



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: May 17, 2017
Project Number: 228447774-001
File Number: SDAB-D-17-079

Notice of Decision

- [1] On May 3, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **April 9, 2017**. The appeal concerned the decision of the Development Authority, issued on March 28, 2017, to refuse the following development:

Construct a two-Storey Accessory Building (Garage Suite on second floor, Garage on main floor, 9.14 metres by 7.9 metres), and to demolish the existing rear detached Garage.

- [2] The subject property is on Plan 1275HW Blk 3 Lot 3, located at 11512 - 75 Avenue NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay and the McKernan / Belgravia Station Area Redevelopment Plan apply to the subject property.

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

- A copy of the McKernan / Belgravia Station Area Redevelopment Plan;
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer's written submission;
- One e-mail in support of the proposed development by an adjacent property owner; and
- The Appellant's written submission.

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

- Exhibit A – Photographs submitted by the Appellant.

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.

Summary of Hearing

i) Position of the Appellant, Ms. K. Maguire

- [8] Ms. Maguire purchased the property five years ago and has lived in the McKernan / Belgravia area since 1998.
- [9] The subject site is close to the LRT and the Garage Suite will be used as a rental property for university students.
- [10] She consulted with neighbouring property owners regarding the proposed development and the design and received no opposition. She indicated that the most affected neighbours to the west are in support of the proposed development. She did not speak to the property owner to the east as they are new to the neighbourhood and the tenants are university students.
- [11] She hired a draft designer from the neighbourhood and she researched other garages with Garage Suites in the McKernan / Belgravia area.
- [12] She considered sunlight penetration and possible impacts on the adjacent neighbours when she designed the Garage Suite.
- [13] The existing house is a small bungalow that was built in 1945. She intends to build a two-storey house in the future that will match the height of the Garage Suite.
- [14] The mature trees in the rear yard will be maintained.
- [15] With regard to the overage in site coverage, she stated that the balcony was added to provide more living space and an interior staircase was planned due to the winter climate.
- [16] She provided the Board with photographs of the area showing the existing green space and trees in the rear yard; a three-storey building with surface parking in the rear lane abutting the subject site; two-storey buildings; and Garage Suites in the neighbourhood.
- [17] With respect to privacy issues, the proposed Garage Suite will have a sun window above the (east) staircase to provide natural light, which cannot be used to look into adjacent properties.

ii) Position of the Development Officer, Mr. G. Robinson

- [18] Mr. Robinson referenced his written submission and outlined the location criteria for Garage Suites under policy 5, *Neighbourhood Infill* of the McKernan / Belgravia Station Area Redevelopment Plan.
- [19] He suggested that the two (west) elevation windows on the Garage Suite should be opaque if the proposed development is approved. There are no privacy issues with the main floor windows. He reiterated Ms. Maguire's statement that the sole (east) window is used for natural light.
- [20] He referred to the design and roof articulation and stated that the proposed Garage Suite will have a 12/10 roof pitch. He referred to the plans and outlined how he determined the height calculations.
- [21] Mr. Robinson provided the following with respect to questions from the Board:
- a. He agreed that the proposed development will be compatible with the surrounding neighbourhood.
 - b. He does not have the authority to grant a variance in height and agreed that the overage in site coverage is minimal.
 - c. He agreed that the total site coverage is well below the maximum 40 percent requirement.

iii) Rebuttal of the Appellant, K. Maguire

- [22] Ms. Maguire did not have anything to add in rebuttal.

Decision

- [23] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:
1. The development shall be constructed in accordance with the stamped and approved drawings.
 2. Immediately upon demolition of the building, the site shall be cleared of all debris.
 3. Frosted or opaque glass treatment shall be used on windows on the red-lined stamped approved elevation plan to minimize overlook. (Reference section 87.8)

4. Only one of a Secondary Suite, a Garage Suite or Garden Suite may be developed in conjunction with a principal Dwelling.
5. A Garage Suite shall not be allowed within the same Site containing a Group Home or Limited Group Home, or a Major Home Based Business and an associated principal Dwelling, unless the Garage Suite is an integral part of a Bed and Breakfast Operation in the case of a Major Home Based Business.
6. Notwithstanding the definition of Household within the *Edmonton Zoning Bylaw*, the number of unrelated persons occupying a Garage Suite shall not exceed three.
7. The Garage Suite shall not be subject to separation from the principal Dwelling through a condominium conversion or subdivision.
8. The area hard surfaced for a driveway, not including the area used for a walkway, shall comply with section 54.6 of the *Edmonton Zoning Bylaw*.
9. Except for the hard surfacing of driveways and/or parking areas approved on the site plan for this application, the remainder of the site shall be landscaped in accordance with the regulations set out in section 55 of the *Edmonton Zoning Bylaw*.
10. All access locations and curb crossings shall have the approval of the City Transportation prior to the start of construction. Vehicular access shall be from the rear lane only. (Reference section 53(1)).
11. Prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign. (Reference section 20.2).

