

SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA

Wednesday, 9:00 A.M.
February 22, 2017

Hearing Room No. 3
Churchill Building,
10019 - 103 Avenue NW,
Edmonton, AB

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING ROOM NO. 3**

I	9:00 A.M.	SDAB-D-17-039	Construct an Auctioneering Establishments building and operate an Auctioneering Establishment on the entire Site (including existing storage building and shed), and demolish an existing storage building (Osman Auction Inc.) 11650 - 199 Street NW Project No.: 152674334-001
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NOTE: *Unless otherwise stated, all references to “Section numbers” refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-17-039

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 152674334-001

APPLICATION TO: Construct an Auctioneering Establishments building and operate an Auctioneering Establishment on the entire Site (including existing storage building and shed), and demolish an existing storage building (Osman Auction Inc.)

DECISION OF THE DEVELOPMENT AUTHORITY: Approved with Notices

ORIGINAL DECISION DATE: July 3, 2014

ORIGINAL NEWSPAPER PUBLICATION DATE: July 10, 2014

ORIGINAL APPEAL DATE: July 24, 2014

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 11650 - 199 Street NW

LEGAL DESCRIPTION: Plan 5337NY Lot A

ZONE: IM Medium Industrial Zone

OVERLAY: N/A

STATUTORY PLAN: Winterburn Industrial Area Structure Plan

Grounds for Appeal

2014 Grounds for Appeal

In its original appeal application to the Subdivision and Development Appeal Board (the “SDAB”) in 2014, the Appellant provided the following reasons for appealing the decision of the Development Authority:

Numerous conditions to this development permit that were included in page 2 of the development permit consist of inappropriate off-site levies under the name of conditions to a development permit when they were in fact off-site levies that are inappropriate to be charged for this development permit.

2014 Decision of the SDAB

In a decision dated October 10, 2014, the SDAB allowed the appeal in part, confirmed the decision of the Development Authority, subject to various conditions, including the following:

- 1) Winterburn Industrial Arterial Roadway Assessment (“ARA”), as amended by the SDAB:

The amount of ARA owing using the 2014 rate totals \$481,950 for the entire site. The proposed development represents a **39.8 percent** [amended from original 57.7%] increase in development on the property therefore, **39.8 percent** of the ARA amount for the entire property in the amount of **\$191,816.10** [amended from original \$277,970] is owed with this development application. (Page 12, SDAB-D-14-232 Decision)

- 2) Servicing Agreements for the following assessments:

- Winterburn Industrial Area Master Plan: \$125/ha
- Area Master Study (NW Annexation I-130): \$43/ha
- **Winterburn Industrial North Onsite Storm: \$85,598/ha**
- **Winterburn Industrial North (Yellowhead Ind) Onsite Sanitary: \$25,240/ha**
- EA (WESS): \$23,278/ha [emphasis added]

PACs and EA are applicable to the entire lot. Under this DP, we are only doing drainage assessment for 20% of the total lot area that is 1.577 ha. [Page 2 of 4, Original Decision of the Development Authority, Project Number: 152674334-001]

Appeal of the 2014 SDAB Decision to the Alberta Court of Appeal

The Appellant appealed the decision of the SDAB to the Alberta Court of Appeal, specifically the condition “requiring it to pay a proportionate share of the installation costs of storm and sanitary sewers that will soon service the industrial area where it is located – roughly \$175,000.” (*Osman Auction Inc. v Edmonton (City)*, 2015 ABCA 135 at paragraph 2, [*Osman 2015*])

The Court granted leave to appeal on the following question of law: “Does s. 650(1)(c) or s. 687(3)(a.1) or both of the *Municipal Government Act* authorize the imposition of the development conditions to which *Osman Auction* objects?” (*Osman 2015* at paragraph 41)

2016 Decision of the Alberta Court of Appeal

In 2016, the Court rendered its decision: “The answer is that the City is so authorized, but only if the public utilities are ‘necessary to serve the development’. The appeal is allowed, and the decision of the Board is set aside. The matter is remitted back to the Board for reconsideration in a manner consistent with the statutory provision.” (*Osman Auction Inc. v Edmonton (City)*, 2016 ABCA 166 at paragraph 31)

General Matters

Appeal Information:

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

Grounds for Appeal

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

685(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal to the subdivision and development appeal board.

