SUBDIVISION

AND

DEVELOPMENT APPEAL BOARD

AGENDA

Wednesday, 9:00 A.M. June 5, 2019

Hearing Room No. 3 Churchill Building, 10019 - 103 Avenue NW, Edmonton, AB

SUBDIVISION AND DEVELOPMENT APPEAL BOARD HEARING ROOM NO. 3

Ι	9:00 A.M.	SDAB-D-19-060	Construct exterior alterations to a Public Education Services site (Landscaping revision of Ecole Joseph-Moreau Junior High School)	
			9735 - 75 AVENUE NW Project No.: 262704257-020	
II	1:30 P.M.	SDAB-D-19-080	Change the use from a Specialty Food Store (Starbucks) to a Cannabis Retail Sales and construct interior alterations	
			4333 - 50 STREET NW Project No.: 306082440-001	

NOTE: Unless otherwise stated, all references to "Section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.

TO BE RAISED

<u>ITEM II: 10:30 A.M.</u> <u>FILE: SDAB-D-19-060</u>

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER BY AN ADJACENT PROPERTY OWNER

APPELLANT:

APPLICATION NO.: 262704257-020

APPLICATION TO: Construct exterior alterations to a Public

Education Services site (Landscaping revision of Ecole Joseph-Moreau Junior

High School)

DECISION OF THE

DEVELOPMENT AUTHORITY: Approved with Notices

DECISION DATE: March 12, 2019

DATE OF APPEAL: March 27, 2019

NOTIFICATION PERIOD: March 19, 2019 through April 9, 2019

RESPONDENT:

MUNICIPAL DESCRIPTION

OF SUBJECT PROPERTY: 9735 - 75 Avenue NW

LEGAL DESCRIPTION: Plan 1721326 Blk A Lot A

ZONE: US-Urban Services Zone

OVERLAY: N/A

STATUTORY PLAN: Ritchie Area Redevelopment Plan

Grounds for Appeal

The Appellant provided the following reasons for appealing the decision of the Development Authority:

The landscape plan called for 152 trees. They are now proposing 49 trees. Also the shrubs are being reduced from 253 to 76.

This equates a 67% reduction in landscaping. We live directly across from the school site and we would like a landscaping buffer so we don't have to look directly onto an extensive parking lot. With the construction of the School and parking lot on the north side of the property along 75 Ave. All residents on 75 Ave including myself have lost their green space. We request to see the landscaping plans.

General Matters

The Subdivision and Development Appeal Board made and passed the following motion on April 25, 2019:

"That the appeal hearing be postponed until June 5, 2019 at the verbal request of the Appellant and with the support of the Respondent and the Development Authority."

Appeal Information:

The Municipal Government Act, RSA 2000, c M-26 states the following:

Grounds for Appeal

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal to the subdivision and development appeal board.

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,

- (a) in the case of an appeal made by a person referred to in section 685(1)
 - (i) with respect to an application for a development permit,
 - (A) within 21 days after the date on which the written decision is given under section 642, or

(B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,

or

- (ii) with respect to an order under section 645, within 21 days after the date on which the order is made, or
- (b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

Hearing and Decision

687(3) In determining an appeal, the subdivision and development appeal board

. .

- (a.1) must comply with the land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;
- (a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;
- (a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;

. .

- (c) may confirm, revoke or vary the 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;
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
 - (i) the proposed development would not
 - (A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

General Provisions from the Edmonton Zoning Bylaw:

Section 510.2(5) states a **Public Education Service** is a **Permitted Use** in the (US) **Urban Services Zone**.

Under Section 7.8(11), **Public Education Service** means:

development which is publicly supported or subsidized involving public assembly for educational, training or instruction purposes, and includes the administration offices required for the provision of such services on the same Site. This Use includes public and separate schools, community colleges, universities, and technical and vocational schools, and their administrative offices. This Use does not include Private Education Services and Commercial Schools.

