



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: February 15, 2017
Project Number: 227359080-001
File Number: SDAB-D-17-026

Notice of Decision

[1] On February 2, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **December 26, 2016**. The appeal concerned the decision of the Development Authority to issue the following Order on December 13, 2016:

To cease the General Industrial Use (bulk sand bag filling, storage and shipping of sand) and remove all related materials from the property before January 12, 2017

[2] The subject property is on Plan 9723204 Lot 4A, located at 1951 - 232 Avenue NE, within the AG Agricultural Zone. The Edmonton Energy and Technology Park Area Structure Plan applies to the subject property.

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

- Copy of the Stop Order; and
- The Development Compliance Officer’s written submissions.

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

- Exhibit A – Photos of the site submitted by the Appellant
- Exhibit B – PowerPoint from Development Compliance

Preliminary Matters

[5] 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.

[6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”).

Summary of Hearing

i) Position of the Appellant, Mr. F. Jutt:

- [8] This business was started on a small scale to supply sand bags to sell at the six gas stations that he owns in Edmonton.
- [9] He acknowledged that the business grew beyond his expectations and he did not comply with the appropriate development regulations. However, he met with the Development Compliance Officers and paid the fines that were issued in respect of bylaw violations.
- [10] He only appealed the Order in an attempt to receive an extension to the compliance date.
- [11] The business has been scaled back significantly. Sand is no longer being brought to the site to fill sand bags. He submitted photographs, marked Exhibit A, to illustrate that some of the sand bags have been removed from the site.
- [12] However, it is difficult to remove the pallets of sand from the site during the winter months because the pallets are frozen to the ground.
- [13] He referenced photographs taken from neighbouring properties to support his opinion that allowing the sand bags to remain on the site until spring will not impact any of the neighbours because they are not visible from their properties.
- [14] Mr. Jutt provided the following responses to questions:
- a) He estimated that there are between 60 to 80 pallets of sand remaining on the site.
 - b) He recently tried to remove some pallets from the site and it took him over an hour to remove six pallets because they are frozen to the ground.
 - c) The projection was to sell between 6,000 and 7,000 bags of sand this winter but he was only able to sell 300 bags.
 - d) He acknowledged that the photographs of the site submitted by the Development Compliance Officer accurately depicted the condition of the site. However, when compared to the photographs that were taken yesterday, it is clear that the site has been cleaned up.
 - e) He would like to delay removal of the remaining sand bags until the beginning of May 2017 in order to allow heavy equipment to be brought on site without damaging the land or roadways.
 - f) He estimated that it would take a minimum of three or four days to remove all of the sand bags from the site using his truck.
 - g) He was not able to sell the sand bags to B.C. or Saskatchewan because the bags are not recyclable. He still does not know what he will do with the sand bags.
 - h) Each sand bag weighs 18 kilograms and there are 55 bags of sand on a pallet.
 - i) He can move six pallets on his truck while a semi-trailer truck can move 30 bags.
 - j) The site will be damaged even if the City removes the sand bags from the site.

ii) *Position of Development Compliance, Mr. M. Doyle and Mr. J. Young:*

- [15] Mr. Doyle used a PowerPoint presentation, marked Exhibit B, to review the context of the Site, provide a Site history and review the existing Site conditions.
- [16] The Site is located within the Edmonton Energy and Technology Park Area Structure Plan.
- [17] The exit onto 232 Avenue NE is a gravel round about.
- [18] A land use complaint was received in August 2016. A Development Permit application for a Minor Home Based Business was made on August 9, 2016. An inspection on August 10, 2016 revealed a Use occurring on the Site without a Development Permit. Photographs taken on August 10, 2016 were submitted to illustrate the condition of the Site and the storage of sand bags and pallets on the Site.
- [19] A *Municipal Government Act* Order was issued on August 12, 2016 to cease the Temporary Storage use and remove all heavy machinery and associated materials by August 19, 2016. This Order was not contested.
- [20] The Site was inspected on August 25, 2016 for the Development Permit application and it revealed the storage of more sand than was visible from the road.
- [21] The Development Permit was refused on September 2, 2016 and the Subdivision Development Appeal Board did not assume jurisdiction to hear the appeal of that decision at a hearing held on November 30, 2016.
- [22] The Use occurring on Site was not permitted and a Stop Order was issued on December 13, 2016.
- [23] Eight complaints regarding the use of the land were received between August 2 and December 13, 2016, after the Orders were issued, related to the visible and audible impacts of equipment and vehicles.
- [24] This site is located in an AG Agricultural Zone. The purpose of this Zone is to conserve agricultural and rural Uses.
- [25] It has been determined that the Use occurring on this Site fits the definition of a General Industrial Use, pursuant to Section 7.5(2) of the *Edmonton Zoning Bylaw*.
- [26] Even if sand bags were not being filled on the Site, storage of the bags fits the definition of Temporary Storage, pursuant to Section 7.5(5) of the *Edmonton Zoning Bylaw*.

