. However, the more buildings around the Transitional Surface, and the closer one's location is to the heliport, the greater the risk of an accident.
14. He acknowledged that two nearby buildings, which are 20 storeys and 28 storeys tall, could shelter some of the rotor wash, but also clarified that rotor wash is not simply a vertical effect, as it radiates outward and spreads. The buildings could magnify the effect of the rotor wash, similar to the effect experienced near tall buildings on windy days.
15. He stated that the heliport is approximately nine storeys high, and the play area is located on the second storey. Rotor wash can be felt even at ground level, which is approximately 10 feet lower than the subject property.
16. He clarified that the older heliport formerly located at the emergency building of the University of Alberta Hospital is no longer operational.
17. It is possible that the flight path which the Transitional Surface is tied to may be moved, but flight paths are based on the location of the actual heliport. Moving the flight path further west may not necessarily solve the problem as there are also other buildings to the west. Ultimately, it will be up to Transport Canada to determine the feasibility of new flight paths.
18. Although it may be possible to implement a communications process whereby an incoming helicopter could radio in to Alberta Health Services or directly to the daycare, such a setup would add an element of delay.
19. Mr. T. Holliday, also from Alberta Health Services, stated that in his experience, military craft "write their own rules" and will come directly onto the heliport without notice, following flight paths or hovering.
20. The number one priority of heliport operators is to ensure that there is no debris when helicopters fly in. However, they cannot control loose rocks or debris on or near other buildings.

ii. Position of the Development Officer, Ms. E. Peacock

1. She did not know about the helicopter flight path or Transitional Surface when she conducted her review.
2. When the Development Authority reviews Child Care Services applications, they have to consider noise, so that is a concern she has with the Proposed Development.
3. She noted that although Section 80(8)(a) references various considerations such as noise and noxious or hazardous adjacent Uses, there is no reference to helicopters.
4. Under Section 14.9 of the *Edmonton Zoning Bylaw*, "The Development Officer may require an applicant for a Development Permit to submit…environmental site assessments, risk assessment studies and risk management plans and/or exposure control plans".
5. She acknowledged that by failing to consider the nearby heliport before issuing the development permit, it could be interpreted that the Development Authority failed to follow the directions of council, which would allow the Board to substitute its own decision, pursuant to Section 641(4)(b) of the *Municipal Government Act.*

6. She referenced an adjacent 20-storey building and a nearby 28 storey building to the east, which could provide some buffer between the heliport and the playspace.
7. Having heard the information provided by the Appellant, she acknowledged that there is risk associated with wind pushing debris and rocks onto the play area.
8. She confirmed that there is a play area just east of the development that is at Grade; however, Alberta Child Care Services requires that daycares have an on-site play space, which is why this play space must be located on the second level. She confirmed that the proposed play area is sheltered on three sides.
9. Although she does not have the expertise to assess rotor wash on a 20 storey building, she believes mitigation measures could be taken by removing the risk factors from the development.
10. One option is to install an overhead projection or dome-like structure that could protect the play area from falling debris, but there may be light/shade requirements for play areas, and the projection may not meet those requirements.
11. In any event, she does not know what the actual risk is, and therefore cannot order mitigation measures.
12. Even if a Development Permit is granted, the development would still have to meet Alberta Child Care Licensing standards.
13. When questioned by the Board, she acknowledged that if Transport Canada's assessment results in the closure of the heliport, there would be no risk posed to the play area.

iii. Position of the Respondent, Mr. V. Wansink

1. He suggested that the actual play space is outside the Transitional Surface, but the Board noted that the map provided by the Appellant appears slightly skewed, as evidenced by the sun shadowing.
2. It is not possible to relocate the play space, because Child Care Licensing requires that it be within easy walking distance to the daycare.
3. No other area of the roof is suitable: in fact, most of the roof is not even on the same level as the play space.
4. He does not want any risk to the children. There will be a solid deck over the gravel on the roof and fencing all around the play space, but he does not know whether the rotor wash from incoming helicopters will cause toys to fly around or debris to fall from nearby buildings.
5. Even if the Development Authority's decision is upheld, he would still like to know what the risk is. Unfortunately, Alberta Child Care Licensing will not even look at completing a risk assessment until money has already been invested into building the daycare and play space.
6. He believes Transport Canada should be able to provide some sort of statistics about rotor wash.

iv. Rebuttal of the Appellant, Mr. S. Alexander

1. He showed the Board a sketch, demonstrating how, despite the sheltering of surrounding buildings, wind from the rotor wash circulates in all directions, which will lead to debris bouncing off of buildings to land within the play area.

2. Irrespective of the rotor wash, there is still concern about noise.
3. He noted that if the development is approved and Transport Canada's subsequent assessment results in the heliport's closure, it will be a loss of $3 million dollars.
4. He confirmed that he is representing both the interests of Alberta Health Services in ensuring access to emergency services by air, as well as the safety interests of the children who will use the proposed play space.
5. He believes it could take months for a risk assessment to be completed by Transport Canada.

Decision:

The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **REFUSED** for the following reasons.

Reasons for Decision:

The Board finds the following:

1. Child Care Services is a Listed Use under Section DC2.732.
2. Section 641(4)(b) of the *Municipal Government Act* states:

> Despite section 685, 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.