Section 510.1 states that the **General Purpose** of the **(US) Urban Services Zone** is to provide for publicly and privately owned facilities of an institutional or community service nature.

Landscaping

Section 55.3(1)(b) states for new development consisting of Residential-Related Use Classes, Commercial Use Classes, Industrial Use Classes, Basic Services Use Classes, and Community, Educational, Recreational and Cultural Service Use Classes, the number of trees and shrubs provided shall be determined on the basis of the following:

- i. one tree for each 25 square metres and one shrub for each 15 square metres of Setback;
- ii. one tree for each 20 square metresand one shrub for each 10 square metres of parking area islands, as determined by subsection 54.2(3); and
- iii. in no case shall there be less than one tree per parking area island.

Development Officer's Determination

1) Landscaping - The site provides 49 trees and 76 shrubs, instead of 152 trees and 253 shrubs. (Section 55.3(1)(b))

Notes: Development Officer calculates the Landscape Requirement based on the development boundary (front setback along 75 Ave and side setback 98 Street), instead of 4 side property lines.

Total number of required trees is reduced from 152 trees to 38 trees.

Total number of required shrubs is reduced from 253 shrubs to 63 shrubs.

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.



Project Number: 262704257-020
Application Date: OCT 29, 2018
Printed: March 27, 2019 at 3:04 PM
Page: 1 of 3

Major Development Permit

This document is a record of a Development Permit application, and a record of the decision for the undertaking described below, subject to the limitations and conditions of this permit, of the Edmonton Zoning Bylaw 12800 as amended.

Applicant

STANTEC ARCHITECTURE LTD 400, 10220 - 103 AVENUE NW EDMONTON, ALBERTA CANADA T5J 0K4

Property Address(es) and Legal Description(s)

9735 - 75 AVENUE NW Plan 1721326 Blk A Lot A

Specific Address(es)

Entryway: 9735 - 75 AVENUE NW Building: 9735 - 75 AVENUE NW

Scope of Permit

To construct exterior alterations to a Public Education Services site (Landscaping revision of Ecole Joseph-Moreau Junior High School).

Permit Details

Class of Permit: Class B Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.): Contact Person:
Lot Grading Needed?: N
NumberOfMainFloorDwellings:
Stat. Plan Overlay/Annex Area: (none)

I/We certify that the above noted details are correct.

Applicant signature:

Development Permit Decision

Approved

Issue Date: Mar 12, 2019 Development Authority: LI, CINDY



Project Number: 262704257-020
Application Date: OCT 29, 2018
Printed: March 27, 2019 at 3:04 PM
Page: 2 of 3

Major Development Permit

Subject to the Following Conditions

LANDSCAPE CONDITIONS:

- Landscaping shall be in accordance with the approved landscaping plan and Section 55 of the Zoning Bylaw, to the satisfaction of the Development Officer.
- Any changes to an approved Landscape Plan require the approval of the Development Officer prior to the Landscaping being installed.
- 3. Landscaping shall be maintained in a healthy condition for a minimum of 24 months after the landscaping has been installed, to the satisfaction of the Development Officer.

DEVELOPMENT CONDITIONS:

- 1) Exterior lighting shall be developed to provide a safe lit environment in accordance with Sections 51 and 58 and to the satisfaction of the Development Officer.
- 2) All access locations and curb crossings shall require the approval of Transportation Services. (Reference Section 53(1))

NOTES:

- The Development Permit shall NOT be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled; and no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in subsection 21.1 (Ref. Section 17.1).
- 2) This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
- 3) Signs require separate Development Applications.
- 4) A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.
- 5) The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this Development Permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.
- 6) An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

Variances

1) Landscaping - The site provides 49 trees and 76 shrubs, instead of 152 trees and 253 shrubs. (Section 55.3(1)(b))

Notes: Development Officer calculates the Landscape Requirement based on the development boundary (front setback along 75 Ave and side setback 98 Street), instead of 4 side property lines.

