Edmonton Subdivision and Development Appeal Board

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-577-3537
Email: sdab@edmonton.ca
Web: www.edmontonsdab.ca

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File Number: SDAB-D-16-022

Notice of Decision

[1] On February 19, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on December 17, 2015. The appeal concerned the decision of the Development Authority, issued on December 10, 2015, to refuse the following development:

> To operate a Minor Alcohol Sales Use and to construct interior alterations.
> [unedited from the Development Permit]

[2] The subject property is located on Plan 1420932 Blk V Lot 1, municipal description 10503 Kingsway NW, within the CB2 General Business Zone. The Central McDougall/Queen Mary Park Area Redevelopment Plan applies to the subject property.

[3] The following documents, which were received prior to the hearing and copies of which are on file, were read into the record:

- Appellant's Notice of Appeal, with reasons, received December 17, 2016;
- Appellant's written submissions, received on January 12, 2016;
- Copy of the Development Permit Application, Refusal Decision, and plans;
- Development Officer's written submissions, dated December 11, 2015;
- Fax dated December 23, 2015 and email dated December 24, 2015, both from the same affected neighbouring business owner in opposition to the development;
- Written submissions from legal counsel for the above business owner, received February 16, 2016;
- Copy of the Central McDougall/Queen Mary Park Area Redevelopment Plan; and
- Copy of the Appeal Board's decision for file number SDAB-D-15-271, which was referenced by the Development Officer in his decision.

Summary of Hearing:

[4] 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.

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

i) Position of the Appellant, First Capital (10503 Kingsway) Corporation ("First Capital")

[6] The Appellant was represented by legal counsel, Mr. R. Haldane, who was accompanied by the following individuals:

- Mr. D. Hennessey, Leasing Manager, First Capital;
- Ms. N. Brooks, Vice President, Legal Affairs, Western Canada, First Capital; and
- Mr. A. Preksaitis, President, ParioPlan.

[7] Mr. Haldane clarified that Tab 1, Paragraph 27 of the Appellant's written submissions should indicate a combined total area of approximately 240 square metres for both the proposed liquor store at 10503 Kingsway NW and the one located at 10611 Kingsway NW.

[8] The Appellant submitted that since the total area of both liquor stores is less than the maximum allowable of 275 square metres for Minor Alcohol Sales as per Section 7.4(32) of the *Edmonton Zoning Bylaw*, the impact of allowing both operations to exist within 500 metres of each other is minimal.

a) Site Context

[9] The Appellant submitted Exhibit "A", a PowerPoint presentation consisting of a Site Plan and Map of the area surrounding the subject development.

[10] Mr. Hennessey explained that when First Capital purchased the strip mall in 2012, it was languishing and experiencing vacancy rates of up to 30%.

[11] First Capital subsequently made various improvements to attract more tenants and to serve as a greater amenity to the neighbourhood. It invested $3.2 million, which included construction of a new site access point off 105 Street.

[12] Under First Capital's direction, the strip mall now enjoys full occupancy. Referring to the Site Plan, Mr. Hennessey noted that four new pad sites have been proposed, measuring either 1,251 or 1,252 square feet. These new pad sites will be located along Kingsway Avenue and are currently in the planning and development stages.

[13] Since First Capital's purchase in 2012, the strip mall has not experienced any parking-related concerns and there is sufficient off-street parking. The new Royal Alex LRT station and transit centre located directly across the street from the Site allows for a higher degree of densification. Unlike 107 Avenue, which experiences more pedestrian and public transit traffic, the strip mall is located along Kingsway Avenue which is more automobile-oriented.

[14] Tenants include a bakery, medical centre, pharmacy, fitness centre, and dry cleaning shop. As an autocentric strip mall with the majority of customers accessing the Site by car, the various services provided make the site an ideal location for a liquor store as customers can purchase alcohol while picking up their dry cleaning or bakery items.

b) Community Support

[15] First Capital also conducted a form of community consultation (Exhibit "C") to gauge support for the proposed development. It received letters of support from tenants including Anytime Fitness, Respiratory Homecare, Rexall, and St. John's Cultural Centre. Five other tenants signed a petition in support. The owner of York Apartments at 10965 – 106 Street NW was consulted and provided no objections. The Royal Alexandra Hospital (Alberta Health Services) and the Alzheimer Society also did not object.

c) Concerns Associated with Liquor Stores

[16] With respect to nuisance concerns commonly associated with liquor stores, Mr. Preksaitis noted that the strip mall, which is oriented more toward Kingsway Avenue, actually acts as an island or buffer to the residential neighbourhood.

[17] Following his consultation with the Kingsway Business Association and the Avenue of Nations Business Association, it was Mr. Preksaitis' understanding that growing concerns about homelessness in the Central McDougall neighbourhood are not attributable to liquor stores themselves; rather, they stem from the downtown homeless population being pushed further north into neighbouring communities as a result of the downtown revitalization.

[18] The Board drew attention to the Central McDougall/Queen Mary Park Area Redevelopment Plan ("ARP"), which cites liquor stores as an example of undesirable businesses in the area, and that the community suffers from a "perception of high crime and unsafe streets by both residents and people living outside the area" (page 23 of the ARP).

[19] In response, Mr. Preksaitis noted that the ARP is a somewhat outdated plan, and that the concerns with respect to liquor stores are more characteristic of the area around 107 Avenue. In his view, the problems identified in the ARP may not necessarily apply to the entirety of the area.

[20] When questioned about Section 85(6)(d), which requires that liquor stores be located no closer than 100 metres from public parks zoned AP Public Parks Zone, Mr. Preksaitis observed that although the subject site is surrounded by various green spaces, some may be zoned AP while others could be zoned US Urban Services Zone.

[21] The Appellant referred to *Newcastle Centre GP Ltd v Edmonton (City),* 2014 ABCA 295 [*Newcastle*], in which the Alberta Court of Appeal held at paragraph 6 that the Board committed an error in holding that it could not exercise its variance powers with respect

to liquor store separation distances unless the presumption of harm to the public is rebutted by the applicant.

[22] At paragraph 12 of *Newcastle*, the Court held that "if there is any interference with neighbourhood amenities, or with use, enjoyment, or value of other land parcels, the Board had a duty to explain that in its Reasons".

[23] The Appellant submitted that when people rely on Section 687(3)(d) of the *Municipal Government Act*, they often raise issues related to noise and traffic which are nuisance factors. In other words, one of the issues before the Board today is not simply the existence of two liquor stores within 500 metres distance of each other, but whether they will create a nuisance.

d) Request to Cancel Development Permit: Summary of Events

[24] In June 2015, First Capital finalized the lease arrangements with Solo Liquor, the new tenant at 10503 Kingsway NW. These arrangements were not conditional upon obtaining a permit, which the Appellant submits is indicative of First Capital's intent to not cancel the existing permit with respect to Minor Alcohol Sales.