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

...

- (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*. [emphasis added]

The *Edmonton Zoning Bylaw 12800* provides as follows:

20. Notification of Issuance of Development Permits

20.2 Class B Development

1. Within seven days of the issuance of a Development Permit for a Class B Discretionary Development, the Development Officer shall dispatch a written notice by ordinary mail to all relevant parties listed below that are wholly or partially within 60.0 m of the boundaries of the Site which is the subject of the Development Permit:
 - a. each assessed owner of the Site or a part of the Site of the development;
 - b. each assessed owner of land;
 - c. the President of each Community League; and
 - d. the President of each Business Revitalization Zone.
2. The notice shall describe the development and state the decision of the Development Officer, and the right of appeal therefrom.
3. Within 10 days of the issuance of a Development Permit for Class B Discretionary Development, the Development Officer shall cause to be published in a daily newspaper circulating within the City, a notice describing the development and stating their decision, and the right to appeal therefrom.
4. Where, in the opinion of the Development Officer, a proposed development is likely to affect other owners of land beyond 60.0 m, the Development Officer shall notify owners of land at such additional distance and direction from the Site as, in the opinion of the Development Officer, may experience any impact attributable to the development.

The decision of the Development Officer is dated July 3, 2014. Notice of the development was published in the *Edmonton Journal* on July 10, 2014. The Notice of Appeal was filed on July 24, 2014.

Off-site Levies and Conditions of Issuing Development Permit

The *Municipal Government Act* provides as follows:

Off-site levy

648(1) For the purposes referred to in subsection (2), a council may by bylaw

- (a) provide for the imposition and payment of a levy, to be known as an “off-site levy”, in respect of land that is to be developed or subdivided, and
 - (b) authorize an agreement to be entered into in respect of the payment of the levy.
- (2)** An off-site levy may be used only to pay for all or part of the capital cost of any or all of the following:
- (a) new or expanded facilities for the storage, transmission, treatment or supplying of water;
 - (b) new or expanded facilities for the treatment, movement or disposal of sanitary sewage;
 - (c) new or expanded storm sewer drainage facilities;
 - (c.1) new or expanded roads required for or impacted by a subdivision or development;
 - (d) land required for or in connection with any facilities described in clauses (a) to (c.1).
- (3)** On September 1, 1995 an off-site levy under the former Act continues as an off-site levy under this Part.
- (4)** An off-site levy imposed under this section or the former Act may be collected once for each purpose described in subsection (2), in respect of land that is the subject of a development or subdivision, if
- (a) the purpose of the off-site levy is authorized in the bylaw referred to in subsection (1), and
 - (b) the collection of the off-site levy for the purpose authorized in the bylaw is specified in the agreement referred to in subsection (1).
- (4.1)** Nothing in subsection (4) prohibits the collection of an off-site levy by instalments or otherwise over time.
- (5)** An off-site levy collected under this section, and any interest earned from the investment of the levy,
- (a) must be accounted for separately from other levies collected under this section, and
 - (b) must be used only for the specific purpose described in subsection (2)(a) to (c.1) for which it is collected or for the land required for or in connection with that purpose.
- (6)** A bylaw under subsection (1) must be advertised in accordance with section 606 unless

- (a) the bylaw is passed before January 1, 2004, or
 - (b) the bylaw is passed on or after January 1, 2004 but at least one reading was given to the proposed bylaw before that date.
- (7) Where after March 1, 1978 and before January 1, 2004 a fee or other charge was imposed on a developer by a municipality pursuant to a development agreement entered into by the developer and the municipality for the purpose described in subsection (2)(c.1), that fee or charge is deemed
- (a) to have been imposed pursuant to a bylaw under this section, and
 - (b) to have been validly imposed and collected
- effective from the date the fee or charge was imposed.

