

Edmonton Subdivision and Development Appeal Board

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-496-8175
Email: sdab@edmonton.ca
Web: www.edmontontribunals.ca

DATE: February 20, 2015
PROJECT NO.: 89958187-003
FILE NO.: SDAB-D-15-025

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This appeal dated January 7, 2015, from the decision of the Development Authority for permission to:

Relocate a Minor Impact Utility Service (relocate City Park and Ride facility for Century Park LRT Station)

on Lot 5A, Block 32, Plan 0022925, located at 2423 - 111 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on February 5, 2015. The decision of the Board was as follows:

SUMMARY OF HEARING:

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

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

The Board heard an appeal of the decision of the Development Authority to approve an application to relocate a Minor Impact Utility Service (relocate City Park and Ride facility for Century Park LRT Station) with a variance granted in the landscaping requirement such that it is deferred to a future development permit and subject to conditions, located at 2423 – 111 Street NW. The subject site is zoned DC2.846 Site Specific Development Control Provision.

The approved development permit application was subsequently appealed by an adjacent property owner.

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

- A submission from the Development Officer received January 29, 2015.

SUMMARY OF HEARING (CONTINUED):

- A Memorandum from City of Edmonton Transportation Services to the Board.

At the beginning of the hearing, the Board noted that the Appellant, Ms. S. Tsingotis, was not present. Board staff telephoned the Appellant, and she advised that she would not be attending today. She did not ask for an adjournment. The records showed that the notice of the hearing had been sent to her current address.

The Board heard from Mr. I. Welch, City of Edmonton Sustainable Development Department, who was asked to respond to the Appellant's concerns listed as reasons for appeal. He provided the following information to the Board:

1. With respect to Ms. Tsingotis' concern about noise from the proposed parking lot and the fact that Park and Ride draws a strange crowd, Mr. Welch stated there is no objective evidence that a safety concern would be created as a result of a temporary parking lot.
2. There is no evidence that a temporary parking lot would have an impact on property values.
3. Mr. Welch felt that the parking lot layout would minimize the impact of noise or light from vehicles on adjacent properties.
4. He noted that the Appellant did not address whether the Development Authority followed the directions of council with respect to the Direct Control District in her filed reasons for appeal.
5. He noted that with temporary developments like the one being proposed, it is a practical difficulty to explicitly follow all the directions of council but he felt that it had been done in this case.

Mr. Welch provided the following responses to questions from the Board.

1. The development permit is temporary in nature and expires in 2020.
2. The City holds a lease on the property and will be required to leave the property in 2020. Additional construction on the site is anticipated at that time.
3. The Appellant's condominium building is located further from the proposed parking lot than the existing parking lot. As well, she is situated on the fourth floor, which would not likely be impacted from any noise or light.
4. Regarding Section 4.3(1)(j) of the Direct Control Bylaw requiring walking routes to be marked within a Park and Ride facility, City of Edmonton Transportation Services is of the view that the requirement has ultimately been met with the proposed development.

SUMMARY OF HEARING (CONTINUED):

5. Landscaping has not been provided with the current Park and Ride parking lot as temporary permits are typically for no more than five years, which makes it difficult to provide adequate landscaping.
6. He noted that there is no landscaping provided in the existing parking lot.

DECISION:

That the appeal be DENIED and the decision of approval by the Development Authority CONFIRMED with a variance granted in the landscaping requirement as per Sections DC2.846.5(s) 55.4, and 55.8:

- The additional landscaping required for the subject property shall be deferred to a future Development Permit.

The approval is subject to the following conditions:

1. This Development Permit is NOT valid until the Notification Period expires in accordance to Section 21.1. (Reference Section 17.1).
2. The applicant or landowner shall pay the Notification Fee of \$100.
3. Exterior lighting shall be developed to provide a safe lit environment in accordance with Sections 51 and 58 and to the satisfaction of the Development Officer.
4. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51 of the Edmonton Zoning Bylaw 12800).
5. The applicant shall place barricades at the entrance of the westbound entrance at 109 Street to prevent vehicles from entering the site at this location. "No Entrance" signage must also be installed to indicate that this access must operate as an exit only.
6. Any sidewalk or 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 sidewalks and 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.

DECISION (CONTINUED):

7. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at: http://www.edmonton.ca/bylaws/licences/licences_permits/oscam-permit-request.aspx.
8. This permit shall expire on June 30, 2020. The development must be removed from the site by this date.

