

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Thursday, 9:00 A.M.
March 5, 2020**

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

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING ROOM NO. 3**

| | | | |
|-------|------------|---------------|---|
| I | 9:00 A.M. | SDAB-D-20-030 | Construct a Single Detached House with front attached Garage, Unenclosed Front Porch, Basement development (NOT to be used as an additional Dwelling), fireplaces, covered deck (9.75 metres by 4.57 metres) 224 – Windermere Drive NW Project No.: 309557454-001 |
| <hr/> | | | |
| II | 10:30 A.M. | SDAB-D-20-031 | Construct a Single Detached House with front attached Garage, uncovered deck (4.42m x 3.05m), Unenclosed Front Porch and Side Entrance (11745 - 83 Avenue NW) 11743 - 83 Avenue NW Project No.: 346840459-001 |
| <hr/> | | | |
| III | 10:30 A.M. | SDAB-D-20-032 | Construct a Single Detached House with front attached Garage, uncovered deck (4.42m x 3.05m), Unenclosed Front Porch and Side Entrance (11743 - 83 Ave) 11743 - 83 Avenue NW Project No.: 346830997-001 |
| <hr/> | | | |

NOTE: *Unless otherwise stated, all references to “Section numbers” in this Agenda refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-20-030

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 309557454-001

APPLICATION TO: Construct a Single Detached House with front attached Garage, Unenclosed Front Porch, Basement development (NOT to be used as an additional Dwelling), fireplaces, covered deck (9.75 metres by 4.57 metres)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: January 30, 2020

DATE OF APPEAL: February 7, 2020

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 224 – Windermere Drive NW

LEGAL DESCRIPTION: Plan 2301MC Blk 2 Lot 30

ZONE: (RR) Rural Residential Zone

OVERLAY: N/A

STATUTORY PLAN: Windermere Area Structure Plan
Windermere Neighbourhood Structure Plan

Grounds for Appeal

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

This is our letter of appeal regarding the refusal of development permit for the above-addressed lot. The project consists of a single family, wood frame, 2 story house, 6373 square feet in total with front- attached side-drive garage. Details of the proposed house can be found in the attached drawing set - 224 Windermere Drive NW -Arch Drawings.

We were officially issued the refusal on January 30, 2020 by the development officer Mark Winget. The refusal was listed for three reasons. Those issues are outlined here:

1. Height deficiency - The height shall not exceed 10.0m to the midpoint of the roof. (Section 240.4.4) - Proposed: 10.5m - Deficiency: 0.5m
2. Height deficiency - The height shall not exceed 11.5m to the peak of the roof. (Section 52.2.c)
- Proposed: 12.6m - Deficiency: 1.1m
3. Site area deficiency - The minimum site area shall be 1.0 ha. (Section 240.4.1) - Proposed: 0.6 ha - Deficiency: 0.4 ha

On behalf of our clients, we would like to appeal these issues based on the reasoning below and with the supporting attached documents.

Height Deficiency Issues

Addressing both the height deficiency issues together, we think the sought roof height of 1.1meters over the bylaw maximum for the Rural Residential Zone is reasonable based on the following:

1. Topographical and site constraints.

a. Lot elevations for height calculation in relation to Road

There is a Related to its unique West bank location along Windermere Drive, the establishment of the grading is another issue that is disadvantageous toward determining heights. Essentially this is due to the sites sloped location at the River Valley, wherein the Bylaw only accounts for the elevations as based from the front corners of the lot as what establishes the average grade and what determines from where the allowable height is measured.

b. Lot size and internal drainage Impact:

Considerable slopes and swales are another feature of the site based on the way the road transitions into the lot; and these drain down the side yards and thereby force the house to be built into the middle, higher portion of the lot, and this helps maintain appropriate drainage patterns down into the Valley as proposed and required by the surveyors.

c. Overall Street Elevation:

In the larger neighborhood context, it is important to know that Windemere Drive follows the direction of the River Valley and subdivides the two rows of homes along it East and West respectfully.

