



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: February 21, 2018
Project Number: 266266065-002
File Number: SDAB-D-18-023

Notice of Decision

- [1] On February 7, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on January 11, 2018. The appeal concerned the decision of the Development Authority, issued on January 11, 2018, to refuse the following development:

Construct exterior alterations to a Single Detached House (Driveway extension, 1.2m x 4.41m)

- [2] The subject property is on Plan 1026029 Blk 1 Lot 259B, located at 5220 - 1A Avenue SW, within the RF4 Semi-Detached Residential Zone. The Charlesworth Neighbourhood Structure Plan and Southeast 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 refused plans;
 - Development Officer’s written submissions dated January 31, 2018;
 - Appellant’s written submissions and supporting materials; and
 - One online response from a neighbouring property owner.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The 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*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, Mr. I. Chaldrey

- [7] The Appellant attended on behalf of the new property owners who had requested an updated Real Property Report as a part of the sale of the subject property.
- [8] Mr. Chaldrey explained that on-street parking is very limited along this block as there are “no parking” signs along the north side of 1A Avenue SW. As the neighbourhood developed, parking spaces became scarcer and people began parking on their lawns. To solve the problem, ten to twelve properties along 1A Avenue SW have constructed similar Driveway extensions, photos of which have been provided to the Board. He does not know if any of these properties have permits. The photos depict extended Driveways of homes both inside and outside the 60 metre notification area.
- [9] The subject Driveway extension was poured to match the original Driveway. Many of the other Driveway extensions in the area are made of cement blocks. No trees or shrubbery were removed to install the extension, and the grass that was removed was dry and not very attractive.
- [10] The subject property has a one car Garage with room for an additional car on the Driveway. The extension allows a vehicle to park on the Driveway without interfering with a vehicle entering and exiting the Garage.
- [11] The Appellant did not consult with neighbours at the time of the appeal; however, the abutting neighbours on both sides expressed no concerns at the time the Driveway was constructed. The neighbor in the linked Semi-detached also started using the Driveway.

Decision

- [12] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority.
- [13] In granting the development, the following VARIANCES to the *Edmonton Zoning Bylaw* are allowed:
1. Section 54.1.4(a) is waived. The subject Driveway extension need not lead directly from the roadway to the Garage.
 2. Section 54.1(4)(b) is varied to permit a Driveway width of 4.85 metres, which presents an excess of 1.2 metres over the allowable maximum width of 3.65 metres.

Reasons for Decision

- [14] The proposed development is for a Driveway extension, which is Accessory to a Semi-detached House, a Permitted Use in the RF4 Zone.
- [15] There were no objections from any of the neighbours with respect to this appeal.
- [16] This Driveway extension will have no impact on street parking because there is no parking allowed in front of the Appellant's house on the north side of 1A Avenue NW.
- [17] The Driveway extension is made of concrete and matches the rest of the existing Driveway.
- [18] The Driveway extension does not eliminate all of the green space in the Front Yard. A substantial green area that is contiguous to the immediately abutting neighbour's lawn to the east assists in breaking the visual impact of the Driveways along this block face, which is characterized by very narrow lots.
- [19] For the above reasons, the Board is of the opinion 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.



Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. K. Cherniawsky; Mr. R. Hichigian; Ms. N. Hack; Mr. R. Hobson

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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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 21, 2018
Project Number: 187765571-001/004/005/007
File Number: SDAB-D-18-024 / 25 / 26 / 27

Notice of Decision

- [1] On February 7, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on January 12, 2018. The appeal concerned four Stop Orders issued by the Development Authority on December 21, 2007, set out as follows:

Order 187765571-004 (SDAB-D-18-024)

Remove the Residential Sales Centre from the property by February 7, 2018 or obtain a Development Permit for the Residential Sales Centre. A complete application must be submitted by February 7, 2018.

Order 187765571-005 (SDAB-D-18-025)

Cease the Apartment/Lodging House Use of the building at 7740 - 101 Avenue NW until the use of the building at 7740 - 101 Avenue NW conforms with an approved Development Permit.

Order 187765571-007 (SDAB-D-18-026)

Obtain a valid Development Permit for the Freestanding Off-premises Sign (Billboard Sign). A complete application must be submitted by February 7, 2018 or remove the Freestanding Off-premises Sign (Billboard Sign) from the Site by February 7, 2018.