Condition of issuing development permit

650(1) A council may in a land use bylaw require that, as a condition of a development permit's being issued, the applicant enter into an agreement with the municipality to do any or all of the following:

- (a) to construct or pay for the construction of a road required to give access to the development;
- (b) to construct or pay for the construction of
 - (i) a pedestrian walkway system to serve the development, or
 - (ii) pedestrian walkways to connect the pedestrian walkway system serving the development with a pedestrian walkway system that serves or is proposed to serve an adjacent development,or both;
- (c) to install or pay for the installation of a public utility described in section 616(v)(i) to (ix) that is necessary to serve the development, whether or not the public utility is, or will be, located on the land that is the subject of the development;
- (d) to construct or pay for the construction of
 - (i) off-street or other parking facilities, and
 - (ii) loading and unloading facilities;
- (e) to pay an off-site levy or redevelopment levy imposed by bylaw;
- (f) to give security to ensure that the terms of the agreement under this section are carried out.

(2) A municipality may register a caveat under the *Land Titles Act* in respect of an agreement under this section against the certificate of title for the land that is the subject of the development.

(3) If a municipality registers a caveat under subsection (2), the municipality must discharge the caveat when the agreement has been complied with.

(4) Where, prior to the coming into force of this subsection, an agreement referred to in subsection (1) required the applicant to install a public utility or pay an amount for a public utility referred to in subsection (1)(c), that requirement is deemed to have been validly imposed, whether or not the public utility was located on the land that was the subject of the development.

Determining an Appeal

The *Municipal Government Act* states the following:

Hearing and decision

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

...

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

...

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

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

(i) the proposed development would not

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

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

and

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

General Provisions from the *Edmonton Zoning Bylaw*:

Section 420.1 states that the **General Purpose** of the **IM Medium Industrial Zone** is:

... to provide for manufacturing, processing, assembly, distribution, service and repair Uses that carry out a portion of their operation outdoors or require outdoor storage areas. Any nuisance associated with such Uses should not generally extend beyond the boundaries of the Site. This Zone should normally be applied on the interior of industrial areas adjacent to collector and local industrial public roadways such that Uses are separated from any adjacent residential areas by a higher quality Industrial or Commercial Zone.

Under Section 420.3(1), **Auctioneering Establishments** is a **Discretionary Use** in the IM Medium Industrial Zone.

Section 7.4(3) states:

Auctioneering Establishments means development specifically intended for the auctioning of goods and equipment, including Temporary Storage of such goods and equipment. This Use does not include Flea Markets.

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing. Bylaw No. 11136 requires that a verbal announcement of the Board's decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.



Project Number: **152674334-001**
Application Date: APR 09, 2014
Printed: July 11, 2014 at 11:37 AM
Page: 1 of 4

Major Development Permit

This document is a record of a Development Permit application, and a record of the decision for the undertaking described below, subject to the limitations and conditions of this permit, of the Edmonton Zoning Bylaw 12800 as amended.

Applicant 	Property Address(es) and Legal Description(s) 11650 - 199 STREET NW Plan 5337NY Lot A Specific Address(es) Entryway: 11646 - 199 STREET NW Building: 11646 - 199 STREET NW
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Scope of Permit
 To construct an Auctioneering Establishments building and operate an Auctioneering Establishment on the entire Site (including existing storage building and shed), and demolish an existing storage building (Osman Auction Inc.).

Permit Details	
Class of Permit: Class B Gross Floor Area (sq.m.): 2376 New Sewer Service Required: N/A Site Area (sq. m.): 78833	Contact Person: Lot Grading Needed?: Y NumberOfMainFloorDwellings: 0 Stat. Plan Overlay/Annex Area: (none)

I/We certify that the above noted details are correct.
 Applicant signature: _____

Development Permit Decision
 Approved

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



Project Number: **152674334-001**
 Application Date: APR 09, 2014
 Printed: July 11, 2014 at 11:37 AM
 Page: 2 of 4

Major Development Permit

Subject to the Following Conditions

PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the submitted Landscape Plan shall be to the satisfaction of the Development Officer.

PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall provide a guaranteed security to ensure that landscaping is provided and maintained for two growing seasons. The Landscape Security may be held for two full years after the landscaping has been completed. This security may take the following forms:

- a) cash to a value equal to 100% of the established landscaping costs;
- or
- b) an irrevocable letter of credit having a value equivalent to 100% of the established landscaping costs.

Any letter of credit shall allow for partial draws. If the landscaping is not completed in accordance with the approved Landscape Plan(s) within one growing season after completion of the development or if the landscaping is not well maintained and in a healthy condition two growing seasons after completion of the landscaping, the City may draw on the security for its use absolutely. Reference Section 55.6.

PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the property owner shall enter into a Servicing Agreement to pay the the following assessments:

- Winterburn Industrial Area Master Plan; \$125/ha
- Area Master Study (NW Annexation I-130); \$43/ha
- Winterburn Industrial North Onsite Storm; \$85,598/ha
- Winterburn Industrial North (Yellowhead Ind) Onsite Sanitary; \$25,240/ha
- EA (WESS) \$23,278/ha

PACs and EA are applicable to the entire lot. Under this DP, we are only doing drainage assessment for 20% of the total lot area that is 1.577 ha. The remaining area of the lot (i.e. 80%) will be deferred for assessment until future application of subdivision, development permit or sewer service connection. The total area of the property is 7.884 ha and is obtained from the City's information computer program called POSSE. The rates are 2014 rates. The final PAC amounts will be based on the prevailing rates at the time the applicant/owner pays and enters into a servicing agreement with the City.

The PACs must be paid by entering into a servicing agreement, which will be prepared by the Sustainable Development. The applicant/owner should contact Raghda Abdelmonem at 780-442-7042, upon issuance of the Development Permit, when he/she is ready to initiate the servicing agreement and make payment.

PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the owner must enter into a Municipal Improvement Agreement with the City for the following improvements:

- reconstruction of the most southern culvert crossing to a width within a range of 11.5 m to 13.5 m, located approximately 115 m south of the north property line; and
- hard surfacing of the access/drive aisle of both accesses from the edge of driving surface to the property line.

The Agreement must be signed by the property owner and returned to Transportation Services to the attention of Loli Fernandez (780-944-7683) including an irrevocable Letter of Credit in the amount of \$ 55,000.00 to cover 100% of construction costs. The Agreement will be forwarded directly to the owner for his signature. Once signed, the owner is required to have a Civil Engineer submit stamped engineering drawings for approval by the Transportation Services.

PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the owner must enter into a Servicing Agreement with the City of Edmonton for the payment of the ARA owing on the portion of the property being developed. This lot is within the Winterburn Industrial Arterial Roadway Assessment (ARA) catchment. The amount of ARA owing using the 2014 rate totals \$481,950 for the entire site. The proposed development represents a 57.7 % increase in development on the property therefore, 57.7 % of the ARA amount for the entire property in the amount of \$277,970 is owing with this development application. However, through negotiations with the owner, Transportation Services has agreed to accept 50% of the total ARA amount owing for the site in the amount of \$240,975. Upon future development or subdivision of the site, the remaining 50% will be collected. The assessment amount may be adjusted to reflect the current ARA rate at the time the Servicing Agreement is signed. The owner must contact Raghda Abdelmonem (780-442-7042) of Sustainable Development for more information on the Servicing Agreement and ARA owing. The owner must enter into a Servicing Agreement with the City of Edmonton for the payment of the ARA owing on the portion of the property being developed.

All access locations and curb crossings shall have the approval of the City Transportation and Streets Department prior to the start

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



Project Number: **152674334-001**
 Application Date: APR 09, 2014
 Printed: July 11, 2014 at 11:37 AM
 Page: 3 of 4

Major Development Permit

of construction. Reference Section 55(1).