The West Row is closer to the River Valley and thus lower in elevation than the East, so in fact this proposed home (west side), as with many others forming West side of the Drive, will sit at a lower elevation than Homes across the Drive, and not impose its height across to the East neighbors.

2. **House is well-positioned for low impact relative to neighbors.** From where it is placed and massed, the house will have little impact on adjoining properties, and this is separately describe as follows:
 - a. There is a culvert (ditch) between the road and the entry point of the lot, which establishes a fairly significant drop in elevation between the property and the road (approximately 0.95m on average across the front), negating the visual impact to any drive by traffic/residents and neighbors. This is pretty close to the 1.1m sought variance, thus almost cancelling out the impact of the extra height as deemed by the bylaw calculations.
 - b. The proposed home is set far back into its site with its lower single-story garage to the front, it will not mass heavily to the front. In fact, as proposed the front entrance of the house is 117 feet setback from its front property line - further than is typical of the area. As the attached elevation views of the house show, the garage in fact is well detailed and offers a good relief to massing of the house behind.
 - c. The lot directly north is actually zoned as Agricultural and designated as a park, thus there is no development here now, or in the foreseeable future and thus no impact.
 - d. The next house over to the northwest (after the park) is over 200' away in distance and will have minimal impact from either height or shade cast.
 - e. The property to the south also faces little impact as the proposed house here is set further back into the site, and will cast no shadows south. The property to the south is built much closer to the street (less set back) and thus presents much more front heavy, and overall higher in elevation in comparison to the proposed build.
3. **Unique lot/property conditions.** Given the location of the lot, its large size of 6401square meters (over 1.5 Acres), and the fact that it is part of a larger row of similarly large River Valley- facing lots along Windemere Drive, both the lot specifically and the others adjoining it are all suited to larger-sized homes that have already been built. Generally, most of the homes in this area are larger than average, and spaced further apart than is typical in most other residential neighborhoods, thus making an extra 1.1 meters of height practically unnoticeable. With our proposed home, we feel that the design has been sensitively laid out for its surroundings.

4. **What could otherwise be built analysis:** In contrast to the proposed development, we feel that a far more intrusive home could be designed and still fit within the bylaws. For instance, far more of a house could've been massed to the front of the property, and this would have presented much more heavily to the front, thereby gaining significant impact on perspective/perceived height. In contrast, the proposed house as it is set back into the property, allowing for significantly more front landscaping/yard space to offer appeal and relief.

Site Area Deficiency Issue

In prior consultation with the City Development Officer, we were notified that this item would be considered a non-issue, and approval granted. This is on the basis that the lot sizes are already determined and zone. As such, we trust the City will recognize this as merely a definitional contradiction with the bylaw terms and accept the property as it is currently sized and located.

Conclusion

This concludes our letter of appeal. We will bring some further supporting visuals and documents to the appeal meeting for the board.

We trust that this info is sufficient enough to support our case for the development of the above noted property as outlined in the documents submitted to the City of Edmonton.

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|------------------------|
| <i>General Matters</i> |
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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.

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, [...]

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*:

Under section 240.2(5), **Single Detached Housing** is a **Permitted Use** in the **(RR) Rural Residential Zone**.

Under section 7.2(8), **Single Detached Housing** means “development consisting of a building containing one principal Dwelling which is separate from any other principal Dwelling or building. This Use includes Mobile Homes which conform to Section 78 of this Bylaw.”

Section 240.1 states that the **General Purpose** of the **(RR) Rural Residential Zone** is:

to provide for Single Detached Residential development of a permanent nature in a rural setting, generally without the provision of the full range of urban utility services. The RR Zone is intended to regulate rural residential development within existing rural residential subdivisions that existed prior to the passage of this Bylaw, and is not intended to facilitate future rural residential development and subdivision, which is contrary to the Municipal Development Plan.