Order 187765571-001 (SDAB-D-18-027)

Cease the Apartment/Lodging House Use of the building at 7730 - 101 Avenue NW until the use of the building conforms with an approved Development Permit

- [2] The subject property is on Plan 1221538 Blk 4 Lot 1A, located at 7730 / 7740 - 101 Avenue NW, within the DC2.936 Site Specific Development Control District.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copies of the four Stop Orders;
 - Copies of DC2.807 (Bylaw 15674) and DC2.936 (Bylaw 17799);
 - Appellant’s written submissions and supporting documents; and

- Development Compliance Officer's briefing note, with supporting materials including a PowerPoint presentation.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The Presiding Officer advised the parties that the Board must first determine if the appeal was filed on time. The *Municipal Government Act*, RSA 2000, c M-26 (the "MGA") states the following:
- 686(1)** A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,
- (a) in the case of an appeal made by a person referred to in section 685(1)
- (i) ...
- (ii) with respect to an order under section 645, within 21 days after the date on which the order is made,
- [7] In this case the Order was made on December 21, 2017, which would give the Appellant until January 11, 2018, to file an appeal. The appeal of the four Stop Orders was filed on January 12, 2018.
- [8] However, Section 645(2.1) of the *MGA* states:
- (2.1) A notice referred to in subsection (2) must specify the date on which the order was made, must contain any other information required by the regulations and must be given or sent to the person or persons referred to in subsection (2) on the same day the decision is made.
- [9] According to the information provided to the Board, the Stop Orders were not mailed until December 22, 2017.
- [10] The Appellant stated he was away until December 30, 2017, and when he returned, he exchanged emails with the Development Compliance Officer, seeking an extension of the compliance date for the orders. Copies of these emails were included in his supporting

materials. The last email from the Development Compliance Officer dated January 12, 2018, stated that no extension would be granted. It was suggested that the Appellant should file an appeal with the SDAB as soon as possible, which he did that same day. The Appellant did not dispute the validity of the Orders.

- [11] Ms. K. Lamont, the Development Compliance Officer, confirmed that the four Stop Orders were prepared and issued on December 21, 2017, but were not mailed until December 22, 2017. In her view, the delayed mailing does not affect the validity of the Orders.
- [12] Mr. A. Jabs, a Senior Planner who accompanied Ms. Lamont, confirmed that the Orders were not mailed until December 22, 2018. In his view, the Orders were validly issued and it would be reasonable to use December 22, 2018 as the starting time for the appeal period.

Decision on Preliminary Matter

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

Reasons for Decision

- [14] The issue before the Board is when the appeal period begins to run.
- [15] The four Stop Orders were made on December 21, 2017; however, they were not mailed until December 22, 2017.
- [16] Looking only at section 686(1)(a)(ii) of the *MGA*, it would appear that the Appeal period began to run on the day the Orders were made, that being December 21, 2018. However section 645(2.1) states, among other things, that such Orders must be given or sent to the party on the same day the decision is made.
- [17] Considering these two sections together, the Board is of the view that the legislative intent is that the 21-day appeal period for these types of Orders should begin to run on the date the Order is made, provided the notice is given or sent on the same day the Order is made. In this case, since the notice of the Orders were not sent until the day after the Orders were made, the effect is that the 21-day appeal period did not begin to run until the date the Orders were sent.
- [18] Accordingly the appeal period expired on January 12, 2018, which is the date the appeal was filed. The appeal was therefore filed on time.

Summary of Hearing

i) Position of the Appellant, 1196885 Alberta Ltd.

- [19] The Appellant numbered company was represented by Mr. J. Yeung, who provided some background information regarding the subject site.
- [20] This development was operating as a motel when the Appellant purchased the property in 2005. In October, 2011, the site was re-zoned to allow for a 132 unit condominium development for occupants 55 years old or older, but due to the market downturn, the project never went ahead.
- [21] In 2015, the Appellant applied to have the property re-zoned to allow seniors accommodation consisting of 230 independent living units and 70 assisted living units. This re-zoning was approved on October 24, 2016, through Bylaw 17799 (DC2.936). One of the conditions of DC2.936 required that the principal buildings be demolished within two years. The Appellant was under the impression that the motel operation could continue to exist until the time of demolition.
- [22] Modifications have been made to the buildings, and instead of 18 units there are now 19 suites plus six sleeping units. Mr. Yeung referred the Board to Item “D” of his supporting materials, which show how five suites have been converted into two bedroom units with shared kitchen and bathroom facilities. Each of the two bedrooms is rented out separately. No permits of any kind were obtained for these conversions but an inspection was done by the Fire Department and all of their recommendations were followed. All windows are now properly sized, and fire and smoke alarms have been installed.
- [23] Although the property operates as a motel, one night room rentals are discouraged and the rooms, which are fully furnished, are rented out on a weekly or monthly basis. Occupants do not sign leases but are required to pay a \$250 damage deposit and fill out a registration form when they move in. Mr. Yeung referred the Board to copies of two Registration Cards contained in his materials. Having longer term renters avoids problems with the criminal elements of society.
- [24] Mr. Yeung would like the Board to extend the compliance date of the four Stop Orders for several reasons:
- a) The demolition deadline is only seven months away – October 24, 2018. Rather than applying for development permits, which would likely take several months to process, it would make more sense for the Board to simply extend the compliance date of the four Stop Orders. He does not dispute that Development Permits were never obtained for the current Uses.
 - b) He did not realize until recently that a Demolition Permit would be required and he has now applied for the necessary permit. Demolition will take some time as there may be hazardous materials on site that must be professionally handled.

