



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: December 8, 2017
Project Number: 258895254-001
File Number: SDAB-D-17-192

Notice of Decision

- [1] On October 19, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **September 11, 2017**. The appeal concerned the decision of the Development Authority, issued on August 21, 2017, to approve the following development:

Construct exterior alteration to an existing Apartment building (removing the rooftop addition and rooftop patio, 5.54 metres by 4.04 metres)

- [2] The subject property is on Condo Common Area (Plan 0626935), located at 10003 - 87 Avenue NW, within the RA7 - Low Rise Apartment Zone. The Medium Scale Residential Infill Overlay and the Strathcona Area Redevelopment Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
 - The Development Officer’s written submissions;
 - The Appellant’s written submissions;
 - Two Court of Appeal Decisions submitted by Legal Counsel for the Appellant;
 - The Respondent’s written submissions; and
 - Online responses.

October 19, 2017 Hearing:

- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Letter from the Safety Codes 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 (the "*Municipal Government Act*").

Summary of Hearing

i) Position of Mr. Noce, Legal Counsel for Ms. Stenzel, the Appellant

- [8] Mr. Noce sent Legal Counsel for the Respondent a letter on October 15, 2017 indicating he would be requesting a postponement of the hearing. He spoke to Mr. Forgues on October 16, 2017 explaining the reason for the postponement request. Mr. Forgues replied by email that day indicating that he was agreeable to a postponement, but his client was not.
- [9] Mr. Noce advised that if the Board proceeded with the hearing, he was not able to continue past 3:30 p.m. because he needed to pick up his children from school as there was no one else that could pick them up on this day. He believed that it would be unfair to continue the hearing in his absence.
- [10] He referred to two Court of Appeal Decisions that dealt with postponement requests to support this argument.
- [11] There is an ongoing law suit between the Condominium Corporation and the Appellant which is in the early stages. The Corporation provided the Court with its submission and the Appellants are in the process of preparing their documents as the Respondents to the Court application filed by the Corporation. The matter is scheduled to be heard on November 8, 2017.
- [12] He has not been able to cross-examine on the affidavit filed by the Corporation in support of its application. However, the Respondent included that affidavit as part of the submission to this Board. The Appellants have a legal right to cross-examine and he needs the opportunity to cross-examine on that affidavit in order to properly prepare for this hearing. It would be unfair for the Board to rely on the affidavit before cross-examination.
- [13] The Condominium chose to submit the materials which opened the door for him to cross examine on the affidavit. If they chose not to file the affidavit, he could not make that argument. He still has an issue with proceeding without cross-examining on the Respondent's affidavit.

- [14] Counsel for the Appellant asked to postpone the hearing past November 2, 2017 as stated in his letter. In his opinion, the roof top patio has been in existence for several years and postponing this hearing will have no impact on anyone. He provided sufficient notice to the Respondent that he would be requesting this postponement.
- [15] In response to questions by the Board, he stated that there is ongoing litigation between the parties in attendance at the hearing. The Condominium Board President chose to include the affidavit filed in that litigation in the Respondent's submission to the Board and therefore he has the right to cross examine in order to make his case for the Board hearing.
- [16] Counsel for the Appellant will also be preparing an affidavit for the Court hearing on November 8, 2017. It is an application in regular Chambers, however he believes that due to the complicated nature of the matter, it may need to be resolved in Special Chambers. He believes the Court will be looking at possibly April or May 2018 for that type of hearing.
- [17] In the litigation, the Respondents are seeking a declaration of the Court that the patio is an illegal roof top addition and they should be entitled to gain access to the unit to gain access to the roof top.
- [18] This Development Permit application is an attempt to add a cost to the process for the Condominium Corporation and the Appellant. If they are successful at the Courts, the Board would not have to proceed with the hearing. If there is an Order of the Court to demolish the structure, a Development Permit would not be required.
- [19] If the Board upholds the permit and denies this appeal, then there would be instruction from the Appellant to immediately seek permission to appeal. This would put a stay on the permit and the subsequent application to appeal to the Court of Appeal would likely be heard in January or February, 2018. If it were successful, the full appeal would likely be heard in 2019.
- [20] Nothing will be achieved today if the Respondents are successful. If the Board proceeds today, it is moot which will add to the leave to appeal process.
- [21] He would like to postpone the hearing *sine die*. If the hearing had started prior to the lawsuit, there would be a different process.
- [22] A member asked a question regarding the stability of the structure and the building. The Appellant provided an Engineering Report to the Board outlining that the roof top structure is stable and does not impose a risk to anyone if the appeal hearing is postponed. There is no issue with the building itself and the Board cannot deal with the building in any event.