[25] In September 2015, a series of emails were exchanged between First Capital and Mr. Garg, the previous tenant of 10503 Kingsway NW. The emails show that Mr. Garg was requesting that First Capital cancel his business licence. The body of the emails did not mention the cancellation of the Minor Alcohol Sales Development Permit for 10503 Kingsway NW.

[26] Mr. Garg's email requesting the cancellation of his business licence was accompanied by an attached form of letter. The form of letter was to be signed by an authorized contact person for First Capital, and stated the following: "I am property owner/Authorized agent requesting you [City of Edmonton] to cancel existing approved *development permit* for location 10555 Kingsway Av NW". [emphasis added]

[27] The Appellant submits that there is a disconnect between what was requested in Mr. Garg's email, compared to the actual form of letter provided to Ms. Brooks: the former requested a business licence cancellation; the latter requested a development permit cancellation.

[28] Subsequent letters addressed to the City of Edmonton on First Capital's letterhead confirmed First Capital's request to cancel both Mr. Garg's business licence (September 18, 2015), and the Minor Alcohol Sales Development Permit for 10503 Kingsway NW (September 21, 2015).

[29] Following the September 18 and 21, 2015 letters, the Development Authority emailed Ms. Brooks on September 28, 2015. The email stated that two Minor Alcohol Sales permits had in fact been identified for the subject property: Permit 430303-001/SDAB-D-

96-04 and Permit 13190390-001. The email requested that Ms. Brooks revise her cancellation request to encompass both permits.

[30] In response, Ms. Brooks sent a revised letter on First Capital letterhead, dated September 30, 2015, requesting cancellation of both permits.

[31] During this time, Ms. Brooks had no knowledge that Mr. Garg had applied for a Minor Alcohol Sales Development Permit for his new liquor store location. In her mind, she was simply assisting a former tenant with the transition of his business to its new location.

[32] Indeed, when First Capital received notice of the proposed Minor Alcohol Sales development at 10611 Kingsway NW, the new site for Mr. Garg's liquor store, its only concern was the potential competition that the new development would pose. Recognizing that concerns about competition were not valid planning reasons for appeal, First Capital therefore did not object to Mr. Garg's development because it was operating under the belief that it still held a Development Permit for Minor Alcohol Sales at 10503 Kingsway NW.

[33] Ms. Brooks acknowledged her error in requesting the cancellation of the development permit. She was not aware that development permits that allow Minor Alcohol Sales run with the land, and that losing the permit could prevent the operation of Minor Alcohol Sales for future tenants, due to the 500 metres separation distance limitation stipulated under Section 85(3)(a) of the *Edmonton Zoning Bylaw*. Ms. Brooks noted that Solo Liquor was able to obtain a Building Permit on the basis that First Capital still held a Development Permit for Minor Alcohol Sales.

[34] In response to Board questions, Ms. Brooks advised that First Capital has over 20 years of experience as a commercial landlord and that it has other liquor store tenants on other Edmonton properties.

[35] Upon realizing that the Development Permit had been cancelled, Ms. Brooks spoke with a Construction Manager who had some experience in development-related matters. The Manager expressed surprise, as it was his understanding that the City would usually explain the impact of a Development Permit cancellation prior to its cancellation. The Manager subsequently spoke with a Senior Planner employed by the City, who also expressed the same.

[36] A letter from First Capital to the City, dated December 4, 2015, stated the following:

> We have not received a letter from the City confirming that these Development Permits have been cancelled as required by s.17.2(3) of the Edmonton Zoning Bylaw. Also, by virtue of s. 17.2(2) of the Edmonton Zoning Bylaw, the City is prohibited from cancelling development permits that have been appealed to the Subdivision and Development Appeal Board. The evidence confirms that the referenced Development Permits have not, and cannot have been cancelled.

> We hereby officially withdraw our earlier request that the Development Permits referenced above [#430303-002/SDAB-D-96-04 and 13190390-001] be cancelled.

[37] Ms. Brooks subsequently spoke via telephone with Mr. Harry Luke, a Senior Planner with the City of Edmonton, who followed up the conversation with an email dated December 9, 2015. The email stated:

> I do, in fact, confirm that the Development Permit for a Minor Alcohol Sales business at 10555-Kingsway Avenue approved by the Subdivision and Development Appeal Board (SDAB) on March 13, 1996, SDAB-D-96-040 is cancelled, based on your letter to the City, dated September 21, 2015.

[38] The Appellant clarified that 10503 Kingsway NW is the address for the entire shopping strip, and the 10555 Kingsway NW address references the entryway of the proposed liquor shop.

e) Section 17.2: Cancellation of a Development Permit Under the *Edmonton Zoning Bylaw*

[39] Section 17.2 of the *Edmonton Zoning Bylaw* states:

> 17.2 Cancellation of a Development Permit
>
> 1. The Development Officer may cancel a Development Permit following its approval if:
>
>   a. any person undertakes development, or causes or allows any development to take place on a Site contrary to the Development Permit;
>
>   b. the application for the Development Permit contained a material misrepresentation;
>
>   c. material facts were not disclosed during the application for the Development Permit;
>
>   d. the Development Permit was issued as a result of a material error; or
>
>   e. the landowner requests, by way of written notice to the Development Officer, the cancellation of the Development Permit.

2. Notwithstanding subsection 17.2(1), the Development Officer shall not cancel a Development Permit that has been appealed to the Subdivision and Development Appeal Board, the Alberta Court of Queen's Bench or the Alberta Court of Appeal.

3. Notice of the Development Officer's decision to cancel the Development Permit shall be provided in writing by ordinary mail to the property owner, and to the applicant of the Development Permit and such notice shall state the reasons for the cancellation of the Development Permit.

4. Any person who undertakes development, or causes or allows any development after a Development Permit has been cancelled, shall discontinue such development forthwith and shall not resume such development until a new Development Permit has been approved by the Development Officer and is valid pursuant to Section 17.1 of this Bylaw.

5. All developments continuing after the Development Permit has been cancelled shall be deemed to be developments occurring without a Development Permit.

Section 17.2(1)

[40] The Appellant submits that the City never made it clear that pursuant to Section 17.2(1)(e), the request for cancellation of the permits must originate from the landowner, First Capital, and not from the tenant, Mr. Garg. The City also failed to explain the consequences of cancelling a permit.