- [27] A photograph of the Site taken on October 4, 2016 was referenced to illustrate that the sand bags are visible from 232 Avenue NE.
- [28] The impacts of the development on this Site are not desirable for the neighbourhood and are not consistent with the intent of the *Edmonton Zoning Bylaw*.
- [29] Mr. Doyle provided the following responses to questions:
- a) The Site has been inspected several times but they have not been able to confirm some of the activities reported by neighbours.
 - b) It was his opinion that it would be better to remove the sandbags now rather than waiting until spring because the ground and roadways are frozen and less damage would occur.
 - c) He acknowledged that some work has been done to clean up the Site and some of the sand bags have been removed. However, extending the compliance date to the beginning of May is in effect approving a Temporary Storage Use on the Site which is neither a Permitted nor Discretionary Use in the AG Agricultural Zone.
 - d) It was their estimation that there are between 100 and 200 pallets of sand left on the Site.
 - e) 232 Avenue NE is not a truck route.
 - f) Development Compliance can hire a contractor to remove the frozen pallets from the Site without damaging the land.
 - g) A Natural Resources Development use was not considered as a potential Use for this Site because the sand is being brought to the Site from another location.

iii) Position of an Affected Property Owner in Opposition to the Appellant, Mr. G. Penney representing his mother, Ms. Violet Penney:

- [30] Mr. Penney was not in agreement with extending the date of compliance to the beginning of May because of the potential to damage the roadway.
- [31] He agreed with Development Compliance that less damage would occur to the road if the sand bags were removed now because the ground is still frozen.
- [32] His family has owned and lived next door to this Site since 1971. He has witnessed the consistent disregard for compliance with Bylaw regulations.
- [33] It was his opinion that the photographs of the Site submitted by Mr. Jutt were taken from angles that do not show the inventory of sand still on the Site.
- [34] Moving the sand bags will not damage the land which is mostly pasture that has never been sodded or seeded.
- [35] 232 Avenue NE is a gravel road suitable for light balanced farm equipment.
- [36] Winter is the time to move the sand bags.

[37] The roadway will not be maintained by the City because this area will eventually be rezoned.

[38] Large vehicles create large ruts in the roadway which makes it difficult for vehicles.

iv) Rebuttal of the Appellant

[39] The photographs taken on October 4, 2016 by Development Compliance confirm that the operation was shut down. Sand is no longer being brought to the Site.

[40] The photographs that he submitted were not taken from angles to mask the location of the sand bags on the Site.

[41] If an extension is not granted, heavy equipment will be brought in to remove the sand bags which could damage the roadway.

[42] He reiterated his opinion that the sand bags cannot be seen from neighbouring properties.

[43] He could work with a shorter extension but two weeks is just not feasible.

[44] They own this property and do not want to damage the road.

Decision

[45] The appeal is **ALLOWED IN PART** and the Stop Order is **VARIED**. The Stop Order is **UPHELD** as issued by Development Compliance with the following change:

To comply with an Order to cease the General Industrial Use (bulk sand bag filling, storage and shipping of sand) and remove all related materials from the property before **March 17, 2017**. [emphasis added]

Reasons for Decision

[46] The Appellant advised the Board that he was not contesting the issuance of the Stop Order or compliance with the Order. The appeal was filed simply to request an extension to the date of compliance from January 12, 2017 to May 1, 2017. The extension was requested because the pallets of sand bags are frozen to the ground and it is more problematic to remove them during the winter.