ADVISEMENTS:

i.) Lot grades must comply with the Edmonton Drainage Bylaw 16200. Contact Drainage Planning and Engineering at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.

ii.) The driveway access must maintain a minimum clearance of 1.5m from all surface utilities.

iii.) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM online at:
http://www.edmonton.ca/bylaws_licences/licences_permits/oscampermit-request.aspx

- [24] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The maximum Height of 5.98 metres as per the Height of the existing Principal Dwelling is varied to allow an excess of 0.46 metres, thereby increasing the maximum Height to 6.44 metres. (Section 87.2(a)(i)).
 2. The maximum Site Coverage for Accessory Buildings of 12 percent as per section 110.4(7)(a) is varied to allow an excess of 0.4 percent, thereby increasing the maximum Site Coverage for Accessory Buildings to 12.4 percent.

Reasons for Decision

- [25] The proposed development, a Garage Suite, is a Discretionary Use in the (RF1) Single Detached Residential Zone.
- [26] The proposed Garage Suite complies with the privacy requirements under section 87.14(b) of the *Edmonton Zoning Bylaw* as the second floor windows will be frosted or opaque on the west elevation, the east elevation window is a sun window for natural light, and the north elevation windows face the rear lane.
- [27] Based on the evidence, the Board grants the variance in Height as the future Principal Building is anticipated to be two-Storey structure, which will be compatible with the proposed Garage Suite. A three-Storey Apartment Building with surface parking is across the rear lane, which is compatible with the proposed Garage Suite.
- [28] Based on the evidence, the Board grants the variance in Site Coverage as the overage is minimal and will have no impact on adjacent properties. The Board notes that the existing Principal Building or anticipated Principal Building with the proposed Garage Suite is well under the maximum 40 percent Site Coverage requirement.
- [29] Based on photographic evidence, there are several Garage Suites and two and three-Storey buildings existing in the neighbourhood.
- [30] The proposed development meets section 4.4.6 *Neighbourhood Infill*, policy 5 of the McKernan / Belgravia Station Area Redevelopment Plan, which states:
- Allow small scale infill (secondary suites, garden suites, garage suites, duplexes, semi-detached, row housing and apartment housing with up to four dwelling units per site) in locations specified in the Zoning Bylaw 12800.
- [31] The mature trees on the subject Site will be maintained, which will provide additional screening and landscaping.

- [32] One letter was received in support from a neighbouring property owner and the Appellant has verbal support from the most affected neighbour west of the subject Site. There were no letters received in opposition to the proposed development.
- [33] Based on the above, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor will it materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



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Date: May 17, 2017
Project Number: 188542572-003
File Number: SDAB-D-17-080

Notice of Decision

- [1] On May 3, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **March 30, 2017**. The appeal concerned the decision of the Development Authority, issued on March 17, 2017, to refuse the following development:

**Develop a temporary surface Non-accessory Parking lot for 10 years
(previous permit expired).**

- [2] The subject property is on Plan B2 Blk 5 Lots 133-137, located at 10145 - 106 Street NW and 10123 – 106 Street NW, within the (UW) Urban Warehouse Zone. The Downtown Special Area Overlay and the Capital City Downtown Plan apply to the subject property.

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

- A copy of SDAB-D-16-294 and 295;
- A copy of the Capital City Downtown Plan;
- A copy of the Development Permit application with attachments, proposed plans, the refused Development Permit, a Transportation Services memorandum, and an Arborist's Report;
- The Development Officer's written submission;
- A submission from Legal Counsel representing the Appellant;
- A letter from Impark; and
- A letter of opposition from the Downtown Edmonton Community League.

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

- Exhibit A – A Court of Appeal decision, submitted by the Appellant;
- Exhibit B – Photographs of the subject site and surrounding area, submitted by the Appellant;
- Exhibit C – Letters of support, submitted by the Appellant;
- Exhibit D – E-mails regarding remediation, submitted by the Appellant;
- Exhibit E – Outline of submissions, submitted by the Appellant;
- Exhibit F – The written submission, submitted by an adjacent property owner in support of the proposed development; and

- Exhibit G – A letter to the City, submitted by the Development Officer.

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.

Summary of Hearing

- i) *Position of Ms. J. Agrios, Legal Counsel for the Appellant, Wigalo Holding Ltd., who was accompanied by Mr. B. Romanesky, an urban planner representing CITYTREND*
- [8] Ms. Agrios indicated that she will review the background of the subject property, the history of the development permit application process, and the rationale for granting the variances. She stated that this application is perhaps the most thorough and detailed application for a parking lot.
- [9] She referred to the following TABs outlined in her submission:
1. TAB 2; the reasons for the appeal and the variances they are requesting.
 2. TAB 3; a map of the area and the location of the five lots of the subject site.
 3. TAB 9; a survey plan of the area.
- [10] The definition of Non-accessory Parking includes surface and parking structures.
- [11] TAB 16; outlines the regulations of the Special Area Downtown as defined in the *Edmonton Zoning Bylaw*. Section 910.4(1)(e) states:
- i. no surface parking shall be allowed, other than accessory parking that is located at the rear of a building and is accessed from the abutting alley;
 - ii. A minimum 4m landscaped setback shall be provided from any property line abutting a Public Roadway, other than a lane, for any surface parking area.
- [12] TAB 15; outlines the Special Areas General Provisions that apply to all Special Areas as outlined in section 900.4(3):

Special Area provisions shall not be used:

- a. to alter Permitted or Discretionary Uses, Floor Area Ratio or Density in any underlying conventional Zone;
- b. where the proposed regulations or changes to the regulations of an underlying conventional Zone: [...]

