



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: July 5, 2019  
Project Number: 276654077-003  
File Number: SDAB-D-19-094

**Notice of Decision**

- [1] On June 21, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on July 11, 2018. The appeal concerned the decision of the Development Authority, issued on June 21, 2018, to approve the following development:

**Demolish a Pedestrian Bridge across 170 Street and construct exterior alterations (West Edmonton Mall)**

- [2] The subject property is on Plan 8421891 Block 28 Lot 6, Plan 8421891 Block 28 Lot 5, Plan 8322082 Block 22 Lot 7, Plan 8421542 Block 22 Lot 6A, located at 8882 - 170 Street NW and Plan 0726880 Block 3 Lot 5, located at 16940 - 87 Avenue NW, within the DC2 Site Specific Development Control Provision and US Urban Services Zones. The Summerlea Neighbourhood Area Structure Plan applies only to DC2.1012 zoned property.

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

- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions; and
- Online responses.

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

- Exhibit A – A joint submission received from the Appellant and the City of Edmonton.

**Preliminary Matters**

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).

**Summary of Hearing**

- i) *Position of Mr. Dhir, Legal Counsel for the Appellant, West Edmonton Mall and Mr. M. Gunther, City of Edmonton, Law Branch:*

- [8] Mr. Dhir thanked the Board for granting the previously requested postponements because it has allowed the City and West Edmonton Mall to come to a constructive resolution that is being presented today. This is consistent with natural justice and addresses the concerns of West Edmonton Mall, the City of Edmonton and the residents regarding the removal and reconstruction of the Pedestrian Bridge.
- [9] West Edmonton Mall agrees with the language contained in the proposed amendment to Condition No. 3.
- [10] Mr. Gunther submitted a copy of the amended Condition No. 3, and it was marked *Exhibit A*.
- [11] At this point, the Chair asked Mr. Dhir and Mr. Gunther to address the procedural issues that the Board must address pursuant to section 685(4) of the *Municipal Government Act* that applies to lands that are zoned Direct Control. Section 685(4) requires the Board to determine whether or not the Development Authority followed the direction of Council when making a decision. The Board can only substitute its decision if it is determined that the Development Authority failed to follow the direction of Council.
- [12] In response to a question, Mr. Gunther confirmed that DC2.1012 was amended after the appeal was filed in June 2018. However, the amendments have no impact on the subject site or the matter before the Board. This DC2 has been amended many times over the years but the original DC2.1012 still applies to the West Edmonton Mall site.
- [13] This is an unusual and unique situation because the Pedestrian Bridge that spans 170 Street is partially located in the DC2.1012 Site Specific Development Control Provision and partially located in the (US) Urban Services Zone. The portion of the bridge located on the west side of 170 Street is located in the DC2 Zone, West Edmonton Mall site and the east portion of the bridge is located in the (US) Urban Services Zone, the Alberta Health Services Site.

- [14] According to the *Edmonton Zoning Bylaw*, zones run to the middle of a roadway. In this situation, both the usual powers provided to the Board for a development located in the (US) Urban Services Zone and the more limited powers outlined in section 685(4), of the *Municipal Government Act* apply.
- [15] It was Mr. Gunther's opinion that the direction of Council outlined in DC2.1012 is not specific and does not address the imposition of conditions. Section 650 of the *Municipal Government Act* allows Council in a land use bylaw to impose a condition requiring the applicant to enter into an agreement with the municipality to construct or pay for a road, a public walkway and install or pay for the installation of public utilities. There are also obligations contained in the original development agreements that have to be considered. All of these factors combined resulted in the imposition of Condition No. 3.
- [16] It was his opinion that the direction of Council is not specific and can accommodate the proposed amended condition. The requirements of section 685(4) of the *Municipal Government Act* only apply to a portion of this proceeding and it was his opinion that the direction of Council is best reflected by the proposed amended Condition No. 3.
- [17] Mr. Gunther agreed with the Chair that there is a gap in the law because in *Garneau Community League v Edmonton (City)*, 2017 ABCA 374, the Court of Appeal did not deal with the imposition of conditions, which is different from the specific direction of Council provided in a Direct Control Zone and the specific land uses that are intended.
- [18] It was his opinion that conditions may be set out in a Direct Control Zone but if limited guidance regarding conditions has been provided, the Board has more flexibility to make a decision that is appropriate.
- [19] Prior to the issuance of the development permit, discussions were held with West Edmonton Mall regarding the replacement of the Pedestrian Bridge and who would be responsible for the costs. Condition No. 3 that was imposed on the development permit that was issued on June 21, 2018 did not accurately reflect those discussions and required West Edmonton Mall to bear all costs for replacement and reconstruction of the bridge. That condition was appealed and is the subject of the proposed amendment. The imposition of the original condition could be viewed as an error by the Development Officer.
- [20] This situation is unique and it would be absurd to conclude that half of the bridge falls in one zone and the other half in another zone.
- [21] Regardless of the jurisdictional issue, the Applicant and the City of Edmonton both agree that the amendment contained in the joint submission is the best outcome for the City.