ii) Position of Mr. Forgues, Legal Counsel for the Respondent, Mr. Yale

- [23] Mr. Forgues stated that the Condominium Board will need a Court Order to gain access to the rooftop to remove the patio. They are in the early stages of the Court proceedings to secure access, a matter which is not within Board's jurisdiction in this appeal of the demolition permit.
- [24] He is not sure if he agrees with Mr. Noce that a Development Permit will not be needed if there is a Court order in his client's favour.
- [25] Granting a postponement of the appeal hearing will have a negative impact on all the parties in attendance as all of the Condominium Board Members took the day off work to attend the hearing. In his opinion, Mr. Noce did not provide sufficient notice to all of the Condominium Board regarding the postponement and they would like to proceed with the hearing.
- [26] He could not confirm the stability of the rooftop patio, but he did not believe there is urgency to access the unit.
- [27] In his opinion, there is prejudice to the Respondent if the postponement is granted.
- [28] He stated that cross-examining on the affidavit filed in support of the Chamber's application is not part of this appeal hearing process so that is not a reason for adjourning.

iii) Position of Affected Property Owners

Mr. Duebel, speaking on behalf of his daughter who resides in the Condominium

- [29] Mr. Duebel began to outline his substantive concerns and the Presiding Officer indicated that they were only dealing with the postponement request at this time.
- [30] He had nothing to add concerning the postponement request.

iv) Rebuttal of the Appellant, Mr. Noce

- [31] Issues will be settled in the Court of Queen's Bench that are outside the Board's jurisdiction and the Court decision will determine the issues.
- [32] If the Condominium Corporation is successful in establishing that the rooftop patio is illegal, the Development Permit will be moot as the Appellant will have nothing to defend it with.
- [33] If the Appellant (Respondent in the judicial hearing) is successful in the Court matter and the rooftop patio is allowed, the application for a permit is also moot as they will not have the authority to get the permit.

- [34] The Board is hearing a matter that is beyond its scope as there are issues to be resolved about whether there is the prior permit is a legal permit and about ownership – the second matter is not usually in issue before the Board. The issue of legitimacy is not usually in play.
- [35] Ownership of the addition and validity of the prior Development Permit is not before the Board.

Decision

- [36] That the hearing for SDAB-D-17-192 be TABLED to November 23, 2017.

Reasons for Decision

- [37] While the Board recognized that the Respondent and the other affected parties would be inconvenienced by an adjournment, the Board granted the adjournment because it was a first request and in the circumstance the Board accepted that Mr. Noce's departure mid-hearing could leave his client in an unfair position and possibly unable to properly make her case.

November 23, 2017 Hearing:

- [38] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Condominium Additional Plan Sheet Certificate submitted by the Appellant
 - Exhibit B – Notice of Change of Directors submitted by the Appellant
 - Exhibit C – Marked up copy of Schedule B-2 submitted by M. Aquiletti
- [39] At the outset of the hearing, the Presiding Officer indicated that the Board Office received an email from Mr. Forgues, Legal Counsel for the Respondent, Mr. Yale, which indicated that he would not be in attendance at the hearing and asked the Board to proceed in his absence. Mr. Yale confirmed that this information was correct.
- [40] The Presiding Office indicated that the Board granted the postponement request at the previous hearing only on the basis of Mr. Noce's departure due to personal reasons and did not decide any other issues discussed at the prior portion of the hearing.

Summary of Hearing

i) Position of Mr. Noce, Legal Counsel for the Appellant, Ms. Stenzel

- [41] Mr. Noce submitted Exhibit A, Condominium Additional Plan Sheet Certificate, and Exhibit B, Notice of Change of Directors.
- [42] Mr. Noce referred to photographs in the submitted materials showing the building from the rooftop and the side view. The rooftop patio is the structure in question.
- [43] There is a dispute as to whether or not the Appellant has the rightful opportunity to maintain and use the structure.
- [44] There is a dispute between the Appellant and the Respondent about whether the Appellant has exclusive use of the structure and whether the structure is compliant. These issues are beyond the jurisdiction of the Board.
- [45] The Board cannot make a determination about whether this area is common property, exclusive to the Appellant, or whether the Condominium Plan or Bylaw has been violated. Under the *Condominium Property Act*, RSA 2000, c C-22, the only forum to determine the rights and obligations of the Condominium Corporation is the Court of Queen's Bench.
- [46] In this type of Development Permit appeal hearing, ownership is normally not an issue. In a hearing on a regular permit, the property owner is known and there are no objections at the hearing as to the ownership of the property.
- [47] If a tenant makes an application in a building for a retail business, they would need the approval of the owner of the building and that does not come into play in this hearing.
- [48] Here there is ongoing litigation between the Condominium Corporation and the Appellant in the Court of Queen's Bench. The Condominium Corporation has filed an affidavit with the Court, but the Appellant has not. That affidavit is part of Respondent's submissions to the Board for this hearing.
- [49] Examination on that affidavit has not taken place and the Court of Queen's Bench application has been adjourned. He does not believe anything will take place until 2018 and the matter could take a year or two for resolution. That litigation will determine the legality of the structure and they will then be able to act appropriately. If it is determined that the structure is illegal or on common property, the Condominium Corporation can take steps to enforce the judgement of the Court.
- [50] If the Court rules that the structure is legal and the Appellant, Ms. Stenzel, has the right to maintain it, then a demolition permit would be inappropriate. Until that judicial determination, the Board does not have the jurisdiction to determine the ownership. The Development Permit application is premature.