Section 17.2(2)

[41] Even if the September correspondence from Ms. Brooks constitutes a valid request as contemplated under Section 17.2(1)(e), the Appellant submits that the Development Officer is barred from cancelling a permit that has been appealed before the Subdivision and Development Appeal Board pursuant to Section 17.2(2).

[42] In this case, Permit 430303-002/SDAB-D-96-04 concerned the appeal of a refused Minor Alcohol Sales permit that was heard before the Board, and which the Board subsequently approved in 1996.

[43] The Appellant submits that once Permit 430303-002/SDAB-D-96-04 was appealed, the Development Officer became *functus officio,* that is, he had no further jurisdiction with respect to that permit, and therefore no longer had the ability to cancel the permit. Such an interpretation of Section 17.2(2) prevents the Development Officer from interfering with or undermining the decision and appeals process of the Board.

[44] Since the Development Officer is *functus officio*, the only body that can cancel a Development Permit that was appealed to the Board is the Board itself. The Board was the body that had authority with respect to the issuance of the Development Permit under appeal, and therefore it is the body that has authority with respect to the cancellation of that same permit.

[45] When questioned, the Appellant clarified that Section 17.2(2) does not operate to confer a bulletproof permit on the applicant. The Development Officer would retain the authority to deal with new applications with respect to changes to the approved permit; however, the Development Officer would not be able to cancel a permit approved by the Board or the Court of Appeal.

[46] For example, should a permit cancellation be required due to a material misrepresentation in the application pursuant to Section 17.2(1)(b), the Development Officer would be required under Section 17.2(2) to refer the matter to the Board to determine whether there has indeed been a material misrepresentation. Accordingly, only the Board can cancel the permit

[47] When asked to identify case law that would support his interpretation of Section 17.2(2), the Appellant acknowledged that there was no case law on point. The Appellant also admitted that it could not point the Board to any mechanism in legislation or bylaw that would enable a landlord to bring a permit cancellation request directly to the Board. However, he submitted that the Board is prima facie vested with such authority.

[48] Further, it is a principle of statutory interpretation that the provisions of a specific statute supersedes those of a general one. In other words, although Section 17.2(1) appears to confer a discretionary power on the Development Officer to cancel a Development Permit under specific circumstances, Section 17.2(2) is the more specific provision dealing with the cancellation of permits, as it clearly states that "the Development Officer *shall not* cancel a Development Permit that has been appealed…" [emphasis added]

[49] As such, once a permit has been approved via the appeals mechanisms contemplated under Section 17.2(2), the Development Officer can only refer a subsequent cancellation of that permit to the Board.

[50] The Board noted that Permit 430303-002/SDAB-D-96-04 in fact concerned the appeal of a *refusal* to issue a Development Permit, and therefore, no *approved* Development Permit was actually appealed to the Board. Also, Permit 13190390-001 was issued by the Development Officer and had never been appealed to the Board. The Board questioned whether Section 17.2(2) applied since neither Development Permit had been appealed to the Board.

[51] In response, the Appellant submitted that such an interpretation of Section 17.2(2) is too narrow, as it is the filing of the appeal itself, notwithstanding the fact that there is no approved permit under appeal, which takes the jurisdiction away from the Development Officer to cancel a permit.

Section 17.2(3)

[52] The Appellant further submitted that Section 17.2(3) requires written notification by ordinary mail of the cancellation. In this case, written notification was received via email, and only after First Capital had already sent the December 4, 2015 letter revoking the request to cancel the permits.

[53] With respect to Permit 13190390-001, which was not a matter that had been appealed to the Board, the Appellant submitted Exhibit "B", a 2002 copy of the Application for Development Permit that shows that a Development Officer never signed off on the decision, and therefore no permit was actually issued. The Board pointed out that the words "This is not a Development Permit" are on the bottom of the document.

[54] The Appellant drew attention to the handwritten notation at the bottom of Exhibit "B", which states: "This permit was cancelled Sept. 30th, 2015."

[55] The Appellant submitted that the cancellation of a permit is perfected only if proper notification is given pursuant to Section 17.2(3). A handwritten notation on a document that is not an issued permit is insufficient to meet this obligation, and therefore, cancellation of Permit 13190390-001 was never perfected.

ii) Position of Affected Property Owner, Solo Liquor

[56] Solo Liquor, the new liquor store tenant at 10503 Kingsway NW, was represented by Mr. F. Clemens, Vice President.

[57] He stated that Solo Liquor operates 35 stores throughout Alberta, and has been in business for 20 years. The Alberta Gaming and Liquor Commission ("AGLC") has never refused permission for Solo Liquor to operate, nor has it ever charged Solo Liquor with selling to minors or intoxicated people. Solo Liquor has always operated within provincial guidelines.

[58] Mr. Clemens explained that as a tenant, it is Solo Liquor's usual practice to apply for the Development Permit. However, in this case, Solo Liquor understood that the permit was already in place, and due diligence required that it simply call the municipality to ensure that liquor sales was permitted on the premises.

[59] Mr. Clemens confirmed that it did its due diligence in this regard. Around June 2015, prior to removing contractual conditions, Solo Liquor inquired with the City that liquor sales were permitted at the location. Solo Liquor was told that a permit was in place.

[60] When questioned about potentially confusing information provided on the Development Permit application form, Mr. Clemens clarified that Solo Liquor has never operated at the subject site, and that the "new liquor store" as stated in Box 12 of the application form was simply a reference to the same liquor store that Solo Liquor was attempting to open.

iii) Position of the Central McDougall Community League

[61] The Central McDougall Community League was represented by Mr. W. Champion.

[62] Mr. Champion stated that the Community League did not support one liquor store over the other; rather, the League's position was that it did not matter which liquor stayed, so long as two liquor stores would not exist within 500 metres of each other. Community residents were of the view that only one liquor store be permitted in the area.

[63] He submitted that since various parties committed numerous errors, the Board should return to "square one" and send the Development Permit application back to the Development Officer so that the proper process could be followed.

[64] Mr. Champion stated that concerns about liquor stores are not restricted to nuisances occurring in front of the liquor store itself. Problems also arise when intoxicated customers migrate to other areas of the neighbourhood and pass out in front of a resident's yard, defecate in public parks, or simply attract other individuals with alcohol and drug addiction problems.

[65] Mr. Champion explained that recently, two gazebos and various picnic tables had to be removed from community parks, as they were defecation and alcoholism magnets. In his view, liquor stores simply increase the number of homeless and people with alcohol and drug addictions.