Total number of required trees is reduced from 152 trees to 38 trees. Total number of required shrubs is reduced from 253 shrubs to 63 shrubs.



Project Number: **262704257-020**Application Date: OCT 29, 2018
Printed: March 27, 2019 at 3:04 PM
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Major Development Permit

\$362.00

Rights of Appeal

Totals for Permit:

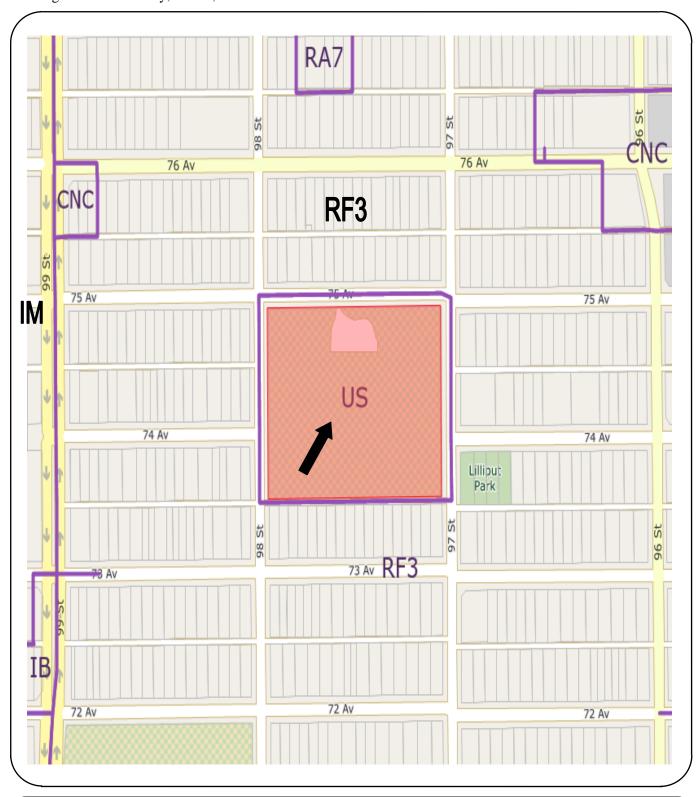
This approval is subject to the right of appeal as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.

Notice Period Begins: Mar 19, 2019 Ends: Apr 09, 2019

\$362.00

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$362.00	\$362.00	05465868	Nov 09, 2018
Total GST Amount:	\$0.00			



SURROUNDING LAND USE DISTRICTS

Site Location

File: SDAB-D-19-060

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ITEM II: 1:30 P.M. FILE: SDAB-D-19-080

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 306082440-001

APPLICATION TO: Change the use from a Specialty Food

Store (Starbucks) to a Cannabis Retail Sales and construct interior alterations

DECISION OF THE

DEVELOPMENT AUTHORITY: Refused

DECISION DATE: April 25, 2019

DATE OF APPEAL: May 8, 2019

MUNICIPAL DESCRIPTION

OF SUBJECT PROPERTY: 4333 - 50 Street NW

LEGAL DESCRIPTION: Plan 9123322 Blk 1 Lot 56

ZONE: DC2 Site Specific Development Control

Provision

OVERLAY: N/A

STATUTORY PLAN: Burnewood Neighbourhood Area

Structure Plan

Grounds for Appeal

The Appellant provided the following reasons for appealing the decision of the Development Authority:

- 1. The permit application was refused due to proximity of the parcel of land including Jackie Parker Recreational Area zoned as public lands (100m required; 47m provided)
- 2. The Appellant respectfully requests that the SDAB uses its variance power to grant a variance in the required separation for the following reasons:

- a. The City of Edmonton planning department did not measure as prescribed in the most recent zoning bylaw amendment, Section 70 Subsection 3 (a) "separation distance shall be measured from the closest point of the subject site boundary to the closest point of another site boundary and shall not be measured from zone boundaries or from the edges of structures".
 - i. If measured from our specific site boundary the proximity of our site to the public lands is approximately 95m.
 - ii. Copy of Bylaw amendment is enclosed for reference
- b. While the public lands abut directly onto 50 Street NW, the portion of the lands used for park space is further than that
 - i. The closest portion of the off-leash dog park parking lot is approximately 178 m away as shown in the attached map
 - ii. The closest portion of the parking lot for Jackie Parker Recreational Area is approximately 300 m away as shown in the attached map
 - iii. Maps enclosed for reference
- c. Walking distance from our site to:
 - i. Jackie Parker Park is approximately 400 m
 - ii. Off-leash dog park is approximately 180 m
 - iii. Maps enclosed for reference
- 3. Such further and other grounds may be determined from reviewing the file.

General Matters

The Municipal Government Act, RSA 2000, c M-26 states the following:

Grounds for Appeal

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

(2) ...

- (3) Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under section 683.1(8).
- (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.

Appeals

- **686(1)** A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,
 - (a) in the case of an appeal made by a person referred to in section 685(1)
 - (i) with respect to an application for a development permit,
 - (A) within 21 days after the date on which the written decision is given under section 642, or
 - (B) ...

General Provisions of DC2.1040 Site Specific Development Control Provision:

Under section DC2.1040.3(b), Cannabis Retail Sales is a Listed Use in the DC1.

Section DC2.1040.1 states that the **General Purpose** of this **Site Specific Development Control Provision** is:

To establish a Site Specific Development Control District to accommodate a limited range of local convenience commercial and personal service uses which are intended to serve the day-to-day needs of the neighbourhood residents, with site development criteria to ensure that the commercial development will be compatible with the adjacent residential Zonings.

General Provisions from the Edmonton Zoning Bylaw:

Under section 7.4(9), Cannabis Retail Sales means:

development used for the retail sale of Cannabis that is authorized by provincial or federal legislation. This Use may include retail sales of Cannabis accessories. This Use does not include Cannabis Production and Distribution.

Under section 6.1. **Cannabis** means:

a cannabis plant and anything referred to in subsection (a) of this definition but does not include anything referred to in subsection (b) of this definition:

a. Cannabis includes:

- any part of a cannabis plant, including the phytocannabinoids produced by, or found in, such a plant, regardless of whether that part has been processed or not, other than a part of the plant referred to in subsection (b) of this definition.
- ii. any substance or mixture of substances that contains or has on it any part of such a plant;
- iii. any substance that is identical to any phytocannabinoid produced by, or found in, such a plant, regardless of how the substance was obtained.

Notwithstanding subsection (a) of this definition, Cannabis does not include:

- i. a non-viable seed of a cannabis plant;
- ii. a mature stalk, without any leaf, flower, seed or branch, of such plant;
- iii. fibre derived from a stalk referred in subsection (b)(ii) of this definition; and
- iv. the root or any part of the root of such a plant.

Section 70 – Cannabis Retail Sales (amended February 25, 2019)

1. Any Cannabis Retail Sales shall not be located less than 200 m from any other Cannabis Retail Sales. For the purposes of this subsection only:

- a. the <u>200 m</u> separation distance shall be measured from the closest point of the Cannabis Retail Sales Use to the closest point of any other approved Cannabis Retail Sales Use;
- b. A Development Officer shall not grant a variance to reduce the separation distance by more than 20 m in compliance with Section 11; and
- c. The issuance of a Development Permit which contains a variance to separation distance as described in 70(1)(b) shall be issued as a Class B Discretionary Development.

2. Any Site containing Cannabis Retail Sales shall not be located less than:

- a. 200 m from any Site being used for a public library, at the time of the application for the Development Permit for the Cannabis Retail Sales; and
- b. 100 m from any Site being used for Community Recreation Services Use, a community recreation facility or as public lands at the time of application for the Development Permit for the Cannabis Retail Sales.