[47] The Development Compliance Officers and an affected property owner advised that heavy trucks transporting the sand bags from the Site caused damage to 232 Avenue NE, which is a gravel roadway.

- [48] The Board agrees with the opinion of the Development Compliance Officers that winter is the most appropriate time to remove the sand bags from the Site because the roadway is frozen and less likely to be damaged by trucks transporting the sand bags. The Board accepts the evidence of the Development Compliance Officers that it is possible to move the pallets in the winter, notwithstanding the frozen ground, and that doing so will cause minimal damage to this pasture land. The Board agrees with the Appellant that it would be best to use smaller trucks because they can access the Site more easily and they are less likely to damage the road.
- [49] According to the Appellant, there are 60 to 80 pallets of sandbags left on the Site. The Development Compliance Officers thought that there were considerably more, although they have not inspected the Site since October 2016. In any event, even using smaller trucks that can handle six pallets at a time, the Appellant should have no difficulty clearing the Site of sandbags within 30 days of commencing the work.
- [50] The Board is of the opinion that granting an extension to March 17, 2017 will provide the Appellant with adequate time to remove the sand bags from the Site while the ground and roadway are still frozen. Allowing the sand bags to remain on the Site until then will not cause any significant problems for neighbouring parcels of land.
- [51] Accordingly, the Board has upheld the Stop Order but has extended the date of compliance to March 17, 2017.



Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Ms. P Jones, Ms. G. Harris, Mr. A. Peterson

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.



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Date: February 15, 2017
Project Number: 236959342-001
File Number: SDAB-D-17-027

Notice of Decision

- [1] On February 2, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **January 10, 2017**. The appeal concerned the decision of the Development Authority, issued on December 19, 2016, to approve the following development:

To operate a Major Home Based Business (Administration Office for Drywalling company - Best Drywall & Insulation Ltd.), expires December 19, 2021

- [2] The subject property is on Plan 9722830 Blk 44 Lot 36, located at 4116 - 37A Avenue NW, within the RSL Residential Small Lot Zone. The Burnewood Neighbourhood Area Structure Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, and the approved Development Permit;
 - The Development Officer’s written submissions;
 - The Appellant’s written submissions; and
 - Online responses

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the party in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

- [6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”).

Summary of Hearing

- [7] The only party attending the hearing was the Development Officer. The Presiding Officer advised the Development Officer that attempts had been made, without success, to contact the Appellant, Ms. Guzzo, and the Respondent, Mr. Pandher. The Presiding Officer advised that the Board had decided to proceed with the hearing relying on the written reasons for the appeal provided by Ms. Guzzo when the appeal was filed on January 10, 2017. The Board reviewed Ms. Guzzo’s written reasons for appeal, which outlined concerns regarding idling vehicles, oversized vehicles parking on the street and blocking residential driveways and the storage of a trailer onsite but not in the garage.

i) Position of the Development Officer, Ms. H. Vander Hoek

- [8] It was her opinion that the conditions imposed on the approved Development Permit will address the concerns of the Appellant.
- [9] The trailer has to be parked inside the garage when at the Site between jobs, business partners do not come to the Site, and there are only two employees, both of whom reside onsite.
- [10] Most of the concerns raised by the Appellant are enforcement issues and non-compliance with any of the imposed conditions can be reported to Bylaw Enforcement.
- [11] She could not confirm if there were other Home Based Businesses operating on this street.

Decision

- [12] The appeal is **DENIED** and the decision of the Development Officer is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority, subject to the conditions noted on the permit.

Reasons for Decision

- [13] Neither the Appellant nor the Respondent attended at the hearing.