She agrees with the Development Officer's interpretation of this section as outlined in his written submission that the Special Area provisions can alter regulations, they just cannot alter the Permitted or Discretionary Uses.

- [13] The Downtown Special Area provision states that you cannot have surface parking, other than Accessory parking. It is their submission that this particular provision does not remove Non-accessory Parking as an allowable Use in the (UW) Urban Warehouse Zone and they are seeking to waive the non-surface parking requirement as a development regulation.
- [14] TAB 18; outlines Accessory Uses and Buildings of the *Edmonton Zoning Bylaw*.
- [15] TAB 19; is the definition of Required Off-street Vehicular Accessory Parking in the *Edmonton Zoning Bylaw*. In many respects the Use being made is similar to Accessory parking. The parking lot functions as an Accessory parking lot even though they agree it is technically a Non-accessory Parking Use.
- [16] With regard to the Google map in TAB 4, although the parking fronts 106 Street, the adjacent buildings are older and have limited on-site parking with no underground parking. Excluding street parking, employees and customers of the abutting businesses depend on the subject parking lot. The parking lot is adjacent to these buildings. The definition of "adjacent" in the *Municipal Government Act* states that if the lot is separated by a lane it is still considered to be adjacent.
- [17] Accessory parking must be within 120 metres of the site per the *Edmonton Zoning Bylaw*. This parking lot is well within 120 metres of the adjacent businesses.
- [18] The Development Officer outlined that the parking lot is not at the rear of a building and it is separated by a public road. Ms. Agrios reiterated that the parking lot is actually separated from the businesses by a rear lane and the regulation does not say that the rear parking has to be on the same site.
- [19] The only difference between an Accessory parking lot and the subject parking lot is that this Use serves multiple businesses instead of just one business and there is little difference in impact.
- [20] In the late 1970s, the four north lots were used by Healy Motors and the fifth lot further south was used as a car lot since 1992. For 40 years the subject site has been used for parking. The Appellant owned land north of the subject site and switched properties with Healy Motors in 1994.

- [21] The Appellant applied for a development permit for a Non-accessory Parking lot in 1995 which was approved for ten years. In 2006, the permit was renewed for another ten years.
- [22] The Appellant made an application to renew the permit in March, 2016 before it expired and then proceeded to withdraw that application after there were some concerns. A new application was made in September, 2016.
- [23] TAB 8; is a letter from the Development Officer regarding the development permit application asking for information regarding the variances. The Appellant was able to address all of the information required except for two regulations, which is why the development permit application was refused.
- [24] TAB 10; is a proposed tree assessment for the existing trees.
- [25] TAB 11; is a Drainage and Snow Management plan.
- [26] TAB 12; is a diagram showing the illumination levels that are measured in lux.
- [27] TAB 13; is a memorandum from Transportation Services outlining a condition for the removal of the existing access to 106 Street. The Appellant was in agreement to this condition and entered into a Municipal Improvement Agreement with the City. Also in TAB 13 is a landscape plan to show what vegetation will be added to enhance the existing trees.
- [28] TAB 8 (page 41); is a letter regarding the landscape security which was paid and is still being held by City even though the permit was refused.
- [29] Ms. Agrios summarized that the Appellant has done everything they were asked to do by the City. Under TAB 8 (page 48), the Development Officer's e-mail advising the Appellant of the refusal also recognized the Appellant's efforts to address the various issues that the initial proposal had.
- [30] The Board's test to grant variances was referenced in the *Municipal Government Act*, section 687(3)(d). Ms. Agrios indicated that the Board must look at the impact on the area and neighbouring properties.
- [31] The Development Officer outlined in his written submission that there is no unnecessary hardship or practical difficulty peculiar to the site because the site is large and unconstrained. However, the Board's test is not hardship.
- [32] Ms. Agrios provided the Board with a 2012 Court of Appeal decision, *Tymchak v. Edmonton (Subdivision & Development Appeal Board)*, and referred to Paragraph 19 and 20 stating that that hardship and the unusual site condition is not relevant to the Board as they are subject to different tests as outlined in section 687(3)(d) of the *Municipal Government Act*. (*Exhibit A*).

- [33] There will be no impact to the neighbouring properties as Ms. R. Schwab of Schwab and Schwab LLP and Mr. Romanesky conducted a community consultation and no letters were received in opposition.
- [34] With regard to the letter in opposition from the Downtown Edmonton Community League, she stated that Ms. Schwab tried to contact the Community League. They could have addressed their concerns but the Community League did not respond. The letter indicates that a parking lot will not be reasonably compatible as there is a future park development and future residential, which will have a negative impact on the enjoyment of the park. Ms. Agrios stated that the City is in the planning process for the park which could take five to ten years.
- [35] TAB 22; letters and form petitions received in support from surrounding businesses who are the main users of the parking lots.
- [36] Restaurants in the area use the parking lots for loading and unloading as they do not have loading spaces for their business.
- [37] An e-mail was received from Impark, showing the breakdown of the monthly parkers.
- [38] The parking lot is Accessory for staff and important for the viability of the business as businesses do not have sufficient on-site parking.
- [39] With regard to the concern about potential development of the site, she stated that the Appellant is not a developer but a holding company. The Appellant has been trying to sell the property for several years but due to the economy and contamination, there has not been a sale.
- [40] The original Environmental Report was done in 2002. In 2003 they obtained a report and the contamination was identified to be from a dry cleaner. The remediation is a long process and drilling on the property occurred in 2006, 2007 and 2008 to eliminate contamination.
- [41] In 2009, 2010, and 2011 chemical injections occurred on the site, which takes years for the chemicals to take its course. There is still some mild contamination on the site. Alberta Environment reviewed the application and indicated that the remediation was still not sufficient. Experts from the United States were retained and remediation continued. It could take five years or more to receive a remediation certificate.
- [42] The subject site does not pose any danger to anyone but the property cannot be developed until the contamination is removed.
- [43] They were advised by the City that they do not qualify for the Brownfield Grant Program as the site does not meet the required criteria.