- c) The Sign and the Residential Sales Centre will be removed at the same time that demolition takes place. The trailer for the Residential Sales Centre is simply being stored on the site and belonged to one of the Appellant's previous projects at a different site. It has been boarded up and is not currently being used. The Sign dates back to the re-zoning and is currently not advertising anything.
- d) As some of the Appellant's tenants have been living at the property for over six months, some as long as 10 years, the *Alberta Residential Tenancies Act* comes into play. Mr. Yeung is required to give these long term tenants three consecutive months' notice to vacate.

[25] It was noted by the Board that the Stop Orders incorrectly referenced DC2.807 as the zoning in place at the Site. DC2.807 approved the re-zoning of the Site in 2007. The DC2 currently in force is DC2.936, which was approved in October 2016. Mr. Yeung confirmed he is aware of the current zoning.

[26] The Board questioned whether the current use of the Site was for a Motel, given the length of time that tenants occupy the units. Section 7.4(38) of the *Edmonton Zoning Bylaw* was referenced:

Motels means development used for the provision of rooms or suites for temporary lodging or light housekeeping, where each room or suite has its own exterior access. Motels may include Accessory food and beverage facilities and Personal Service shops.

[27] The Appellant stated that some of his tenants have stayed for a long period of time because they find the rooms affordable. He cannot tell them they can stay only for a short period of time. He confirmed that no light housekeeping is provided.

ii) *Position of the Development Authority*

[28] Ms. K. Lamont, a Development Compliance Supervisor and Mr. A. Jabs, a Senior Planner, appeared to represent the Development Authority. Ms. Lamont reviewed a PowerPoint presentation she had prepared illustrating the Site context, existing Site conditions and development compliance history.

[29] The subject property is located within the Forest Heights neighbourhood bound by 101 Avenue to the south and the Capilano Ravine to the north and west. The Site consists of several consolidated lots with 101A Avenue bisecting the property.

[30] An overhead illustration of the Site showed the location of the buildings and the Sign that are the subjects of the four Stop Orders:

- | | |
|-----------------------------|---------------------|
| a) Building A (7730) | Order 187765571-001 |
| b) Building B (7740) | Order 187765571-005 |
| c) Residential Sales Centre | Order 187765571-004 |
| d) Freestanding Sign | Order 187765571-007 |

There are also several residential buildings and a detached garage on the Site which are not relevant to these Stop Orders.

Residential Sales Centre

- [31] Section 7.3(9) of the *Edmonton Zoning Bylaw* defines Residential Sales Centre as “a permanent or temporary building or structure used for a limited period of time for the purpose of marketing residential land or buildings.”
- [32] Screen captures of Google Maps historical search results showed this Residential Sales Centre was installed on the site sometime between April 2009 and April 2010. Site inspections undertaken on August 2, 2017, and October 19, 2017, confirmed that this building is still present. Posted on the entrance is also a sign providing hours of operation and contact information. The website referenced on this sign also remains active.
- [33] A review of historical documents and the Development Authority’s database revealed that there is no Development Permit in place that would allow for a Residential Sales Centre to be on the subject site.

Freestanding Sign (Billboard Sign)

- [34] Section 7.9(3) of the *Edmonton Zoning Bylaw* defines Freestanding Off-premises Signs as “any Sign supported independent of a building, displaying Copy that directs attention to a business, activity, product, service or entertainment that cannot be considered as the principal products sold nor a principal business, activity, entertainment or service provided on the premises or Site where the Sign is displayed.”
- [35] A review of historical documents and their database found no Development Permit for the subject Sign.

