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Date: February 15, 2019
Project Number: 277039391-002 and 004
File Number: SDAB-D-19-013 and 014

Notice of Decision

[1] On January 31, 2019, the Subdivision and Development Appeal Board (the "Board") heard four appeals together that were filed on **January 7, 8, and 9, 2019**. The appeals concerned the decision of the Development Authority, issued on December 14, 2018, to approve the following developments:

277039391-002

Construct additional 58 Dwellings (new total number of Dwellings 236) to an existing Lodging House/Apartment Housing (Court building - 8403 142 Street NW) and construct exterior alterations (reconfigure the parking and landscaping area); and

277039391-004

Construct additions and interior alterations to an existing Lodging House/Apartment Housing (expansions/landscaping, pergola on main floor, a roof patio on 2nd floor and to reduce the total number of Dwellings from 236 to 209 for Court building - 8403 142 Street NW).

[2] The subject property is on Plan 6269KS Blk 21 Lots 3U, 2, and 4, located at 8311 - 142 Street / 8403 – 142 Street NW and Plan 8821521 Blk 21 Lots 1A and 1B, located at 8311 - 142 Street NW / 8403 - 142 Street NW, within the DC2.970 Site Specific Development Control Provision.

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

- A copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;

- The Development Officer's written submissions;
- Several written submissions from the four Appellants including from their legal counsel;
- Written responses from 13 additional properties;
- Written submissions from the Respondent's legal counsel; and
- Two postponement requests.

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

- Exhibit A – Safety Evaluation of Lane Widths in the City of Edmonton submitted by T. Hamilton
- Exhibit B – Excerpts of text messages with Canterbury Administration including two photographs by T. Hamilton
- Exhibit C – Speaking notes of S. Cooper
- Exhibit D – A Written submission of legal counsel for the Respondent

Preliminary Matters

[5] At the outset of the appeal hearing, the Presiding Officer (Mr. R. Handa) indicated that two of the panel members would like to make disclosures. Ms. M. McCallum advised she is acquainted with Mr. P. Lefebvre, one of the affected parties in attendance. Mr. R. Hobson advised that his grandson attends kindergarten at Laurier Heights School. The Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

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

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

[8] The Presiding Officer asked if a postponement request was still on the table. Ms. L. Roberts, a resident who resides a few blocks away only became aware of the appeal hearing through the newspaper. While she does live outside of the 60 metre notification area she would have liked time to prepare a presentation. As no other party indicated they would like to request a postponement Ms. Roberts confirmed she was prepared to proceed.

[9] The Presiding Officer stated the following:

> Before we get into the merits of this case this appeal being in a Direct Control District is governed by section 685(4) of the *Municipal Government Act*. That limits this Board's authority when dealing with a Direct Control District. The only consideration we can make is whether or not the Development Authority

> failed to follow the directions of City Council and those directions are contained within the DC. That is the first hurdle we need to get over. If we find that the Development Officer did follow the directions of City Council this Board does not have any jurisdiction to make any changes. We must first be satisfied that the Development Officer did not follow the directions of City Council. Once we get over that hurdle we may substitute a decision but our decision must be also be in accordance with the directions of City Council. We do not have our typical variance power that we have on other appeals in other zones. We are very limited here. I also remind you that we are an Appeal Board; we are not a re-zoning Board. We need to deal with the zone as it is presented to us and as it is written in the zoning bylaws.

Summary of Hearing

[10] Mr. K. Wakefield, legal counsel for one of the Appellants, Mr. S. Cooper, suggested that he should present first as he would address the jurisdiction issue. Ms. T. Hamilton and Ms. L. Pateman were already seated at the front and indicated they were ready to proceed.

i) Position of the Appellant No. 1 (T. Hamilton)

[11] Ms. Hamilton lives directly east of the Canterbury complex.

[12] After filing her appeal she met with the Development Officer, Mr. J. Angeles, to review the parking impact study and she also spoke with a representative from City Transportation. She obtained a 2018 document that evaluated the width of Edmonton's streets (submitted as *Exhibit A*).

[13] Things in the neighbourhood have changed dramatically since the parking assessment study was done. That assessment included a number of recommendations that were supposed to address the on-street parking problems in the neighbourhood. Similar recommendations were also contained in a 2017 letter from Greg MacKenzie & Associates Consulting Ltd. ("GMAC") to K. Rutherford of the City of Edmonton, Sustainable Development Department and also in the re-zoning report itself. These recommendations seem to have largely been ignored or are not effective. A new staff entrance was constructed close to 85 Avenue and 141 Street which has resulted in a lot of problems.

a) Two rows of parking on 85 Avenue create a bottleneck and the yield sign at 141 Street is often obstructed by parked vehicles.

b) Vehicles parking too close to the intersection create an unsafe situation for children travelling to the nearby school.

c) She understands that there is now a plan to move this staff entrance further down towards 82 Avenue which is even a bigger concern and is just moving the problem. 141 Street is narrower than 85 Avenue.

d) Canterbury was to ensure that employee vehicles were removed during neighbourhood blading, but this does not happen.

At this point the Presiding Officer reminded Ms. Hamilton that the Board needed to hear how the Development Officer did not follow the directions of Council and how he erred in granting the permits. He indicated that this Board has a very limited scope with relation to this development and does not have any jurisdiction beyond what is in the *Municipal Government Act* (the *Act*).

Mr. Wakefield reminded the Presiding Officer that he had proposed to go first as he would be providing submissions that this is a Class B Discretionary Development and as a result the Board has much more jurisdiction than has been stated by the Presiding Officer.

Ms. Hamilton continued with her presentation:

e) Canterbury was to take responsibility for removing the windrows along the west side of 141 Street, the south side of 85 Avenue and the north side of 80 Avenue.

f) Canterbury should be providing education to the staff which is not being very well done. The parking passes they give out should carry some responsibilities with them.

g) Canterbury was to install no-parking signage at all intersections. This has only been partially done and the signs tend to be ignored.

[14] Reporting parking violations to City Bylaw Enforcement has not been effective. This creates stress to both the employees parking as well as to the neighbours.

[15] Staff generally start arriving at 6:00 a.m. and are parked all day; therefore, those parking spaces are effectively blocked for use by anyone else. While it was not mentioned in the parking analysis, there are neighbours that require access to on-street parking at times. Ms. Hamilton feels the existing parking issues need to be addressed before any further development of any kind is permitted on the subject site.

[16] The number of available on-street parking spaces indicated in the parking study did not take into account such neighbourhood features as fire hydrants and double driveways. It also did not account for changes in traffic flow and reductions in bus service on 142 Street.

[17] Ms. Hamilton reviewed a series of photographs which had previously been submitted to the Board which highlight the parking issues in the area surrounding the proposed site:

a) Signs are ignored or blocked by parked vehicles.

b) Vehicles are parked too close to the intersection.

c) Children crossing the street have to come out from between parked vehicles.

d) Streets are not properly cleaned because of parked vehicles.

e) Vehicles are parked too far from the curb.

f) There are large spaces between parked vehicles.

g) The width of the travel lane is reduced due to large vehicles being parked. This is a safety issue as large emergency vehicles are unable to get through.

Community feedback has consistently raised the parking issues which have been brushed aside.

[18] The value of her property will decrease as a result of the proposed development.

[19] The Development Permit should be turned down. The development has met the minimum, but this is not appropriate in this case. Laurier Heights was not built on minimum standards.

[20] The existing development already results in many negative impacts to the neighbourhood. The new development will bring added pressure from construction workers and additional staff.

The Presiding Officer invited Ms. Pateman to proceed but cautioned her to confine her comments to the permits at hand, the development that is being proposed and specifically whether not or she felt the Development Officer followed the directions of Council.

Mr. Wakefield wanted it put on the record that he felt the Presiding Officer was providing improper directions for the reasons he stated earlier.

ii) Position of the Appellant No. 2 (L. Pateman)

[21] Ms. Pateman has lived in the neighbourhood since 1969. When the seniors' residence was originally proposed in 1969, neighbourhood residents were concerned about traffic and parking on 141 Street. The same concerns were raised by residents in the 1980s when the Canterbury Manor proposal was made. In both cases residents were promised that Canterbury Foundation would not take up any parking along 141 Street.

[22] These promises were broken two years ago when a staff entrance was moved to 141 Street and staff were instructed to park along 141 Street, 80 Avenue and 85 Avenue.

[23] The proposed development will bring additional staff, visitors, volunteers, service people and residents which will result in additional traffic, parking, congestion and safety issues.

[24] Staff vehicles parked on the streets create the following issues:

a) It is difficult to back out of her driveway, particularly in the winter when windrows are present.

b) Snow removal and street sweeping cannot be done.

c) Safety issues for children.

Canterbury Court should be required to provide sufficient off street parking for staff, residents, and visitors and they should not be using the neighbourhood streets as their parking lot.

[25] Area residents pay high taxes and take pride in their properties. They feel like they have been double crossed and duped by Canterbury Foundation. The good relations that the residents have had over the years with Canterbury Foundation have deteriorated over the past few years and Canterbury administration are no longer good neighbours. Canterbury is turning into an eyesore for the community.

[26] Ms. Pateman provided the following information in response to questions from the Board:

a) Her concerns relate to both parking and the development proceeding. The new development will exacerbate the existing parking problems.

b) There has been a lack of communication regarding the proposed development and many neighbours received no prior notification.

c) Staff vehicles are parked from 80 Avenue to 85 Avenue and arrive between 6:00 a.m. and 6:30 a.m. Residents are disturbed by staff greeting each other loudly and beeping their vehicles to lock.

d) They have spoken to a realtor who has advised them that the new addition will have a negative impact on their property values due to additional parking and traffic pressures.

e) The assurances given to residents that there would never be parking on 141 Street may have been verbal.

iii) Position of the Appellant No. 3 (S. Cooper / K. Wakefield)

[27] Mr. K. Wakefield of Dentons Canada LLP appeared to represent Mr. S. Cooper, who lives within the notification area and was also present.