- [44] With regard to the Development Officer's comment that a site can be developed without having the site remediated, she stated that may be true but it is risky to develop without the site being clear of contamination. It may be difficult to buy and sell a contaminated site. There has been some interest from developers with a conditional offer; however buyers are aware of the remediation process.
- [45] They would like the parking lot to be approved so it can be used while remediation is taking place. Without a development permit, the subject site will remain as a vacant lot.
- [46] Mr. Romanesky referred to two images showing the outline of the parking lot and some areas that do not meet the minimum lux levels of light. The lux levels are closer to the location of the lamp post. The new plan will meet the lux 6 level of the *Edmonton Zoning Bylaw*, without bleeding light out past the property.
- [47] With regard to the landscaping, there are some trees on 106 Street and they are planting additional trees and shrubs to create additional screening to meet the intent of the *Edmonton Zoning Bylaw*.
- [48] He referenced *Exhibit B*, when looking north on 106 Street showing trees along the property line and inside the parking lot and stated that some of the corner islands have been upgraded. All of the landscaping upgrades have been approved by a landscape architect. Once the shrubs and trees grow in a couple of years, there will be a good cover along 106 Street.
- [49] In his opinion, the Non-accessory Parking Use meets the definition for the proposed development.
- [50] If the intent of the Downtown Special Area was to exclude Non-accessory surface parking, Non-accessory Parking would be read as excluded from the district. The surface parking regulations does not say parking has to be on the same site and it does not make reference to a natural development -- it just comments that parking is from the rear of a building and is to be accessed from a lane. They have removed access from 106 Street.
- [51] From a planning perspective, parking access is from the back so that the plan creates a pedestrian friendly environment. Pedestrians do not visit 106 Street for the retail environment but to access the parking lot as that is generally all there is on that section of the street.
- [52] From a planning standpoint, the subject site meets the test that parking is Accessory to current development.
- [53] He provided the Board with letters of support, marked "Exhibit C". A form petition letter was received from the owner of a pizza place on Jasper Avenue. The owner stated that although parking is important for users, the parking lot is used for loading and unloading for his business. Another business owner indicated that there will be a negative impact on their customers if the parking lot was not allowed.

- [54] Section 910.4(1)(e)(ii) states a minimum 4.0 metre landscaped setback shall be provided from any property line abutting a Public Roadway, other than a lane, for any surface parking area. He stated that subject site currently has a 0.6 metre setback. However, there is sufficient space to plant landscaping to provide the required screening. There will be approximately a 1-metre high continuous landscaping of shrubs along 106 Street.
- [55] There are several trees on the boulevard that provide screening to the parking lot. The low shrubs along 106 Street will provide screening at the pedestrian level. Trees and shrubs could be planted on the corner islands. The existing trees planted by the City will remain and one tree on the property beyond the curb will be removed. If they created a 4.0 metre landscaped setback, those trees would have to be removed for any future residential development for excavation.
- [56] He referenced the Capital City Downtown Plan. Chapter 1 is the *Land Use Context* and it is not an implementation or policy section. The refusal on the development permit application indicates that allowing Non-accessory Parking does not contribute to realizing this potential. Mr. Romanesky agrees that a parking lot is not the best Use for the site, but it is a matter of creating the incentives to make a parking lot change into the next best Use for the site.
- [57] With regard to Chapter 2 *Challenges* of the Capital City Downtown Plan, the Development Officer references “Despite very high-density zoning, or perhaps because of this favourable zoning, surface parking lots are the dominant presence in large portions of the Warehouse Campus Neighbourhood. The abundance of these lots breaks up the urban fabric and seriously detracts from the vibrancy of this western portion of the Downtown.”
- However, below that paragraph it states “This Plan suggests a number of initiatives that will make development more attractive to property owners than land speculation.” It does not give direction to the Development Officer to remove Non-accessory Parking; it says this Plan will create an environment where speculation is not the best thing to do.
- [58] On page 151 of the Capital City Downtown Plan, *Parking Downtown*, in his view the direction is to redevelop the site carefully and agrees the optimal Use for the site is a mixed-Use development.
- [59] The subject site is located across the street from the proposed park, which may not be developed for 4 to 5 years.
- [60] Businesses do not always have access to the transit system for their customers and there is a need for a parking lot when transit closes as transit is not open at all times of the day.
- [61] Ms. Agrios and Mr. Romanesky provided the following with respect to questions from the Board:

- a. They agreed that section 687(3)(a.1) of the *Municipal Government Act* states that, when determining an appeal, the Board must comply with, among other things, statutory plans and that Capital City Downtown Plan is a statutory plan.
- b. They agreed that the Board must consider the Capital City Downtown Plan when deciding how to exercise its discretion but the statements in the Plan about surface parking lots do not prevent the Board from allowing a surface parking lot at this site.
- c. They agreed that the (UW) Urban Warehouse Zone is a Special Area zone created under the provisions of section 910 of the *Edmonton Zoning Bylaw*.
- d. Although Section 900.4(3)(a) states that Special Area provisions cannot alter permitted and discretionary uses in conventional zones, that does not mean such provisions can alter discretionary uses in the Urban Warehouse Zone.
- e. Section 910.4 contains general regulations and section 910.11 contains specific regulations. The specific regulations prevail over the general regulations. Non-accessory Parking is a discretionary use in the zone, which means that surface parking lots should be allowed in the zone. In their opinion a variance to section 910.4(e)(i) should be granted.
- f. With regard to the Policy and Direction Sections of the Capital City Downtown Plan, the page 32 reference to surface parking lots is not a policy or direction – it is an observation and not binding on the Board. The direction comes from the *Edmonton Zoning Bylaw*. There is nothing specific in the Plan saying you cannot have a surface parking lot. The Plan is relevant to how the Board exercises its discretion, but it is not relevant on the variance test, which is section 687(3)(d).
- g. Mr. Romanesky confirmed that the surface parking lot is paved.
- h. There are 121 parking spaces on the subject site with 69 long term parking spaces. Long term parking is for the adjacent businesses and their employees and the temporary parking spaces are for delivery vehicles.
- i. Any development permit with an expiration date is considered to be a temporary Use. The idea of the ten year approvals was that no one wanted the subject site to be given a non-temporary permit as a parking lot.
- j. The parking lot makes money and pays property taxes. However, the subject site is more valuable to a company for a multi-unit mixed use development; however, there has been no interest at this point.
- k. They confirmed that the parking lot has continued to be used without an approved permit, but they indicated that the City has been very decent and has taken no steps to enforce the Stop Order pending the outcome of the appeal.

- l. Although there is a landscaping setback requirement of 4.0 metres along 106 Street, they reiterated that the same screening objective can be achieved within the existing 0.6 metre setback. The parking lot would lose a row of parking stalls if they had to create a 4.0 metre setback.
- m. With regard to doing a parking demand study, they feel it is not necessary since community consultation has been completed and they have received feedback from businesses in the area that there is a need for the parking lot.
- n. It is complicated and expensive to deal with the contamination on-site and not just simply a matter of excavating the soil.
- o. The property owner is willing to accept a shorter time limit on the development permit than 10 years.
- p. They are agreeable to all the conditions suggested by the Development Officer if the proposed development is approved.

[62] Ms. Agrios submitted a copy of the e-mails from Sustainable Development regarding the criteria for the Brownfield Grant, marked *Exhibit D*, and a copy of Mr. Romanesky's notes from his presentation, marked *Exhibit E*.

ii) Position of an affected property owner, Mr.B. Green, in support of the Appellant

[63] Mr. Green read from a written submission that he provided to the Board, marked *Exhibit F*. Mr. Green is involved in retail wholesale and real estate holdings in Downtown Edmonton.

[64] He has been actively involved with several committees in the City of Edmonton and owns the building east of the subject site.

[65] In his opinion, not renewing surface parking lot permits will have an adverse impact for building owners, tenants, and employees as there is insufficient parking downtown.

[66] If a business does not have accessible parking, customers will not go to the business. If a business closes there will be empty buildings in the area.

[67] He was informed by one of the employees of his tenant that the subject parking lot might be refused, not anyone from the City.

[68] With the new office towers in the Ice District being developed, vacancy in downtown is growing. The owners of property outside the Ice District will be impacted.

[69] He outlined how the price of buildings in the downtown have been dropping.

- [70] Closing the parking lots will only benefit a land developer and will be detrimental to others in the area. He questioned where people would park if the parking lot is closed.
- [71] In his opinion, downtown has to rely on the commercial component.
- [72] In response to questions by the Board, Mr. Green stated that there is no on-street parking on 105 Street due to construction and no parking on 106 Street due to bike lanes.
- [73] He reiterated that the businesses in the area are dependent on the subject parking lots.