Building B (7740 – 101 Avenue)

- [36] The most recent Development Permit for this site is No. 4613 dated April 17, 1954, which was to “Erect a proposed ten (10) suite apartment hotel”
- [37] An inspection of this building on January 17, 2017, found a 12 unit (9 Suites and 3 Sleeping Units) Apartment with Lodging House, which is not in compliance with the approved use as a 10 suite Apartment Hotel.

Building A (7730 – 101 Avenue)

- [38] A number of Development Permits were found associated with this building, including:
- a) June 18, 1953: Development Permit No. 3323 “To Develop a project of Two-Eight Suite Apartment Buildings”

- b) August 28, 1963: Permit to Build No. 4514 “Reinforced Concrete” to develop a Swimming Pool.
 - c) April 8, 1971: Development Permit No. 71-712 “Construct an addition to an existing motel in order to develop an office & living quarters”.
 - d) October 12, 1971: Development Permit No. 71-5986 “Construct a fireplace onto an existing motel”.
 - e) March 26, 1981: Development Permit No. 81-2711 and Permit to Build No. 2155 “To repair fire damage to an existing motel”.
- [39] An inspection of this building on January 12, 2017, found a 13 unit (10 Suites and 3 Sleeping units) Apartment with Lodging House which is not in compliance with the approved use for an eight (8) suite motel.
- [40] This property first came to the attention of the Residential Compliance team as a referral from the Project Watch Task Force which aims to ensure safe housing conditions for individuals and families.
- [41] Two further inspections conducted on August 17, 2017, and October 19, 2017, confirmed the following violations:
- a) Large blank billboard sign on the southwest of the property facing 101 Avenue;
 - b) Temporary structure (Residential Sales Centre) located next to the south side of building 7730;
 - c) Building 7730 contains 13 units (10 Suites and 3 Sleeping Units); and
 - d) Building 7740 contains 12 units (9 Suites and 3 Sleeping Units).
- [42] A series of inspection photos was shown depicting the interiors of the three types of units in buildings 7730 and 7740:
- a) Suites with full kitchen and bathroom;
 - b) Sleeping units with kitchenette and wash stand; and
 - c) Room rentals within suites with shared kitchen and bathrooms.
- [43] The following definitions from the current *Edmonton Zoning Bylaw* were referenced:
- 6.1(32) **Dwelling** means a self contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household.
- 6.1(106) **Sleeping Unit** means a Habitable Room in a building used for Congregate Living in which the room is occupied by a person under any form of accommodation agreement providing remuneration for the room, and the room:

- a. does not include provision for cooking or food preparation except as provided for in Section 76 (Lodging House) and 79 (Group Homes and Limited Group Homes) of this Bylaw;
- b. may or may not be equipped with sanitary facilities; and
- c. provides accommodation for a maximum of two persons.

7.2(1) **Apartment Housing** means development consisting of one or more Dwellings contained within a building in which the Dwellings are arranged in any horizontal or vertical configuration, which does not conform to the definition of any other Residential Use.

7.3(1) **Apartment Hotels** means development consisting of Dwellings contained within a building or part of a building having a principal common entrance, in which the Dwellings are not available for daily lease and there are cooking facilities within each Dwelling, the Dwellings are furnished including dishes and linen, and either maid service, telephone service, or desk service is provided. Apartment Hotels shall not contain Commercial Uses, unless such Uses are a Permitted or Discretionary Use in the Zone where the Apartment Hotel is located.

7.4 (38) **Motels** means development used for the provision of rooms or suites for temporary lodging or light housekeeping, where each room or suite has its own exterior access. Motels may include Accessory food and beverage facilities and personal Service Shops.

7.3(6) **Lodging Houses** means a building or part of building, used for Congregate Living, containing Sleeping Units and four or more persons, and where there is no provision of on-site care, treatment or professional services of a physical or mental health nature. This Use does not include Extended Medical Treatment Services, Detention and Correctional Facilities, Fraternity and Sorority Housing, Group Homes, and Limited Group Homes.

76(4) A Lodging House shall be developed as either a purpose-built freestanding structure, or Single Detached Housing converted for the purpose, or part of an Apartment Housing development;

- [44] The Presiding Officer noted that the incorrect DC2 was cited in the Orders as well as the PowerPoint presentation. The Orders and the presentation referred to DC2.807, which has been superseded by DC2.936. Mr. A. Jabs acknowledged this error and requested that the Board use its variance power to correct this oversight. Regardless of which DC2 is cited, the Uses cited in the four Stop Orders are existing without Development Permits on the subject site.