Site Area

Under Section 240.4(1), the minimum Site Area shall be 1.0 hectare.

Development Officer’s Determination

3) The minimum Site Area shall be 1.0 ha. (Section 240.4.1)

Proposed: 0.6 ha.

Deficiency: 0.4 ha.

Height

Under section 6.1, **Height** means “a vertical distance between two points.”

Under Section 240.4(4), the maximum building Height shall not exceed 10.0 metres, in accordance with Section 52.

Under section 52.2 in determining whether a development conforms to the maximum Height permissible in any Zone, the following regulations shall apply:

- c. Where the maximum Height as determined by Section 52.1 is measured to the midpoint, the ridge line of the roof shall not extend more than 1.5 metres above the maximum permitted building Height of the Zone or overlay, or in the case of a Garden Suite the maximum permitted building Height in accordance with Section 87 of this Bylaw.

Development Officer's Determination

- 1) The Height shall not exceed 10.0m to the midpoint of the roof. (Section 240.4.4)

Proposed: 10.5m

Deficiency: 0.5m


- 2) The Height shall not exceed 11.5m to the peak of the roof. (Section 52.2.c)

Proposed: 12.6m

Deficiency: 1.1m

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.

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|--|---|--|--|---|
|  | <p>Application for Minor Development Permit</p> | <p>Project Number: 309557454-001 Application Date: MAR 28, 2019 Printed: February 10, 2020 at 8:31 AM Page: 1 of 2</p> | | |
| <p>This document is a Development Permit Decision for the development application described below.</p> | | | | |
| <p>Applicant</p> <div style="border: 1px solid black; height: 60px; width: 100%;"></div> | <p>Property Address(es) and Legal Description(s) 224 - WINDERMERE DRIVE NW Plan 2301MC Blk 2 Lot 30</p> <hr/> <p>Specific Address(es) Entryway: 224 - WINDERMERE DRIVE NW Building: 224 - WINDERMERE DRIVE NW</p> | | | |
| <p>Scope of Application To construct a Single Detached House with front attached Garage, Unenclosed Front Porch, Basement development (NOT to be used as an additional Dwelling), fireplaces, covered deck (9.75m x 4.57m).</p> | | | | |
| <p>Permit Details</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> # of Dwelling Units Add/Remove: 0 # of Secondary Suite Dwelling Units To Construct: Client File Reference Number: Minor Dev. Application Fee: Single Detached House Secondary Suite Included?: N </td> <td style="width: 50%; border: none;"> # of Primary Dwelling Units To Construct: 1 Class of Permit: Class B Lot Grading Needed?: New Sewer Service Required: N Stat. Plan Overlay/Annex Area: (none) </td> </tr> </table> <p>I/We certify that the above noted details are correct. Applicant signature: _____</p> | | | # of Dwelling Units Add/Remove: 0 # of Secondary Suite Dwelling Units To Construct: Client File Reference Number: Minor Dev. Application Fee: Single Detached House Secondary Suite Included?: N | # of Primary Dwelling Units To Construct: 1 Class of Permit: Class B Lot Grading Needed?: New Sewer Service Required: N Stat. Plan Overlay/Annex Area: (none) |
| # of Dwelling Units Add/Remove: 0 # of Secondary Suite Dwelling Units To Construct: Client File Reference Number: Minor Dev. Application Fee: Single Detached House Secondary Suite Included?: N | # of Primary Dwelling Units To Construct: 1 Class of Permit: Class B Lot Grading Needed?: New Sewer Service Required: N Stat. Plan Overlay/Annex Area: (none) | | | |
| <p>Development Application Decision Refused</p> <p>Issue Date: Jan 30, 2020 Development Authority: WINGET, MARK</p> <p>Reason for Refusal</p> <p>1) The Height shall not exceed 10.0m to the midpoint of the roof. (Section 240.4.4)</p> <p style="margin-left: 40px;">Proposed: 10.5m Deficiency: 0.5m</p> <p>2) The Height shall not exceed 11.5m to the peak of the roof. (Section 52.2.c)</p> <p style="margin-left: 40px;">Proposed: 12.6m Deficiency: 1.1m</p> <p>3) The minimum Site Area shall be 1.0 ha. (Section 240.4.1)</p> <p style="margin-left: 40px;">Proposed: 0.6 ha. Deficiency: 0.4 ha.</p> <p>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.</p> | | | | |
| <p>THIS IS NOT A PERMIT</p> | | | | |