3. For the purposes of subsection 2:

- a. separation distances shall be measured from the closest point of the subject Site boundary to the closest point of another Site boundary, and shall not be measured from Zone boundaries or from the edges of structures;
- b. the term "public library" is limited to the collection of literary, artistic, musical and similar reference materials and learning resources in the form of books, electronic files, computers, manuscripts, recordings and films for public use, and does not include private libraries, museums or art galleries.
- c. the term "community recreation facilities" means indoor municipal facilities used primarily by members of the public to participate in recreational activities conducted at the facilities, as per the Municipal Government Act; and

d. the term "public lands" is limited to Sites zoned \underline{AP} , and Sites zoned \underline{A} .

- 4. Subsection 105(3) of the *Gaming, Liquor and Cannabis Regulation*, is expressly varied by the following:
 - a. any Site containing a Cannabis Retail Sales shall not be located less than:

Public or private education

i. <u>200 m</u> from a Site being used for public or private education, at the time of the application for the Development Permit for the Cannabis Retail Sales;

Provincial health care facility

ii. 100 m from a Site being used for a provincial health care facility at the time of the application for the Development Permit for the Cannabis Retail Sales; and

School reserve or municipal and school reserve

iii. 100 m from a Site designated as school reserve or municipal and school reserve at the time of the application for the Development Permit for the Cannabis Retail Sales.

Measurement of Separation Distances

b. For the purposes of this subsection, separation distances shall be measured from the closest point of the subject Site boundary to the closest point of another Site boundary, and shall not be measured from Zone boundaries or from the edges of structures.

Sites Greater than Two Hectares

- c. For Sites that are greater than <u>2.0 ha</u> in size and zoned either <u>CSC</u> or <u>DC2</u>, that do not contain a public library at the time of application for the Development Permit for the Cannabis Retail Sales:
 - i. Subsection 70(2), and 70(4)(a) shall not apply; and
 - ii. the distances referred to in Subsection 105(3) of the *Gaming, Liquor and Cannabis Regulation* shall be expressly varied to 0 m.
- d. For the purposes of subsection 70(4)(a)(i), the term "public or private education" means a school as defined in subsection (1)(y)(i) and (1)(y)(ii) of the School Act (as amended from time to time).
- 5. Notwithstanding Section 11 of this Bylaw, a Development Officer shall not grant a variance to subsection 70(2), 70(3)(a) or 70(4).

Design Requirements

- 6. Cannabis Retail Sales shall include design elements that readily allow for natural surveillance to promote a safe urban environment, where applicable and to the satisfaction of the Development Officer, including the following requirements:
 - a. customer access to the store is limited to a storefront that is visible
 from the street other than a Lane, or a shopping centre parking lot, or
 mall access that allows visibility from the interior of the mall into the
 store;
 - b. the exterior of all stores shall have ample transparency from the street;
 - c. Any outdoor lighting shall be designed to ensure a well-lit environment for pedestrians and illumination of the property; and
 - d. Landscaping shall be low-growing shrubs or deciduous trees with a high canopy at maturity to maintain natural surveillance.

Minimum Setback from Public Lands

Development Officer's Determination

The proposed Cannabis Retail Store does not comply with the minimum setback requirement from public lands (Jackie Parker Recreational Area) (Sections 70.2-70.3):

Required Setback: 100m Proposed Setback: 47m Deficient by 53m

Under Section 70.5 of the Zoning Bylaw, the Development Officer is prohibited from granting a variance to the minimum setback to allow for the proposed Cannabis Retail Store.

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.



Application for

Project Number: 306082440-001 FEB 28, 2019 Application Date: Printed: May 8, 2019 at 3:17 PM 1 of 2

Page:

Major Development Permit

This document is a Development Permit Decision for the development application described below.