3. The first question this Board must consider when faced with an appeal within a DC2 Direct Control Zone is whether the Development Authority followed the directions of Council when it approved the proposed development.
4. In making this determination, the Board turns to Section 720.3(3) of the *Edmonton Zoning Bylaw*, which states: "All Regulations in the Zoning Bylaw shall apply to development in the Direct Control Provision, unless such Regulations are specifically excluded or modified in a Direct Control Provision."
5. With respect to regulations in the Zoning Bylaw that apply to Child Care Services, Section 80 states, in part:

> A Child Care Service shall comply with the following regulations:
>
> …

4. the Development Officer shall, when deciding whether to approve or refuse a Child Care Service in a Commercial Zone, take into account, among other matters, traffic, noise and proximity to hazardous uses to ensure the proposed Child Care Service is in a safe location;

…

8. where on-site outdoor play space is provided, pursuant to the Provincial *Child Care Licensing Regulation*, it shall comply with the following regulations:

a. noisy, noxious or hazardous adjacent Uses such as, *but not limited to,* loading/unloading areas, garbage bins, large parking lots, arterial roads, passenger drop-off areas, rail lines, Light Rail Transit lines or stormwater lakes should either be avoided or their effects mitigated through landscaping, buffering, fencing, or other means [emphasis added];

b. outdoor play space shall be located at ground level. *If no reasonable opportunity exists for at Grade outdoor play space, the Development Officer may approve an above Grade outdoor play space provided that the following conditions are met:*

i. secure perimeter fencing is provided that is at least 1.83 m in height and is located a reasonable distance from the edge of the building;

ii. roof top mechanical equipment is located a reasonable distance away from the play space to avoid sources of noise and fumes unless the mechanical equipment is designed so that it does not create adverse effects related to noise and fumes and can be integrated into the play area; [emphasis added]

c. outdoor play space shall be securely enclosed on all sides with the exception of developments proposed on zoned Sites US and AP where existing play fields are proposed as outdoor play space;

d. in a Residential Zone, outdoor play space may be allowed in any Yard, providing it is designed to limit any interference with other Uses, or the peaceful enjoyment of the properties of nearby residents, through fencing, landscaping, buffering and the placement of fixed play equipment;

e. in any Non-residential Zone, the outdoor play space shall not be located in any Yard that abuts a public roadway unless the design, size and other characteristics of the proposed play space mitigate the potential impact from the roadway traffic upon children using the play space…

6. The Development Officer gave evidence, which the Board accepts, wherein she confirmed she was not aware of the heliport at the nearby Mazankowski Alberta Heart Institute ("MAHI") when she approved the development permit, which is the subject of this appeal.
7. In response to further questioning from the Board on this subject, the Development Officer stated that had she known of the heliport and of the safety concerns raised by the Appellant, she would have asked the Respondent to provide a risk assessment pursuant to Section 14.9 of the *Edmonton Zoning Bylaw*, which states:

> The Development Officer may require an applicant for a Development Permit to submit any information, including but not limited to: environmental site assessments, risk assessment studies and risk management plans and/or exposure control plans that, in the opinion of the Development Officer, is required to determine that the Site is suitable for the full range of uses contemplated in the Development Permit application.

8. Accordingly, the Board finds that the directions of council were not followed due to the Development Officer's admitted failure to consider the potential for noisy and hazardous conditions caused by the heliport in relation to the proposed development.
9. Although heliports are not specifically mentioned in Section 80(8)(a), the Board finds that if a garbage container can be considered potentially noisy, noxious, or hazardous as an adjacent use, then it follows that a high volume helicopter landing pad could be considered within this class as well.
10. In light of the foregoing, the Board may substitute its decision for that of the Development Authority to ensure that the directions of council are followed.
11. Based on the wording of Section 80.8(a), it is clear that the safety of children is paramount when approving an outdoor play space.
12. In addition to the above, Alberta Health Services gave evidence that there are approximately 400 landings at the heliport each year.
13. Some of these landings are without notice, such as when the Canadian Armed Forces exercises its unfettered access to the heliport during medical emergencies.
14. The Appellant advised the Board that although the heliport is located 9 storeys above street level, the rotor wash can be felt at street level.
15. One of the flight paths runs very close to the proposed play area and the Transitional Surface is very close to if not directly above the play area.
16. Although the play area is located near a 20 storey and a 28 storey building which may provide some shelter to the second storey play area, the Board placed weight on the opinion of the Appellant that these buildings could magnify the rotor wash effect. Rocks and debris can be spun up by the rotor wash, bouncing off neighbouring tall buildings and onto the second storey play area below.
17. It was made clear to the Board that debris from adjacent areas is out of the control of both the Appellant and the Respondent, which was part of the Appellant's concerns over the potential safety hazards to the proposed development.

18. From the evidence submitted, the Board is of the view that the Appellant has raised legitimate concerns that the operation of the heliport could potentially be noisy and hazardous to users of the proposed outdoor play area.
19. The wishes of council, as found in Section 80.8(a), require that with respect to outdoor play spaces, noisy, noxious or hazardous adjacent Uses must either be avoided or mitigated.
20. In the circumstances, the Board is of the opinion that it would be prudent to require a detailed study prepared by experts in the field to accurately evaluate the risk.
21. In the absence of such a study – indeed, of any expert evidence – the Board believes that it is impossible to determine if the heliport constitutes a noisy noxious or hazardous Use or if there are acceptable risk mitigation measures. Accordingly, the Development Permit should not be issued until a risk assessment has been completed.

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 5th Floor, 10250 – 101 Street, Edmonton.

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*, RSA 2000, c S-1;
    c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
    d) the requirements of any other appropriate federal, provincial or municipal legislation; and
    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 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 5th Floor, 10250 – 101 Street, Edmonton.

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.

Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

c.c.