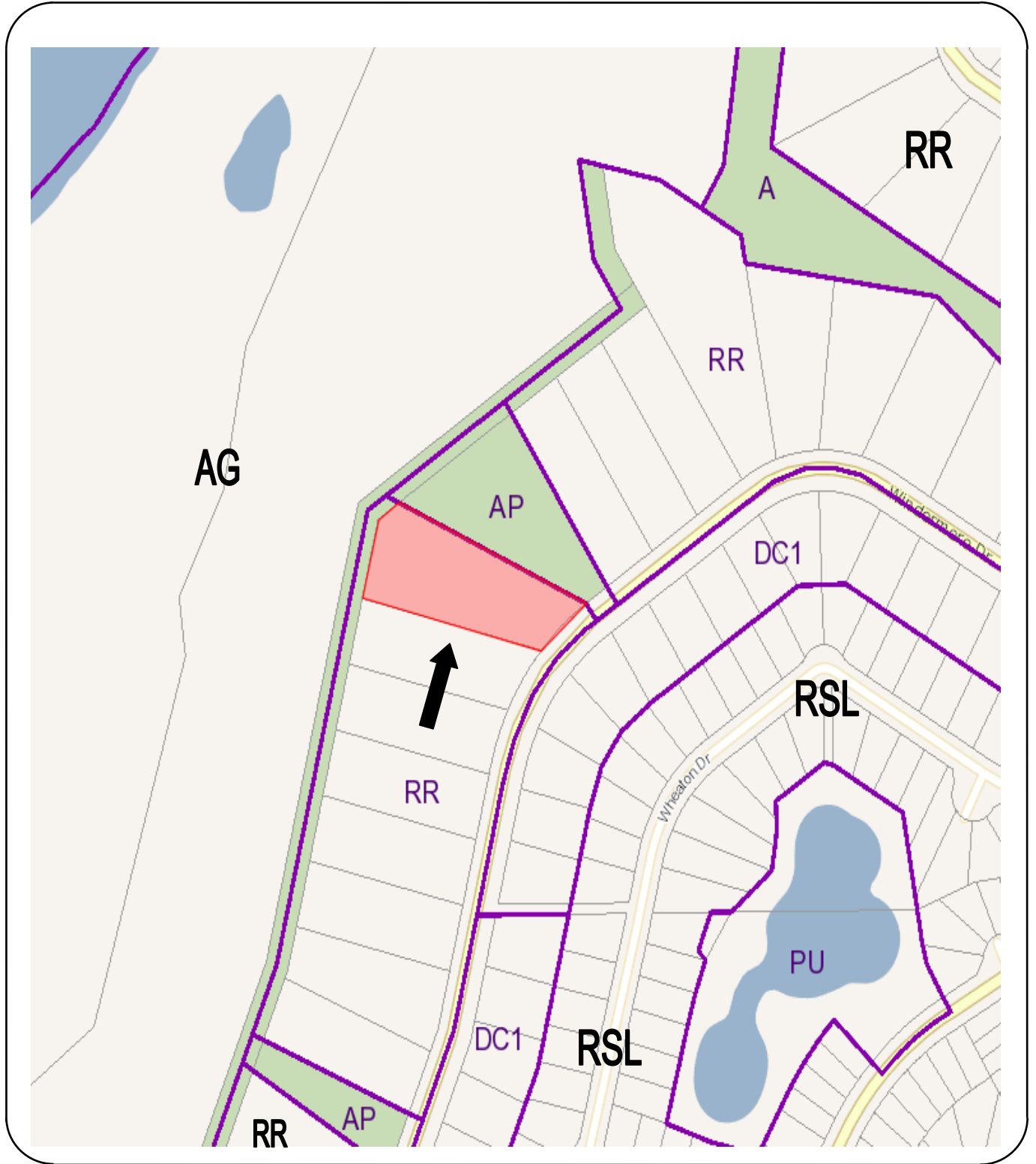
Application for Minor Development Permit