- [14] The Board decided to proceed with the hearing relying on the written reasons provided by the Appellant and the written and verbal evidence provided by the Development Officer.
- [15] A Major Home Based Business is a Discretionary use in the RSL Residential Small Lot Zone. This development permit approves a Major Home Based Business to operate an administrative office for a drywalling company out of a Single Detached House.
- [16] The concerns raised by the Appellant in her written reasons for appeal included the excessive idling of the Respondent's vehicles, vehicles being parked on or in front of other residential driveways, an oversized vehicle being parked on the street and a trailer parked outside the garage.
- [17] The Board notes the Development Authority has addressed all of the Appellant's concerns with the conditions imposed on the approved Development Permit.
- [18] The Development Permit includes, among others, the following conditions:
- a) The Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located;
 - b) No non-resident employees or business partners will work on-site;
 - c) No visits to the site shall be associated with the business;
 - d) The site will not be used as a daily rendezvous point for employees;
 - e) No outdoor business activities, or outdoor storage of material or equipment associated with the business;
 - f) Commercial and industrial equipment is not permitted at the site;
 - g) All commercial, industrial and overweight vehicles shall be parked at an approved storage facility, off-site;
 - h) One non-enclosed trailer with less than 4500 kg gross vehicle weight shall be parked inside the front attached Garage at all times when not at a jobsite.
- [19] The Board is satisfied that compliance with all of the conditions in the Development Permit will ensure that the proposed development is reasonably compatible with surrounding uses and will not unduly interfere with the amenities of the neighbourhood nor will it materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

- [20] The Board notes that the Development Permit has only been approved for a period of five years. This will allow sufficient time for neighbouring property owners to assess the impact of the proposed development and report any violations of the conditions to Bylaw Enforcement. This will result in appropriate actions, which could include the cancellation of the approved Development Permit.



Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Ms. P. Jones, Ms. G. Harris, Mr. A. Peterson

Important Information for the Applicant/Appellant

1. This is not a Business License. A Business License must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 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.



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Date: February 15, 2017
Project Number: 234600718-001
File Number: SDAB-D-17-028

Notice of Decision

- [1] On February 2, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **January 8, 2017**. The appeal concerned the decision of the Development Authority, issued on December 21, 2016, to approve the following development:

To add a Bar and Neighbourhood Pub (82.9 square metres of public space) to an existing General Industrial Use and to construct interior alterations - (Town Square Brewing)

- [2] The subject property is on Condo Common Area (Plan 1024895,0920843,0920863), located at 2951 - Ellwood Drive SW and Plan 0920863 Unit 19, located at 2907 - Ellwood Drive SW and Plan 0920863 Unit 16, located at 2919 - Ellwood Drive SW, within the EIB Ellerslie Industrial Business Zone. The Special Area Ellerslie Industrial Overlay and Ellerslie Area Structure Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
 - The Development Officer's written submissions;
 - Memorandum from City of Edmonton Transportation Planning and Engineering;
 - The Appellant's written submissions; and
 - Online responses.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Appellant's Presentation Notes

Preliminary Matters

- [5] 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.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (the "*Municipal Government Act*").

Summary of Hearing*i) Position of the Appellant, Mr. M. Schwartz, representing 1389978 Alberta Ltd.:*

- [8] He is the owner of 1389978 Alberta Ltd. and is appearing on behalf of his wife who is the owner of Prime School of Music. He is also representing Hanul Art School and the Ellerslie Community League.
- [9] It was his opinion that entry of the proposed development into this complex will cause negative impacts on his business as well as the multiple others located in and around it.
- [10] The Development Permit application has classified the proposed development as a Pub but Town Square Brewing disputes this designation and refers to their business as a Restaurant or Eatery.
- [11] This euphemism does not hold up however because the main focus of a restaurant is the food it offers and not the alcohol it sells, produces or distributes. Food is the secondary item in this development and should be excluded from future discussion.
- [12] It was his opinion that the Applicant is attempting to convince people that the nature of their business is less impactful than that of a normal alcohol distributor.
- [13] Using words like artisanal, craft, microbrewery and even the company name attempts to project an image of small town old fashion family values which is far from the truth. It is simply an attempt to form an emotional connection in hopes of getting people to lower their guard in relation to the products the business is selling.
- [14] The Appellant does not want to be designated as a Pub because of the pre-existing negative connotations that consumers can have toward pubs.
- [15] The definition of a Pub is simply that of a public house or a building with a bar and one or more public rooms licensed for the sale and consumption of alcoholic drink, often also providing light meals.