- [22] Therefore this is the best way for the Board to address the jurisdictional issue to exercise the power provided in section 687(3)(d) of the *Municipal Government Act* which states that the Board “may confirm, revoke or vary an order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own”.
- [23] Mr. Dhir agreed with all of the comments made by Mr. Gunther.
- [24] In response to a question, Mr. Dhir indicated that the decision was made not to withdraw the appeal because the original condition would remain on the approved development permit. The Development Officer is functus and could not amend the condition to reflect the agreed upon amendment. Therefore, the only way to change the wording of the condition on the development permit was to proceed by way of a joint submission and have the Board consider and hopefully endorse the proposed amendment to the condition.
- [25] The joint submission is that Condition No. 3 should be amended.
- [26] West Edmonton Mall and the City of Edmonton agreed at a meeting on June 12, 2018 that the Pedestrian Bridge was a public safety hazard and had to be removed forthwith. It was agreed that the need for a replacement of the overpass would be addressed at a later date because the City did not have any studies or surveys regarding the use of the overpass. West Edmonton Mall applied for a development permit to have the bridge removed and it was issued on June 21, 2018. The approval allowed the removal of the overpass subject to conditions. However, Condition No. 3, the “rebuild condition” was not discussed at the meeting and was imposed in error.
- [27] It was Mr. Dhir’s opinion that this error resulted from a lack of communication and that the joint submission before the Board today captures the intent of the parties as discussed at the meeting that was held on June 12, 2018. The bridge was removed by West Edmonton Mall on June 26, 2018.
- [28] This is a unique situation that was not contemplated in the regulations or the legislation.
- [29] Mr. Gunther agreed that the language contained in the amended condition captures the discussion that occurred between the City of Edmonton and West Edmonton Mall as it relates to development issues.
- [30] Discussions have been ongoing with residents and representatives of various community groups to ensure that their concerns were seriously considered. West Edmonton Mall considers itself a member of the community and wants to do what is best for the residents.
- [31] Mr. Dhir and Mr. Gunther both agreed that certain media reports inaccurately described the situation which may have amplified the concerns of the residents.

- [32] The community is aware that the City and West Edmonton Mall are acting in good faith to ensure that their concerns regarding the replacement of the Pedestrian Bridge are being addressed through this process.
- [33] The joint submission, the amendment to Condition No. 3 is being submitted for the Board's approval.
- [34] Mr. Gunther reviewed the original Condition No. 3 that was imposed on the development permit that was issued on June 21, 2018. That condition stated that:

In accordance to the existing Development Agreement between the City and West Edmonton Mall, which continues to be in force, a Pedestrian Bridge Overpass across 170 Street is required. As such:

- a) A new Pedestrian Bridge Overpass across 170 Street shall be replaced and reconstructed, connecting the west side to West Edmonton Mall at 8882 – 170 Street (Lots 5 and 6, Block 28, Plan 842 1891, Lot 6A, Block 22, Plan 842 1542, Lot 7, Block 22, Plan 832 2082 and Lot 4, Block 28, Plan 822 2590) and the east side to Alberta Health Services at 16940 – 87 Avenue (Lot 5, Block 3, Plan 072 6880), to the satisfaction of the City of Edmonton, City Operations, Bridges, Structures and Open Space Maintenance Engineer. All costs of replacement and reconstruction shall be borne by the owners of West Edmonton Mall.
  - b) The owners of West Edmonton Mall shall submit a detailed design of a new 170 Street Pedestrian Bridge Overpass, including pedestrian connections on the West Edmonton Mall site and Alberta Health Services site, to the satisfaction of the Development Officer and City of Edmonton, City Operations, Bridges, Structures and Open Space Maintenance Engineer.
  - c) The owners of West Edmonton Mall shall provide, in writing, a time line for reconstruction of the Pedestrian Bridge Overpass by September 4, 2018, to the satisfaction of the Development Office and City of Edmonton, City Operations, bridges, Structures and Open Space Maintenance Engineer.
- [35] The joint submission is an amended Condition that reflects a cost sharing agreement that has been agreed upon by West Edmonton Mall, the City of Edmonton, Alberta Health Services, and other institutions that will benefit from the reconstruction of the bridge.
- [36] The proposed LRT expansion will require the acquisition of some land from West Edmonton Mall. Therefore, West Edmonton Mall and the City of Edmonton both agree that the most efficient course of action is to deal with the matters together.

- [37] Mr. Gunther confirmed that the conceptual planning for the new Pedestrian Bridge has commenced. The proposed amended condition acknowledges the necessity of the Pedestrian Bridge, addresses cost sharing, will ensure design efficiencies in accordance with city standards. The end result will benefit the residents of this area, West Edmonton Mall and the taxpayers.
- [38] Mr. Gunther read the joint submission, the amended Condition No. 3 which states:
- West Edmonton Mall and the City of Edmonton shall enter into an Agreement for the construction of a new Pedestrian Overpass spanning 170 Street from West Edmonton Mall at 8882 – 170 Street (Lots 5 and 6, Block 28, Plan 842 1891, Lot 6A, Block 22, Plan 842 1542, Lot 7, Block 22, Plan 832 2082, and Lot 4, Block 28, Plan 822 2590) to Alberta Health Services at 16940 – 87 Avenue (Lot 5, Block 3, Plan 0726880), and such agreement shall contemplate any agreed-upon cost sharing and mechanisms therefore. Such agreement shall not preclude cost sharing mechanisms from third-parties, and may be incorporated into the parties' agreements regarding LRT infrastructure.
- [39] The land on the east side of 170 Street is owned by Alberta Health Services. The Misericordia Hospital, a long term care facility and retirement housing, is located on the land.
- [40] They are optimistic that the Provincial Government will contribute funds towards the project and that the infrastructure requirements for the LRT intersection and the proposed new Pedestrian Bridge can be addressed at the same time.
- [41] The City of Edmonton is of the opinion that the amended condition will allow the most cost effective approach for taxpayers and therefore it is reasonable to allow West Edmonton Mall to take advantage of the efficiencies that will be provided and to work with the City in a collaborative manner.
- [42] Mr. Gunther and Mr. Dhir provided the following information in response to questions from the Board:
- a) The original, existing Development Agreement between the City of Edmonton and West Edmonton Mall that required the development of the Pedestrian Bridge dates back to the 1980's when the mall was built. It is not possible to require a new development permit application or to amend the Development Agreement that was signed over 30 years ago. Therefore, the proposed joint submission to amend the original Condition No. 3 is the cleanest way to deal with the issue.

- b) There were several Development Agreements entered into between 1987 and 1990 that related to various parts of the construction of West Edmonton Mall. It was acknowledged that those Development Agreements required a Pedestrian Bridge across 170 Street.
- c) The proposed amended Condition No. 3 does not deviate from the original Development Agreements that were undertaken between West Edmonton Mall and the City of Edmonton. The proposed cost sharing agreement is a fair response to the lack of clarity contained in the Development Agreements regarding the maintenance and replacement of the Pedestrian Bridge.
- d) The proposed cost sharing agreement ensures the replacement of the Pedestrian Bridge over 170 Street which addresses the concerns of the residents of this area to provide a safe crossing over 170 Street.
- e) The proposed amendment is consistent with the Development Agreements that were taken out in the 1980's, addresses the grey area of the law and is in the best interests of the public.
- f) Mr. Dhir and Mr. Gunther agreed that their joint submission is the best way to resolve the cost of replacing the bridge because it will avoid years of litigation in an attempt to determine who is responsible for maintaining and replacing the structure that will ensure that the residents of west Edmonton have a safe way to cross 170 Street.
- g) Because of the grey area in the law, litigation could go in any direction. It was acknowledged that the bridge needs to be rebuilt and the City of Edmonton is acknowledging its role in that process by allowing this construction to be wrapped up in the larger development that includes the future LRT construction.
- h) It was their opinion that the inclusion of an agreement to agree in the proposed amended Condition No. 3 is permissible in planning law pursuant to section 650 of the *Municipal Government Act*.
- i) If, for some reason, negotiations fall apart, there is an obligation to replace the Pedestrian Bridge and each party has its own remedies. The *Municipal Government Act* provides mechanisms to ensure that developers do what they say.
- j) Mr. Dhir reiterated that West Edmonton Mall has worked constructively with the City over the past 30 years and prides itself in being a valued member of the community. West Edmonton Mall is currently involved in discussions with the City regarding the future expansion of the LRT and the reconstruction of the Pedestrian Bridge is part of that development. It was his opinion that the City maintains the biggest advantage in the discussions because of the required land expropriation. This should provide some confidence to the Board and the general public that an agreement can be reached to the satisfaction of both the City of Edmonton and West Edmonton Mall.