[28] Mr. Wakefield asked that the Presiding Officer recuse himself from the hearing based on the Presiding Officer's statement of the law pertaining to section 685(4) of the *Act* and on the previous hearing interactions with the Appellants. Mr. Wakefield believed that they were not being provided a fair hearing and the Presiding Officer already made his decision. He felt the Presiding Officer was not approaching the appeals with an open mind.

[29] The Presiding Officer disagreed; however, he called a recess to discuss with the Board panel if it was appropriate for him to recuse himself.

[30] After a brief recess the hearing resumed without Mr. R. Handa who took no further part in the appeals. Ms. K. Cherniawsky took over as Presiding Officer. Ms. Cherniawsky confirmed with all parties in attendance that there was no opposition to the appeal hearings proceeding with only the remaining four members of the panel.

[31] Mr. Wakefield first referred the Board to Development Permit 277039391-002 which is for the additional tower and the associated application document. The Development Permit states that this is a Class B permit and that it is a Discretionary Development.

[32] The Board was then referred to Development Permit 277039391-004 for the alterations to the existing lodge and the associated application document. This permit also shows that the proposed development is a Discretionary Development.

[33] There are very clearly two separate Development Permit applications – one for the tower and one for the renovations. There are two separate architects and two separate Development Permits have been issued. The SDAB required that two separate permit appeals be filed. Mr. Cooper only filed an appeal on the tower permit; therefore, he was only able to attain on-line access to the documents related to that Development Permit. There is nothing that legally links the two permits.

[34] The drawing (A001DP) included with Development Permit application 277039391-002 indicates a total of 366 units are proposed (128 Manor units, 180 Court units plus the proposed addition of 58 units). A different set of numbers within the development permit application shows a total of 364 units. Either way the maximum permitted 355 units per DC2.970 has been exceeded.

[35] There is nothing to stop these two separate Development Permits from operating independently. The Developer would be within his legal rights to not act on the second Development Permit.

[36] The Development Officer characterized both Development Permits as Discretionary Developments which is defined in section 12.4 of the *Edmonton Zoning Bylaw* (the *Bylaw*) as follows:

> This class includes all developments for which applications are required and are for a Discretionary Use or require a variance to any of the regulations of this

> Bylaw. This class of Development Permit also includes all applications on Sites designated Direct Control not noted in Section 12.3.

[37] Mr. Wakefield reviewed the powers of the Development Officer as outlined in section 11 of the *Bylaw* with regard to Class B Discretionary Developments.

He first referred to section 11.1(f) (g) and (h):

> The Development Officer shall receive all applications for development and:
>
> …
>
> f. may relax a regulation in a Zone or other Section of this Bylaw in accordance with the regulations contained in that Zone or Section, or may relax regulations in accordance with Sections 11.3 and 11.4, and in such case, the development applied for shall be a Class B Discretionary Development;
>
> g. may refuse or approve, with or without conditions, with or without changes in the design of the development, or with or without the imposition of regulations more restrictive than those required by this Bylaw, an application for development of a Discretionary Use, having regard to the regulations of this Bylaw and the provisions of any applicable Statutory Plan;
>
> h. may refuse, or approve, with or without conditions, an application for development in a Direct Control Provision, in accordance with the regulations of this Bylaw; and
>
> …

Regarding section 11.1(g) Mr. Wakefield stated that there is no Statutory Plan for this area and stated we are talking about a Discretionary Use.

Section 11.3(2) provides the following variance power to the Development Officer:

> The Development Officer may approve, with or without conditions as a Class B Discretionary Development, an enlargement, alteration or addition to a non-conforming building if the non-conforming building complies with the Uses prescribed for that land in this Bylaw and the proposed development would not, in their opinion:
>
> a. unduly interfere with the amenities of the neighbourhood; or
>
> b. materially interfere with or affect the use, enjoyment or value of neighbouring properties.

Section 11.4(1) provides a limitation on variance powers that would be considered only in cases of unnecessary hardship or practical difficulty peculiar to the Use, character or situation of the land.

[38] Section 720 of the *Bylaw* provides the General DC2 Site Specific Development Control Provision regulations. 720.3(3) states:

> All Regulations in the Zoning Bylaw shall apply to development in the Direct Control Provision, unless such Regulations are specifically excluded or modified in a Direct Control Provision.

[39] Mr. Wakefield provided a copy of the original 1990 re-zoning application for historical interest. At that time the General Purpose of the Direct Control contained the following clause: "To establish site specific development criteria to ensure compatibility with surrounding low density residential and institutional land uses." Mr. Wakefield used the notification map to identify the current location of these various land uses.

[40] In 1990 Bylaw 9553 gave the following power to the Development Officer: "The Development Officer may grant relaxations to Sections 50-79 of the Land Use Bylaw and the provisions of this District, if, in his opinion, such a variance would be in keeping with the general purpose of this District and would not affect the amenities, use and enjoyment of neighbouring properties".

[41] DC2.970 is the Site Specific Development Control Provision for the subject site. The General Purpose is: "To accommodate low and mid-rise residential development with limited supporting Uses, while ensuring compatibility with adjacent existing development in Laurier Heights". Lodging Houses, which is what the proposed development would be described as, is contained in DC2.970.3.g.

DC2.970.4.d limits the maximum number of units to 355 as previously mentioned.

DC2.970.4.f.iv states that "the minimum setback shall be 6.0 m from the Lot line abutting 142 Street NW, except for a maximum length of 30.0 m along the Lot line where a setback of 0.0 m is permitted, as generally shown on Appendix I and Appendix II." The normal setback has been waived for a length of 30 metres to accommodate the new tower. The rest of the site still has the six metres minimum required setback.

DC2.970.6.b requires a minimum of 114 parking stalls to be provided – 48 at Grade stalls and 66 underground stalls. The underground stalls are located under the Manor (the southerly development).

[42] Historically there has been a good relationship between the neighbourhood and the senior citizens lodge. That all changed when the Foundation opened up a staff access off of 141 Street and directed the staff to park on 141 Street. This change was done without any permit that he was aware of. While it is shown on the subject plans this change was already made 18 months ago, long before the subject plans were approved.

[43] The unintended effect of this illegal change was that it showed how bad parking for staff on 141 Street would be even before a five storey tower is added.

[44] Mr. Wakefield referred to section 13.3 of the *Bylaw* which relates to Class B Discretionary Development Excluding Signs. Section 13.3(2)(a) states:

> If required by the Development Officer, the applicant shall also submit four copies of the following:
>
> a. an urban design context plan and vicinity map at a minimum scale of 1:500 showing the proposed development and its relationship to on-site and surrounding natural physical features, existing development and other factors affecting the design of the proposed development, and a statement describing how the design of the proposed development has responded to the following:
>
> i. the Uses and amenities of surrounding properties within 100.0 m of the boundaries of the project Site;
>
> ii. the physical characteristics and human activity patterns characteristic of the Site, surrounding Uses and development;
>
> iii. the urban design statements of any Statutory Plan which are applicable to the Site; […]

As the subject permits were for Class B Discretionary Developments, the Development Officer had the option to require an urban design context plan which would have shown the parking issues present today.

[45] Section 685(4)(b) of the *Act* talks about the limited nature of an appeal in a Direct Control Zone as opposed to the normal power of the SDAB which is described in section 687(3)(d) of the *Act*.

[46] Mr. Wakefield referred the Board to an extract from Professor Laux's Direct Control in Planning Law and Practice in Alberta (Third Edition). Section 6.2(2)(e) talks about the role of the SDAB in Direct Control. In the fourth paragraph of this section he talks about section 641 (now section 685(4)) of the *Act*. Professor Laux believes there are circumstances where the DC remains silent and council has not exercised direct control over a certain element. In these cases, where true Direct Control has not been utilized, the appeal rights and powers set forth in section 684 to 687 of the *Act* should apply.

The current DC2 is silent on parking. It sets a minimum but does not set a maximum.

[47] Mr. Wakefield referred to a number of cases where discretion was used or should have been used to grant variances in Direct Control Districts:

a) Mr. Wakefield referred to a 2014 SDAB decision (SDAB-D-14-246). Paragraph 8 of that decision quoted the General Purpose of section 11.17.2 of the DC1 provisions. In paragraph 10 of that decision the SDAB found that per Professor Laux, the Direct Control is silent as to Height, Storey number, and Rear Setback requirements; therefore those three aspects of the development are not under

Direct Control and the SDAB has its normal variance power per section 687(3) of the *Act*.

b) The *Garneau Community League v Edmonton (City)*, 2017 ABCA 374 case was referred to. At issue was what discretion the Development Officer had – did he have it under section 11 of the *Bylaw* or under the operative Garneau Area Redevelopment Plan. The Court of Appeal found that the Garneau Area Redevelopment Plan had discretion and that is what should have been used. On any Direct Control you have to look at whether there is discretion and what the focus of that discretion is.

c) The *CFPM Management Services Ltd. v Edmonton (City)*, 2019 ABCA 3 case is a recent permission to appeal a decision on a Cannabis Retail Sales in a DC1 Direct Development Control Provision. A single Justice of the Court of Appeal, on an interim basis, has echoed the *Garneau* case and said you have to look at all the documents where there is discretion or a variance power.

d) Another decision of the SDAB (SDAB-D-17-047) was governed by DC2.922. The SDAB allowed the appeal and revoked the decision of the Development Authority. This appeal found there was no justification to grant a variance regarding the size of a parkade in order to protect some trees.

e) The Glenora Liquor Store Case (SDAB-D-17-071) was also in a DC2 Site Specific Development Control Provision. The Development Officer refused a liquor store permit because it fell within the separation distances specified for Major / Minor Alcohol Sales. This decision was overruled by the SDAB because they found that the DC2 specifically contemplated a liquor store within the site; therefore, there was no need to vary the generally applicable development regulations in section 85 of the *Bylaw* pertaining to Minor Alcohol Sales Uses.

f) The *Investors Group Trust Co. v. Calgary (City of)*, 2005 ABCA 34 case is regarding a C-5 district in Calgary which is Calgary's version of Direct Control. Justice McFadyen, in her ruling, found that it was open to the Development Authority to raise the number of parking stalls. As far as the immunity goes, this is a Permission to Appeal decision, not a binding authority. Also, since 2004, a lot has happened with respect to Direct Control, culminating in *Garneau*.