- [16] This sounds more in line with the goals of the Appellant, however, this statement does not include any reference to brewing, creating, production of alcohol, or the sale of alcohol not obtained through a licensed distributor approved by Alberta Gaming & Liquor Commission (AGLC).
- [17] These designations are also missing from the Discretionary Use definition of the *Edmonton Zoning Bylaw*.
- [18] It was his opinion that the proposed development should not have been approved as a Discretionary Use because these designations are not included in the definition of a Discretionary Use contained in the Bylaw.
- [19] He acknowledged that manufacturing a product is acceptable in an industrial zone but it was his opinion that an alcohol based product would be more restricted and held to a higher standard during the approval process.
- [20] Since this type of business is not fully defined within the City and a specific designation is not included in the *Edmonton Zoning Bylaw*, it was his opinion that the application should not have been approved as a Discretionary Use.
- [21] If and when this business is fully defined in the Bylaw it was his expectation that additional restrictions and limitations would be imposed especially when surrounding businesses offer child centric or religious based facilities and services.
- [22] This type of business will negatively impact the ability of existing occupants to conduct business and continue to attract customers. There are strong stigmas attached to businesses with the main focus of selling alcohol. The impact is even greater for the Art Studio and the Music School who primarily provide service children between five and 16 years of age.
- [23] There is a greater likelihood that a child will be exposed to individuals in an inebriated state with a brewery sharing common areas with businesses focusing on child development.
- [24] The Appellant did not meet with members of the association or the community in an attempt to address concerns. The Appellant did not contact him until after he had filed his appeal.
- [25] The average alcohol content for craft beer ranges between five and 10 percent. While a customer may believe they are simply sampling beer, they are more than likely over-consuming more than they normally would at a regular Pub or Restaurant which is also a safety concern.

- [26] There are many incompatible businesses surrounding this location, including a Church, and three child-based schools. Photographs and a Google map were referred to illustrate the location of the subject site in relation to the Music School and the Art Studio.
- [27] There are no other businesses in this area manufacturing products that would require a large range of chemicals, high degrees of heat and pressure, and processes that generate odors and byproducts that could easily be triggers for allergy sufferers or those with sensitive health conditions.
- [28] There is an increased opportunity for public disturbance, added risk of injury, increased traffic by higher risk individuals and their related activities, plus the added unnecessary exposure of children to the drinking culture.
- [29] Ellerslie Community League has provided written support for the appeal and shares many of the same concerns.
- [30] At some point the City approved a variance that reduced the minimum number of parking spaces required for Parsons Centre from 239 to 180. This would have been acceptable when the centre was new but it is not reasonable now. Customers struggle every day to find a place to park to access businesses that already exist.
- [31] The only information provided regarding parking was a document entitled Parking Justification which was compiled by the Appellant. Mr. Schwartz questioned the accuracy of the information provided by the company applying for a development permit.
- [32] Parking has been an ongoing issue for the past seven years. There have been two parking restriction plans, multiple attempts to procure additional parking space from neighbouring properties, discussions related to pay parking, and at least one instance in which the association took over contractually assigned parking spots from tenants.
- [33] With an approved seating capacity of 50 and likely an additional staff of five to 12, this business poses a much greater impact than the business that it is replacing. That is roughly double the existing need.
- [34] With a total of 180 parking spaces for the entire complex, that equates to a dedicated parking allowance of eight spaces for this unit.
- [35] All the businesses are not utilizing all parking spaces at the same time, but eight spaces to satisfy 56 to 62 people is a stretch. Larger and larger businesses cannot continue to be allowed to occupy smaller spaces under the same original parking variance that was allowed years ago.