- k) Mr. Dhir agreed that the Development Agreements are ambiguous regarding whether the costs of maintaining and replacing the Pedestrian Bridge should be borne by the City of Edmonton, West Edmonton Mall, or both.

ii) *Position of Affected Property Owners:*

Ms. Hall

- [43] Ms. Hall resides about four blocks from the Pedestrian Bridge. She used the bridge four or five times per week to access the mall or the Italian Centre. Students from the local high school have also been impacted as they used it two or three times per day.
- [44] Her City Councilor cautioned that there may be changes made to the bridge. She just wants the bridge replaced without any additional expense. There has to be a time limit imposed, even though it is her experience with other projects timelines are not met. The timelines need to be committed to in writing. The bridge was built to address safety concerns. Those safety concerns still remain. Street level crossing does not make any sense. The stop gap solution can easily become a permanent solution. There are 6 lanes of traffic. Elderly people from the retirement homes cannot cross the 6 lanes in time. Level crossing is not a solution.
- [45] The City says it is more cost effective to wrap it together with the LRT which is five years away. She questioned whether it would be more cost effective.
- [46] The wording of the initial development agreement is ambiguous. Will these problems be resolved in the new construction? Both parties have to be clear. What does the shared cost mean to the taxpayer?
- [47] In response to questions from the Board, Ms. Hall stated:
- a) Pedestrians are currently crossing at 87 Avenue and 95 Avenue.
  - b) She is not aware of a shuttle bus servicing from the seniors residences to the Mall.
  - c) Crossing 170 Street is difficult for even motorized wheelchairs. Drivers have to be aware.
  - d) The Pedestrian Bridge was handicap accessible. There were no steps and ramps, so all of the seniors could easily get across. There is a parking lot to walk through after the crossing but that she was not aware of any accidents.
  - e) The bridge does not need to be enhanced, simply replaced.



Mr. Goyeau:

- [48] Mr. Goyeau is a regular user of the mall and he resides one mile away.
- [49] He understands the hearing today is with regards to an amendment to a condition. He hopes that it is possible to adjust the amendment to address more concerns.
- [50] He shares the same concerns of Ms. Hall.
- [51] Problems have arisen because nothing has been brought forward about the agreement between the City of Edmonton and West Edmonton Mall. It is hard for the neighbourhood to understand what is going on.
- [52] The bridge is a neighbourhood necessity.
- [53] He wonders what exactly the timelines are. It has now been a year without the bridge and no one understands why it had to be removed or the safety concerns dealt with in a different manner. Can the Board impose timelines? He opposes further delays. He is asking the Board to keep the matter open to address further concerns.
- [54] He is receptive to level crossing, as long as it was a temporary installation until the Pedestrian Bridge is replaced.

Mr. Komljenovic

- [55] Mr. Komljenovic lives close to the Misericordia Hospital.
- [56] The bridge is needed for the safety of the residents in this neighbourhood.
- [57] The residents are upset and are not sure what is happening with the replacement of the Pedestrian Bridge.

*iii) Rebuttal of Mr. Dhir and Mr. Gunther:*

- [58] Mr. Dhir agreed that the inclusion of an agreement to agree is contemplated in both section 650 of the *Municipal Government Act* and section 15 of the *Edmonton Land Use Bylaw*.
- [59] The purpose of the appeal is to address the imposition of a condition regarding the responsibility of costs. Timelines are not subject to this appeal and West Edmonton Mall is not disputing the necessity of replacing the Pedestrian Bridge.