The most northern access from the site to 199 Street exists; however, Transportation Services will not permit a graveled access to a paved roadway. The access/drive aisle of the access must be hard surfaced from the edge of driving surface to the property line, as shown on Enclosure I. The pavement will limit loose gravel from being carried onto the paved surface of the adjacent roadway from the graveled yard. Any further modification to the existing access requires the review and approval of Transportation Services.

The most southern access from the site to 199 Street located approximately 115 m south of the north property line, must be reconstructed as a culvert crossing to a width within a range of 11.5 m to 13.5 m to accommodate large vehicles. In addition, the access/drive aisle of the access must be hard surfaced from the edge of driving surface to the property line, as shown on Enclosure I. The proposed gate must not swing out over road right-of-way. It must either swing into the property or slide along the fence. No objects are permitted to encroach onto, over or under road right-of-way.

There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.

There are existing trees and shrubs adjacent to the site that must be protected during construction. Should removal of the trees and shrubs be required, the owner/applicant must contact Marshall Mithrush of Community Services (780-496-4953). Any removal costs shall be borne by the owner/applicant.

Any hoarding or construction taking place on road right-of-way requires an OSCAM permit. It should be noted that the hoarding must not damage boulevard trees. The owner must call Transportation Operations at 780-442-6458 to arrange for the permit.

Any boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Services, as per Section 15.5(f) of the Zoning Bylaw. The boulevard will be inspected by Transportation Services prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

Bicycle parking (a minimum of 5 spaces) shall be provided in accordance to Section 54.3 and to the satisfaction of the Development Officer.

Immediately upon demolition of the building, the site shall be cleared of all debris.

The applicant/owner shall provide parking for People with Disabilities (a minimum of 3 spaces) in accordance to Section 54.1(3) and to the satisfaction of the Development Officer.

All activities or operations of the proposed development shall comply to the standards prescribed by the Province of Alberta pursuant to the Environmental Protection and Enhancement Act and the regulations pertaining thereto.

All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer in accordance with Sections 55(4) & (5).

The off-street parking, loading and unloading (including aisles or driveways) shall be hardsurfaced, curbed, drained and maintained in accordance to Section 54.6.

The development shall comply to the performance standards for the IB District in accordance to Section 57 of the Edmonton Zoning Bylaw. (Reference Section 400.4(6)).

No parking, loading, storage, trash collection, outdoor service or display area shall be permitted within the required 3.0 m yards. (Reference Section 420.4(3).)

Landscaping shall be in accordance to the approved Landscape Plan, Section 55 and to the satisfaction of the Development Officer.

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



Project Number: **152674334-001**
 Application Date: APR 09, 2014
 Printed: July 11, 2014 at 11:37 AM
 Page: 4 of 4

Major Development Permit

An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

This Development Permit is NOT valid until the Notification Period expires in accordance to Section 21.1. (Reference Section 17.1)

Notes:

- Signs require separate Development Applications.
- The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this 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.
- A Building Permit is Required for any construction or change in use of a building. For a building permit, and prior to the Plans

Rights of Appeal

This approval is subject to the right of appeal as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.