- [36] According to the *Edmonton Zoning Bylaw*, a Discretionary Use is one that may be approved or refused at the discretion of the Development Officer depending on how the proposed use relates to surrounding areas and applicable statutory plans.
- [37] This is a professional services complex and not the type of area where people get together to spend time.
- [38] This type of business does not have a reasonable zoning classification to fully outline the regulations and has not had time to be fully vetted to assess the impacts. This paired with no apparent shareholder or staff professional training makes opening this type of business in an area catering to children very risky.
- [39] It was his opinion that the proposed development could be located in a more suitable area.
- [40] There is nothing to stop the owner from selling the business in the future to an owner who would take full advantage of the Bar/Neighbourhood Pub Use class.
- [41] It was his opinion that parents will not enroll their children in a music or arts program located next to a brewery which will negatively impact his business.
- [42] Mr. Schwartz provided the following responses to questions:
- a) He estimated that the distance between the proposed development and the first entrance to the Music Studio is approximately 40 feet and approximately 70 feet to the second entrance.
 - b) Patrons do share parking with other businesses.
 - c) The proposed occupancy and additional staff parking will place an unreasonable strain on the parking.
 - d) The Music School is open most weekdays between 3:00 and 9:00 p.m. and Thursdays from Noon to 9:00 p.m. Programs are provided for children between five and 14 years of age.
 - e) The Art School is open from Noon to 7:00 p.m. on most weekdays and from Noon to 9:00 or 10:00 p.m. on weekends.
 - f) The church is located across a small green belt from the back of the complex.
 - g) The food menu is quite limited, not like a Restaurant menu that serves beer and wine. This is more like a brewery that serves food.
 - h) He disagreed with the findings of the Parking Justification because his customers always complain about the lack of parking.
 - i) He reiterated his concerns for the safety of children including exposure to drunk drivers, smokers and disruptive patrons.
- ii) *Position of the Development Officer, Mr. C. Chan, who provided the following responses to questions:*

- [43] Completion of the Parking Justification is a requirement of Transportation Planning.
- [44] The intent is to identify the peak parking demand for a specific site.
- [45] The Applicant is responsible for the integrity of the Parking Justification study.
- [46] There have been no parking complaints to Sustainable Development regarding the subject site.
- [47] There are no location criteria for a Bar/Neighbourhood Pub in relation to a Religious Assembly or children's services.
- [48] It was his opinion that a Bar/Neighbourhood Pub was the most appropriate Use Class for the proposed development. If onsite drinking was not proposed, it would have been approved as a brewery.
- [49] Subsequent to approving this Development Permit, a change in Use in the complex reduced the onsite parking requirement by 19 spaces, meaning that now the overall total parking requirement is 220 spaces instead of 239.
- [50] Transportation Services did not oppose the application even when the required number of spaces was 239.

iii) Position of the Respondent, Mr. B. Boutin, representing Town Square Brewing

- [51] It was his opinion that the proposed development is more like a restaurant that serves alcohol than a Bar/Neighbourhood Pub.
- [52] There is a restaurant located across the street that serves beer and wine.
- [53] Edmonton, unlike Calgary, has not yet defined this business model of a brewery that serves food and drink onsite.
- [54] The choice was made to apply as a Bar/Neighbourhood Pub because of the sale of the craft beer for customers to take home. This also allowed a reduction in the square footage of the kitchen which aligned with their business plan regarding food offerings.
- [55] Smoking near entrances is regulated by City of Edmonton Bylaws.
- [56] The alcohol content and size of glasses for samples of craft beers are regulated by AGLC. The Commission has reviewed their proposal and it has been regulated accordingly.
- [57] There are other businesses nearby promoting adult services, such as the sale of bongs and e-cigarettes.