[48] In the subject case it is a situation where the amount of proposed units exceeds the maximum; a General Purpose clause that requires that the development must complement the surrounding neighbourhood; the fact that it is a Class B Discretionary Use; and silence regarding whether parking should or should not be increased over the minimum. Mr. Wakefield indicated that even though this is a DC2 Site Specific Development Control Provision this Board does, in fact, have discretion with respect to parking.

[49] The decision to switch the staff parking to 141 Street, even before final approval and without a permit, has shown that parking is now a total mess and nearby neighbours are

already adversely affected. The proposed development is really bad planning and has turned around the neighbourhood's previously positive view of Canterbury.

[50] Mr. Wakefield submits that the Board has two choices. They could quash the decision and send it back to the developer and architects to come forward with a better fix on parking, or the Board could condition that more on-site parking is required. The January 6, 2017 GMAC letter referenced by Ms. Hamilton outlines possible alternative parking options (Tab D of the Respondent's submission).

[51] The current underground parking is mostly rented to tenants and no parking is planned for under the tower. The whole five block stretch of 141 Street from 80 Avenue to 85 Avenue is monopolized by Canterbury staff from as early as 6:00 a.m. This is not the typical parking situation where people come and go as the vehicles remain parked for the entire shift.

[52] Mr. Wakefield provided the following information in response to questions from the Board:

a) Staff access from 141 Street was not added until 12 to 18 months ago and was moved to this location without a permit and prior to the subject drawings being approved. Mr. Wakefield believes a Development Permit would have been required for this change.

b) Because this is a Class B Discretionary Development the Development Officer would have been able to use discretion regarding the amount of parking stalls required. As per Professor Laux, where you have discretion you do not have full Direct Control zoning and the Board then has its jurisdiction under section 687 of the *Act*.

c) The Development Officer could have requested an urban design context plan per section 13.3(3) of the *Bylaw* as this is a Class B Discretionary Development. This plan is intended to show the relationship of the proposed development to its surroundings. The General Purpose clause of DC2.970 requires that the development must be compatible with adjacent existing development in Laurier Heights. An urban design context plan would have required the Development Officer to look at human activity patterns which includes parking vehicles and would have identified the issues with parking. Council would have wanted the Development Officer to look at that under the General Purpose clause.

d) The two permits have been treated as separate permits every step of the way and there has never been any legal nexus between the two. The Development Officer had an application in front of him that was not technically compliant with the maximum number of units and should have denied the permit.

e) Mr. Wakefield acknowledged that the Board would not be able to require more underground parking as this would require a total re-design and new drawings. The better option is to simply overturn the Development Officer's decision.

f) Mr. Wakefield confirmed that his arguments can be summarized as follows:

i) The General Purpose clause of DC2.970 was ignored by the Development Officer.

ii) To allow a stand-alone permit that could result in 366 units is unlawful.

iii) The Development Officer has classified these developments as Discretionary Developments. According to Professor Laux, whenever there is discretion in a DC the Board has its authority under 687(3)(d) of the *Act*.

iv) There is no evidence that the Development Officer gave any thought as to whether the minimum amount of required parking stalls should be increased.

v) There is no evidence that the Development Officer gave any thought as to whether an urban design context plan per section 13.3(3) should be ordered.

S. Cooper

[53] Mr. Cooper moved into the neighbourhood in June 2017 and was never notified of the proposed development.

[54] The five main reasons he is opposed to the Canterbury development are:

1. Partnership.
2. Safety.
3. Employees.
4. Revenue from parking.
5. Follow through on obligations.

[55] It is concerning that the Canterbury Board Chair will not help in removing vehicles and is not even aware of the location of the only coffee shop in Laurier Heights (adjacent to Canterbury). Canterbury is acting like they own the public street; this is unfair to tax paying residents who should have the same right and access to the street. Current leadership is not returning e-mails and is unwilling to meet with residents.

[56] There have been several near misses between vehicles and pedestrians, especially since the staff entrance was moved to 141 Street. The Canterbury issues have been added to the Laurier Heights School agenda as a concern.

[57] There is conflicting information as to the number of employees. In 2014 the Canterbury annual report indicated 170. In 2018 the report indicated 195 while LinkedIn shows 200 employees. The parking study was based on 182 employees.

[58] Canterbury rents 45 of the underground parking stalls to residents. It is unfair that Canterbury can profit from parking while taking away street parking from residents.

[59] There has been no follow-through of the following obligations / promises made by Canterbury:

1. HVAC is not proofed or matched to neighbourhood.
2. Light pointed at houses.
3. No permit was obtained for the existing staff entrance.
4. No negotiation with Laurier Strip Mall.
5. Not asking Laurier about converting old gas station land to car lot.
6. Not willing to help with illegally parked vehicles.
7. No removal of snow drifts or removal of cars on cleaning days.

iv) Position of the Appellant No. 4 (722383 AB Ltd.)

[60] Mr. J. Shafir is the owner of the Laurier Heights shopping centre northwest of the subject site.

[61] His major concern is regarding parking and it is his position that the parking impact assessment was incomplete and is misleading. Page 26 of that document refers to the possibility of renting parking spaces at his shopping centre; however, nothing came as a result of several meetings with the Canterbury Foundation regarding this.

[62] Once construction starts there are going to be quite a number of construction workers on site. Nothing in the study addresses that and he does not want interference to his tenants by having his parking lot become a staging area to accommodate this construction.

[63] Mr. Shafir summarized some of the problems he has encountered with parking:

a) A white van associated with Canturbury was removed from his parking lot within 10 or 15 minutes after he called to complain.

b) People visiting Canterbury continuously use his lot for free parking and drive away without doing any business with his tenants. He has been subjected to an attitude of entitlement and a string of foul language when he has consulted these people.

c) A "Driving Miss Daisy" vehicle was waiting in his lot to pick up someone from Canterbury as the Canterbury parking was full.

d) On-street parking is almost always completely filled up. Occasionally there is the odd space available.

e) He has had employees of Canterbury park vehicles on his lot all day. It is not his job to provide free parking for their employees.

[64] Mr. Shafir provided the following information in response to questions from the Board:

a) There is a sign on the shopping centre pylon saying it is private property.

b) He is not sure if off-site accessory parking is permitted in the CNC Neighbourhood Convenience Commercial Zone.

v) Position of Affected Property Owners in Support of the Appellants

R. Clarkson

[65] Mr. Clarkson lives just outside of the 60 metre notification area but is directly affected by the proposed development. He must use the intersections at either 141 Street and 84 Avenue or 141 Street and 80 Avenue to enter or exit his crescent.

[66] He has been a resident in the area for 38 years and his father was one of the residents that were promised that parking on 141 Street would never be an issue. This has been the case until recently when the staff entrance was moved to 141 Street.

[67] Safety is an issue and he himself was involved in a near-miss with a child while he was only driving 30 kilometres per hour during good driving conditions. The outcome could have been different had it been winter when it was dark out.

[68] The population of Laurier Heights School has increased and soccer season is approaching which will increase the amount of pedestrians at the 84 and 82 Avenue intersections.

[69] The parking impact study is inaccurate as the data is three years old. The study considered that parking was permitted on both sides of 142 Street which is no longer the

case. It also did not correctly account for bus and school parking areas that are not available for parking. It totally underestimated available street parking spaces. The report also does not consider that the demand for parking by health care workers will increase with the proposed development.

[70] In addition to being an affected resident, Mr. Clarkson is a member of the committee that acts as a liaison between the Community League and the Canterbury Foundation. While he spoke to Ms. King, the executive director of Canterbury, in 2017 there has been no communication since then. One possible solution to the problem could be car-sharing by employees – currently every parked car only has one person it.

[71] Mr. Clarkson provided the following information in response to questions from the Board:

a) The residents do not feel like they have been heard by Council or the Canterbury Foundation.

b) While he did speak to Council at the re-zoning meeting he did not have access to any supporting documents such as the parking impact study.

J. Smith

[72] Mr. Smith lives within the notification area and had previously provided a written submission to the Board.

[73] He has resided in the neighbourhood for 30 years and was heavily engaged with the neighbours at the time the new part of the manor was developed in 1990. Representations were made to Council and while they did not get everything they wanted, some adjustments were made and the building was lowered to reduce shadows. There was to be no employee egress or ingress from 141 Street and there was to be no employee parking along 141 Street. That commitment was upheld until about 18 months ago.

[74] The information from the City stating that 18 of 19 property owners were consulted is incorrect. Ms. Pateman, one of the previous Appellants, mentioned that she was not consulted. He was not consulted either.

[75] Similar to Mr. Shafir, Mr. Smith does not want to police parking. It should be the responsibility of Canterbury Court to ensure employees obey and respect the law and the neighbourhood; he should not have to constantly report parking violations to have the offending parties ticketed. Earlier this month he had to report a vehicle that was parked five feet away from the curb due to the windrows.

[76] The parking study is flawed and assumes the weather will be dry. It does not take into account what occurs during the winter. Windrows range from 51 to 58 inches wide and are largest on the Canterbury side. The City bylaw stipulates the minimum distance to

park a vehicle from the curb; therefore, anyone parking alongside a windrow is in contravention of the bylaw. As well as 141 Street, there are also windrows on both sides of 80 Avenue. It is incumbent on Canterbury Court to remove windrows but they have not done so.

[77] The parking assessment assumed that vehicles would park rationally but as the photographs show there are large gaps between parked vehicles. This results in a lot of wasted space and not as many parking spaces as the report suggests.

[78] Safety is a concern due to congestion. He was witness to an accident in which a young boy came out of an alley and smacked into a vehicle.