Project Number: **309557454-001**
Application Date: MAR 28, 2019
Printed: February 10, 2020 at 8:31 AM
Page: 2 of 2

Fees

| | Fee Amount | Amount Paid | Receipt # | Date Paid |
|----------------------|-------------------|--------------------|------------------|------------------|
| Lot Grading Fee | \$145.00 | \$145.00 | 81980202690I0010 | Mar 29, 2019 |
| Dev. Application Fee | \$493.00 | \$493.00 | 81980202690I0010 | Mar 29, 2019 |
| Total GST Amount: | \$0.00 | | | |
| Totals for Permit: | <u>\$638.00</u> | <u>\$638.00</u> | | |

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-20-030



ITEM II and III: 10:30 A.M.

FILE: SDAB-D-20-031 and 032

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 346840459-001

APPLICATION TO: Construct a Single Detached House with front attached Garage, uncovered deck (4.42m x 3.05m), Unenclosed Front Porch and Side Entrance (11745 - 83 Avenue NW)

DECISION OF THE DEVELOPMENT AUTHORITY: No decision has yet been made

APPLICATION DATE: November 15, 2019

DATE OF APPEAL: February 5, 2020

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 11743 - 83 Avenue NW

LEGAL DESCRIPTION: Plan 4116HW Blk 12 Lot 22

ZONE: (RF1) Single Detached Residential Zone

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: N/A

Grounds for Appeal

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

To whom it may concern,

As an applicant to apply for development permit to build a single detached house, I am writing to appeal against the failure to issue a development permit by the City of Edmonton’s development authority.

This development permit is deemed to be refused based on the following fact:

According to the Edmonton Land Use Bylaw (LUB) and the Municipal Government Act (MGA), the development authority must make a

decision on an application for a development permit within 40 days of receipt by an applicant of the development authority's written acknowledgment that the application is complete.

My development permit application was submitted on November 15, 2019. I never received any written acknowledgement that explicitly confirms the completeness of the application.

Only on December 18, the development officer sent me an email stating that "no further changes are necessary". The development authority then has not requested any additional information or documentation from me.

According to the MGA Section 683.1(4), if the development authority fails to determine the completeness of my application, the application shall be deemed to be complete.

Till February 5, 2020, 82 days have elapsed since the development authority received my application, and 49 days have passed since the December 18 email. Although the development officer has expressed his intention to decline my application through, a final and legal refusal letter was never issued to me.

In accordance with the MGA Section 686(1)(a)(B), I hereby submit my appeal against the development refusal on the ground that the application is deemed to be refused.

Your sincerely,
Chang Liu

General Matters

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.

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, [...]

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 clause (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.

(4) In the case of an appeal of the deemed refusal of an application under section 683.1(8), the board must determine whether the documents and information that the applicant provided met the requirements of section 683.1(2).

Permit deemed refused

684(1) The development authority must make a decision on the application for a development permit within 40 days after the receipt by the applicant of an acknowledgment under section 683.1(5) or (7) or, if applicable, in accordance with a land use bylaw made pursuant to section 640.1(b).

(2) A time period referred to in subsection (1) may be extended by an agreement in writing between the applicant and the development authority.

(3) If the development authority does not make a decision referred to in subsection (1) within the time required under subsection (1) or (2), the application is, at the option of the applicant, deemed to be refused.