- [58] Odors from a craft brewery are similar to those from a bakery. Odors are regulated by City Bylaws.
- [59] He addressed the concerns of the Appellant regarding drunkenness and nuisance. He stated that the proposed business is no different from a child being exposed to members of their family having a glass of beer or wine with their dinner at a restaurant.
- [60] The condo board reviewed their business plan and intentions for the space and did not have any objections.
- [61] After the appeal was filed, he provided business owners in the complex with an outline of his business including the vision and values and a list of products that would be sold. He submitted a petition of support that included the signatures of nine of the 32 business owners, including the adjacent business owners.
- [62] Mr. Boutin provided the following responses to questions:
- a) The Development Officer provided the guidelines for completing the Parking Justification, which stipulated that counts needed to be done on three consecutive weekdays and Saturday, with four counts at different times each day. He estimated that it took him one hour to count all of the vacant parking spaces.
 - b) He never has trouble finding a parking space on the site.
 - c) Hours of operation of the proposed development will be Tuesday and Thursday, 11:00 a.m. to 10:00 p.m. and Friday and Saturday, 11:00 a.m. to 11:00 p.m.
 - d) The hours of operation were intentionally reduced in order to prevent the perception of being a Bar and the negative connotations that come along with that.
 - e) Their business will be family oriented and children can attend with their parents.
 - f) Their hours of operation align with the hours of operation of an existing restaurant in the same complex that serves beer and wine.
 - g) The kitchen is in the middle of the brewery separated by a fire retaining wall. Customers will only enter through the front door. The rear entrance is only for staff use and deliveries.
 - h) Customer parking will be located in the front of the building and staff parking will be at the rear.
 - i) There is one bus stop located on Parsons Road and another on Ellwood Drive.
 - j) Fifty patrons does not equate to 50 vehicles because many patrons will share a vehicle when they come.
 - k) They have complied with all of the requirements of the AGLC, including providing a food menu that caters to all generations.
 - l) The Church is separated from the Site by green space and a parking lot at the rear of the building. Customers do not use the rear entrance and the hours of operation do not overlap.
 - m) In his opinion this business plan is similar to a Starbucks but for craft beer. Customers will come to enjoy the flavor of beer in the company of friends and family.
 - n) This is not a sports bar with multiple televisions and there will be no entertainment.

- o) Mr. Boutin lives in the area and he chose this Site specifically because it is located close to the neighbourhoods of Ellerslie and Summerside.
- p) It was his estimation that customers will not stay longer than an hour and a half.

iv) Position of Mr. C. Kopp, owner of the Condo Unit in Support of the Respondent:

- [63] There are a number of adult only businesses operating in this complex, including gyms, a tattoo parlor and several restaurants that serve alcohol.
- [64] The Appellant's wish to have only child friendly businesses in this area severely restricts his ability to lease his space.
- [65] The parking problems referred to by the Appellant have been addressed by the condo board and, in his opinion, they have been resolved for the most part.
- [66] It was his opinion that the Appellant's business is located more than 40 feet away from the subject Site.
- [67] Any business that moves into this space will require parking and a parking variance.

v) Rebuttal of the Appellant

- [68] The Development Officer did not find any record of parking complaints because such complaints are made to the condo board not the City of Edmonton.
- [69] Restaurants that serve alcohol are much different than a brewery that produces, serves and sells alcohol. The proposed business cannot be compared to a Boston Pizza because they do not produce and allow offsite sales.
- [70] Only one business owner who signed the petition of support is a member of the condo board.
- [71] There are businesses that offer adult only services in the area but they do not offer products that will impair customers when they leave.
- [72] He disagreed with Mr. Kopp that the parking issue on this Site has been resolved.
- [73] He would appeal the issuance of a development permit for any use of this Site that would significantly impact the parking issues for this complex.

Decision

- [74] The appeal is **DENIED** and the decision of the Development Officer is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority.

Reasons for Decision

- [75] The proposed development is located in Parsons Centre, which consists of three buildings containing commercial condominium units, which are owned by or leased to various businesses. The proposed development is a craft brewery that will have 82.9 square metres of public space, which will be used as a Bar and Neighbourhood Pub.
- [76] The brewery is a General Industrial Use, which is a Permitted Use in the EIB Ellerslie Industrial Business Zone. Bars and Neighbourhood Pubs, not to exceed 200 occupants nor 240 square metres of Public Space, if adjacent to or across a Lane from a Site zoned residential, is a Discretionary Use in this Zone.
- [77] The Appellant is a tenant in the condo complex who operates a music school that provides programming for children between five and 14 years old. The Appellant also represented the operator of an art school, located in a unit immediately adjacent to the proposed development, as well as the Ellerslie Community League, who both shared the same concerns regarding the proposed development.
- [78] The primary objection to the proposed development is that it will produce and serve alcohol onsite, which the Appellant felt would have a negative impact on existing businesses, particularly those that catered to children and families. The Appellant was of the view that, because a Bar and Neighbourhood Pub is a Discretionary Use, the Board should exercise its discretion not to allow one on this Site because it was not reasonably compatible with neighbouring development.
- [79] The Appellant was concerned that the presence of a Bar and Neighbourhood Pub would create a negative impression on parents bringing their children to the music school and arts school in the complex, as well on other family friendly businesses nearby. He was concerned that children might be exposed to intoxicated individuals and people smoking outside the Bar. He felt there could be safety issues caused by intoxicated drivers. He felt the proposed Bar and Neighbourhood Pub was fundamentally different from a licensed restaurant because alcohol would be manufactured onsite in the brewery and the business model promoted greater alcohol consumption than a licensed restaurant would. He was also concerned about odours emanating from the brewery and how this could affect allergy sufferers. Although no one appeared representing the nearby church, he expressed concerns on its behalf as well.
- [80] The Board does not share the Appellant's concerns. Based on the evidence provided and a review of the submitted plans, the Board is of the opinion that there will not be a significant difference between the proposed Bar and Neighbourhood Pub and the licensed restaurants in the immediate area.
- [81] The Board notes that there are no locational criteria in the *Edmonton Zoning Bylaw* regarding the placement of Bars and Neighbourhood Pubs relative to other developments such as schools.