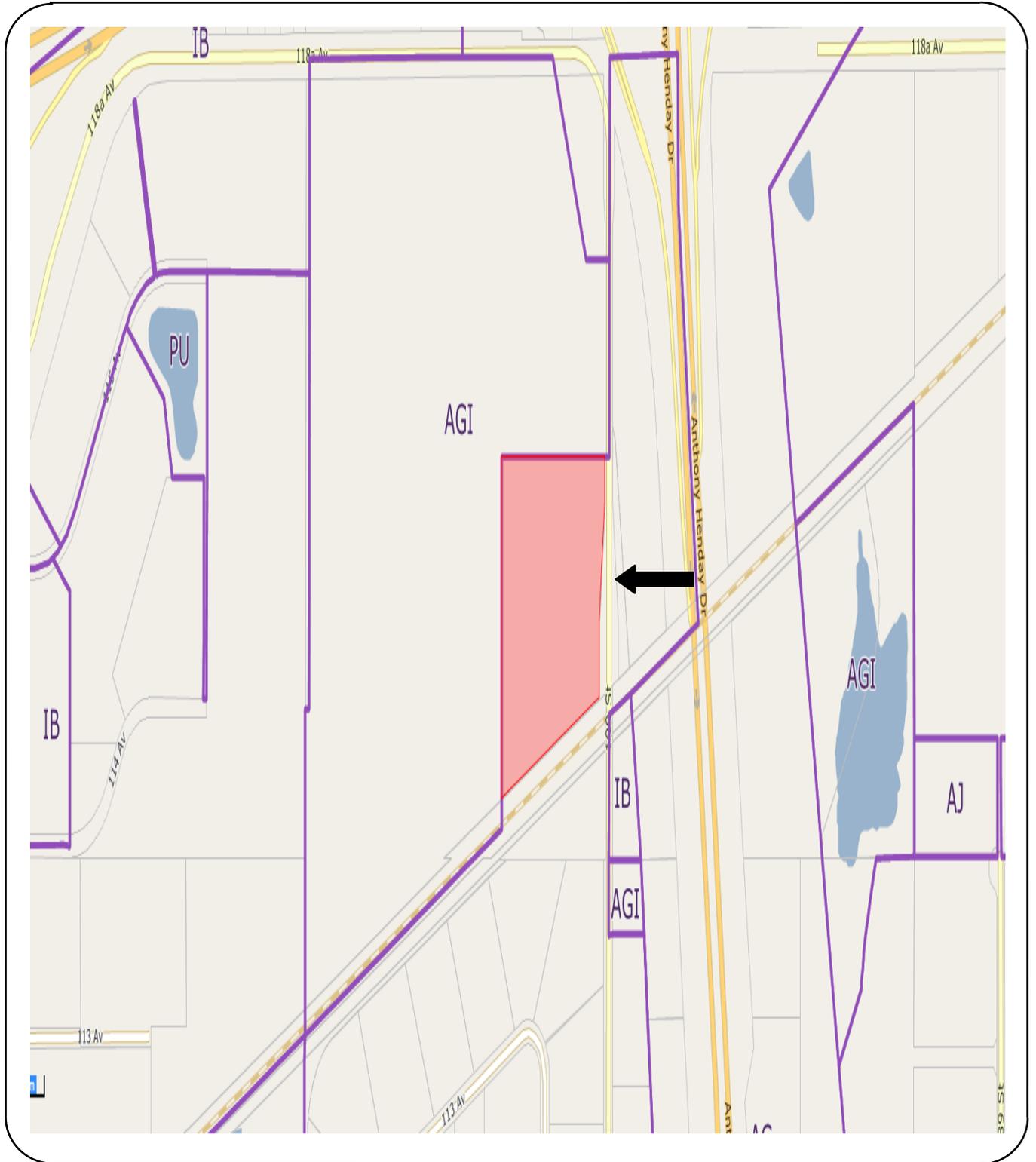
Issue Date: Jul 03, 2014 **Development Authority:** KOWAL, PAUL **Signature:** _____

Notice Period Begins: Jul 08, 2014 **Ends:** Jul 21, 2014

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Lot Grading Fee	\$1,734.33	\$1,734.33	01687403	May 30, 2014
Major Dev. Application Fee	\$811.00	\$811.00	01576674	Apr 10, 2014
Dev. Application Fee for GFA	\$1,672.00	\$1,672.00	01576674	Apr 10, 2014
DP Notification Fee	\$100.00	\$100.00	01687403	May 30, 2014
Total GST Amount:	\$0.00			
Totals for Permit:	<u>\$4,317.33</u>	<u>\$4,317.33</u>		

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



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-17-039