iii) Position of the Development Officer, Mr. A. McLellan

- [74] He agreed that the Appellant has responded very well to his requests for information. He provided the Board with a letter received from the Appellant providing information regarding the requested variances, marked *Exhibit G*. This is the letter he was relying on, not the letter in TAB 7 of the Appellant's submission.
- [75] The Capital City Downtown Plan is clear, specific and discourages, if not prohibits surface Non-accessory Parking lots. The Zoning of the subject property was created in conjunction with the Plan.
- [76] Surface parking lots cannot be approved in the Downtown Special Area unless they are Accessory.
- [77] Section 910.4 of the *Edmonton Zoning Bylaw* contains the Downtown Wide Regulations for the Downtown Special Area. Section 910.4(e)(i) prohibits surface parking lots except when they are for Accessory parking. Section 910.11 contains the regulations specific to the Urban Warehouse Zone. Although Non-accessory Parking is a discretionary use in the zone, the prohibition in the Downtown Wide Regulations means that that use is limited to parking structures.
- [78] With regard to Accessory and Non-accessory, he stated that the parking lot is not intended for a particular development, therefore it is Non-accessory. Further, the parking lot is not located at the rear of a building.
- [79] The development permit application is for Non-accessory Parking lot but the Appellant is asking that it be considered as Accessory because nearby businesses use it. In his view, every Non-accessory Parking lot would have to be considered Accessory if you followed this reasoning. He was provided with a list from the Appellant of 17 businesses around the parking lot. He reviewed their development permits and none of them mentioned anything about needing the subject parking lot to meet their *Edmonton Zoning Bylaw* parking requirements.
- [80] In his opinion, people can access businesses in the area by other means of transportation. He counted only about 20 letters of support from people that use the parking lot out of 121 parking spaces.

- [81] He has worked with developers on other projects that work around a contaminated site and a remediation certificate is not necessarily a requirement to obtain a development permit. The City regularly works with Alberta Environment to review remedial action plans and risk management plans while processing development permits in order to facilitate redevelopment of land. While the sale price may be impacted, contaminated land can be developed.
- [82] This is the third application for temporary development permit application for the subject site. After the second development permit was issued in 2006, the new Capital City Downtown Plan was passed.
- [83] There has been sufficient time from 2006 for the remediation to be completed and ten years later, the Appellant is applying for the same thing.
- [84] The Capital City Downtown Plan was developed with extensive public consultation. It is designed to encourage other methods of transportation, such as the expanded LRT and bicycle lanes. There are zoning regulations to limit surface parking lots. Mr. Romanesky indicated that pedestrians do not walk down 106 Street because there are only surface parking lots and that is the problem.
- [85] The Downtown Special Area has maximum parking requirements limiting the number of parking stalls a development can have to encourage the use of alternate forms of transportation.
- [86] If the parking lot is not allowed as a temporary use, this might encourage redevelopment of the site. Landowners make money from parking lots, which keep the sites from being redeveloped.
- [87] Mr. McLellan provided the following with responses to questions from the Board:
- a. He does not have any statistics about Accessory and Non-accessory parking lots in the area.
 - b. He confirmed the subject site is 80 metres from a future Valley LRT line station and 130 metres from the existing Corona LRT station. He could not comment on the future LRT line timeline.
 - c. The City is beginning the expropriation processes for the proposed park across 106 Street from the proposed development.
 - d. If the proposed development is approved, the landscape plan developed in the arborist's report will be sufficient for the interior of the parking lot. However it will be lacking landscaping along the perimeter.
 - e. Although the shrubs will be planted in the 0.6 metre setback along 106 Street, that will not provide sufficient screening.

- f. He confirmed that if the parking lot is not approved and the site remains vacant, the City has standards regarding how the property must be maintained.
- g. The *Edmonton Zoning Bylaw* does not give specific direction for the issuing of temporary permits.
- h. He stated that completion of an appropriate parking demand study would have made decision making by all parties much easier.
- i. With respect to people that currently use the subject site for vehicular parking, they will have to find a new location if the Board upholds the decision.

iv) Rebuttal of the Appellant

- [88] Mr. Romanesky indicated that, if the parking lot is refused, it will have to be replaced by a residential development or something that brings people into the area. Businesses will have challenges if this does not happen quickly. Removing the parking lots does not mean it will trigger development on the subject site.
- [89] Ms. Agrios indicated that, based on Mr. Green's first-hand experience, the parking lot is full and used by surrounding businesses and the letters provided support Mr. Green's account.
- [90] With regard to surrounding businesses not requiring many parking spaces in the Downtown Special Area, the reality is that the businesses do depend on this parking lot.
- [91] The Development Officer agreed that the limitation to surface parking is a regulation and it can be varied.
- [92] Ms. Agrios reiterated that they are not arguing that the parking lot is Accessory. They agree it is a Non-accessory Parking Use. However, due to the vicinity of the surrounding businesses, it is also used as an Accessory parking lot.
- [93] A Bar, Apartment House, or Hotel of any significant size would require a parking lot of this size.
- [94] Under section 54.2(2)(b) of the *Edmonton Zoning Bylaw*, Accessory parking does not have to be on the same site as the principal use and parking can be within 120 metres of the principal use. This demonstrates that there is no difference in impact between Non-accessory Parking and Accessory parking.
- [95] The economic situation will determine when the time is right for redevelopment to happen for mixed-use development. Contamination of the site is an issue.

[96] She reiterated that the property owner is not sitting on the site. They want to sell the property and it has been listed for years, however there are several conditions needed for a deal to proceed. One of the conditions for a possible sale is that there is a development permit in place for temporary surface parking until the site is remediated prior to redevelopment. If the appeal is denied, the lot will remain vacant for the next five years no matter what.

Decision

[97] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **REFUSED**.

Reasons for Decision

[98] This is an appeal from the Development Officer's decision to refuse to issue a development permit for a temporary surface Non-accessory Parking lot for 10 years.

[99] The subject site is located in the Warehouse Campus neighbourhood. It is subject to the Downtown Special Area Overlay and it is within the (UW) Urban Warehouse Zone. In this zone Non-accessory Parking is a discretionary Use.