(4) Section 640(5) does not apply in the case of an application that was deemed to be refused under section 683.1(8).

Development applications

683.1(1) A development authority must, within 20 days after the receipt of an application for a development permit, determine whether the application is complete.

(2) An application is complete if, in the opinion of the development authority, the application contains the documents and other information necessary to review the application.

(3) The time period referred to in subsection (1) may be extended by an agreement in writing between the applicant and the development authority or, if applicable, in accordance with a land use bylaw made pursuant to section 640.1(a).

(4) If the development authority does not make a determination referred to in subsection (1) within the time required under subsection (1) or (3), the application is deemed to be complete.

(5) If a development authority determines that the application is complete, the development authority must issue to the applicant an acknowledgment in the form and manner provided for in the land use bylaw that the application is complete.

(6) If the development authority determines that the application is incomplete, the development authority must issue to the applicant a notice in the form and manner provided for in the land use bylaw that the application is incomplete and that any outstanding documents and information referred to in the notice must be submitted by a date set out in the notice or a later date agreed on between the applicant and the development authority in order for the application to be considered complete.

(7) If the development authority determines that the information and documents submitted under subsection (6) are complete, the development authority must issue to the applicant an acknowledgment in the form and manner provided for in the land use bylaw that the application is complete.

(8) If the applicant fails to submit all the outstanding information and documents on or before the date referred to in subsection (6), the application is deemed to be refused.

(9) If an application is deemed to be refused under subsection (8), the development authority must issue to the applicant a notice in the form and manner provided for in the land use bylaw that the application has been refused and the reason for the refusal.

(10) Despite that the development authority has issued an acknowledgment under subsection (5) or (7), in the course of reviewing the application, the development authority may request additional information or documentation from the applicant that the development authority considers necessary to review the application.

(11) If the development authority refuses the application for a development permit, the development authority must issue to the applicant a notice in the form and manner provided for in the land use bylaw that the application has been refused and the reasons for the refusal.

General Provisions from the *Edmonton Zoning Bylaw*:

Under section 110.2(7), **Single Detached Housing** is a **Permitted Use** in the **(RF1) Single Detached Residential Zone**.

Under section 7.2(8), **Single Detached Housing** means:

development consisting of a building containing one principal Dwelling which is separate from any other principal Dwelling or building. This Use includes Mobile Homes which conform to Section 78 of this Bylaw.

Section 110.1 states that the **General Purpose** of the **(RF1) Single Detached Residential Zone** is:

to provide for Single Detached Housing while allowing other forms of small scale housing in the form of Secondary Suites, Garden Suites, Semi-detached Housing and Duplex Housing.

Section 814.1 states that the **General Purpose** of the **Mature Neighbourhood Overlay** is:

to regulate residential development in Edmonton's mature residential neighbourhoods, while responding to the context of surrounding development, maintaining the pedestrian-oriented design of the streetscape, and to provide an opportunity for consultation by gathering input from affected parties on the impact of a proposed variance to the Overlay regulations.

Section 21.3 states the following with respect to **Appeals**:

A Development Permit Application shall, at the option of the applicant, be deemed to be refused in accordance with the provisions of Section 16 of this Bylaw, and the applicant shall appeal in writing to the Subdivision and Development Appeal Board within 21 days after the date of expiry of the time period specified in section 16 of this Bylaw.

Section 16.1 states the following with respect to **Decisions on Development Permit Applications**:

if the Development Officer does not make a decision on an application for a Development Permit within 40 days after the applicant's receipt of an acknowledgment that the application is complete in accordance with Section 11.2 of this Bylaw, the application shall, at the option of the applicant, be deemed to be refused.