NOTES:

1. 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.
2. The Development Permit shall not be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled; and no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in subsection 21.1 (Ref. Section 17.1).
3. Signs require separate Development Applications.
4. 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.
5. A Building Permit is Required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.
6. This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.

REASONS FOR DECISION:

The Board finds the following:

1. Section 641(4)(b) of the *Municipal Government Act* states that if a decision with respect to a development permit application in respect of a direct control district is made by a Development Authority, the appeal is limited to whether the Development Authority is following the directions of council, and if the Subdivision and Development Appeal Board finds that the Development Authority did not follow the directions it may, in accordance with the direction, substitute its decision for the Development Authority's decision.
2. The Board finds the Development Authority followed the directions of Council for the following reasons:
 - a) Minor Impact Utility Services is a listed use in the DC2.846 District, Section DC2.846.3.
 - b) The Board finds that the variance for landscaping is appropriate since the development is temporary and the Board accepts that it would be a practical difficulty to develop landscaping for a temporary use. The Board notes there is no landscaping on the current Minor Impact Utility Service on site.
 - c) The Appellant's reasons for appeal indicates concerns with noise, strangers and property values but the Appellant did not attend the hearing and did not provide the Board with any concrete evidence to support her concerns or address whether the Development Authority followed the directions of council.
 - d) The Board accepts that the Appellant resides some distance away from the proposed development and would not be impacted by light or noise. Also, the current Minor Impact Utility Service on the site is in closer proximity to the Appellant than the proposed development.
 - e) The purpose of the DC2.846 District is to accommodate the comprehensive redevelopment of a former district shopping centre site into a mixed-use urban village with primarily residential uses complimented by commercial uses, in a pedestrian-friendly environment that supports higher intensity Transit Oriented Development at transit hubs.
3. The Board is satisfied that the Development Authority followed the directions of council.
4. As well, the Board is satisfied that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

IMPORTANT INFORMATION FOR 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. 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.
3. A Development Permit shall expire and shall no longer be valid after one year from the date of approval of the Permit, if no construction has been initiated. However, if the permit holder is unable to proceed pending a court decision involving the proposed development, time shall not run until such proceedings are finally completed. For further information, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.
4. Notwithstanding clause (3) above, if a Building Permit is issued for the development within the twelve month period, the Development Permit issued therefore shall not lapse unless and until the Building Permit so issued is cancelled or allowed to lapse by virtue of work not having commenced within the statutory minimum period.
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, R.S.A. 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.

Ms. D. Poon Phillips, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

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DATE: February 20, 2015
PROJECT NO.: 151219046-001
FILE NO.: SDAB-D-15-026

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This appeal dated January 5, 2015, from the decision of the Development Authority for permission to:

operate a Major Home Based Business (administration office and equipment storage for landscaping services)

On Plan 5718AE, Block 29, Lot 26, located at 10909 - 73 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on February 5, 2015. The decision of the Board was as follows:

SUMMARY OF HEARING:

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

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

The Board heard an appeal of the decision of the Development Authority to approve an application to operate a Major Home Based Business (administration office and equipment storage for landscaping services), subject to conditions, located at 10909 – 73 Avenue NW. The subject site is zoned RA7 Low Rise Apartment Zone and is within the Medium Scale Residential Infill Overlay.

The approved development permit application was subsequently appealed by an adjacent property owner.

Prior to the hearing the Board received one letter in support of the development from the owner of the subject Site, a copy of which is on file.

The Board heard from Mr. R. Pagacz, the Appellant who provided the following information in support of the appeal:

SUMMARY OF HEARING (CONTINUED):

1. Mr. Pagacz is the owner of two neighbouring properties, directly behind the subject site.
2. His concerns center on equipment storage and activities that may occur on the property that have not been specified on the application.
3. There is only rear access to the garage so all equipment and vehicles must travel down the alley.
4. He noted that there is no street parking for his properties; therefore, the occupants must use the alley daily. Business-associated activities would result in the alley being blocked several times a day.
5. The rear driveway for the subject site has a 12-foot by 15-foot apron and a City easement. He is concerned that this space is not large enough for loading and unloading a trailer and truck.
6. He is the owner of a similar type of business so is familiar with equipment associated with a landscaping. In his view, all equipment associated with this business will require regular servicing and repairs which will occur at the residence outside of regular business hours. This would involve excessive noise, fumes, and risks due to disposal of associated waste materials.
7. He was concerned with the conditions attached to this permit and questioned whether it was a Major or Minor Home Based business.
8. He noted one condition requires all parking to be on site and in his view, there is no space for a trailer. He is unaware of the size of the garage and is concerned the trailer would be parked on the existing back driveway. Maneuvering it will necessitate encroachment onto neighbouring properties.