Applicant



Property Address(es) and Legal Description(s)

4333 - 50 STREET NW

Plan 9123322 Blk 1 Lot 56

Specific Address(es)

4357 - 50 STREET NW Entryway: 4357 - 50 STREET NW Building: 4333 - 50 STREET NW

Scope of Application

To change the use from a Specialty Food Store (Starbucks) to a Cannabis Retail Sales and construct interior alterations.

Permit Details

Class of Permit:

Gross Floor Area (sq.m.): 195 New Sewer Service Required: N

Site Area (sq. m.):

Contact Person:

Lot Grading Needed?: N NumberOfMainFloorDwellings:

Stat. Plan Overlay/Annex Area: (none)

I/We certify that the above noted details are correct.

Applicant signature:

Development Application Decision

Refused

Issue Date: Apr 25, 2019 Development Authority: WELCH, IMAI

Reason for Refusal

The proposed Cannabis Retail Store does not comply with the minimum setback requirement from public lands (Jackie Parker Recreational Area) (Sections 70.2-70.3):

Required Setback: 100m Proposed Setback: 47m Deficient by 53m

Under Section 70.5 of the Zoning Bylaw, the Development Officer is prohibited from granting a variance to the minimum setback to allow for the proposed Cannabis Retail Store.

Rights of Appeal

The Applicant has the right of appeal within 21 days after the date on which the decision is made, as outlined in Section 683 through 689 of the Municipal Government Act.

Fees

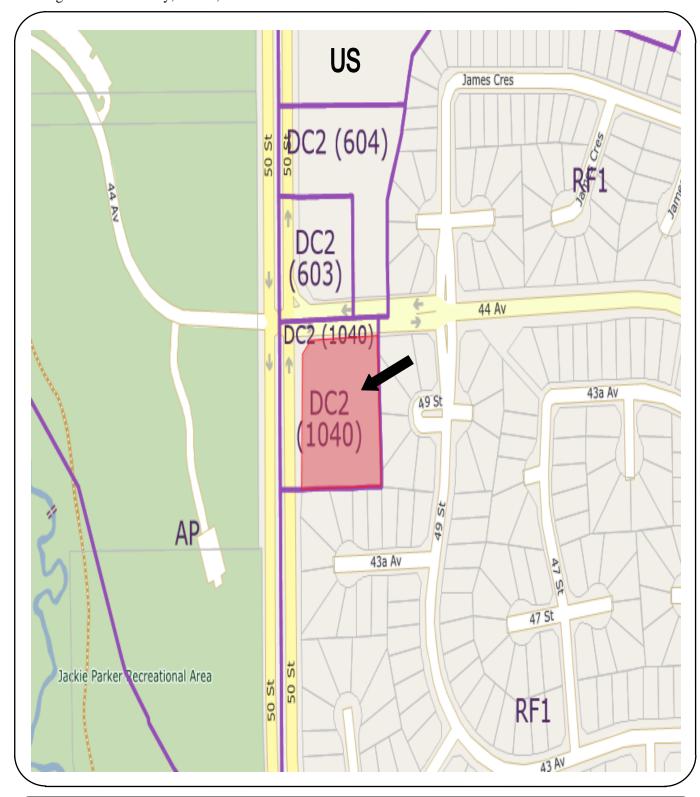
	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$5,600.00	\$5,600.00	071520190315000	Mar 15, 2019
Development Permit Inspection Fee	\$518.00	\$518.00	05707549	Mar 15, 2019

THIS IS NOT A PERMIT

Application for **Major Development Permit**

Project Number: 306082440-001
Application Date: FEB 28, 2019
Printed: May 8, 2019 at 3:17 PM
Page: 2 of 2 Application Date: Printed: Page:

Fees Receipt # Date Paid Fee Amount **Amount Paid** Total GST Amount: \$0.00 Totals for Permit: \$6,118.00 \$6,118.00 THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

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Site Location

File: SDAB-D-19-080

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