[79] 141 Street has been privatized resulting in property values going down. It is difficult to sell a home if there is no parking in front of it.

[80] Perhaps Canterbury could pay 50 percent toward bus passes for employees to encourage the use of public transit.

[81] Mr. Smith asked that he and the neighbourhood be respected and the proposed development not be built based on a flawed study.

C. Roskin

[82] Mr. Roskin resides directly south of Canterbury and was also not included in the consultation. He is also representing his wife and the Krugers who reside directly to the west and were not able to attend the hearing.

[83] He has been at this location for 18 years and has lived in Laurier Heights for 30 years. He is concerned about the effect of the proposed development on residential housing values. An experienced realtor has advised him that residents can expect a 5 to 10 percent reduction in the value of their homes as a result of the proposed development.

[84] Noise is also an issue. He has been awoken at all hours of the day by the arrival or leaving of shift workers and the accompanying loud talk and honking horns.

[85] Lack of parking for their family members and guests has been an on-going issue over the past 18 months to two years.

L. Roberts

[86] Ms. Roberts is not within the notification area and resides four to five blocks away. However, an institution of this size at this location affects everyone in Laurier Heights.

[87] Her elderly mother was recently injured when the bus she was on slammed on its breaks because a vehicle pulled out of the entrance from Canterbury Court. Many Canterbury Court residents also take the bus and could be at similar risk.

[88] The parkade entrance is often obscured by parked cars and windrows in the winter.

[89] The neighbourhood is changing and there is currently a large multi-family townhouse complex in the works nearby. This will lead to a huge spike in traffic.

[90] No underground parkade is planned for the proposed development and she was told there was sufficient parking. She disagreed with this conclusion; at some point Canterbury will have to deal with parking.

[91] Compared to other existing seniors' residences in Edmonton, Canterbury's application and permit is too large for the location. Parking issues will only get worse.

vi) Position of the Development Officer, J. Angeles

[92] Mr. Angeles stated that he attended the hearing to answer questions from the Board and provided the following responses:

a) The minimum parking number has been met for this application; therefore, he did not exercise his discretion on the parking requirement.

b) The parking study was reviewed during the rezoning process and that is why that parking number was established in the DC2.970. He did not review the parking study because there is already a number specified in the DC2.970.

c) He did not review the original 1990 public hearing and conditions and he was unaware of promises made at that time with respect to parking.

d) The change of access for employees from 141 Street was included in the drawings. The connecting path walks from 141 Street to the Canterbury building had no Development Permit because they already exist. However, the path walks are included in the subject application. He did not see the connecting path walks on the previous Development Permit and reiterated that they are included in the permit he approved.

e) He considered the two permits at the same time because the Applicants applied for two permits at the same time. He is unsure why the applicants applied for two separate permits, but they can be reviewed at the same time because the ultimate outcome will be the same. Both applications were circulated to City departments and both permits were issued on the same day.

f) When a Development Permit is issued, the permit will stand for a maximum of two years and if the application is not developed, the Development Permit will expire. However, if the applicant applies for a building permit and has paid the building permit fees prior to those two years, the Development Permit will stay intact unless a building permit application has been cancelled or expired.

g) He had to make sure both permits were approved at the same time so that the total number of units would be in accordance with the DC2.970. There are no conditions to link the two permits to meet the total maximum unit requirement.

h) An urban design context plan was not considered because the re-zoning has been completed for the subject development and a traffic impact assessment, a sun shadow study, and a public engagement study was conducted. In his opinion, everything has been taken care of during that rezoning process and he is not in the position to require another urban design context plan for this application. He is not saying he does not have the authority to request an urban design context plan but he reiterated that it is no longer required because it has been dealt with during the re-zoning process.

i) The Urban Form and Corporate Strategic Development report on City Bylaw 18161 was not looked at; however, he acknowledged it was part of the re-zoning process because the DC2.970 has already been approved.

j) He considered in his decision that the DC2.970 has been complied with.

k) He did not consider any suggestions or recommendations in the re-zoning report to Council if they were not mentioned in the DC2.970.

l) He could not consider any traffic issues since the parking impact assessment was conducted because he could only consider the DC2.970 that states the minimum number of parking spaces.

m) He was not involved in the re-zoning process but there were public engagement surveys done; however, he has limited information about those surveys and the information provided to Council. He is not in the position to comment on those details.

n) In his opinion, the development is already compatible with the whole neighbourhood pursuant to the General Purpose of the DC2.970, because the building exists and the Applicants are only adding a small part of the building. The five storey addition meets the height requirement of the DC2.970. He agreed that because the development is compliant with the Height regulation and it is an existing Use, the General Purpose is met.

o) He agreed that there is no condition that requires the south permit to be built but not the north permit. He agreed if the north permit was built first it would meet the DC2.970 requirement. He agreed that if the south permit with the five storey

addition was built and the north permit was not, the site would be over the maximum number of dwellings allowed. He reiterated that there is no condition to link both permits together.

p) The 66 required underground parking spaces already exist. When the new addition is built, the surface parking will be reconfigured to meet the 48 surface parking space requirements. The new development will create 24 new parking spaces.

q) In his opinion, if the minimum parking requirement is met, the development meets the intent of the DC2.970. For other applications, regulations are reviewed on a case to case basis. However, most of the time if the parking meets the minimum requirement the Development Officer will not demand anything greater. There are other regulations in the *Bylaw* that have minimum and maximum requirements. If the minimum parking requirement in the DC2.970 is 114 parking spaces, the development is compliant with the DC2.970.

r) He agreed that the applications are considered as a Class B Discretionary Development because it is a Direct Control Provision. Section 13.3(2) of the *Bylaw* states "If required by the Development Officer, […]". He decided not to ask for any plans under section 13.3 because the DC2.970 has been met. If section 13.3 was actually required in the DC2.970, he would have asked for it. He reiterated that he would never ask for plans in section 13.3 if it was not included in a Direct Control Provision.

s) He agreed that he looked at both applications in conjunction as one that were both proceeding. He looked at both applications together to decide whether or not they met the requirements in DC2.970.

vii) Position of the Respondent, ONPA Architects

[93] Ms. M. Conroy and Mr. J. Di Liello of MLT Aikins appeared to represent the Canterbury Foundation. They were accompanied by Ms. W. King, Executive Director of Canterbury Foundation, Mr. P. Byrne with ONPA Architects and Mr. G. MacKenzie of Greg MacKenzie & Associates Consulting Ltd.

[94] The Appellants' reasons for challenging the Development Permits relate to traffic and parking arising from the Canterbury facility.

[95] Because the site is zoned as Direct Control, the threshold question in this appeal is whether the Development Permits are consistent with Council's directions. If the Permits are consistent with Council's directions, then the Board has no authority to change the Development Permits and the appeals must be dismissed.

[96] Canterbury submits that it is clear that the Development Permits comply with Council's directions, including DC2.970. Specifically with respect to the grounds raised by the Appellants, DC2.970 mandates a minimum of 114 parking stalls on-site. The Development Permits confirm the minimum parking requirement in DC2.970 is met.

[97] The Canterbury Foundation - a non-profit organization with charitable status - operates Canterbury Manor, Canterbury Court, and Canterbury Lane which provide a range of living options for senior citizens.

[98] Canterbury Court was built in 1974. It is the renovation of the Court that has prompted all of these changes.

[99] The Site was first zoned as a Direct Control District under DC2 in 1990. This previous DC2 mandated a minimum of 90 parking spaces (66 underground and 24 surface stalls). In 1992, the facility was expanded to include Canterbury Manor. An underground parking garage with 66 stalls was included as part of the Manor development.

[100] The forthcoming development at issue in this appeal will not result in any changes to the Manor or its underground parking garage.

[101] In 2017, Canterbury submitted an application to amend the DC2 provisions applicable to the Site to reflect the present-day *Bylaw* and enable the development of a mid-rise apartment on a portion of the Site ("Rezoning Application"). Some of the changes to the DC2 provisions sought in the Rezoning Application included:

a) An increase of maximum number of units to 355;

b) An increase in the Floor Area Ratio from 1.3 to 1.5;

c) An increase in the maximum Height on the west portion of the Site to accommodate a new addition; and

d) An increase in the minimum parking from a total of 90 spaces (24 at grade and 66 underground) to a total of 114 spaces (48 at grade and 66 underground).

[102] Canterbury consulted extensively with the community in advance of submitting the Rezoning Application (above and beyond what was required). Pre-application public engagement on the Rezoning Application included:

a) A meeting with Laurier Heights Community League on June 13, 2016;

b) Distribution of brochures to 140 houses in the neighbourhood in August 2016;

c) Door-to-door consultation with adjacent homes in August 2016;

d) Engagement with a nearby school and churches; and

e) An open-house on September 8, 2016 that was advertised in the Laurier Heights community newsletter, on Community League signage, and in the above noted brochures.

More detailed information on this public consultation can be found under Tab F of the previously submitted background information.

[103] The draft site plan shared during the pre-application consultations provided for 102 parking spaces (an increase of 12 stalls from the existing development). In response to concerns raised by some residents at the pre-application stage, Canterbury revised its plans to increase the number of on-site surface parking spaces to 114 (an increase of 24 stalls from the existing development).

[104] Additionally, Canterbury tried to negotiate an agreement to rent parking stalls from a neighbouring strip mall located on 142 Street, kitty corner to the Site. On December 2, 2016 and February 13, 2017, a representative from Canterbury met with Mr. Shafir, whose company owns the strip mall, and who is an Appellant in this hearing. The parties were unable to come to an agreement.

[105] In January 2017, Canterbury's agent submitted the Rezoning Application which included a proposed new DC2. The proposed DC2 included a term that mandated a minimum of 114 parking stalls on-site (48 surface stalls, and 66 underground).

[106] In February 2017, the City sent notice of the Rezoning Application to 99 recipients, including property owners surrounding the Site and on June 1, 2017 the City held another open house to discuss the Rezoning Application.