The Board then heard from Mr. P. Belzile, Development Officer, representing the City of Edmonton, Sustainable Development Department who provided the following responses to questions:

1. He indicated the conditions he placed on this permit applicable to a Minor Home Based Business should be replaced with the conditions more applicable to a Major Home Based business as follows:
 - a) Condition 1 should be revised to refer to a Major Home Based Business rather than a Minor Home Based Business and should reference Section 75.2 of the *Edmonton Zoning Bylaw*.
 - b) Condition 2 should be replaced based on the wording of Section 75.1 of the *Edmonton Zoning Bylaw*.
 - c) Condition 3 is to be replaced by section 75.5 of the *Edmonton Zoning Bylaw* which would allow for storage of materials and equipment inside a dwelling or accessory building.
 - d) Condition 4 should be removed.

SUMMARY OF HEARING (CONTINUED):

- e) He would add a condition requiring the storage of the trailer associated with the Major Home Based Business to be within the accessory building.
2. He could not provide the Board with an accurate dimension of the driveway or garage although he understands it is a double garage.
3. It was his opinion that a trailer associated with the business is considered equipment, as per Section 75.5 of the *Edmonton Zoning Bylaw*.
4. The letter of support received from the property owner of the subject site stated that the trailer would be stored on the driveway. He would refuse the application for a Home Based Business if the trailer were to be stored on the driveway.

Ms. J. Youill, a neighbouring property owner, provided the following information to the Board:

1. She indicated her only concern is parking. Last summer, a large black truck and trailer were parked at the site.
2. Parking is congested due to the close proximity of businesses and townhouses.
3. She has personally lived at the subject site, and believes there is ample space for a truck and a six-foot trailer to be parked in the garage. If that was the case, she would not object to the development.
4. She also believes there is enough space to back a trailer into the garage and disconnect it from the truck without blocking the alley.

The Board then heard from Ms. M. Hamilton, the Respondent, who provided the following information to the Board:

1. She indicated no servicing of equipment is done on site as she receives free servicing off-site at a commercial location owned by a relative.
2. The trailer associated with the business is a ten-foot aluminum trailer which is not loaded and unloaded daily.
3. She provided an inventory of her summer and winter landscaping equipment. The summer equipment is loaded on the trailer which is parked in the garage. The winter equipment is stored in the truck bed and also parked in the garage.
4. She notes she is a very skilled driver and backs the tractor/trailer combination up the alley, directly into the garage and unhitches it while the truck is completely on the driveway.
5. The trailer is on a wheel jack and is easily maneuverable completely on site.

SUMMARY OF HEARING (CONTINUED):

6. There is no outdoor storage of any business related equipment.
7. Ms. Hamilton showed a series of photographs on her tablet illustrating that there is ample room for the truck, trailer and associated equipment within the garage. The Board requested that these photographs be provided for the file.
8. She did note that on one occasion, she rented a larger trailer over a single night but that occurrence was not related to her business.
9. There is no equipment on site in excess of what a normal residence would have.
10. She leaves with the truck and trailer at the beginning of each work day and does not return until the end of day. There are no business-associated visits at any time during the day.

Ms. M. Hamilton provided the following responses to questions.

1. The trailer is always parked in the garage as this allows it to be left loaded and prevents it from being stolen.

In rebuttal, Mr. R. Pagacz made the following points:

1. He confirmed that his major concern is storage of equipment and access for the tenants of his properties.
2. He is concerned that in the future, a larger trailer may be associated with this business which would result in blockage of the alley.
3. He confirmed that he had not communicated with the Respondent prior to this hearing.

DECISION:

That the appeal be DENIED and the decision of approval by the Development Authority CONFIRMED with the following conditions:

1. This approval is for a 5 year period ONLY from the date of this decision. A new Development Permit must be applied for to continue to operate the business from this location.
2. There shall be no exterior display or advertisement other than an identification plaque or Sign a maximum of 20 centimetres by 30.5 centimetres in size located on the Dwelling;

DECISION (CONTINUED):

3. There shall be no mechanical or electrical equipment used that creates external noise, or visible and audible interference with home electronics equipment in adjacent Dwellings;
4. 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;
5. The number of non-resident employees or business partners working on-site shall not exceed two at any one time;
6. There shall be no outdoor business activity, or outdoor storage of material or equipment (including trailers) associated with the business. Indoor storage related to the business activity shall be allowed in either the Dwelling or Accessory buildings;
7. The Major Home Based Business shall not change the principal character or external appearance of the Dwelling or Accessory buildings;

A Major Home Based Business shall not be allowed within the same principal Dwelling containing a Secondary Suite or within the same Site containing a Garage Suite or a Garden Suite and an associated principal Dwelling, unless the Home Based Business is a Bed and Breakfast Operation and the Secondary Suite or the Garage Suite or the Garden Suite is an integral part of the Bed and Breakfast Operation.