[66] Various properties near the proposed development will also be negatively impacted, including McDougall Elementary School and the Central McDougall Park. He noted that $1.8 million was recently invested into the park to transform it into a hub for the community, and to make it more family friendly. Should a second liquor store operate in the vicinity, the residents' enjoyment of the park would be affected.

[67] Mr. Champion also noted that residential row housing of about 146 units is located approximately 100 feet from the subject site, and a senior home is also located about 200 feet away. He explained that residents of these properties constantly deal with problems caused by liquor stores.

[68] When questioned, Mr. Champion stated that he disagreed with the Appellant's submission that since the two liquor stores located at 10503 Kingsway NW and the one located at 10611 Kingsway NW total less than 275 square metres, the impact upon the neighbouring area will be minimal.

[69] He submitted that every liquor store that opens provides more opportunity to attract the homeless and individuals with alcohol and drug addictions. It was his view that should the Board consider a variance to the separation distance requirements for liquor stores, it would amount to a major variance of approximately 70 to 80 percent, which was simply too large.

iv) Position of the Development Officer, Mr. N. Shah

[70] Mr. Shah was accompanied by a colleague, Mr. I. Welch, also a Development Officer employed by the City.

Site Context

[71] Mr. Shah disagreed with the Appellant's submission that the site orientation actually mitigates impact upon neighbouring residential properties. Although the property faces Kingsway Avenue, it is still entirely accessible from the park.

[72] Mr. Shah clarified that the deficiency of 18 parking spaces is not a primary concern, as the subject site is in the Transit Oriented Development ("TOD") area. However, even with TOD and greater walkability, the site is still auto-oriented, which are factors that he must take into consideration in his review.

[73] When questioned further by the Board regarding the separation requirements for liquor stores, Mr. Welch stated that he was unsure as to why the measurement of 500 metres between liquor stores is calculated from unit to unit, whereas the measurement of 100 metres between a liquor store and a public park is measured from boundary to boundary.

[74] Regardless, the Development Authority must enforce the regulations and the intent of such regulations. While a deficiency of 5.50 metres to the 100 metres separation under Section 85(6) may not appear significant, the Development Authority must consider social factors which the regulations are intended to address, such as impact upon nearby schools and recreational parks.

Cancellation of the Development Permit

[75] Mr. Shah stated that prior to his September 28, 2015 email to Ms. Brooks, he had never corresponded with her. His request that she cancel both development permits was to ensure that nobody would operate a new liquor store using an old permit that should have been cancelled. Also, since the business licence had formed part of the initial development application, he asked for its cancellation as well.

[76] Mr. Welch clarified that Permit 13190390-001, which had been issued in 2002, had in fact been approved. Prior to the hearing, they had attempted to print the permit, but the computer system does not allow a cancelled permit to be printed. In this regard, he confirmed that the permit had indeed been cancelled on September 30, 2015, as per the handwritten notation.

[77] The Development Officers explained that the cancellation of a Development Permit automatically cancels the Building Permit as well. They stated that it is very rare to receive a request for an outright cancellation, as most developers try to find another liquor store tenant, or some other way to hold onto the Minor Alcohol Sales permit.

[78] When Mr. Garg applied for a new liquor store location at 10611 Kingsway NW, he would have been informed that his application would be denied due to the 500 metres separation distance requirement, and that the permit at the old location would have to be cancelled before the new development could be approved. This would explain why Mr. Garg informed First Capital that a cancellation was required, and why he sought to obtain such cancellation.

Section 17.2 of the *Edmonton Zoning Bylaw*

[79] Regarding the Appellant's interpretation of Section 17.2(2), the Development Authority disagreed that it was *functus officio* with respect to a Development Permit once it has been appealed to the Board or the Court of Appeal.

[80] Mr. Welch noted that decisions rendered by the Board are subsequently administered by the Development Officers. Similarly, when the Court of Appeal remits a matter back to the Board for rehearing, the Development Officers enforce the Board's new decision.

[81] Even if the Development Officer is "disabled" in its authority to cancel a Development Permit by virtue of it having been appealed, that disability is somewhat limited due to the operation of Section 17.2(1), which grants the Development Officer with discretionary powers to cancel a Development Permit in specific circumstances, including instances where the landowner requests the cancellation of a permit of their own accord.

[82] Mr. Welch acknowledged that Section 17.2(3) requires that the Development Officer provide notice of cancellation in writing. However, in his view, such notification is required only if the cancellation was initiated by the Development Officer.

[83] In this case, since the request originated from the landowner, the landowner would have been aware of the cancellation, and notification would therefore not be required. The December 9, 2015 email to Ms. Brooks confirming the cancellation of the permits was not notification as contemplated under Section 17.2(3); rather, it was a followup email confirming a communications that had occurred between the Development Officer and Ms. Brooks.

v) Position of the Affected Party, Mr. G. Garg

[84] Mr. Garg was represented by legal counsel, Mr. R. Noce.

Site Context

[85] Mr. Noce provided a general overview of the area surrounding the subject site, and noted that John A. McDougall Elementary School, located just west of the Central McDougall Park, experienced a 29.8% increase to student enrollment in 2014-15. The school also has a 38% utilization rate, so there remains plenty of space for potential increase in use.

Victoria School of the Arts, located further south, experienced an overall decrease of 1.23% in student population since 2009.

Community Consultation

[86] It was Mr. Noce's view that notwithstanding the letters and petition of support for the proposed development, which he noted were from the Appellant's tenants, the observations of Mr. Champion, who represents the community league, should be what matters most.

[87] He submitted that the Appellant's tenants likely return home to other communities once they close their stores for the day, and therefore do not have to deal with the daily nuisances caused by liquor stores.

Deficiency in Off-Street Parking

[88] In response to the Appellant's submission that parking has never been an issue in the past 20 years, Mr. Noce noted that changes have occurred in the community that could now impact parking.

[89] First, the Appellant intends to construct four additional commercial spaces, which would further reduce available parking.

[90] Second, 20 years ago, metred parking was permitted along Kingsway Avenue along both sides of the park and the hospital; now, all metred parking in that area has been eliminated, so parking stresses have moved into the residential community. Residential parking is also more popular as users seek to avoid hefty hospital parking fees. Finally, with the new LRT and transit station, residents experience greater parking pressures as commuters use residential streets for park-and-ride.

[91] Mr. Noce submitted that since Minor Alcohol Sales is a Discretionary Use, the Development Officer could still decide to refuse the development permit, even if no parking variance were required. The Board must consider whether the proposed liquor store will impact neighbourhood parking further, given the new modern factors.