[107] On or about April 2017, Canterbury provided the Development Authority a Parking Impact Assessment ("PIA"). The PIA concluded that the projected parking demand arising from the expansion of Canterbury could be accommodated within the study area (the "study area" included on-site parking, and on-street parking immediately adjacent to the Site, including 141 Street, 142 Street, 85 Avenue, and 80 Avenue). This PIA can be found under Tab I of their submitted documents.

[108] After being advertised in the Edmonton Journal twice, Council held a public hearing on September 11, 2017, to consider the Rezoning Application. Four parties in opposition to the Rezoning Application attended and participated in the Council hearing: P. Lefebvre, R. Clarkson, J. Shafir, and 722383 Alberta Inc. They presented their concerns about parking. The video of this meeting is available for viewing on the City website.

[109] It appears that others who participated in the Council Rezoning hearing have filed letters for this Appeal. The concerns about off-site parking and traffic generated by Canterbury were fully canvassed in the Rezoning hearing before Council.

[110] After hearing from the interested parties, Council unanimously approved the Rezoning Application ("Rezoning Decision"). The provisions in DC2.970 replaced the old DC2 provisions governing the Site. No judicial review was commenced challenging the Rezoning Decision.

[111] In August 2018, the architects for Canterbury applied for the Development Permits and on December 14, 2018 the Development Permits were approved by the Development Authority.

[112] Ms. Conroy acknowledged the total amount of units is confusing. The net increase is 39 units when both permits are taken into account. There is also an increase in 24 parking stalls from what is exists.

[113] Canterbury is aware of the neighbourhood concerns and Tab K of their supporting documents lists the steps that Canterbury has taken since late December to mitigate parking concerns. They have tried to educate their staff about parking legally and in a respectful manner. Canterbury has also considered the options outlined in the GMAC report and has not dismissed them without regard.

[114] There is a meeting planned with residents for March 7 and a representative of Canterbury will be there. That is the forum where many concerns / solutions can be addressed. The Board in its role in this appeal does not have the power to do what might resolve some of these concerns.

[115] There are three issues in this appeal:

a) Scope of SDAB's authority for development appeals in Direct Control Zones.

b) Did the Development Authority follow the Directions of Council?

c) Are the remedies sought by the Appellants available in this Appeal?

[116] The Development Permits are located in a Direct Control District and the decision to approve the Permits was made by the Development Officer. Accordingly, this appeal is governed by section 685(4)(b) of the *Act*, which provides:

> Despite subsections (1), (2) and (3), **if a decision with respect to a development permit application in respect of a direct control district**
>
> > (a) is made by a council, there is no appeal to the subdivision and development appeal board, or
> >
> > **(b) is made by a development authority, <u>the appeal is limited to whether the development authority followed the directions of</u> 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 directions, substitute its decision for the development authority's decision.** [emphasis added]

[117] An appeal under section 685(4)(b) of the *Act*, is not a hearing *de novo* on the merits of the development. The threshold question to be addressed by the Board in this appeal is whether the Development Authority, in approving the Development Permits, followed the directions of Council.

[118] The onus rests on the Appellants to provide evidence that the Development Officer failed to follow the directions of Council.

[119] It is patently obvious that the Development Officer followed the directions of Council. It his not his job to look behind the reasons why Council set those minimums when they re-zoned the area. As to the argument whether the Development Permit should have included parking spaces past the minimum, the Board must first decide that Council's directions were not followed by the Development Officer before this can be addressed.

[120] Ms. Conroy referred to the *Garneau* case where on page 25 it was found that the Development Officer did not follow the directions of Council. In that case there was discretion under the Garneau Area Redevelopment Plan that was not considered. The Court of Appeal honed in on that and said that is the threshold question. It goes on to say that the SDAB only has the discretion the Development Officer had when it steps into his shoes. Unless and until it is found that the directions of Council have not been followed, section 687(3)(d) of the *Act* cannot be considered.

[121] Exercising section 13.3 of the *Bylaw* could be considered a collateral attack on the re-zoning decision. Mr. Wakefield suggested that Council's direction was that something like an urban design context plan or report would be valuable. If Council wanted to direct that to happen it could have included it in the DC2. As the Development Officer stated, if it is not stipulated in the DC2 there is no reason to do it because he felt it was considered already when the DC2 was drafted.

[122] Further to the discussions regarding Professor Laux, footnote 175 is being ignored: "But not including, of course, the variance power conferred in s. 687(3) in so far as council has prescribed a development standard." The SDAB can assume the authority of the Development Officer but the SDAB is confined by the instructions of Council.

[123] Ms. Conroy does not believe there is discretion for the Board in its decision to ask for more than the 114 minimum required parking spaces. Previous cases where the Development Officer refused a development based on looking at something outside of the DC2 provisions were overturned. There arguably is discretion for the Development Officer to bump the parking up, but the Board does not get to the question whether the Development Officer should have bumped it up unless he did not follow the directions of Council. He followed the directions of Council when he ensured that it met the minimum.

[124] As per the Development Officer's submission, it was Council's job to review the parking impact analysis and he relied on their examination when they came up with 114 parking spaces. Ms. Conroy submits it would be a collateral attack on Council's decision if he were to look behind this decision.

[125] The PIA cannot be disregarded just because some conditions may have changed. By their very nature things change and traffic flows are never static. Different developments happen. Further, the Appellants have not provided a certified parking analysis. It was Council's job to look into the PIA. That is not what the Board is here to do.

[126] Ms. King of Canterbury Foundation advised that the only change to 141 Street is that the school zone changed decreasing the permitted speed limit. She is not aware of any other changes and her position is that the PIA still applies and that is why the Development Officer has no discretion to look beyond it.

[127] Although two separate permits were issued, the drawings submitted with 277039391-002 contemplated both the renovation and the reduction of units in the Court and the tower addition. There is a need to renovate the Court but in order to renovate there had to be a place to move people to. Once the Court is complete the people that were moved to the new addition can move back to the Court. The two developments cannot be done independently of each other.

[128] Page 4 of the approved permit for 277039391-002 references the Development Permit for 277039391-004 under the Transportation Advisements. While this is arguably not a condition it does show that the two permits are not separate from each other. The two permits do not exceed the maximum number of units directed in DC2.970.

[129] The Development Permits comply with the Uses listed in the DC2.

[130] The Development Permits comply with Council's direction in the City's Municipal Development Plan ("The Way We Grow") to provide a broad and varied housing choice, incorporating housing for various demographic and income groups in all neighbourhoods, and to support redevelopment and residential infill that contributes to the livability and adaptability of established neighbourhoods.

[131] The Development Permits also comply with Council's direction in Edmonton's Strategic Plan, including policy objectives to ensure that Edmonton is attractive and compact, and that Edmontonians are connected to the city in which they live, work, and play.

[132] The Development Permits do not consider provisions in Overlays because Council's direction, as expressed in the *Bylaw*, is that Overlays do not apply to Direct Control Districts.

[133] The 1990 DC2 does not apply any more. Perceived verbal promises made, unless included in the actual DC2 or the permits, are not legally enforceable.

[134] The findings of the SDAB regarding SDAB-D-14-246 (paragraph 19 was referenced by Mr. Wakefield) were overruled by paragraphs 28 and 29 of the *Garneau* decision.

[135] Regarding SDAB-D-17-047 referenced by Mr. Wakefield, a developer consulted with the community based on a certain number of parking spaces. Later in the process, when he applied for a permit, the number of parking spaces was actually lower. He received that permit and the appeal was allowed by the SDAB. In the subject case it is the opposite. The community was consulted and after hearing what they said Canterbury increased the number of parking spaces. Contrary to SDAB-D-17-047 the minimum number was specified in the subject DC2.

[136] The Respondents submitted that the remedies requested by the Appellants in their appeals are either issues outside of the scope of an appeal of this nature under 685(4) of the *Act* or are matters that should be handled by Bylaw Enforcement.

[137] A good deal of the evidence filed by the Appellants appears to attack the provision that governs parking in the DC2. A desire to have another underground garage, expand the current garage or re-visit the minimum parking requirements are all issues considered by Council in the re-zoning application and is not relevant to the scope of this appeal. While the Appellants do not agree with the directions of Council, evidence as to what Council should or should not do is outside the scope of the hearing.

[138] If the Appellants were unhappy with the zoning decision, their legal remedy was to commence a judicial review pursuant to section 536 of the *Act* challenging that zoning decision. No such judicial review was commenced.

[139] Matters concerning alleged on-street parking violations, people parking improperly at the nearby strip mall, and other traffic violations are not within the purview of the hearing. Those are matters within the authority of Bylaw Enforcement.

P. Byrne, ONPA Architects

[140] There will be a total of 337 units after the renovations to the Court and the addition of the tower have been completed. There is an overall net increase of 39 units.

[141] The development application packages were prepared so that they could be submitted together or separately. Mr. Byrne referred to the clause on the drawings that link them together. They spent close to an hour with the intake clerk at the City who determined it was simpler to process the proposed development as two separate applications.

[142] The actual construction consists of complex phasing. Some of the scope related to the Court will be done first. However, the addition does have to be in place first before the bulk of the work to the Court can be completed.

W. King, Executive Director, Canterbury Foundation

[143] There are currently 310 residents at Canterbury with the average age being 89. 60 percent of the people in the Court have some form of dementia. The last renovation of any kind was done in 1998 which added 20 spaces to the memory care.

[144] There are approximately 200 staff which include full time, part time, and casual. They are not all on-site at the same time as this is a 24 / 7 operation. The highest amount of staff is present on Wednesdays.

[145] The Court is 44 to 45 years old and in need of renovations, especially to the washrooms. They also plan to move the second floor dementia patients to the main floor to allow them access to a gated garden space. The only way to do the renovations is to move residents elsewhere and it was found that developing a five storey addition would be the most feasible option.

[146] They realize parking is an issue and empathize with the neighbours. It was decided to have the staff park on 141 Street as 142 Street is closer to the main entrance and is used by visitors. They have no problem with installing additional "no parking" signs.