REASONS FOR DECISION:

The Board finds the following:

1. A Major Home Based Business is a Discretionary Use in the RA7 Low Rise Apartment Zone.
2. The Board finds that the proposed Major Home Based Business is reasonably compatible for the neighbourhood since it complies with all the regulations in Section 75 of the *Edmonton Zoning Bylaw*.
3. The Board accepts that all equipment, including a trailer, will be stored in the Accessory building and the conditions imposed ensure that there will be no outdoor storage of equipment on site.
4. The Board accepts that equipment associated with the business will not be serviced on site.
5. Based on the above, it is the opinion of the Board, that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

IMPORTANT INFORMATION FOR 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. 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.
3. For further information regarding the expiry of a development permit for failure to commence business operations within one year, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.
4. 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*, R.S.A. 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.
5. 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.

Ms. D. Poon Phillips, Presiding Officer
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DATE: February 20, 2015
PROJECT NO.: 165989900-001
FILE NO.: SDAB-D-15-027

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This appeal dated January 6, 2015, from the decision of the Development Authority for permission to:

develop a temporary Accessory parking lot, Accessory to existing adjacent Commercial Use properties (Expires 60 calendar days after 102 Avenue NW between 125 Street NW and Connaught Drive NW is restored and reopened to the General Public)

On Plan 2604AM, Block 31, Lot 3, located at 12428 - Stony Plain Road NW and Plan 2604AM, Block 31, Lot 4, located at 12432 - Stony Plain Road NW, was heard by the Subdivision and Development Appeal Board at its hearing held on February 5, 2015. The decision of the Board was as follows:

SUMMARY OF HEARING:

At the outset of the appeal hearing, Mr. M. Young, Board Member, disclosed he had previously worked for the City of Edmonton's Law Department. The Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

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

The Board heard an appeal of the decision of the Development Authority to approve an application to develop a temporary Accessory parking lot, Accessory to existing adjacent Commercial Use properties located at 12428 and 12432 – Stony Plain Road NW (Expires 60 calendar days after 102 Avenue NW between 125 Street NW and Connaught Drive NW is restored and reopened to the General Public). The subject site is zoned RA7 Low Rise Apartment Zone and is within the Mature Neighbourhood Overlay. The development permit was approved with conditions with a variance granted to allow for Accessory parking to the non-residential uses along Stony Plain Road to be temporarily located within 120 metres of the subject properties, on which non-residential uses are neither permitted nor discretionary on the subject properties to be used for additional parking. The permit was subsequently appealed by tenants of nearby properties.

SUMMARY OF HEARING (CONTINUED):

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

- A presentation from Transportation Services; and
- A submission from the Development Officer.

The Board heard from Ms. S. Proudlock, Appellant, owner and operator of The Tea Girl, a neighbouring business, who provided the following information in support of the appeal. She is also the Vice-Chair of the 124 Street Business Association. Ms. S. Proudlock provided the following information to the Board:

1. She was concerned about the safety of pedestrians crossing Stony Plain Road at 125 Street. She acknowledged there is a controlled crossing at 124 Street, but people frequently do not use it.
2. In her opinion, the proposed development will create safety concerns for vehicles on Stony Plain Road as both eastbound and westbound traffic will have to decelerate for vehicles turning onto the site. Traffic congestion is a problem.
3. The decision of Transportation Services to temporarily relocate parking from Stony Plain Road to the proposed development is not based on traffic studies conducted after the 102 Avenue closure and do not reflect the effect on Stony Plain Road. The 124 Street Business Association was not consulted in the decision.
4. In her opinion, the removal of the parking meters along the south side of Stony Plain Road would adversely affect her business. It is a temporary solution and money is not being spent wisely.