Deficiency in 100 metres Separation Distance from a Public Park

[92] Mr. Noce disagreed with the Appellant's submission that a variance to the 100 metres separation rule will not impact the amenities of the neighbourhood.

[93] He echoed Mr. Champion's comments, noting that the Central McDougall Park is an active recreational park that matters to the community. It is used by families and children, and as per the ARP, it is intended to be the major hub of the community.

[94] Mr. Noce shared Mr. Champion's view, stating that although nuisance issues may not occur at the liquor store itself, the problems migrate to the park, in front of people's homes, and into the community.

[95] Mr. Noce referred the Board to Exhibit "D", a copy of the land use map which shows that the majority of the green space located in the Central McDougall neighbourhood is located in the north, right in the vicinity of the proposed liquor store. The lack of green space to the south means that the impact of the proposed liquor store will be felt by the community to the north.

[96] Mr. Noce submitted that the 100 metres rule exists to recognize the impact of liquor stores upon the adjacent communities, and a variance to this rule should not be granted.

[97] The Board questioned why Mr. Garg was adopting this position, when he had requested that the Board vary the same 100 metres separation requirement for his own liquor store located on 10611 Kingsway NW.

[98] In response, Mr. Noce distinguished the subject site from Mr. Garg's store. The liquor store located on 10611 Kingsway NW is surrounded by six lanes of arterial roadways, with no children. The park which is located within the separation distance is a memorial park which appears to be used only for ceremonial occasions. From morning to evening, Mr. Noce observed that nobody actually used the park, not even to take a stroll or to stop and eat a sandwich. By contrast, Central McDougall Park has had a recent $1.8 million dollar upgrade and is intended to be the hub of the community.

Deficiency in 500 metres Separation Distance to Another Minor Alcohol Sales

[99] Mr. Noce noted that a deficiency of 376 metres is significant, and that although the *Newcastle* decision of the Alberta Court of Appeal held that the Board does have authority to vary the 500 metres separation distance rule, that does not mean that the Board *must* grant the variance. Mr. Noce referenced paragraph 12 of *Newcastle*, which states that "if there is any interference with neighbourhood amenities, or with use, enjoyment or value of other land parcels, the Board had a duty to explain that in its Reasons".

[100] Mr. Noce submitted that the Board should not grant a variance to the 500 metres separation requirement for the following reasons:

a. Referring to Tab 7 of his written submissions, "The Role of Alcohol Outlet Density in Reducing Domestic Violence in Alberta", Wells, L., Dozois, E., Esina, E., Calgary, AB: The University of Calgary (2013), Mr. Noce noted that there is a correlation between alcohol use and domestic violence, which could be connected to liquor store density.

b. Mr. Noce referred to Tab 8 of his written submissions, a map that shows a significant portion of crime in the neighbourhood is centred around the proposed development and Central McDougall Park.

c. Tab 9 of Mr. Noce's written submissions showed the top 10 communities in the City of Edmonton, including the Central McDougall neighbourhood, that experienced high occurrences of auto thefts. Mr. Noce clarified that he had attempted to locate rankings for other types of crimes, but auto theft ranking was the only list that was readily available.

[101] Mr. Noce submitted that the evidence presented supports the conclusion that the proposed second liquor store will unduly interfere with neighbourhood amenities and with the use or enjoyment of neighbouring land parcels. The Board should therefore recognize Council's intent when it established the 500 metres separation rule and refuse the variance.

[102] Mr. Noce also disagreed with the Appellant's submission that, since the two liquor stores total a combined area of less than 275 square metres, the impact of having both stores located within 500 metres of each other is mitigated. Mr. Noce submitted that if such an interpretation had been Council's intent, exemptions could have been written into the Bylaw, allowing the separation requirement to be waived or varied should the total square footage be less than 275 metres.

[103] Since Council did not provide for such an exemption, the Board must now consider other relevant factors to determine whether to exercise its discretionary variance powers.

Section 17.2(2)

[104] Mr. Noce disagreed with the Appellant's submission that the Development Officer loses jurisdiction to cancel a permit that has been appealed to the Board.

[105] Mr. Noce submitted that to adopt the Appellant's interpretation of Section 17.2(2), the provision should read "has been appealed *and approved*", which would provide greater clarity with respect to the Development Officer's loss of jurisdiction.

[106] In this case, the provision simply reads "has been appealed". When interpreting statutes, it is a rule of construction that words be given their ordinary meaning. A simple reading of the phrase, "has been appealed", indicates that while the Development Officer cannot cancel a permit that is under appeal, he resumes the power to do so once the appeals process is complete.

[107] When Ms. Brooks requested the cancellation of both permits, there was no matter or permit before the Board, therefore, the Development Officer had the authority to cancel the permit as per her request.

[108] Even if the Board should accept the Appellant's interpretation of Section 17.2(2), the argument fails because the most recent 2002 permit was never appealed to the Board.

[109] Furthermore, the approach advocated by the Appellant fails because there is no mechanism under the *Municipal Government Act*, the *Edmonton Zoning Bylaw*, or any other legislation that would provide a landowner with the means to bring a matter back before the Board.

Section 17.2(3)

[110] Mr. Noce submitted that the development permit was ultimately the Development Officer's to cancel, following a request that originated from the landowner. As such, the prejudice that might arise from a lack of notice of such cancellation is negated.

[111] Mr. Noce further noted that Mr. Garg was not a client of First Capital, therefore, First Capital could have simply denied his request to cancel his business licence and the subject development permits. In his view, the fact that First Capital did not understand the consequences of the cancellation of the permits is immaterial. Indeed, the motivation for why someone wishes to cancel a permit is immaterial.

vi) Rebuttal of the Appellant, First Capital

[112] The Appellant emphasized the wording of Section 17.2(1)(e), which states that one of the circumstances in which the Development officer may cancel a permit is if the landowner "requests" such cancellation. In other words, a landowner cannot cancel a Development Permit; only the Development Officer may do so.

[113] However, notwithstanding the above, the Appellant submitted that the Development Officer's authority to cancel a Development Permit is limited by the wording, "shall not cancel" under Section 17.2(2). This Section deprives the Development Officer of the authority to cancel a Development Permit if that permit has been appealed to the Board or the Court of Appeal.

[114] If modification of a permit that has been appealed to the Board or the Court of Appeal is required, a new application can be made, and the Development Officer would have continued jurisdiction to deal with all aspects relating to the new application; however, the Development Officer would no longer have the jurisdiction to cancel the development permit.