[147] They have tried to accommodate as many concerns of the neighbours as possible and have communicated parking etiquette with staff in memos and in meetings.

[148] Ms. King provided the following information in response to questions from the Board:

a) All plans were made clear at the public hearing where Council finalized parking.

b) They are aware that construction will create disruption and are working on trying to find additional spaces for workers to park.

a) While the requirement to remove windrows is not documented anywhere it was one of the recommendations in the parking impact study. They do remove windrows but Ms. King acknowledged that there is a portion of 80 Avenue where this has not been done and she has addressed this with staff.

b) Canterbury administration is constantly reminding managers and supervisors to address parking in staff meetings. They are doing the best they can.

G. MacKenzie, Greg MacKenzie & Associates Consulting Ltd.

[149] Mr. MacKenzie referred to Table 4.4 of the Parking Impact Study which shows a future demand of 24 parking spaces will be required. Through design changes they were able to increase the on-site parking of the proposed developments to provide an additional 24 parking spaces so it is a no net impact scenario. This report was submitted to Council as part of the re-zoning process, it was reviewed by City of Edmonton Transportation, and it was explained at the public hearing before Council.

Summary of Respondents

[150] Ms. Conroy referred to Tab F of her supporting documents which contains the re-zoning report that went to Council. The contents of the PIA are summarized on page 5 and explain to Council that the City technicians have reviewed it.

[151] Ms. Conroy asked why the Development Officer would question the re-zoning decision. It would also be an error for the Board to look behind the re-zoning decision and at the volume of evidence presented other than to note that the issues were not ignored by Council.

[152] Ms. Conroy confirmed that her arguments can be summarized as follows:

a) The Board only has authority if the directions of Council were not followed. It is their submission that the directions were followed; therefore, the Board is precluded from listening to the merits.

(i) The two permits are connected; therefore, you do not get over the maximum 355 permitted number of units.

(ii) They recognize that the Development Officer has discretion to require more parking but in this case he should not because he relied on the fact that a professionally prepared PIA was prepared, submitted to the City, reviewed by the Transportation Department, agreed with, and that is how the minimum required 114 parking spaces was established.

(iii) The same rationale applies to the urban design context plan referred to in section 13.3 of the *Bylaw*. She asked why the Development Officer would decide to order another report when all of the various professionals came into play.

(iv) Within the scope of discretion you can choose to exercise it by choosing to do nothing. The Development Officer relied on the zoning process and he did act by stating the minimum was fine.

b) The final argument is if the Board finds that the Development Officer did not follow Council's directions and goes into the merits, anything the Board directs has to be within the scope of the authority of the Development Officer under the DC2. If the Board did anything else it would be a collateral attack on the DC zoning.

viii) Rebuttal of the Appellants

T. Hamilton

[153] The recommendations referred to are found in 3 different documents:

a) The Parking Impact Assessment.

b) GMAC letter to C. Rutherford dated January 6, 2017.

c) The re-zoning report itself.

The recommendations are similar in the three documents although the wording may be slightly different.

K. Wakefield

[154] At the end of the day the Development Officer did not exercise the discretion that he had. If this is correct, it is a repetition of the same type of error seen in *Garneau* and *CFPM*.

[155] The evidence is clear that the steps taken by the Respondent to mitigate the parking problems are not working.

[156] He agrees with Ms. Conroy that you have to look first at the threshold question on Direct Control appeals and then you can address the merits if appropriate. He also agrees that one ought not to look behind Council's decision. However, the Development Permit application is a totally separate step from the re-zoning decision.

[157] The really important part is not whether Council considered the PIA report, either directly or via the Transportation Department. Council speaks through its Bylaws. Once you get through the re-zoning process all you look at is DC2.970 which contains a General Purpose clause, a maximum number of units and a minimum parking number. According to the Development Officer's decision it was a Class B Discretionary Development, not a Class A Permitted Development which would have been a totally compliant Development Permit application. The DC2.970 must be read and applied; this is not looking behind Council's decision.

[158] Regarding the paragraph in the *Garneau* case where the Court disagreed with what Professor Laux said, what you are left with is the key principle that the SDAB has the same powers of the Development Officer. Since this is a Class B Discretionary Development the Development Officer has extensive power and the Board does as well when it comes to the General Purpose clause and to the parking.

[159] Due to the outdated data contained in the parking study it would not be a collateral attack for the Development Officer to use discretion regarding parking.

[160] A Development Officer receiving a Development Permit application should look at how it fits in with the residential zone around it and at that point he has the discretion to require the urban context design plan referenced in 13.3 of the *Bylaw*. While the conclusion reached may be different from the PIA report of 2017 this is not undermining or collaterally attacking Council's decision. Its is simply saying that the General Purpose

is no longer being met as changes have occurred and at that point the Development Officer would have the ability not to just go with the minimum parking requirements.

[161] To talk about discretion being exercised before or at the re-zoning stage is not relevant to what the Development Officer could do and what he should do at the Development Permit stage.

[162] Mr. Wakefield understands there may have been some rationale for doing things as they were done but the fact remains that there are two separate Permits, two separate intake documents, two architects, two applications and two separate SDAB PIN numbers; therefore, the legal position has not changed.

[163] With respect to the Wilson case (SDAB-D-14-246), Mr. Wakefield's point was not the fact that they were subtracting parking stalls rather than adding parking stalls. It was the legal principle involved, namely; that the Development Officer had power under that DC2 but did not exercise it properly.

[164] Regarding Ms. King's evidence, it does not really speak to the parking issues on 141 Street and 80 Avenue and 85 Avenue. At the end of the day, despite all the meetings and notes to staff, the issues regarding windrows, parking, etc. are still there. Ms. King confirmed there are 200 staff while the PIA said there were only 182. This is a 10 percent increase in staff even before any additional development. At the end of the day there will be more intensive parking.

[165] While the Respondents submitted evidence that there is surplus parking available the evidence is that there is not adequate parking for the current scale of the development let alone any increase.

[166] An e-mail in opposition to the development submitted by Ms. S. Butt, a retired senior Development Officer basically said as a Development Officer she would be concerned. She came to a different conclusion than Mr. MacKenzie. Mr. MacKenzie said the Development Officer had no basis for questioning the parking numbers. This is because Mr. MacKenzie did not look at the General Purpose clause, did not look at any addition and did not do a section 13.3 analysis.

[167] Mr. Wakefield provided the following information in response to questions from the Board:

a) Because this is a Class B Discretionary Development the Development Officer has discretion because he can look at the General Purpose clause. The Board can also look at the General Purpose clause and come to a different conclusion.

b) If the Board accepts 277039391-002 as a separate permit with no legal nexus to the other permit the Board can say the Development Officer had no business approving a Development Permit for something that exceeds the express provisions in the bylaw.

c) The issue of the 114 parking stalls can to some extent be tied to the General Purpose clause. If the minimum is 114 do we stop thinking about it just because the bylaw says that is a minimum? The Board, with or without using section 13.3, can come to different conclusion just as the Development Officer can.

d) Since this is a Class B Discretionary Development it gives the Board the ability to use section 687 of the *Act*.

e) Every DC zone is different and you have to parse each one independently.

f) The rezoning process is separate from the Development Permit process and he has steered clear of making a collateral attack on the re-zoning process. The evidence shows a lot has changed since the time of the rezoning process and the Development Officer did not put his mind to these changes. He had some discretion, but he did not exercise it. His fatal error was connecting the rezoning process to the Development Permit process.

S. Cooper

[168] He took possession of his property on June 18, 2017 and moved in early July 2017. He was never notified or consulted of the proposed development, contrary to the Respondent's evidence.

[169] Renting 45 stalls to tenants is not in the spirit of partnership. It should have been disclosed that these 45 stalls are not available for staff or residents.

[170] He refuted Ms. King's comments that the management of Canterbury is willing to meet with neighbours and stated it has been very difficult to contact anyone at Canterbury.

[171] It takes anywhere from three to nine hours to have parking issues corrected once a complaint has been made to Canterbury.

Decision

[172] The appeals are **DENIED** and the decisions of the Development Authority are **CONFIRMED**.

Reasons for Decision

[173] This hearing concerns four appeals of two Development Permit applications submitted on behalf of the landowner Canterbury Foundation ("the Foundation") related to the Canterbury Court building and approved by the Development Officer:

DP 277039391-002 submitted by ONPA Architects to "Construct additional 58 Dwellings (new total number of Dwellings 236) to an existing Lodging House/Apartment Housing (Court building - 8403 142 Street NW) and construct exterior alterations (reconfigure the parking and landscaping area)" (the 002 Tower Permit); and,

DP 277039391-004 submitted by PGA Architects to "Construct additions and interior alterations to an existing Lodging House/Apartment Housing (expansions/landscaping, pergola on main floor, a roof patio on 2nd floor and to reduce the total number of Dwellings from 236 to 209 for Court building - 8403 142 Street NW)" (the 004 Renovation Permit).

[174] The proposed developments are located within DC2.970, a Site Specific Development Control Provision ("DC2.970"). The Foundation has operated living facilities for seniors on the Site since the mid 1970s when Canterbury Court was constructed. The Site was first zoned as a DC2 Site Specific Development Control District in the early1990s when the Foundation received rezoning to build another building, Canterbury Manor. Canterbury Manor has 128 independent living suites and is not changing as part of the two Development Permits under appeal.

[175] In 2017, the Foundation submitted a rezoning application to amend the DC2.970 provisions for another project to expand the services offered by Canterbury Court by renovating and improving accessibility of existing suites in Canterbury Court and by adding a five storey building to Canterbury Court.

[176] After an initial meeting with City staff about the project, the two Development Permit applications were submitted on August 2, 2018. The Development Officer circulated and considered the two applications for compliance with the *Edmonton Zoning Bylaw* (the *Bylaw*) and DC2.970 together as one. The Development Officer determined that together the 002 Tower Permit and the 004 Renovation Permit complied with all the provisions of the DC2.970 and because the Site is a Direct Control Zone, he issued both permits on December 14, 2018 as Class B Discretionary Developments (Development Officer's Written Reports).