The Board then heard from Ms. K. Bishop, Chair of the 124 Street Business Association and a neighbouring Business Owner who provided the following information to the Board:

1. In her opinion, the proposed development does not address the chronic parking problem on 124 Street.
2. She characterized the proposed development as a band-aid solution. She wanted a strategy in place to address the serious parking issues of 124 Street.
3. In her opinion, vehicles parked on the south side of Stony Plain Road serve as a buffer between pedestrians and traffic. The removal of the parking meters would eliminate this buffer.
4. She further noted that the 124 Street Business Association had not receive notice of the proposed development.

SUMMARY OF HEARING (CONTINUED):

Mr. G. Cuff spoke in support of the appeal. He is not an area business owner and does not own property in the area, but he is familiar with the area. He provided the following responses to questions.

1. He was concerned that the proposed parking lot hours of 9:00 a.m. to 6:00 p.m. would further decrease availability of parking in the area.
2. He personally had not seen the pedestrian counters and questioned how recently these traffic counts had been taken.
3. He confirmed the need for an overhead crosswalk light to protect pedestrians should the proposed development proceed.

The Board then heard from Mr. A. Wen representing the City of Edmonton, Sustainable Development Department.

1. He reviewed the contents of his written submission which had been provided to the Board in advance of the hearing.
2. He had determined that the proposed Use did not fall into any Use Class within the *Edmonton Zoning Bylaw*. Hence, he applied Section 7.1.(3)(b) and deemed the Use to be Accessory parking as it was the most appropriate in character and purpose to the proposed development.
3. His rationale for granting a variance to Section 54.2(2)(d)(i) of the *Edmonton Zoning Bylaw* is to reduce any hardship on adjacent properties imposed by the removal of parking meters.
4. His main concern was traffic congestion on Stony Plain Road.
5. He felt the variance was appropriate given that Transportation Services did not object and had no concerns regarding safety.

Mr. A. Wen provided the following responses to questions:

1. In his view, the RA7 Low Rise Apartment Zone did allow for the site to be used as Accessory parking pursuant to clause 54.2(2)(d)(i), which allows for Accessory parking spaces for non-residential uses to be located on another site.
2. Regarding the issue of notification, he indicated that the requirements of the *Edmonton Zoning Bylaw* were to notify property owners and community leagues and those regulations had been complied with.
3. The removal of parking meters along the south side of Stony Plain Road was not within the jurisdiction of the Sustainable Development Department to decide and is an unrelated matter.

SUMMARY OF HEARING (CONTINUED):

4. In his opinion, the proposed development does not fall within the scope of the Use Class definition for Non-accessory Parking pursuant to Section 7.4(39) of the *Edmonton Zoning Bylaw*.
5. He stated that any Development Officer must look at the intent of a Use; the proposed development is not for a commercial purpose, but is for a municipal purpose to support infrastructure and traffic flow.
6. He indicated that when reviewing a Use Class, one needed to review the reasons for the development. The Transportation Services had provided ample reasons and the people using the proposed parking lot are clients of the businesses making the lot Accessory to those businesses.
7. When asked by the Appellant why the businesses were not consulted, he indicated that the Sustainable Development Department did not have access to all of the information needed to contact tenants of properties.
8. The issue of removing the parking meters on the south side of Stony Plain Road was related to minimizing the impact of increased traffic due to the closure of 102 Avenue but he acknowledged that traffic congestion is not related to zoning.
9. He acknowledged that addressing parking meters is not within the Board's jurisdiction, but he noted that Section 210 of the *Edmonton Zoning Bylaw* does provide for Accessory parking.
10. He acknowledged that the Board does not have the power to vary Use.
11. In response to questions as to whether the Sustainable Development Department would have responded differently to a request from the Appellant to use the subject site for Accessory parking, he would have ruled that being zoned RA7, the use is neither permitted nor discretionary.
12. He declined to answer if this application would be denied if it had been made by any other third party and comprise of Non-accessory Parking, which is neither permitted nor discretionary in the RA7 zone.
13. The permit was a compromise to provide parking for local businesses.

The Board then heard from Mr. B. Maslo and Mr. B. Murphy, representing the Respondent, City of Edmonton Transportation Services who provided the following information to the Board:

SUMMARY OF HEARING (CONTINUED):

1. Mr. Maslo reviewed the written submission which had been provided to the Board in advance of the hearing.
2. He noted that the current meters on the south side of Stony Plain Road are not useable in peak hours from 6:00 a.m. to 9:00 a.m. and 3:30 p.m. to 6:30 p.m., Monday to Friday.
3. He indicated that Transportation Services has considered the viability of parking meters on Stony Plain Road and the movement of traffic without the parking meters as a result of increased traffic generated by the 102 Avenue closure.
4. It is the opinion of Transportation Services that the proposed development is an alternative to the displacement of on-street parking and a good compromise to a difficult situation. Under this proposal, eighteen meters would be removed and replaced with fifteen parking spaces.
5. Transportation Services has the authority to remove the parking meters under the Traffic Bylaw, Bylaw 5590.