[115] Under Section 17.2(3), the Development Officer is required to mail the cancellation decision to perfect the cancellation, which was never done until after Ms. Brooks had already revoked her request to cancel the permits.

[116] The Board must consider the impact of granting the variances upon the neighbourhood. Although there have been submissions relating to existing issues within the community,

there is no evidence with respect to how this specific application before the Board will contribute to, or exacerbate, those issues.

[117] As such, the threshold with respect to Section 687(3)(d) of the *Municipal Government Act* has not been satisfied, and the permit should be granted.

Decision

[118] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision

[119] There are two aspects to this appeal. One is the appeal of the cancellation of the Minor Alcohol Sales developments permits. The other is the appeal of the refusal to issue a new Minor Alcohol Sales development permit.

[120] The Board finds that the appeal period regarding the cancellation of the permits did not commence until the Appellant received written notice of the cancellations on December 9, 2015. The Notice of Appeal was filed on December 17, 2015, within the 14 days allowed under Section 686(1) of the *Municipal Government Act*.

[121] The Notice of Appeal regarding the refusal to issue a new development permit was also filed within the 14 day appeal period.

[122] Minor Alcohol Sales is a Discretionary Use in the CB2 General Business Zone.

[123] The Board finds that there were two Minor Alcohol Sales development permits (the "development permits") issued with respect to the Appellant's premises at 10503 Kingsway NW (the "premises").

[124] The first permit (430303-001) had initially been refused by the Development Authority. This Board revoked that decision on appeal and issued a development permit on March 13, 1996.

[125] The second permit (13190390-001) was issued by the Development Authority on June 20, 2002. It is not clear why a second permit for this Use was issued at this time but the Board is satisfied that this permit was issued.

i) Cancellation of the Development Permits

[126] The Board finds that both of these permits were cancelled by the Development Authority on September 30, 2015.

[127] The Appellant takes the position that these development permits were not properly cancelled for three reasons:

a. The Appellant did not intend to cancel the development permits, notwithstanding its written request to cancel the permits;

b. The Development Officer did not have the authority to cancel the permits because they had been appealed to this Board previously;

c. The Development Officer failed to provide the required notice to the Appellant that the development permits had been cancelled.

a) Effect of Lack of Intention to Cancel the Permits

[128] Regarding the argument that the Appellant did not intend to cancel the development permits, the Board is of the view that this is a valid argument only if the Development Officer knew or ought to have known that the Appellant did not intend for the permits to be cancelled. What the Development Officer knew or ought to have known requires an examination of the circumstances leading up to the cancellations.

[129] The Board finds the following facts:

a. Mr. Gagnan Garg had been operating a Minor Alcohol Sales use at the premises until he was advised that his lease with the Appellant would not be renewed. His lease was extended until September 30, 2015.

b. The Appellant granted a lease of the premises to Solo Liquor.

c. On June 3, 2015, Solo Liquor obtained a building permit with respect to the premises after ascertaining that a development permit for Minor Alcohol Sales for the premises existed.

d. On September 1, 2015, Mr. Garg applied for a Minor Alcohol Sales development permit at a location within 500 metres of the premises. He was advised by the Development Authority that a permit would not be issued unless the existing Minor Alcohol Sales permits at the premises were cancelled.

e. On September 17, 2015, Mr. Garg emailed the Appellant, advising that the City required a letter cancelling his business license. Attached was a form of letter addressed to the City from the Appellant as property owner requesting that the City "cancel existing approved development permit for location 10555 Kingsway AV NW Edmonton T5H4K1 as lease for current Tenant's (1529262 O/A Albertino) is expiring by end of this month."

f. Although Mr. Garg referred to cancelling his business licence in the email, the Board is satisfied that he did not intend to mislead the Appellant about what the City wanted cancelled. The Development Officer confirmed that he had requested the cancellation of the business licence because it formed part of the initial development application. In any event, the attached form of letter made it clear that the request was to cancel the development permit at the premises.

g. On September 18, 2015, Nancy Brooks, Vice President Legal Affairs Western Canada with the Appellant, sent a letter to the City authorizing "the cancellation of the Tenant's Business License" at the premises.

h. Mr. Garg advised the Appellant that this letter needed to be amended to change "Business Licence" to "Development Permit". On September 21, 2015, Ms. Brooks sent another letter to the City authorizing "the cancellation of the Tenant's Development Permit" at the premises.

i. After receiving this letter, the Development Officer became aware that there were two Minor Alcohol Sales development permits associated with the premises. On September 28, 2015 he sent Ms. Brooks an email advising that a correction was needed. He stated that "We need to cancel following [sic] Development permits which were associated with Minor Alcohol Sales for subject property" and referenced the development permit numbers.

j. On September 30, 2015, Ms. Brooks sent another letter to the City referencing both development permits and authorizing "the cancellation of the Tenant's Development Permit at the above noted location [the premises]."

k. On September 30, 2015, the Development Authority cancelled both development permits.

l. In early October 2015, the Development Authority treated the permits as being cancelled when it considered Mr. Garg's development permit application for a Minor Alcohol Sales Use within 500 metres of the premises.

m. After a telephone conversation with the Development Authority regarding the status of the development permits, Ms. Brooks sent a letter dated December 4, 2015 to the Development Authority withdrawing the request to cancel the permits.

n. On December 9, 2015, the Development Authority advised Ms. Brooks by email that the permits had already been cancelled.

[130] At the hearing, Ms. Brooks acknowledged that she had made a mistake. She said that she was not aware that development permits are associated with particular properties. She thought that the development permits had been issued to Mr. Garg. She did not realize that the cancellation of the development permits would mean that Minor Alcohol Sales would no longer be allowed at the premises.

[131] The Board is of the view that unless the Development Officer knew or ought to have known about Ms. Brooks' lack of intent to cancel the permits at the premises, her lack of understanding of the nature of development permits and her lack of appreciation for the consequences of her request are not relevant to the issue of whether the development permits were properly cancelled.

b) Cancellation of Development Permit: Relevant Legislation

[132] Regarding the Development Officer's authority to cancel development permits, the following legislation is relevant.