[177] The 002 Tower Permit was appealed by three neighbouring property owners (Ms. Hamilton, 722283 Alberta Inc. through Mr. Shafir and Mr. Cooper). Mr. Cooper was represented by Mr. Wakefield. The 004 Renovation Permit was appealed by one neighbour (Ms. Pateman). The Board received several submissions opposed to the proposed developments and 15 people attended the hearing to provide oral submissions in opposition. They suggested that the Board should either deny the proposed developments or approve them on the condition that additional parking spaces be provided on the Site (underground or at grade), or else be secured off-site. The Laurier Heights Community League did not take a formal position and Laurier Heights School located directly across 142 Street to the west had no objections to the proposed developments.

[178] The Board heard that the main concerns of the Appellants and others in opposition relate to consultation and parking, specifically:

a) There should have been more consultation with the neighbours about the proposed developments and more cooperative behaviour by the Foundation as it failed to live up to recommendations in the Parking Impact Assessment ("PIA") dated April 2017 and effectively turned the streets along the Canterbury perimeter into parking for its employees and visitors.

b) The parking situation is now congested due mainly to staff parking and currently creates traffic and safety concerns as well as negative impacts for neighbouring property owners and passersby.

c) Existing Bylaw Enforcement mechanisms are inadequate to address the situation.

d) The situation will worsen significantly if the proposed developments proceed.

e) The proposed 114 on-site parking spaces are inadequate and bring material adverse impacts and decreased property values.

f) The PIA Final Report relied on information from 2016 which was flawed from the outset and is out of date due to two intervening developments (first, restrictions have been added along the west side of 142 Street; and second, staff now exit the building at 141 Street significantly increasing employee parking along 141 Street and 85 Avenue).

[179] Mr. Shafir's corporation owns a shopping centre with an on-site parking area kitty corner to the north west of the Site. He had some discussions about shared parking, but no agreement was reached. Nonetheless employees and visitors to Canterbury currently park on his private parking lot creating issues for his tenants. It is difficult to restrict parking on his land and he believes the proposed developments will exacerbate these issues during construction and thereafter.

[180] Mr. Wakefield also made the following arguments for Mr. Cooper:

a) Council did not exercise full control in this particular Direct Control District and therefore the Board has a broader jurisdiction to substitute its own decision in place of the Development Officer's decision, particularly with respect to parking.

b) The Development Officer failed to follow the directions of Council when he approved two completely separate development permits because the 004 Tower Permit on its own results in a total of 366 Units which is unlawful as it exceeds the maximum of 355 Units allowed per DC2.970.4.c.

c) The Development Officer failed to follow the directions of Council with respect to the parking by relying on the rezoning process and not exercising his discretion to require more than 114 on-site parking spaces or to require the applicants to submit a new urban design context plan and vicinity map and a new PIA with their Development Permit applications.

[181] The Respondents argued the appeals should be denied for the following reasons:

a) The Site is within Site Specific Development Control District DC2.970. The proposed developments comply with all its provisions. Therefore, the directions of Council have been followed and per section 685(4) of the *Municipal Government Act* (the *Act*), the Board has no authority to substitute a decision of its own for the decision of the Development Officer.

b) The Board has no jurisdiction to deal with traffic generally and the bylaw compliance issues cited by the Appellants are beyond its authority.

c) The appeals are in substance a collateral attack on Council's decision to rezone the property. Council heard the parking concerns raised by the Appellants and the other parties in opposition and nonetheless passed the Bylaw to change DC2.970 and set the parking requirements. The Bylaw amendments were not legally challenged.

d) Alternatively, the PIA Final Report anticipated the changes and is not out of date. The circumstances have not changed materially. It is the best evidence available about parking and the Board should not impose additional parking requirements over and above the minimum set by Council based on all of the evidence before it.

[182] Per section 720.1 of the *Bylaw*, the General Purpose of a Site Specific Development Control Provision such as DC2.970 is to provide for Direct Control over a specific proposed development where any other Zone would be inappropriate or inadequate. The Board considered the directions of Council in the DC2.970 Site Specific Development Control Provisions governing development for this property:

The General Purpose in DC2.970.1 states "To accommodate low and mid rise residential development with limited supporting Uses, while ensuring compatibility with adjacent existing development in Laurier Heights."

Apartment Housing is a Listed Use per DC2.970.3.a and a Lodging House is a Listed Use per DC2.970.3.g.

DC2.970.4 provides general development regulations applicable to the proposed developments and states in part:

> a. The development shall be in accordance with the following regulations and in general accordance with the attached Appendices.

> b. …
>
> c. The maximum number of units shall be 355. A unit can be either a Dwelling or a Sleeping Unit.
>
> …

DC2.970.6 provides regulations specific to parking, loading and access and states in part:

> a. Vehicular access shall be allowed to the Site from 80 Avenue NW and 142 Street NW as illustrated on Appendix I.
>
> b. A minimum of 114 parking spaces shall be provided on Site, comprised of 48 parking stalls at Grade and 66 underground parking stalls contained within the Parking Garage.
>
> c. Parking is permitted within the required setback along 142 Street NW, limited to a maximum of three parking spaces.
>
> …

DC2.970 includes three Appendices which include six elevations of Canterbury Court and Canterbury Manor and Site plans showing the location of the proposed additions, the surface parking configuration and the fire access plan.

[183] The Board considered section 710.3(3) of the *Bylaw*. It provides all Regulations in the Zoning Bylaw shall apply to development in the Direct Control Provision, unless such Regulations are specifically excluded or modified in a Direct Control Provision. Given that the proposed developments are Class B Discretionary Developments under section 12.4, the Development Officer could have required the applicants to submit an urban design context plan and vicinity map or a PIA per section 13.2(a) and (b) of the *Bylaw*.

[184] Section 685(4)(b) of the *Act* applies to appeals involving Direct Control Districts. It states:

> **685(4)** Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district
>
> (a) …
>
> (b) is made by a development authority, the appeal is limited to whether the development authority followed 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 directions, substitute its decision for the development authority's decision.

[185] The Board considered the jurisdictional submissions presented by counsel for Mr. Cooper, specifically that:

a) Council did not exercise true Direct Control of this Site. Instead they created a measure of discretion for the Development Officer in DC2.970 because: the wording of the General Purpose imports discretion, the Development Officer has the discretion to increase the number of required parking spaces as only a minimum of 114 spaces and no maximum is provided in DC2.970.6.b; and, the proposed developments were classified as Discretionary Developments per section 12.4 of the *Bylaw* which in turn gives rise to a discretion in section 13.3(2)(a) and (b) enabling the Development Officer to require the submission of more documents.

b) As a result of this discretion, in accordance with the rationale set out by Professor Laux, the appeal rights and powers set forth in sections 684 to 687 of the *Act* should apply and the Board has the option in this appeal to consider the evidence before it and exercise that same discretion delegated by Council differently than the Development Officer.

c) In this case the Development Officer should have exercised his discretion by either turning down the development, raising the required number of on-site parking spaces or seeking additional information and that is what the Board should do given the presented evidence.

[186] The Board is bound by decisions of the Alberta Court of Appeal including *Garneau Community League v Edmonton (City*), 2017 ABCA 374 (*Garneau*) which was cited by both counsels.

[187] In *Garneau*, the Court addresses this Board's authority on appeals involving Direct Control Districts in view of section 685(4) of the *Act* (then section 641(4)) and states at paragraph 20:

> However, when the appeal concerns property that is subject to direct control zoning, section 641(4) limits both the scope of the appeal and the role of the subdivision and development appeal board. It provides, with emphasis added:
>
> 641(4) Despite section 685, if a decision with respect to a development permit application in respect of a direct control district
>
> (a) is made by a council…, or
>
> (b) is made by a development authority, the appeal is limited to whether the development authority followed 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 directions, substitute its decision for the development authority's decision.

[188] *Garneau* involved a proposed development located within a DC1 Direct Development Control District which incorporated the development regulations of a regular Zone and

was associated with the Garneau Area Redevelopment Plan ("GARP"). The Development Officer had discretion in making that decision as the proposed development was a Discretionary Development and a Discretionary Use which required variances to the applicable development regulations triggering both a specific variance power in the GARP and the general variance authority in section 11 of the *Bylaw*.

[189] The Court applies a two-stage analysis. First, the Court considers whether the Development Officer failed to follow Council's direction within the terms of section 641(4)(b) and affirms the Board's decision that he did because he considered the general variance power in the *Bylaw*, but not the specific variance power in the associated Plan. Second, the Court rules that only after finding this failure in terms of section 641(4)(b), was the Board entitled to substitute its own decision (provided that it too followed the directions of Council).

[190] The balance of *Garneau* deals with the extent of the Board's discretion to grant variances after finding the Development Officer failed to follow the directions of Council. The Court concludes the Board has authority to exercise exactly the same discretion as the Development Officer, but no more as the specific limits on its appellate authority in section 641(4)(b) constrains its general section 687(3)(d) authority to grant variances. As the Respondents point out, in this second stage of analysis the Court considers and rejects a portion of the excerpt from Professor Laux cited by Counsel for the Appellant in support of broader authority for the Board to substitute its own decision for the decision of the Development Officer with respect to the two permits currently under appeal.

[191] The Board finds no indication in *Garneau* that the delegation of discretion in the Direct Control District enables the Board to disregard the first question and proceed immediately to consider the appeal on the merits and substitute its own decision. Following *Garneau*, the Board must first determine whether the Development Officer followed Council's directions including determining whether the Development Officer exercised the discretion granted to him by Council. Only after finding that the Development Officer failed to follow the directions of Council in accordance with section 685(4)(b) does the Board have the discretion (in accordance with the directions of Council) to substitute its own decision.

[192] The Board considered whether the Development Officer failed to follow the directions of Council with respect to community consultation. DC2.970 includes no requirements for community consultation and the Board was not pointed to any other applicable provision in the *Bylaw* requiring community consultation that was not met by the Development Officer. Accordingly, the Board finds no evidence that the Development Officer failed to follow the directions of Council with respect to community consultation.