- [60] The Pedestrian Bridge had to be demolished in response to a critical concern related to public safety and security that was posed by the continuation of its use. The assessment of the bridge was undertaken by qualified Engineers and it was not taken lightly. At a meeting with the City of Edmonton on June 12, 2018, West Edmonton Mall agreed to initiate the removal of the Pedestrian Bridge to address public safety. Both parties agreed at the meeting, that the associated costs would be addressed at a later date. However, the condition imposed on the development permit that was issued for the demolition of the Pedestrian Bridge did not reflect that discussion.
- [61] Mr. Dhir reiterated that West Edmonton Mall has never resisted the replacement of the Pedestrian Bridge. The appeal was filed simply to address the allocation of the associated costs.
- [62] Mr. Gunther advised that a concept plan for a new Pedestrian Bridge is underway. Work has begun on design options and community consultation. This work will not be impacted by the date on which an agreement is finalized with West Edmonton Mall. The City is moving forward on this initial work while negotiating the associated costs with West Edmonton Mall.
- [63] Mr. Gunther reiterated the fact that the Pedestrian Bridge is located in both a conventional land zone and a DC2 zone. The Board can exercise its normal variance powers for the portion of the bridge that is located in the conventional zone and must produce a reasonable decision for the remaining portion of the bridge.
- [64] Mr. Gunther is not familiar with any Court of Appeal case law that deals with the imposition of conditions in a Direct Control Zone other than the general obligation to ascertain the direction of Council. In *Garneau Community League v Edmonton (City)*, 2017 ABCA 374, the Court of Appeal primarily considered development in a Direct Control Zone. It was his opinion that the imposition of conditions in a Direct Control Zone is an issue for another day. The key in this situation is to explain why the Board reached a specific conclusion.
- [65] Mr. Dhir clarified that the original reasons for appeal were submitted in June 2018 and addressed every live issue at that time. However, over the past year several issues have been resolved, including the necessity to replace the Pedestrian Bridge over 170 Street. When the appeal was filed, not even the City of Edmonton could provide numbers regarding the usage of the Pedestrian Bridge.
- [66] Following the meeting on June 12, 2018, West Edmonton Mall proceeded to have the Pedestrian Bridge removed quickly because of the public safety concerns based on an agreement with the City that the associated costs would be discussed at a later date.
- [67] The Development Officer made any error by imposing a condition that all costs of replacement and reconstruction should be borne by West Edmonton Mall which did not reflect the agreement that was reached at the meeting held on June 12, 2018.

- [68] A condition regarding timelines was not included in amended Condition No. 3 because there are still outstanding issues regarding the location of the bridge. Part of the design concept plan that is underway is to determine where the Pedestrian Bridge should be located in order to benefit the most pedestrian traffic. Engineering and construction plans have to be prepared, including a decision on whether to build the bridge on site or off site. Therefore, it is difficult to commit to a timeline because the scope of the work is not yet known.
- [69] Mr. Dhir clarified that the only outstanding matter for West Edmonton Mall is to enter into a cost sharing agreement. The City of Edmonton is responsible for all of the public consultation, design and engineering work and the ultimate timelines for the project.
- [70] Condition No. 3 imposed on the development permit that was issued in June, 2018 required West Edmonton Mall to submit detailed design plans. The amended Condition No. 3 provides some flexibility during the design process.
- [71] The language used in amended Condition No. 3 should provide confidence to the public that their concerns will be addressed.
- [72] Mr. Dhir noted that the address for the proposed development included on the development permit includes the Alberta Health Services lands located on the east side of 170 Street. This is a unique situation because the development spans a road right of way and the zone line is located in the middle of the roadway. At least 50 percent of this development is located in the (US) Urban Services Zone which is a conventional zone. Therefore, pursuant to section 687(3) of the *Municipal Government Act*, the Board has the authority to confirm, revoke or vary a condition.
- [73] Varying Condition No. 3 on the development permit that was issued in June 2018 to the wording proposed in the joint submission best reflects the intentions of both West Edmonton Mall and the City of Edmonton and is in the best interest of the taxpayers.