[133] Section 640 of the *Municipal Government Act* provides, in part, the following:

> 640(1) A land use bylaw may prohibit or regulate and control the use and development of land and buildings in a municipality.
>
> (2) A land use bylaw
>
> …
>
> (c) must establish a method of making decisions on applications for development permits and issuing development permits for any development, including provision for
>
> …
>
> (iii) processing an application for, or issuing, cancelling, suspending or refusing to issue, a development permit

[134] The City of Edmonton's land use bylaw is the *Edmonton Zoning Bylaw*. Section 17.2 of the *Edmonton Zoning Bylaw* reads as follows:

> 17.2 Cancellation of a Development Permit
>
> (1) The Development Officer may cancel a Development Permit following its approval if:
>
> (a) any person undertakes development, or causes or allows any development to take place on a Site contrary to the Development Permit;
>
> (b) the application for the Development Permit contained a material misrepresentation;
>
> (c) material facts were not disclosed during the application for the Development Permit;
>
> (d) the Development Permit was issued as a result of a material error; or
>
> (e) the landowner requests, by way of written notice to the Development Officer, the cancellation of the Development Permit.
>
> (2) Notwithstanding subsection 17.2(1), the Development Officer shall not cancel a Development Permit that has been appealed to the Subdivision and Development Appeal Board, the Alberta Court of Queen's Bench or the Alberta Court of Appeal.
>
> (3) Notice of the Development Officer's decision to cancel the Development Permit shall be provided in writing by ordinary mail to the property owner, and to the applicant of the Development

> Permit and such notice shall state the reasons for the cancellation of the Development Permit.
>
> (4) Any person who undertakes development, or causes or allows any development after a Development Permit has been cancelled, shall discontinue such development forthwith and shall not resume such development until a new Development Permit has been approved by the Development Officer and is valid pursuant to Section 17.1 of this Bylaw.
>
> (5) All developments continuing after the Development Permit has been cancelled shall be deemed to be developments occurring without a Development Permit.

<u>Section 17.2(1): Authority to Cancel Development Permit</u>

[135] The Board finds that the Development Officer had the authority to cancel the development permits upon receiving the written request of the landowner, the Appellant, pursuant to Section 17.2(1)(e).

[136] The request in the letter of September 30, 2015 was from the Appellant's Vice President Legal Affairs, not from some minor functionary.

[137] Although the letter referred to "the Tenant's Development Permit", the Board finds that this was not significant enough to give rise to any inference that the Appellant believed that the permits were attached to the tenant and not to the premises. The request was clear and unambiguous that the cancellation related to the development permits "at the above noted location", which was the premises.

[138] The Development Officer was not aware that a building permit had been issued to Solo Liquor at the premises. Even if he had been aware of the building permit, the Board finds that this would not have been sufficient for him to question the intention of the Appellant to cancel the permits. Any number of things could have happened since the building permit was issued to cause the development of a new Minor Alcohol Use at the premises to fall apart. In short, the Development Officer had no reason to believe that the Appellant did not really intend to cancel the permits.

[139] Regarding Ms. Brook's request on December 9 to withdraw the request to cancel the permits, this request came after the permits had already been cancelled. While the *Edmonton Zoning Bylaw* confers the Development Officer with the power to issue development permits under section 11, and the power to cancel permits under section 17.2, there is nothing in the Bylaw that grants authority to reinstate a development permit after it has been cancelled.

<u>Section 17.2(2): Effect of Previous Appeal on Authority to Cancel Development Permit</u>

[140] The Appellant submits that the second reason that the development permits were improperly cancelled is because Section 17.2(2) states that, notwithstanding the authority

to cancel development permits in Section 17.2(1), “the Development Officer shall not cancel a Development Permit that has been appealed to the Subdivision and Development Appeal Board”.

[141] The Appellant’s interpretation of this section is that any development permit that exists in respect of a given property following an appeal to the Board cannot subsequently be cancelled by the Development Officer for any reason. Since the 1996 permit was issued by the Board after an appeal of the Development Officer’s refusal to issue a permit, the Development Officer is prohibited from cancelling it for any reason.

[142] The Appellant’s rationale for this interpretation is that the section is intended to prevent the Development Officer from circumventing the intentions of the Board by improperly cancelling permits that have received the Board’s approval.

[143] The Board rejects this interpretation of Section 17.2(2). The Board is of the view that the proper interpretation of the section is that the Development Officer shall not cancel a development permit while it is in the process of being appealed to the Board or the courts. It is logical that the Development Officer should lose his authority to cancel a permit while it is under appeal. It is not reasonable that the Development Officer should forever lose his authority under Section 17.2(1) to cancel a development permit for any reason simply because that permit was approved by the Board.

[144] Section 17.2(1) lists a number of reasons why a Development Officer may cancel a development permit. All of these reasons relate to situations that could arise after the Board has approved a permit. These are situations that the Development Authority has the means to monitor, such as development on the site contrary to the provisions of the permit, or the discovery of a material error at the time the permit was issued. It is appropriate that the Development Officer should retain the authority to cancel a permit in these situations, notwithstanding the fact that the Board at some point in the past approved the permit.

[145] In the particular circumstances of this case, it is reasonable that the landowner should be able to request that the Development Officer cancel a development permit relating to its land even if the Board approved the permit. The Board notes that there is no mechanism in the *Municipal Government Act* or the *Edmonton Zoning Bylaw* for a landowner to submit a request for the cancellation of a development permit to anyone other than the Development Officer.

[146] The Appellant’s contention that Section 17.2(2) is necessary to prevent the Development Officer from circumventing the intentions of the Board by cancelling permits that the Board has approved is unfounded. The cancellation of a development permit is subject to appeal to this Board. That is the only mechanism necessary to ensure that the Development Officer does not attempt to improperly circumvent the intentions of the Board.

[147] Even if the Board accepted the Appellant’s position that Section 17.2(2) should be interpreted literally, that section would not prevent the Development Officer from

cancelling the developments permits in this case. Section 17.2(2) states, in part, that the Development Officer shall not cancel "a Development Permit that has been appealed to the Subdivision and Development Appeal Board". Neither of the cancelled development permits were appealed to the Board. The 1996 application for a permit was refused by the Development Officer. That refusal was appealed to the Board, not the permit. The 2002 development permit was issued by the Development Officer and was never the subject of an appeal to the Board.

Section 17.2(3): Effect of Failure to Give Written Notice of the Cancellations

[148] The third reason the Appellant provides in support of its position that the cancellation of the permits was improper is that the Development Officer did not give written notice that the permits had been cancelled as required by Section 17.2(3).

[149] The Appellant contends that the failure to give this notice was prejudicial to it because it took no steps to appeal the granting of the development permit for Minor Alcohol Sales to Mr. Garg, believing that it still had a valid development permit on its premises.

[150] The Appellant further contends that the retraction of its request to cancel the permits in its letter of December 4, 2015 before it received written notice of the cancellations renders the cancellations ineffective.