[100] There has been a Non-Accessory Parking lot on the subject site for at least 20 years. Two previous development permits allowed this Use for 10-year periods. The most recent permit expired in June 2016. The City issued a Stop Order to cease the operation of the parking lot after the permit expired. This Board upheld the Stop Order, which specified that the Use was to cease by March 15, 2017. Apparently the City has allowed the Use to continue beyond that date pending the outcome of this appeal.

[101] In April 2010 Council passed the Capital City Downtown Plan Bylaw 15200 (the "Plan"), which is an Area Redevelopment Plan, dealing with an area that includes the Warehouse Campus neighbourhood and the subject site. The Development Officer relied upon statements in the Plan to support his decision to exercise his discretion not to issue a development permit for this surface parking lot.

[102] Section 687(3)(a.1) of the *Municipal Government Act* (the "MGA") states that, in determining an appeal, this Board must comply with, among other things, statutory plans in effect. The definition of "statutory plan" in section 616(dd) of the *MGA* includes Area Redevelopment Plans. Accordingly, this Board must comply with the Plan in determining this appeal. For this reason, it is important to review the Plan to assess how it relates to this application for a Non-accessory surface parking lot.

[103] The purpose of the Plan is described as setting out "a number of new policy directions and bold initiatives to meet the ever-changing needs and aspirations of downtown stakeholders." (Page 1) One of the planning principles identified in the Plan is to "provide walkable streets, safe bicycle facilities and convenient transit to get people out

of their cars and reduce the demand for parking Downtown.” (Page 27) A challenge identified in the Plan is the fact that the downtown is auto-dominated, with centrally located and abundant surface parking, especially in the Warehouse Campus neighbourhood. (Page 31)

- [104] At page 32 of the Plan there are the following statements: “Despite very high-density zoning, or perhaps because of this favourable zoning, surface parking lots are the dominant presence in large portions of the Warehouse Campus Neighbourhood. The abundance of these lots breaks up the urban fabric and seriously detracts from the vibrancy of this western portion of the Downtown.”
- [105] A policy in the Plan relates to sustainable transportation by encouraging reduced dependence on drive-alone vehicles. (Page 74)
- [106] A goal identified in the Plan is to manage the downtown roadway system to promote alternative modes of transportation such as transit, cycling and walking and by constraining the availability of long term parking. (Page 133)
- [107] A policy in the Plan is to increase transit’s share of trips to and from downtown by, among other things, parking supply management. (Page 148)
- [108] At page 151 of the Plan, it states that certain areas of the downtown, such as the Warehouse Campus neighbourhood, have an overabundance of long-term surface parking lots. It further states that reviews of short-term parking supply may identify initiatives to manage parking and help reduce dependence on single occupant vehicle use.
- [109] One of the parking policies in the Plan relates to reducing the supply of off-street parking spaces required in the *Edmonton Zoning Bylaw* for developments and by setting maximum limits on the supply of parking spaces. (Page 152)
- [110] Based on this review of the Plan, the Board concludes that there is no direction in the Plan that specifically prohibits a surface lot Non-accessory Parking Use on the subject site. However, it is clear that surface parking lots, particularly in the Warehouse Campus neighbourhood, are seen as undesirable. Such lots are viewed as detracting from the vibrancy of the area and contributing to the “auto-dominated” downtown. These surface parking lots do not contribute to the objectives of reducing dependence on single occupant vehicle use, reducing the demand for parking downtown and encouraging redevelopment of surface parking lots.
- [111] In addition, the Board notes the subject site is within 130 metres of the Corona LRT Station and is approximately 80 metres from a future LRT station on the Valley Line. The City’s Transit Oriented Development Guidelines strive to maintain and strengthen transit supportive uses. The proposed surface parking lot is not transit oriented development.

- [112] The Board is of the view that, when considering whether to exercise its discretion to issue a development permit for this surface parking lot, it must have regard to the statements in the Plan about such lots. It is the Board's opinion that issuing a development permit for this surface parking lot would be contrary to the objectives of the Plan. Accordingly, the Board denies the appeal and confirms the decision of the Development Officer for this reason.
- [113] The Board also denies the appeal for other reasons. The first of these reasons relates to a waiver that would be required to allow a surface parking lot in the Urban Warehouse Zone. The second relates to a variance that would be required regarding the size of a landscaped setback.
- [114] The zoning regulations that apply were implemented in conjunction with the adoption of the Plan and are discussed starting at page 225 of the Plan. The Downtown Special Area Overlay was developed to achieve the objectives of the Plan (Section 910.1). It created several Downtown Special Area Zones, including the Urban Warehouse Zone.
- [115] Special Area General Provisions are set out in Section 900 of the *Edmonton Zoning Bylaw*. In that section, Special Area zones are distinguished from conventional zones. It is contemplated that Special Area overlays may apply to conventional zones as well as Special Area zones.
- [116] Section 900.4(1) states:

Where the regulations of a conventional Zone are varied, those regulations of the Special Area shall be substituted for the specified regulations of the underlying Zone. Where there appears to be a conflict between the provisions of this Overlay and those of the underlying Zone, the Special Area Provisions shall take precedence and effect.