- [82] The proposed development will have reduced business hours, which will prevent patrons from staying late. It will be licensed to hold a maximum of 50 patrons, which can include children. The proposed business model promotes a family friendly environment that will target the surrounding residential neighbourhoods. The proposed location is not typical for a bar or nightclub where customers attend specifically to drink alcohol. The Board is of the view that, while it may be more likely that patrons of the proposed development will consume some alcohol as opposed to the patrons of a licensed restaurant, there is no significant increased risk that they will be drunk or disorderly. Bars and Pubs are heavily regulated businesses and the Board is confident that any problems caused by the patrons of the proposed development will be dealt by the authorities.
- [83] Further, although some people may have a negative opinion of a brewery with an attached Bar and Neighbourhood Pub, most will not. This is demonstrated by the attitudes of the owners and tenants in the condo complex. Although two of the tenants in the complex, including the Appellant, are opposed to the proposed development, eight of the 32 unit owners or their tenants support it and the remainder took no position.
- [84] As for the Appellant's concerns about potential offensive odours emanating from the brewery, the Board notes that the brewery portion of the proposed development is a General Industrial Use, which is a Permitted Use in this Zone without any variances, which means the Board does not have the authority to deny the development permit dealing with this portion of the proposed development (Section 685(3) *Edmonton Zoning Bylaw*). In any event, the Board accepts the Respondent's evidence that the odours produced by the brewery will not be significantly different in character than those produced by a bakery. Any nuisance created by the brewery can be dealt by development compliance officers.
- [85] With respect to the Appellant's concerns about the effects of the proposed development on the nearby church, the Board notes that the church is located at the back of the proposed development and is separated from it by a green space and parking lot. It is unlikely that there will be much interaction between the patrons of these establishments. Accordingly, the Board finds that the proposed development will not have a significant impact on the church or its patrons.
- [86] The only variance required for the proposed Bar and Neighbourhood Pub is a deficiency in the total required number of parking stalls. When this Development Permit was approved, the total number of parking stalls required for the overall Site, with the proposed development included, was 239 stalls. There are only 180 parking stalls onsite, meaning a total variance of 59 parking spaces was necessary. After reviewing the parking justification study, Transportation Services supported the proposed development with the required variance.

- [87] The parking justification study demonstrated that at the busiest time of the busiest day, 65 parking spaces were available. Notwithstanding the Appellant's concerns that the study, which was conducted by the Respondent, may not be accurate, the Board is satisfied that it provides a valid indication that the increased parking demand created by the proposed development can be accommodated by available parking.
- [88] Further, the Development Officer advised that, subsequent to granting the permit for the proposed development, a change in use at another unit in the complex resulted in a total parking requirement reduction of 19 parking spaces. Therefore, the overall onsite parking requirement was reduced to 220 spaces. Accordingly, the required parking variance for the proposed development is now only 40 parking spaces rather than 59.
- [89] For all of the above reasons, the Board is of the opinion that the proposed development is reasonably compatible with surrounding uses and will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

A handwritten signature in blue ink, appearing to read 'M. Young', with a large, sweeping flourish at the end.

Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Ms. P. Jones, Ms. G. Harris, Mr. A. Peterson

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 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.