[45] Ms. Lamont and Mr. Jabs provided the following responses to questions from the Board:

- a) They do not believe Building B can still be considered an Apartment Hotel. Based on the definitions, Sleeping Units cannot be considered Dwellings. Three Sleeping Units share a common bathroom accessed through a common hallway and do not have full kitchen facilities. Also no maid service or telephone service is provided and they are unsure if dishes or linens are provided.
- b) They do not support extending the compliance deadlines for seven months. There are no permits in place and safety aspects must be considered. To their understanding there is no scheduled timeline for the demolition.
- c) The Board questioned the statement found on page 1 of Order 187765571-005 which reads: “The last approved Development Permit allowed for a 10 Unit Motel.” Ms. Lamont confirmed this was an error and the words “10 Unit Motel” should be replaced with “10 Suite Apartment Hotel”.
- d) The Board questioned the statement found on page 1 of Order 187765571-001 which reads: “The last approved Development Permit allowed for a 8 Unit Motel building with an office and living quarters addition.” The Development Officer was unsure how the building went from two eight-suite Apartment buildings in 1953 to one building in 1971.
- e) Ms. Lamont provided the following Use class definitions that would have been in place in 1953 when the subject Site was originally developed. The definitions were taken from *Interim Development Bylaw Number 1339*, July 18, 1950, Section 2 of Schedule “A”.
 - (2) “Apartment House” shall mean a building or portion thereof, other than a hotel, designed or used for three or more family dwellings, having an outside entrance or entrances to three or more housekeeping units.
 - (15) “Hotel” shall mean a building other than an institutional residence, designed for or occupied as a place of transient residence, with provision for the lodging, with or without board, of fifteen (15) or more persons in separate rooms or suites of rooms in which no provisions is made for cooking in any guest room or apartment.
- f) The following definition of Motel was taken from the 1981 *Edmonton Land Use Bylaw 5996*. It is almost identical to the current definition for Motel.
 - 10.3(28) Motels means development used for the provision of rooms or suites for temporary lodging or light housekeeping, where each room or suite has its own exterior access. Motels may include accessory Eating and Drinking Establishments and Personal Service Shops.

[46] Ms. Lamont was unable to find a definition of Apartment Hotel in the old bylaws.

vi) Rebuttal of the Appellant

[47] The Appellant was not aware of any previous approvals or issues with Use classification prior to his purchase of the property.

[48] The subject property was classified as a Motel at the time of purchase and the sleeping rooms already existed at that time. The Appellant only converted five of the units into suites with two sleeping rooms sharing common kitchen and bathroom facilities.

[49] It was the Appellant's position that the property has continued to operate as a Motel from the time it was purchased because the Motel operations never ceased.

Decision Regarding Order 187765571-004 (Residential Sales Centre)

[50] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The wording of the Stop Order is VARIED as follows:

a) Paragraph 2 on Page 1 is replaced with the following:

This property is zoned DC2 (Site Specific Development Control Provision) in accordance with Section DC2.936 of the *Edmonton Zoning Bylaw*. The general purpose of this zone is to provide for a mid- and high-rise Apartment Housing development designed with a pedestrian friendly character and streetscape.

Reasons for Decision

[51] The Board heard that the reference to DC2.807 in the Stop Order was made in error. DC2.807 was superseded by DC2.936, which came into effect on October 24, 2016.

[52] However, that error in the Stop Order has no bearing on the infraction, namely that the Residential Sales Center on the Site had been developed without a Development Permit. This contravention remains the same regardless of what the underlying zoning is.

[53] Further, as evidenced by the Appellant's written submissions, he was well aware of what the correct DC2 zoning was at the time the Order was issued. Accordingly, it is appropriate to vary the wording of the Order to reflect the current zoning.

[54] As for the merits of the appeal, the Appellant admitted he did not have a Development Permit for the Residential Sales Centre.

[55] As well, the Stop Order was issued by a designated officer of the Development Authority as defined in section 624 of the *Municipal Government Act* and in accordance with

section 645. All provisions with respect to the issuance of a Stop Order have been complied with.

[56] Accordingly there is no basis for interfering with the Stop Order.

Decision Regarding Order 187765571-007 (Freestanding Off-premises Sign)

[57] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The wording of the Stop Order is VARIED as follows:

a) Paragraph 2 on Page 1 is replaced with the following:

This property is zoned DC2 (Site Specific Development Control Provision) in accordance with Section DC2.936 of the Edmonton Zoning Bylaw. The general purpose of this zone is to provide for a mid- and high-rise Apartment Housing development designed with a pedestrian friendly character and streetscape.