## Decision

- [74] The appeal is **ALLOWED IN PART** and the decision of the Development Authority is **VARIED**. The development is **GRANTED** as approved by the Development Authority, subject to the following amendments:

The Board **DELETES** the following condition from the Decision of Approval by the Development Authority:

3. In accordance to the existing Development Agreement between the City and West Edmonton Mall, which continues to be in force, a Pedestrian Bridge Overpass across 170 Street is required. As such:

- a. a new Pedestrian Bridge Overpass across 170 Street shall be replaced and reconstructed, connecting the west side to West Edmonton Mall at 8882-170 Street (Lots 5 and 6, Block 28, Plan 842 1891, Lot 6A, Block 22, Plan 842 1542, Lot 7, Block 22, Plan 832 2082 and Lot 4, Block 28, Plan 822 2590) and the east side to Alberta Health Services at 16940-87 Avenue (Lot 5, Block 3, Plan 0726880), to the satisfaction of the City of Edmonton, City Operations, Bridges, Structures and Open Space Maintenance Engineer. All costs of replacement and reconstruction shall be borne by the owners of West Edmonton Mall.
- b. The owners of West Edmonton Mall shall submit a detailed design of a new 170 Street Pedestrian Bridge Overpass, including pedestrian connections on the West Edmonton Mall site and Alberta Health Services site, to the satisfaction of the Development Officer and City of Edmonton, City Operations, Bridges, Structures and Open Space Maintenance Engineer.
- c. The owners of West Edmonton Mall shall provide, in writing, a time line for reconstruction of the Pedestrian Bridge Overpass by September 4, 2018, to the satisfaction of the Development Office and City of Edmonton, City Operations, Bridges, Structures and Open Space Maintenance Engineer.

The Board **IMPOSES** the following condition to the Decision of Approval by the Development Authority:

West Edmonton Mall and the City of Edmonton shall enter into an Agreement for the construction of a new Pedestrian Overpass spanning 170 Street from West Edmonton Mall at 8882 – 170 Street (Lots 5 and 6, Block 28, Plan 842 1891, Lot 6A, Block 22, Plan 842 1542, Lot 7, Block 22, Plan 832 2082, and Lot 4, Block 28, Plan 822 2590) to Alberta Health Services at 16940 – 87 Avenue (Lot 5, Block 3, Plan 0726880), and such agreement shall contemplate any agreed-upon cost sharing and mechanisms therefore. Such agreement shall not preclude cost sharing mechanisms from third-parties, and may be incorporated into the parties' agreements regarding LRT infrastructure.

[75] **The development is NOW subject to the following CONDITIONS (as proposed by the Development Authority and agreed to the parties to this appeal):**

1. Approval for demolition is for the portion of the 170 Street Pedestrian Bridge Overpass within City Road right-of-way. Immediately upon demolition of the Pedestrian Bridge, all areas of the 170 Street Road right-of-way, shall be cleared of all debris.

2. The pedestrian path termination points on the east and west sides of the 170 Street Pedestrian Bridge Overpass must be closed to all pedestrian traffic, to the satisfaction of the Development Officer, and the City of Edmonton, City Operations, Bridges, Structures and Open Space Maintenance Engineer.
3. West Edmonton Mall and the City of Edmonton shall enter into an Agreement for the construction of a new Pedestrian Overpass spanning 170 Street from West Edmonton Mall at 8882 – 170 Street (Lots 5 and 6, Block 28, Plan 842 1891, Lot 6A, Block 22, Plan 842 1542, Lot 7, Block 22, Plan 832 2082, and Lot 4, Block 28, Plan 822 2590) to Alberta Health Services at 16940 – 87 Avenue (Lot 5, Block 3, Plan 0726880), and such agreement shall contemplate any agreed-upon cost sharing and mechanisms therefore. Such agreement shall not preclude cost sharing mechanisms from third-parties, and may be incorporated into the parties' agreements regarding LRT infrastructure.