[193] The Board considered the following factors to decide whether the Development Officer failed to follow the directions of Council by issuing the two appealed Development Permits.

[194] Counsel for Mr. Cooper argued that nothing stops the two permits from operating independently - it is possible for Canterbury to proceed to build the 002 Tower Permit, but not proceed with the renovations per Permit 004. Therefore, the Development Officer failed to follow the Directions of Council because the 002 Tower Permit should not have been approved on its own as it could result in a number of Units on the Site exceeding the 355 units maximum allowed per DC2.970.4.c.

[195] According to the Respondents, the Foundation proposed rezoning of DC2.970 for a project to enlarge and modernize existing suites (resulting in a reduction of units in one portion of Canterbury Court) and the addition of other in a new five storey building in another portion of Canterbury Court. To achieve the objectives of DC2.970, the overall development requires staging and both proposed developments must be implemented. The two proposed developments cannot be implemented independently of one another and together they comply with the directions of Council. The application packages for the project were prepared and submitted together and then on the request of the intake clerk were separated into two permit applications to facilitate the City review.

[196] The Development Officer explained that he issued two separate development permits as he received two applications simultaneously. He did not impose any conditions linking the two permits and he agreed that proceeding with the 002 Tower Permit without the 004 Renovation Permit would result in an excess of Units. He had regard for both permit applications when he reviewed and circulated them together and also when he approved them at the same time which he did to ensure that the total number of Units would be in accordance with the limit in DC2.970.4.c. He felt the ultimate outcome would be the same as a single permit because he looked at both applications together as one. His written reports both mention the simultaneous approval of the other concurrent application and note the number of Units. The written report he submitted for the 004 Renovation Permit includes a calculation confirming it reduces the number of Units and that the final result of the approvals will be compliant with DC2.790.4.c.

[197] The Board also considered the submitted applications. The two Development Permit applications on file show there was a single common preapplication meeting for both developments (Reference meeting #277039391 in the application form). The application for the 002 Tower Permit cross references the 004 Renovation Permit application: “Refer also to concurrent related DP application for Court building renovation.” Both applications include a common Site plan for parking configuration and a common landscape plan labeled L101DP prepared by ONPA Architects (the applicant for the 002 Tower Permit). The 004 Renovation Permit application shows the parking spaces proposed in the scope of work for the 002 Tower Permit application to meet the required number at grade parking spaces.

[198] Plans A001DP and L101DP for the 002 Tower Permit (both stamped approved December 14, 2018) include multiple cross references to the “concurrent” 004 Renovation Permit application. They explicitly contemplate its completion in the compliance calculations for the 002 Tower Permit. The Plans reproduce the DC2.790 provisions in their entirety and include summaries of three applications for the Site which indicate the two permit

applications are intended to be concurrent while a third future application for the Manor is separate. Under the heading Site Information there is a Unit Count Review, a Dwelling Density Review and an Amenity Area Review. Each review includes post renovation calculations indicating compliance with the applicable DC2.970 regulations. It is noted that the existing 180 Units in Canterbury Court will be reduced by 25 pursuant to the separate concurrent application leading to a post renovation count of 155 Units. The Amenity Area Review also explicitly provides that the renovations in Canterbury Court will reduce the number of Units by 25, the addition will add 58, and the Manor will remain unchanged at 128 resulting in a net increase of 33 for a total of 341 Units which is under the 355 Unit maximum.

[199] The Transportation Advisements in the approved 002 Tower Permit also reflect the understanding that both developments are intended to proceed together as one:

> 1. Subdivision Planning is currently reviewing a Development Application (DA#277039391-004) for the subject site which includes a reduction of the number of units within the existing Court Building from 236 to 209. This reduction is for the original interior units of the Court Building and the new addition remains the same. An addition of amenity areas and landscaping are also included for DA#277039391-004.

[200] The Board finds a significant nexus between the two permits, the evidence shows a clear intention and material representations by the Foundation that the two proposed developments will proceed in conjunction with one another and are dependent upon one another. Based on his oral submissions and written report, the Board also finds that the Development Officer acted on this representation and but for his contemporaneous analysis and approval of the 004 Renovation Permit, he would not have approved the 002 Tower permit and vice versa.

[201] The Board agrees with the conclusion of the Development Officer that when the two applications are analyzed together as proposed they comply with the maximum allowed number of Units and the finds the permits approve a net total of 337 Units based on the following:

a) The information and plans in both permit applications show Canterbury Manor has 128 units and is not changing;

b) The undated revised drawings of renovations for the main floor of Canterbury Court stamped approved December 14, 2018 show 65 suites in the application for the 004 Renovation Permit;

c) The undated revised drawings of renovations for the second floor of Canterbury Court stamped approved December 14, 2018 show 86 suites in the application for the 004 Renovation Permit; and,

d) The plans A001DP and A101DP both dated August 1, 2018 and stamped approved December 14, 2018 in the application for the 002 tower permit indicate 58 units will be added to Canterbury Court.

[202] In these circumstances, the Board concludes that the Development officer did not fail to follow the directions of Council when he considered the applications together as one and issued two permits: the 002 Tower Permit and the 004 Renovation Permit.

[203] Next, the Board considered whether the Development Officer failed to follow the directions of Council with respect to parking - either by not exercising his discretion to require more than the minimum of 114 parking spaces or by not requiring a new urban design context plan and vicinity map or a new PIA.

[204] Counsel for Mr. Cooper argued that the Development Officer failed to follow the directions of Council because he relied on the rezoning process for the development permit process when he should have exercised his discretion to require the Applicants to provide a new urban design context plan and vicinity map and a new PIA under his general discretion in section 13.3(2)(a)(b) of the *Bylaw*. Further, given the parking situation described by the parties in opposition, he should have exercised his discretion and required more than the minimum 114 parking spaces or refused the proposed developments.

[205] The Respondents argued that the proposed developments meet all the DC2.970 regulations and issuing the permits follows the directions of Council; therefore, the Board cannot revisit the Development Officer's exercise of discretion.

[206] The Board notes that unlike many of the decisions cited by the parties, in this case the proposed developments do not require any variances. The proposed developments meet all the applicable regulations passed by Council in DC2.970 and are in general accordance with its Appendices. The proposed developments show a total of 114 parking spaces - 48 reconfigured spaces at grade and 66 existing underground spaces in the Manor. This complies with DC2.970.6.b which states "A minimum of 114 parking spaces shall be provided on Site, comprised of 48 parking stalls at Grade and 66 underground parking stalls contained within the Parking Garage." The proposed parking spaces also comply with minimum setbacks in DC2.970.4.f and the locational exceptions to the minimum setbacks allowed for three spaces in DC2.970.6.c.

[207] The Board received evidence that community consultation had occurred as part of the 2017 rezoning application. The Foundation submitted a number of documents including an Urban Form and Corporate Strategic Development Report, and a PIA Final Report dated April 28, 2017 prepared by Bunt and Associates. It refers to dates in May 2016, August 2016 and February 2017. Based on the analysis of the proposed expansion and existing situation, the Report concluded that adding 24 surface spaces would sufficiently accommodate the increase in staff and visitors to the Site associated with the proposed increase in density.

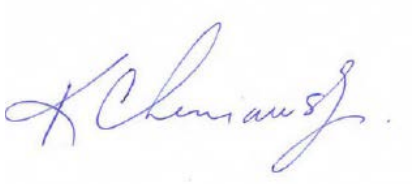
[208] On September 11, 2017 City Council held a public hearing to consider the rezoning application. Council heard from some of the Appellants and other neighbours opposed to the application who spoke to their concerns including parking. Council unanimously passed Bylaw 18161 which amended DC2.970. These amendments included changes to the minimum setbacks and increases to the maximum floor area, the maximum number of Units and maximum building height. The parking, loading and access provisions also changed to increase the minimum number of parking spaces from 90 to 114 (with 24 spaces to be added at grade), to permit a maximum of three parking spaces within the setback along 142 Street, and to remove the requirement for landscaped parking area islands. The amendments were not legally challenged.

[209] The Board considered the Development Officer's oral submissions. He confirmed that he circulated the two applications to various departments including Transportation and Fire Services who raised no concerns. He approved the proposed developments because they met all the regulations in DC2.970 and then issued the permits as Class B (Discretionary Development) Permits because the Site is located in a Direct Control Zone. As he had determined that the developments met the minimum number of parking spaces, he did not exercise discretion to increase the parking requirement, nor to require the Applicants to provide any additional information per section 13.3(2)(a) or (b) of the *Bylaw*. He was aware that he had authority to order an urban design context plan or a PIA. He did not do so because Council considered an urban design context plan, a PIA, a public engagement study, and a sun shadow study when they set the regulations during the 2017 rezoning process and he had determined that the developments complied with all of those regulations. He felt the documents were no longer required. He also believed compliance indicated that the proposed developments met the General Purpose of the DC2.970.

[210] Based on his submissions at the hearing, the Board finds the Development Officer was aware of the relevant provisions in the *Bylaw*, including discretionary authority, and aware that DC2.970 had been before Council and amended in the usual course in September 2017 and that documents of the type listed in section 13.3 of the *Bylaw* were part of that process. Once he determined that all provisions in the DC2.970 were satisfied he approved the proposed developments without exercising his discretion to increase the number and without requiring additional documentation. Based on the evidence before it, the Board does not find that the Development Officer failed to follow the directions of Council by approving the developments without exercising his discretion by requiring a new urban design context plan and map or a PIA or by requiring parking spaces be provided over and above the minimum specified in DC2.790.

[211] For the above reasons, the Board finds that the Development Officer followed the directions of Council in approving the 002 Tower Permit and the 002 Renovation Permit.

In accordance with section 685(4)(b) of the *Act* the Board has no authority in this appeal to exercise its discretion or substitute its decision for the Development Officer's decision.



K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:
R. Hobson, D. Kronewitt Martin, M. McCallum

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.