Reasons for Decision

[58] The Board heard that the reference to DC2.807 in the Stop Order was made in error. DC2.807 was superseded by DC2.936, which came into effect on October 24, 2016.

[59] However, that error in the Stop Order has no bearing on the infraction, namely that the Freestanding Off-premises Sign on the Site had been developed without a Development Permit. This contravention remains the same regardless of what the underlying zoning is.

[60] Further, as evidenced by the Appellant's written submissions, he was well aware of what the correct DC2 zoning was at the time the Order was issued. Accordingly, it is appropriate to vary the wording of the Order to reflect the current zoning.

[61] As for the merits of the appeal, the Appellant admitted he did not have a Development Permit for the Freestanding Off-premises Sign.

[62] As well, the Stop Order was issued by a designated officer of the Development Authority as defined in section 624 of the *Municipal Government Act* and in accordance with section 645. All provisions with respect to the issuance of a Stop Order have been complied with.

[63] Accordingly there is no basis for interfering with the Stop Order.

Decision Regarding Order 187765571-001 (7730 – 101 Avenue NW – “Building A”)

[64] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The wording of the Stop Order is VARIED as follows:

- a) Paragraph 2 on Page 1 is replaced with the following:

This property is zoned DC2 (Site Specific Development Control Provision) in accordance with Section DC2.936 of the Edmonton Zoning Bylaw. The general purpose of this zone is to provide for a mid- and high-rise Apartment Housing development designed with a pedestrian friendly character and streetscape.

Reasons for Decision

- [65] The Board heard that the reference to DC2.807 in the Stop Order was made in error. DC2.807 was superseded by DC2.936, which came into effect on October 24, 2016.
- [66] However, that error in the Stop Order has no bearing on the infraction, namely that the Apartment/Lodging House Use of this building has been developed without a Development Permit. This contravention remains the same regardless of what the underlying zoning is.
- [67] Further, as evidenced by the Appellant's written submissions, he was well aware of what the correct DC2 zoning was at the time the Order was issued. Accordingly, it is appropriate to vary the wording of the Order to reflect the current zoning.
- [68] As to the merits of the appeal, it is the Appellant's position that he is operating this building as a Motel, for which Use he has a valid development permit. The Development Authority takes the position that the current Use of the building is Apartment/Lodging Housing without a development permit.
- [69] The history of the property is as follows.
- a) In June 1953, a Development Permit was issued to develop two eight-suite apartment buildings. There is evidence in the materials presented to the Board that in 1955, there was a sign on the premises indicating that the Site was being used for a Motel.
 - b) On April 8, 1971, Development Permit Number 71-712 was issued authorizing the construction of "an addition to an existing motel in order to develop an office and living quarters." This permit indicates that, as of that date, there was an authorized Use of a Motel in this building.
 - c) On October 11, 2011 DC2.807 (Bylaw 15674) was passed. The general purpose of this site specific Direct Control Provision was "To accommodate a comprehensively planned, high quality, low and mid-rise apartment development designed with a pedestrian-friendly character and streetscape that is compatible in mass and scale with surrounding development." This development did not take place.
 - d) On October 24, 2016 DC2.936 (Bylaw 17799) was passed. The general purpose of this site specific Direct Control Provision was "To provide for a mid- and high-rise

Apartment Housing development designed with a pedestrian friendly character and streetscape.” To date, this development has not taken place.

[70] The Board finds that the Development Authority has acknowledged the Use of this building as a Motel since April 1971. The subsequent zoning changes effected by DC2.807 and DC2.936 render the Motel Use a legal non-conforming use and the development permit continues in effect. (*Municipal Government Act*, Section 643(1)) The question is whether the building is still being used as a Motel.

[71] The current *Edmonton Zoning Bylaw 12800* provides as follows:

6.1(31) Dwelling means a self contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household.

6.1(106) Sleeping Unit means a Habitable Room in a building used for Congregate Living in which the room is occupied by a person under any form of accommodation agreement providing remuneration for the room, and the room:

- a. does not include provision for cooking or food preparation except as provided for in Section 76 (Lodging House) and 79 (Group Homes and Limited Group Homes) of this Bylaw;
- b. may or may not be equipped with sanitary facilities; and
- c. provides accommodation for a maximum of two persons.

7.2(1) Apartment Housing means development consisting of one or more Dwellings contained within a building in which the Dwellings are arranged in any horizontal or vertical configuration, which does not conform to the definition of any other Residential Use.