- [117] Section 900.4(3)(a) states:

Special Area provisions shall not be used:

- a. to alter Permitted or Discretionary Uses...in any underlying conventional Zone;

- [118] Section 910.4(1) states in part:

The following Zoning Regulations are common to all the Downtown Special Area Zones. Further regulation may be described under individual zones.

1. Vehicular Parking

...

- b. Parkade(s) developed below Grade shall be permitted to be built to the property line.
- c. Parkade(s) developed below Grade on streets identified as neighbourhood streets in the Urban Design Framework for Downtown Streets within the Capital City Downtown Plan, Bylaw 15200 are to be located sufficiently below Grade, or a suitable alternative, to provide a minimum of 1.2m soil depth to contribute to healthy root development.
- d. No portion of an above Grade parking garage on the ground (first) floor shall be allowed for a minimum depth of 8.0 m from any front façade facing a Public Roadway, other than a lane. Vehicular Access shall be from the abutting lane.
- e. Surface Parking Lots:
 - i. No surface parking shall be allowed, other than accessory parking that is located at the rear of a building and is accessed from the abutting alley;
 - ii. A minimum 4m landscaped setback shall be provided from any property line abutting a Public Roadway, other than a lane, for any surface parking area;

...

- [119] To issue a development permit for the proposed development, variances would be required to sections 910.4(1)(e)(i) and (ii).
- [120] Section 910.11(3)(s) lists Non-accessory Parking as a discretionary Use in the Urban Warehouse Zone.
- [121] Section 7.4(39) defines Non-accessory Parking as “development providing vehicular parking which is not primarily intended for the Use of residents, employees or clients of a particular development. Typical Uses include surface parking lots and parking structures located above or below Grade.” It is important to note that this Use includes both surface parking lots and parking structures.
- [122] Counsel for the Appellant argued that Section 910.4(1)(e)(i), which prohibits surface parking lots in this zone except as Accessory parking, does not apply to this development. Her reasoning is that section 900.4(3)(a) prohibits any alteration of permitted or discretionary Uses by Special Area provisions.
- [123] However, section 900.4(3)(a) states that Special Area provisions shall not be used to alter permitted or discretionary Uses in any underlying *conventional* Zone. The Urban Warehouse Zone is a Special Area Zone, not a conventional zone. Therefore, the Board finds that Special Area provisions may be used to alter permitted or discretionary Uses in Special Area Zones.

- [124] Further, the Board finds that there is no inconsistency between allowing Non-accessory Parking as a discretionary Use and prohibiting surface parking lots in this zone. The Non-accessory Parking Use includes both surface lots and parking structures, such as parkades. The Special Area regulations in section 910.4(1)(b) through (d) deal with parkades and make it clear that, under certain conditions, this type of Non-Accessory Parking may be allowed. Section 910.4(1)(e)(i) does not eliminate Non-Accessory Parking as a discretionary Use in this zone, it merely limits the scope of that Use. This is in furtherance of the objectives of the Plan.
- [125] The Board finds that section 910.4(1)(e)(i) does apply to the proposed surface parking lot, meaning a waiver of this section would be necessary.
- [126] The Board is of the opinion that this waiver would not be appropriate because the proposed development would unduly interfere with the amenities of the neighbourhood. Acquiring land for a central park in the Warehouse Campus neighbourhood to serve as a catalyst for redevelopment is identified as a project in the Plan. (Page 37) The Plan also speaks to supporting a range of shops, cafes, leisure and recreation facilities fronting and addressing the proposed park to increase activity levels and a sense of belonging to neighbourhood residents. (Page 120)
- [127] The Board heard evidence that the City has chosen land directly across 106 Street from the proposed development for the location of this park. The expropriation process has begun to acquire the land, which is now made up of surface parking lots. The proposed development, in the Board's opinion, is not the type of development that is appropriate in the vicinity of the park. It will have a negative impact on the streetscape and it will not increase a sense of belonging to neighbourhood residents.
- [128] Issuing a development permit for the proposed development would require a variance to section 910.4(1)(e)(ii), which states that a minimum four-metre landscaped setback shall be provided from any property line abutting a public roadway, other than a lane, for any surface parking area. This is in keeping with the objectives of the Plan, which states that new development should make adjacent streets attractive and comfortable for pedestrians through, among other things, landscape improvements in setbacks to create attractive transitions from the private to the public realm. (Page 125)
- [129] The proposed development has provided only a 0.6 metre landscaped setback along 106 Street. The Board is of the view that this landscaped setback is not adequate and will not create the appropriate transition from the street to the parking lot. It is the Board's opinion that, with the proposed setback, the development will unduly interfere with the amenities of the neighbourhood.
- [130] The Appellant advised that there were some issues with contamination of the site that could impede development, so allowing the surface parking lot to remain would be appropriate until those issues were resolved.

The Board accepts the evidence of the Development Officer that it is not uncommon for environmental remediation of a site to occur in conjunction with redevelopment.

[131] The Board acknowledges the support for the proposed development from adjacent property owners and from users of the parking lot. This does not change the Board's view that the proposed development is contrary to the objectives of the Plan and that it will unduly interfere with the amenities of the neighbourhood. The Board notes that the Downtown Edmonton Community League provided a letter of support to deny the proposed development.

[132] For all of the above reasons, the appeal is denied and the decision of the Development Officer is confirmed.



Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.