**Reasons for Decision:**

- [76] This is an appeal of Development Permit, No. 276654077-003, to demolish a Pedestrian Bridge across 170 Street and to construct exterior alterations, that was granted on an emergency basis by the Development Authority on June 21, 2018.
- [77] The Applicant, West Edmonton Mall, appealed to vary the terms of a condition that was imposed on the approved Development Permit.
- [78] The condition that was appealed by the Applicant required West Edmonton Mall to construct at its expense a replacement Pedestrian Bridge overpass. In a joint submission by both the City of Edmonton and West Edmonton Mall, the parties requested that Condition No. 3 be replaced with the following proposed condition:
- West Edmonton Mall and the City of Edmonton shall enter into an Agreement for the construction of a new Pedestrian Overpass spanning 170 Street from West Edmonton Mall at 8882 – 170 Street (Lots 5 and 6, Block 28, Plan 842 1891, Lot 6A, Block 22, Plan 842 1542, Lot 7, Block 22, Plan 832 2082, and Lot 4, Block 28, Plan 822 2590) to Alberta Health Services at 16940 – 87 Avenue (Lot 5, Block 3, Plan 0726880), and such agreement shall contemplate any agreed-upon cost sharing and mechanisms therefore. Such agreement shall not preclude cost sharing mechanisms from third-parties, and may be incorporated into the parties' agreements regarding LRT infrastructure.
- [79] This condition still requires the creation of an agreement for the construction of a new Pedestrian Bridge, but allows the parties to develop an agreed upon cost sharing mechanism.
- [80] This appeal deals with land that is located in two different zones. On the west side of the Pedestrian Bridge, the base of the overpass is located in the DC2 (1012) Site Specific Development Control Provision. On the east side of the Pedestrian Bridge, the land is zoned (US) Urban Services.

- [81] With respect to the portion of the appeal that is located on land zoned (US) Urban Services Zone, this Board has the ability to simply replace the condition imposed by the Development Authority with a condition that it prefers, pursuant to Section 687(3)(d) of the *Municipal Government Act*.
- [82] However, section 685(4) of the *Municipal Government Act* imposes some restrictions on the portion of the appeal that deals with land located in the DC2 Site Specific Development Control Provision. Specifically, that the Board only has jurisdiction when it has been demonstrated that the Development Authority failed to follow the directions of Council.
- [83] It is to be noted that Condition No. 3 imposed by the Development Authority is not a condition required by the DC2 Bylaw regulations. It was imposed by the Development Authority through its general authority provided by City Council in section 15 of the *Edmonton Zoning Bylaw*, which in turn was authorized by section 650 of the *Municipal Government Act*.
- [84] The facts of the matter are uncontroverted: West Edmonton Mall applied for the demolition permit on an emergency basis. Engineering evidence presented to West Edmonton Mall demonstrated a clear and present danger to the public caused by the current state of the bridge. A discussion occurred between the City of Edmonton and West Edmonton Mall whereby West Edmonton Mall agreed to quickly demolish the existing Pedestrian Bridge at its own expense and through its own agency. However, it was agreed by both parties and memorialized in writing (although that writing was not before the Board) that the issue of who or how the Pedestrian Bridge would be replaced and at whose expense would be agreed to between the parties after the emergency demolition was complete.
- [85] However, when Development Permit No. 276654077-003 was issued on June 21, 2018, it contained Condition No. 3 which placed all of the obligations both to perform and to pay for the reconstruction of the new Pedestrian Bridge on West Edmonton Mall, which lead to this appeal.
- [86] It can be inferred that City Council would not condone the Development Authority placing conditions on a Development Permit that were contrary to what was agreed between the parties at the time that the permit was applied for. The Board again notes that nowhere in the DC2 Bylaw is it required that West Edmonton Mall pay for replacing the Pedestrian Bridge.
- [87] For these reasons, the Board finds that the Development Authority did not follow the directions of Council and the Board has jurisdiction pursuant to section 685(4) of the *Municipal Government Act* to issue a Development Permit that is in accordance with the directions of City Council.

- [88] Given that the varied Condition 3 that is being imposed by this Board was consented to by the solicitors for the City of Edmonton and West Edmonton Mall, the Board has decided to vary Development Permit No. 276654077-003 and replace Condition No. 3 that was imposed on that development permit with amended Condition No. 3 on the basis of the joint submission that was put before the Board at this hearing.
- [89] Based on all of the above, the appeal is allowed in part and the decision of the Development Authority is varied.

Mr. I. Wachowicz, Chair  
Subdivision and Development Appeal Board

Board Members in Attendance: Mr. M. Young; Mr. J. Jones; Ms. S. McCartney; Mr. A. Peterson

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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.*