7.3(6) Lodging Houses means a building or part of building, used for Congregate Living, containing Sleeping Units and four or more persons, and where there is no provision of on-site care, treatment or professional services of a physical or mental health nature. This Use does not include Extended Medical Treatment Services, Detention and Correction Facilities, Fraternity and Sorority Housing, Group Homes, and Limited Group Homes.

76(4) A Lodging House shall be developed as either a purpose-built freestanding structure, or Single Detached Housing converted for the purpose, or part of an Apartment Housing development;

[72] Section 10.3(28) of the old *Land Use Bylaw 5996*, which would have been in force at the time that the original Motel Use was approved in 1971, defines “Motel” as follows:

Motels means development used for the provision of rooms or suites for *temporary lodging or light housekeeping*, where each room or suite has its own exterior access. Motels may include accessory Eating and Drinking Establishments and Personal Service Shops. [Emphasis added]

[73] The Appellant indicated that there have been interior alterations changing some of the units into Sleeping Units with shared kitchen and bathroom facilities. No development permits were obtained for these alterations.

[74] Many of the occupants have stayed in the units for over six months, with some staying for over 10 years. The Appellant also indicated that he rents out the units on a weekly or monthly basis and collects damage deposits. He discourages daily rentals. “Photograph #3” from the Development Officer’s written report indicates that the units are advertised as “self-service” and, based on the Appellant’s submissions, the Board finds that no housekeeping is provided.

[75] The Board finds that the self-contained units are not being used for temporary lodging or light housekeeping. They are being used as Dwellings on a permanent or semi-permanent basis. The Board finds that these units do not conform to the definition of Motel; the units are effectively Apartment Housing. The units with shared kitchen and bathroom facilities are Sleeping Units that conform to the definition of Lodging House. The Appellant admitted that there are no development permits for either of these Uses.

[76] DC2.936 contains a clause allowing two years for demolition of the buildings from the time the DC2 was enacted on October 24, 2016, failing which certain restrictions apply to the development. The Appellant argued that this clause should be interpreted to allow him to continue the current Use of the Site until the time of demolition. However, the Board finds that this clause does not allow Uses that do not have valid development permits to continue operating.

[77] The Appellant also argued that, under the provisions of Alberta’s *Residential Tenancies Act*, he is required to give three months’ notice to his tenants and should therefore be granted an extension to the deadline for compliance with the Stop Orders. The Board is of the view that it does not have any authority with respect to the *Residential Tenancies Act* and therefore no extension is appropriate in these circumstances.

[78] Further, the Stop Order was issued by a designated officer of the Development Authority as defined in section 624 of the *Municipal Government Act* and in accordance with section 645. All provisions with respect to the issuance of a Stop Order have been complied with.

[79] Accordingly there is no basis for interfering with the Stop Order.

Decision Regarding Order 187765571-005 (7740 – 101 Avenue NW – “Building B”)

[80] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The Stop Order is VARIED as follows:

a) Paragraph 2 on Page 1 is replaced with the following:

This property is zoned DC2 (Site Specific Development Control Provision) in accordance with Section DC2.936 of the Edmonton Zoning Bylaw. The general purpose of this zone is to provide for a mid- and high-rise Apartment Housing development designed with a pedestrian friendly character and streetscape.

Reasons for Decision

[81] The Board heard that the reference to DC2.807 in the Stop Order was made in error. DC2.807 was superseded by DC2.936, which came into effect on October 24, 2016.

[82] However, that error in the Stop Order has no bearing on the infraction, namely that the Apartment/Lodging House Use of this building has been developed without a Development Permit. This contravention remains the same regardless of what the underlying zoning is.

[83] Further, as evidenced by the Appellant’s written submissions, he was well aware of what the correct DC2 zoning was at the time the Order was issued. Accordingly, it is appropriate to vary the wording of the Order to reflect the current zoning.

[84] As to the merits of the appeal, it is the Appellant’s position that he is operating this building as a Motel, for which Use he has a valid development permit. The Development Authority takes the position that the current Use of the building is Apartment/Lodging Housing without a development permit.

[85] The history of the property is as follows.

a) On April 17, 1954, a Development Permit was issued to erect a proposed 10 Suite Apartment Hotel. There is evidence in the materials presented to the Board that in 1955, there was a sign on the premises indicating that the Site was being used for a Motel.

b) On October 11, 2011, DC2.807 (Bylaw 15674) was passed. The general purpose of this site specific Direct Control Provision was “To accommodate a comprehensively planned, high quality, low and mid-rise apartment development designed with a pedestrian-friendly character and streetscape that is compatible in mass and scale with surrounding development.” This development did not take place.

c) On October 24, 2016 DC2.936 (Bylaw 17799) was passed. The general purpose of this site specific Direct Control Provision was “To provide for a mid- and high-rise Apartment Housing development designed with a pedestrian friendly character and streetscape.” To date, this development has not taken place.