Mr. B. Maslo provided the following responses to questions.

1. He acknowledged that the parking meters could be removed regardless of the Board's decision on the current application.
2. The proposed parking lot would be open to anyone between the operating hours of 9:00 a.m. to 6:00 p.m., Monday to Friday, and at no cost to anyone outside of those hours.
3. He acknowledged that the pictures provided in the written submission taken outside of peak hours did not indicate chronic congestion problems on Stony Plain Road or many customers using the meters.
4. It is the opinion of Transportation Services that the existence of those meters at times reduced eastbound Stony Plain Road to a single lane arterial road and is not acceptable given the closure of 102 Avenue which resulted in another arterial road being lost.
5. He conceded that the proposed parking lot will be available to anyone and is not for any particular development or business and therefore is probably classified as Non-accessory Parking as per Section 7.4(39) of the *Edmonton Zoning Bylaw*.
6. It was Transportation Services' intention to provide off-street parking to offset the removal of meters from the south side of Stony Plain Road. Several alternatives had been considered which resulted in the current proposal before the Board.
7. He indicated that the proposed surface parking lot would be closed and rehabilitated within 60 days following the re-opening of the 102 Avenue over Groat Road Bridge, which he anticipates will take place in the fall of 2015.

SUMMARY OF HEARING (CONTINUED):

Mr. K. Karunaratne, Senior Engineer with City of Edmonton Transportation Services, provided the following information:

1. He confirmed pedestrian count is conducted on a complaint basis; otherwise, traffic counts are usually carried out in the spring and fall.

Mr. A. Jabs, City of Edmonton Parking Enforcement, answered questions from the Board in relation to parking.

1. There are officers in the subject area to enforce parking regularly.
2. He confirmed that parking is a problem in this area.

In rebuttal, Ms. S. Proudlock provided the following information.

1. She believes Transportation Services needs to talk to the people most affected by the removal of parking meters and explore all possible solutions. Both an up-to-date study and community consultation are necessary.
2. In her opinion, the traffic on Stony Plain Road is not as serious a problem as that characterized by Transportation Services and is evident from the pictures submitted.
3. She indicated that she was aware of the implications if the appeal is allowed.

DECISION:

That the Appeal be ALLOWED and the decision of approval by the Development Officer be OVERTURNED.

REASONS FOR DECISION:

The Board finds the following:

1. The Board accepts the reasoning for the application by the City of Edmonton Transportation Services to provide replacement parking to assist businesses on Stony Plain Road.
2. The Board disagrees with the Development Authority's classification of the Use of the proposed development as Accessory parking.
3. The Board finds that the Development is best classified as Non-accessory Parking in accordance with Section 7.4(39) since the proposed parking is not primarily intended for the use of the residents, employees or clients of a particular development. Any member of the public can park in the proposed development at any time and for any purpose.

REASONS FOR DECISION (CONTINUED):

4. Non-accessory Parking is neither a permitted nor a discretionary use in the RA7 Low Rise Apartment Zone.
5. The Board has no authority to vary the definition of a Use as per Section 687(3)(d)(ii) of the *Municipal Government Act*.

IMPORTANT INFORMATION FOR 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, R.S.A. 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.

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SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

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**Edmonton Subdivision and
Development Appeal Board**

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-496-8175
Email: sdab@edmonton.ca
Web: www.edmontontribunals.ca

DATE: February 20, 2015
PROJECT NO.: 160316895-001
FILE NO.: SDAB-D-15-028

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This appeal dated January 14, 2015, from the decision of the Development Authority for permission to:

operate a Major Home Based Business (administrative office for general contractor with storage in Accessory Building)

On Plan 4136RS, Block 44, Lot 45, located at 8704 - 150 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on February 5, 2015. The decision of the Board was as follows:

SUMMARY OF HEARING:

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

The Presiding Officer first addressed the issue of jurisdiction and whether the appeal was filed outside of the allowable 14 day appeal period, pursuant to the requirements of the Municipal Government Act.

At the request of the property owner, the Development Permit was cancelled on December 23, 2014. The Appellants advise that they were notified of this cancellation by the Development Officer via e-mail on January 13, 2015, which was followed up by a telephone call within a day of this e-mail. Jacquie and Dallas Hoover filed their appeal on January 14, 2015, the day after receiving notification of the cancellation. The Development Authority confirmed these facts.