[151] Regarding the argument that the Appellant was prejudiced by the failure to provide written notice of the cancellations immediately after they were effected, Ms. Brooks, the Appellant's Vice President Legal Affairs, gave evidence that she did not appreciate the effect of her request to cancel the development permits. Therefore, the Board finds that even if she had received written confirmation that her request to cancel the permits had been complied with immediately after the cancellations, she would not have had any reason to be concerned. She would have simply received that information as confirmation that the cancellations she had requested had been carried out. Nothing about the written notice would have triggered any concern.

[152] The Appellant also contended that the lack of timely written notice of the cancellations prejudiced it because the lack of knowledge played a role in its decision not to participate in the appeal to the Subdivision and Development Appeal Board regarding Mr. Garg's Minor Alcohol Sales development permit application. However, Ms. Brooks gave evidence that, when the Appellant received notice that Mr. Garg had applied for a development permit for Minor Alcohol Sales within 500 metres of the Appellant's premises, the Appellant decided not to participate in the appeal related to that application because the only reason it could think of to oppose the development was the increased competition with the liquor store on their premises. The Appellant knew this was not a valid planning reason, so it decided not to participate in Mr. Garg's appeal to this Board. The Board finds that lack of timely written notice was not a factor in the First Capital's decision not to participate in the appeal.

[153] Accordingly, the Board finds that there was no prejudice as a result of the Development Officer's failure to provide earlier written notice of the cancellations.

[154] The Board rejects the Appellant's argument that cancellations are not "perfected" because no written notice was provided as required by Section 17.2(3). Nothing in the section indicates that the cancellation of a permit is not complete until written notice is provided. To read such a stipulation into the section is unwarranted.

[155] Failure to provide written notice of the cancellation of a development permit may give rise to a number of consequences. In the case of a development permit that has been cancelled by a Development Officer for one of the reasons set out in Section 17.2(1), failure to receive notice of the cancellation may give rise to a defence in respect of a prosecution for continuing a Use as if the development permit still existed. In a situation where loss or damage is sustained by the person who does not receive notice, the failure to provide notice may give rise to a civil claim. However, the Board is of the view that the failure to provide notice does not have the effect of rendering the cancellation of the permit invalid.

[156] The Board rejects the Appellant's argument that its letter of December 4, 2015 withdrawing the request to cancel the permits before written notice was received has the effect of making the cancellations improper. The Board accepts the Development Officer's evidence that the permits were cancelled on September 30, 2015. The request to withdraw the cancellation request was received too late. The Development Officer has no authority to undo a cancellation or reinstate a cancelled permit. His only authority to approve development permits is found in Section 11.2 of the *Edmonton Zoning Bylaw*, which requires an application to be submitted.

ii) New Development Permit Application Under Appeal

[157] Given that Minor Alcohol Sales Use is a Discretionary Use in the CB2 General Business Zone, the Board was not provided with compelling planning reasons to justify the variances.

[158] The Board considered *Newcastle Centre GP Ltd. v. Edmonton (City),* 2014 ABCA 295, a decision of the Alberta Court of Appeal. In that decision, the Court provided the Board with direction that the determination of whether to grant a variance should be based on the impact that those variances will have rather than the size of the variances. In this case, the fact that this development is in close proximity to residential developments and public parks leads the Board to conclude that granting a variance to the separation distance requirements will have a cumulative effect upon the community as a whole.

[159] Although a Minor Alcohol Sales development permit was issued at this location in 1996, there have been significant changes since then. For one thing, the development regulations with respect to alcohol sales use separation distances were implemented in 2007. The Board recognizes that the intent of these regulations was to address some of the anti-social behaviours associated with liquor store densification. Also, there have been significant improvements at Central McDougall Park, which is less than 100 metres from the proposed development.

[160] Based on information presented by the representative of the Community League, the Board accepts that there are significant concerns within the community with respect to alcoholism, addictions and various nuisances associated with high liquor store density.

[161] The Community League also noted that most of the green space and school sites are concentrated within the general area of the proposed development. In particular, the Board was compelled to consider the location of Central McDougall Park, a significant community park that is highly used by residents, including families and children.

[162] The submissions of the Community League with respect to the problems associated with alcohol abuse in the neighbourhood and the proximity of Central McDougall Park to the proposed development, leads the Board to conclude that granting a variance to the minimum 100 metres separation distance requirement under Section 85(6) would result in an increase in anti-social behaviours which would negatively impact the community's use and enjoyment of Central McDougall Park.

[163] The Board was presented with a study dated March 2013, entitled "The Role of Alcohol Outlet Density in Reducing Domestic Violence in Alberta". The study was conducted through the Faculty of Social Work at the University of Calgary. It purports to show a correlation between the density of alcohol outlets and the amount of domestic violence.

[164] The Board is of the view that the decision to use this study to determine whether a development permit for an alcohol sales use should be granted in a given situation must be done very cautiously. Every neighbourhood is different and a certain density of alcohol sales uses in one neighbourhood will not necessarily lead to the same outcome in another neighbourhood. The study was not specific to the Central McDougall neighbourhood, and therefore, although the Board considered the study, it did not find the study particularly persuasive in relation to the case before this Board.

[165] The submissions of the Community League with respect to concerns about the negative effects associated with the concentration of alcohol sales outlets leads the Board to conclude that granting a variance to the minimum 500 metres separation distance requirement under Section 85(3) would result in an increase in anti-social behaviours which would unduly interfere with the amenities of the neighbourhood.

[166] The Development Officer indicated in the "Advisement" portion of the Development Permit decision that "The Minor Alcohol Sales business requires a net increase of 0 spaces from previous General Retail store." In short, the change of Use from General Retail to Minor Alcohol Sales does not actually contribute to the parking variance required. However, the Board notes that the Site has a deficiency in parking spaces. Given the pressures of off-street site parking in the neighbourhood, the Board accepts the views of the Community League and Mr. Garg that parking stresses currently impact the neighbourhood.

[167] The Board notes that the area along Kingsway Avenue surrounding the subject development has changed significantly since the first approved Minor Alcohol Sales application was provided in 1996. These changes include the removal of parking on both

sides of Kingsway Avenue, the completion of a transit and LRT station, and significant expansion and improvements to the Royal Alexandra Hospital and other developments in the area. All of these changes have increased parking pressures in the neighbourhood. The Board concludes that a parking variance to the requirements of section 54.2 would not be appropriate in the circumstances as it would unduly interfere with the amenities of the neighbourhood.

[168] The Board therefore finds that granting the development and the necessary variances would unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use and enjoyment of neighbouring parcels of land. As such, the appeal is denied and the development is refused.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

CC:

Important Information for the Applicant/Appellant

1. 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.

2. 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.