[86] The subsequent zoning changes effected by DC2.807 and DC2.936 render the Apartment Hotel Use a legal non-conforming use and the development permit continues in effect. (*Municipal Government Act*, Section 643(1)) The question is whether the building is still being used as an Apartment Hotel.

[87] The current *Edmonton Zoning Bylaw 12800* provides as follows:

6.1(31) Dwelling means a self contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household.

6.1(106) Sleeping Unit means a Habitable Room in a building used for Congregate Living in which the room is occupied by a person under any form of accommodation agreement providing remuneration for the room, and the room:

- a. does not include provision for cooking or food preparation except as provided for in Section 76 (Lodging House) and 79 (Group Homes and Limited Group Homes) of this Bylaw;
- b. may or may not be equipped with sanitary facilities; and
- c. provides accommodation for a maximum of two persons.

7.2(1) Apartment Housing means development consisting of one or more Dwellings contained within a building in which the Dwellings are arranged in any horizontal or vertical configuration, which does not conform to the definition of any other Residential Use.

7.3(1) Apartment Hotels means development consisting of Dwellings contained within a building or a part of a building having a principal common entrance, in which the Dwellings are not available for daily lease and there are cooking facilities within each Dwelling, the Dwellings are furnished including dishes and linen, and either maid service, telephone service, or desk service is provided. Apartment Hotels shall not contain Commercial Uses, unless such Uses are a Permitted or Discretionary Use in the Zone where the Apartment Hotel is located.

7.3(6) Lodging Houses means a building or part of building, used for Congregate Living, containing Sleeping Units and four or more persons,

and where there is no provision of on-site care, treatment or professional services of a physical or mental health nature. This Use does not include Extended Medical Treatment Services, Detention and Correction Facilities, Fraternity and Sorority Housing, Group Homes, and Limited Group Homes.

76(4) A Lodging House shall be developed as either a purpose-built freestanding structure, or Single Detached Housing converted for the purpose, or part of an Apartment Housing development;

[88] Section 10.3(28) of the old *Land Use Bylaw 5996* defines “Motel” as follows:

Motels means development used for the provision of rooms or suites for *temporary lodging or light housekeeping*, where each room or suite has its own exterior access. Motels may include accessory Eating and Drinking Establishments and Personal Service Shops. [Emphasis added]

[89] Based on the evidence, the Board finds that there are currently 12 units in the building, rather than the 10 allowed in the existing development permit. Nine of the units are full suites with bathroom and kitchen facilities. Three of the units are Sleeping Units, which do not have their own cooking facilities and share common kitchen facilities and bathrooms. The building does not have a principal common entrance nor is there maid service or telephone service, which are some of the defining characteristics of an Apartment Hotel.

[90] The Appellant maintains that he operates this building as a Motel. However, his evidence was that some of the people using the premises have been there for at least six months and some for over 10 years. Also, he indicated that he collects damage deposits and only rents on a weekly or monthly basis. No light housekeeping is provided.

[91] Given the above, the Board finds that the current Use being made of the building does not fit the definition of either Apartment Hotel or Motel. The nine self-contained units are being used as Apartment Housing. The three Sleeping Units are being used as a Lodging House. Neither of these Uses have a valid Development Permit.

[92] DC2.936 contains a clause allowing two years for demolition of the buildings from the time the DC2 was enacted on October 24, 2016, failing which certain restrictions apply to the development. The Appellant argued that this clause should be interpreted to allow him to continue the current Use of the Site until the time of demolition. However, the Board finds that this clause does not allow Uses that do not have valid Development Permits to continue operating.

[93] The Appellant also argued that under the provisions of Alberta’s *Residential Tenancies Act*, he is required to give three months’ notice to his tenants and should therefore be granted an extension to the deadline for compliance with the Stop Orders. The Board is of

the view that it does not have any authority with respect to the *Residential Tenancies Act* and therefore no extension is appropriate in these circumstances.

- [94] Further, the Stop Order was issued by a designated officer of the Development Authority as defined in section 624 of the *Municipal Government Act* and in accordance with section 645. All provisions with respect to the issuance of a Stop Order have been complied with.
- [95] Accordingly there is no basis for interfering with the Stop Order.



Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. K. Cherniawsky; Mr. R. Hachigian; Ms. N. Hack, Mr. R., Hobson

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 Board's decision.
2. When a decision 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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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.