MOTION:

That the Board assume jurisdiction pursuant to Section 686(1) of the Municipal Government Act.

REASON FOR DECISION:

The Board finds the following:

1. Based on the evidence provided, the Board applied the provisions of Section 686(1)(a)(i) of the *Municipal Government Act*, and therefore finds that the appeal was filed within the allowable 14 days.

SUMMARY OF HEARING (CONTINUED):

The Board heard an appeal of the decision of the Development Authority to operate a Major Home Based Business (administrative office for a general contractor with storage in an Accessory Building) located at 8704 - 150 Avenue NW. The subject site is zoned RF1 Single Family Residential Zone and is within the Mature Neighbourhood Overlay. The development permit was approved and subsequently cancelled at the request of the property owner.

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

- A submission from the Development Officer; and
- An e-mail from a neighbouring property owner in opposition to the proposed development.

The Board heard from Ms. J. Locke of Hansma Bristow Finlay LLP, representing the Appellants, Dallas and Jacquie Hoover, who provided the following information to the Board:

1. The Appellants have operated a general contracting home based business (J & D Residential) for approximately 3 years.
2. A business licence was required to legally operate in the City of Edmonton.
3. The home based business does not comprise of work conducted at the residence nor client visits; and involves storage of tools, vehicles and invoicing on the premise.
4. She indicated that the Appellants had a Minor Home Based Business Development Permit; there is no signage on the property and the business operation was not visible to the neighbourhood.
5. The Board was provided with a copy of the Business Licence which expired on September 4, 2014, which was marked as Exhibit "A".

SUMMARY OF HEARING (CONTINUED):

6. The Appellants indicated to the leasing agent for the subject property that the home based business was going to be conducted from the residence when they signed the lease. The leasing agent advised they would require insurance. The Appellants would not have entered into a lease agreement for the property if they were unable to operate a home based business.
7. The Development Officer advised the Appellants that this would be considered a Major Home Based Business due to the storage of tools in the garage as the rules had recently changed regarding the criteria of Major Home Based Businesses.
8. The Appellants were informed by e-mail on November 24, 2014 that their Major Home Based Business Development Permit was approved.
9. The Landowner subsequently requested that this Development Permit be revoked. She provided a copy of an e-mail between the Appellant and the Development Officer indicating that the project was cancelled by the Landowner on December 23, 2014, marked as Exhibit "B". There were no reasonable grounds for this cancellation.
10. The Appellants indicated that because the Development Permit was cancelled, the Business Licence was no longer valid. The Appellant had not received notice that the Development Permit was cancelled.
11. Ms. Locke emphasized the hardship on her clients as this Business Licence and Development Permit are required to earn a living.
12. Ms. Locke referred to Section 17.2(1) of the *Edmonton Zoning Bylaw* which states the Development Officer "may" cancel a Development Permit following its approval if the landowner requests this by way of written notice. She submitted a copy of Section 26 of the *Interpretation Act*, R.S.A. 2000, c. I-8, marked as Exhibit "C" and stated "may" implies permissive and empowering authority. She submitted that this gives the Development Officer the discretion to look behind the Landowner's request to cancel the Development Permit.
13. She referenced Section 11.2(4) of the *Edmonton Zoning Bylaw* which indicates that the Development Officer "shall approve, without conditions, or with such conditions as required to ensure compliance, an application for development of a Permitted Use provided the development complies with the regulations of this Bylaw".
14. She referenced Section 11.3 which refers to Variance to Regulations. She stated that the Board has the authority to decide if the application will be detrimental to the neighbourhood in deciding whether to cancel the permit.

SUMMARY OF HEARING (CONTINUED):

15. It was her opinion that the Development Officer's decision is unreasonable and misinterprets the bylaw, since all criteria for the home based business are met.
16. The Major Home Based Business could become a Minor Home Based Business should that be the wish of the Board.
17. She acknowledged that Section 17.2(1)(e) of the *Edmonton Zoning Bylaw* refers to landowner and not applicant. However, this is an atypical situation in that a tenant is applying for the permit.

Ms. Locke provided the following information in response to questions from the Board:

1. She addressed the letter of opposition received from an adjacent neighbor that indicated that several vehicles are kept on the roadway in front of the neighbouring property and sometimes there is a trailer attached. She clarified there are up to four vehicles parked on the property and the trailer is generally kept off site. Two vehicles are private and two are used for business purposes, and they are sometimes parked in front of the house.
2. She acknowledged that there are different requirements for a business licence as opposed to a development permit.
3. She also acknowledged that there are other forums that may be able to address the problems between the parties.