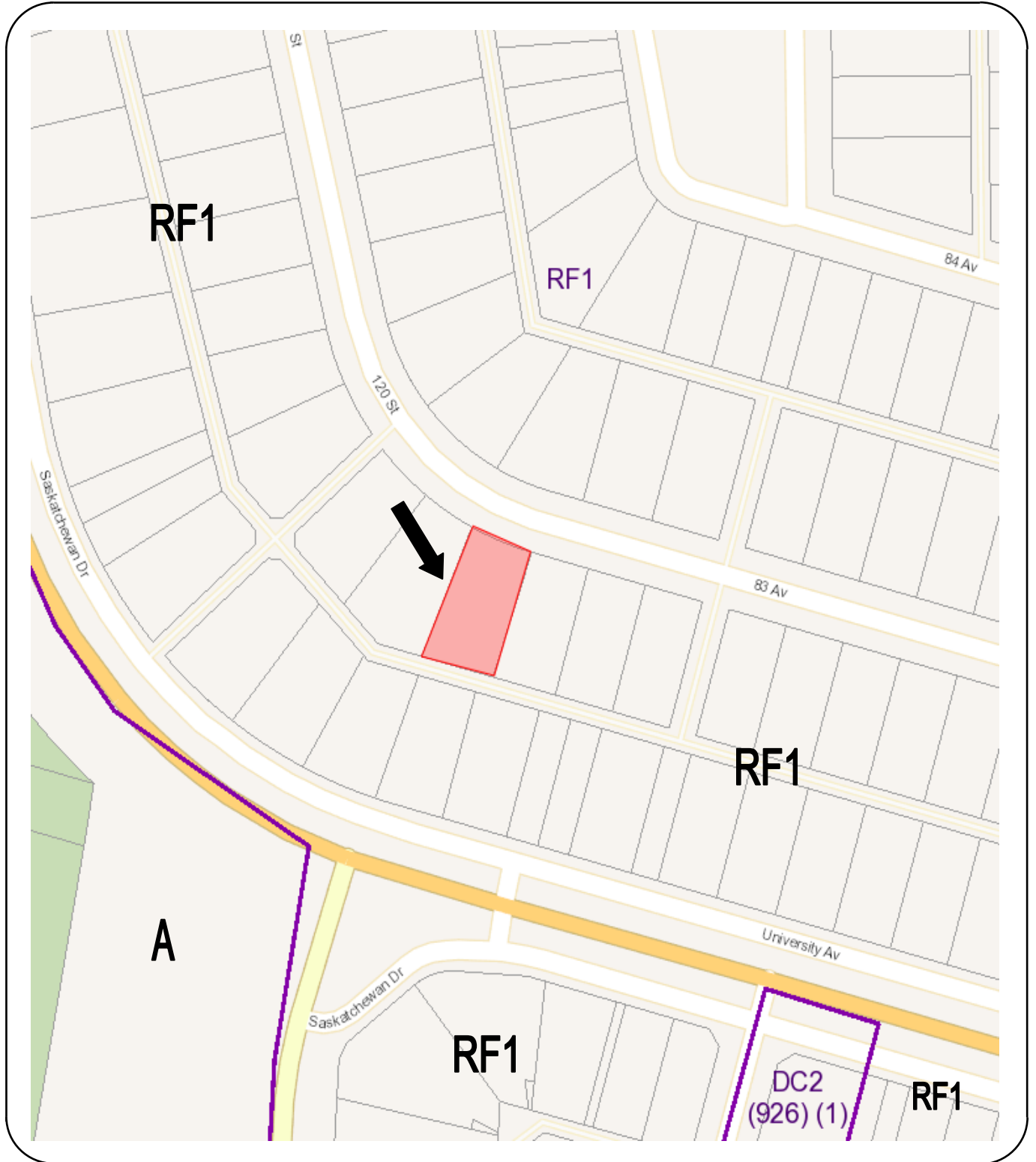
Section 11.1 provides regulations with respect to **Duties with Respect to Development Applications**.

Section 11.2 provides regulations with respect to **Determining Complete Development Applications**.

Section 13.1 provides **General Conditions** with respect to a **Development Permit Application**.

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.



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-20-031 and 032