The Board heard from Mr. D. Hoover, Appellant, who provided the following information in support of the appeal:

1. He further clarified the vehicle allotment and advised the rear parking pad is generally used for parking, but on occasion, the pick-up truck with a trailer is parked out front.

The Board then heard from Ms. K. Mark, representing the Respondent, the City of Edmonton Sustainable Development Department who provided the following information to the Board:

1. She refuted that she advised the Appellants of the right to appeal the classification as a Major Home Based Business within 14 days of the approval.
2. She reviewed the information provided on the Development Permit application and determined it fell into the Major Home Based Business Use Class.
3. No changes to the *Edmonton Zoning Bylaw* applicable to this application occurred during or after the application process.

SUMMARY OF HEARING (CONTINUED):

4. She confirmed that the Development Permit applies to the property and not to the Applicant.
5. The Development Officer indicated an application for a Home Based Business was made by the Appellants and was approved on December 17, 2014. Notices were mailed to landowners within the 60 metres radius as well as to the landowner of the subject site that same day.
6. The landowner requested the cancellation of this Development Permit on December 23, 2014, and the Development Permit was cancelled on January 13, 2015.
7. The Development Officer did not see why the landowner should not have the Development Permit cancelled when he did not consent to that use on his property.
8. The Edmonton Zoning Bylaw supports the right of a landowner to cancel a development permit.
9. In her opinion, where a landowner does not consent to a development permit, he can request a cancellation, even if the Board were to allow the permit.

Ms. Mark provided the following responses to questions.

1. Her practice is to review a request for cancellation to verify that the party making the request is the landowner. The request indicated that the reason for the cancellation request was that the Development Permit application had not been authorized by the landowner.
2. A Development Permit does not belong to applicant but to the property and it is appropriate for a landowner to use their property as they see fit. She cannot see any circumstances why she would not honour the landowner's cancellation request.
3. She did not do a search through the Land Titles Office, but was able to confirm ownership of the property through the City of Edmonton POSSE system.
4. Ms. Mark indicated she would not consider the private dispute of parties in making a decision and would only consider what is specified in the *Edmonton Zoning Bylaw*.

The Board then heard from the landowner, Mr. J. Montalto who provided the following information.

1. He did not provide the authority or agree to allow the Appellants to operate a home based business from the subject Site.
2. He spoke with his property management company who indicated they did not provide any such authorization and authorization was not specified in the lease agreement.

SUMMARY OF HEARING (CONTINUED):

3. He also indicated that on the Development Permit application, it is recommended that the Applicant obtain permission from the landowner prior to submitting the application. The Appellants did not seek this permission.

In rebuttal, Ms. J. Locke made the following points:

1. The original application was for a Minor Home Based Business and that was changed by the Development Officer to a Major Home Based Business.
2. She again asked the Board to consider the duties and discretionary powers contained in Sections 11.2(4), 11.3, 11.4 and 17.2 of the *Edmonton Zoning Bylaw* and stated there was compliance with all regulations of a Major Home Based Business.

DECISION:

That the Appeal be DENIED and the decision of the Development Authority be UPHELD.

REASONS FOR DECISION:

The Board finds the following:

1. A Major Home Based Business is a Discretionary Use in the RF1 Single Detached Residential Zone, Section 110.3(7).
2. Section 17.2(1)(e) of the *Edmonton Zoning Bylaw* states “the Development Officer may cancel a Development Permit following its approval if the landowner requests, by way of written notice to the Development Officer, the cancellation of the Development Permit”.
3. The Board finds the word “may” in the above noted section denotes discretionary power.
4. The Board finds that the Development Officer exercised her discretion lawfully since she considered the landowner’s reason for requesting the cancellation, namely that he did not provide authorization for the application for the development permit.
5. The Development Officer verified that the party requesting the cancellation was indeed the landowner.
6. The Board agrees with the Development Authority that a Development Permit runs with the property and does not belong to an Applicant.

REASONS FOR DECISION CONTINUED:

7. The landowner's lack of consent for the proposed development should be given great weight.
8. The landowner has the right to control the use of their property as they see fit.
9. Therefore, the Board concludes that the Development Permit was appropriately cancelled as per Section 17.2(1)(e) of the *Edmonton Zoning Bylaw*.

IMPORTANT INFORMATION FOR APPLICANT/APPELLANT

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