- [51] On April 28, 2009, the Condominium Board approved a proposed development to construct an addition to an Apartment Building (4.88 metres by 5.49 metres access to a roof top deck). There is a valid Development Permit issued for this site.
- [52] Mr. Yale is the applicant for the demolition permit. He is a resident in the building, but is not on the Condominium Board. He was not appointed to the Condominium Board at the meeting October 30, 2017. Strangers cannot apply for anything and, in law, Mr. Yale is a stranger to the application. What is missing from the process is a resolution of the Condominium Board supporting the application for a demolition permit.
- [53] Mr. Noce referred to Section 13.2 Class A Permitted Development Excluding Signs of the *Edmonton Zoning Bylaw* which states:
1. The applicant shall submit the appropriate application form fully and accurately completed in accordance with the following requirements.
 - a. the municipal address of land and buildings presently occupying the Site, if any;
 - b. a legal description of the land on which the proposed development is to occur, by lot, block, subdivision and registered plan numbers;
 - c. the applicant's name, address, interest in the land, and confirmation of the owner's authorization to apply for the Development Permit
- [54] This section has not been met because nothing was submitted to the Board to show that there was a resolution of the Condominium Board to make an application. They do not allow strangers to make a Development Permit application.
- [55] There are two significant hurdles the Board needs to address:
1. The issue of ownership or exclusive use to the structure.
 2. The issue that Respondent is not on the Condominium Board nor an agent applying for a Development Permit without any confirmation of his status to make an application on behalf of the Condominium.
- [56] The Appellant's submission includes an approved Development Permit issued from Sustainable Development for the addition.
- [57] The Respondent's submission includes a Safety Codes Order from the City of Edmonton dated July 6, 2017. On July 24, 2017, the Safety Codes Order was withdrawn. There is no outstanding Order against the Appellant from the City with regard to the structure.

- [58] The Appellant's submission includes a stamped letter from an Engineer who reviewed the deck. It confirms that the deck framing and railing, the floor modification and roof above, and the adjacent structural components, are structurally adequate to support the roof snow loads and code requirements. Based on the results of the design and construction review, they were advised that the work is now complete, in compliance with their recommendations, code requirements, and good construction practices.
- [59] In his opinion, there is no urgency or concern with regard to the structure itself.
- [60] In the Appellant's materials, there is a series of letters between the Condominium Board, the City, and the Appellant dating back to November 2008. There is documentation from the Condominium Board President at that time supporting the structure which was needed for the Building Permits. However, the current Board is taking a different perspective which raises the issue of estoppel and laches.
- [61] The Appellants provided these materials only to demonstrate the legal matters in dispute. These issues are beyond the jurisdiction of the Board, they are very complex. They require adjudication before the Board can even make a determination.
- [62] Ms. Stenzel stated that in the last few years there has been a change in the Condominium Board and there have been stressful issues since then. She has cooperated with all the inspection requests. The Respondents have made false accusations and their submissions are not complete.
- [63] Mr. Noce stated that given the dispute between the Appellant and the Respondent, the Board cannot make a determination about whether the permit should proceed. Therefore, the Board has only one course of action; it must allow the appeal and quash the permit. Any other decision would be premature.
- [64] In order to affirm a legitimate Development Permit, the Board has to be absolutely comfortable and certain that the person making the application has the right to do so. In the absence of these materials, the Board cannot make a decision. The Court of Queen's Bench will determine what they can or cannot do.
- [65] In his opinion, the structure is valid. It has a legitimate permit and an Engineer stamp. Further, there is no urgency for the Board to make a determination today. In these circumstances, the Board needs to quash the Development Permit.
- [66] Mr. Noce was asked to comment on the observation that the only section of the *Edmonton Zoning Bylaw* referencing the landowner is Section 17.2 Cancellation of a Development Permit and that when a Development Permit is issued, compliance with all development requirements is the issue and the question of ownership is not at play. He explained that a tenant cannot apply for a Home Based Business if the Condominium Board Bylaw does not allow for it which is something that the Board cannot deal with. Legitimacy of the party is in issue in this hearing. If the ownership cannot be determined, the application cannot proceed.

- [67] When applying for a Development Permit, confirmation of owner consent is required. There is an obligation to show authorization from the owner. The Development Officer has jurisdiction over that. Here there is nothing in the application provided by the City. If evidence is provided to the Board, they can make that determination.
- [68] Section 13.2(1)(c) should be given its normal meaning. In his opinion, the Board must allow the appeal since there is no confirmation of ownership in any materials before the Board. The application was *void ab initio*. The Board can inquire about the ownership; however, they should wait until the Court of Queen's Bench litigation is over.
- [69] They do not have the right to go to the City as outlined in Section 17 of the *Edmonton Zoning Bylaw* to cancel the permit because they are not the owners. If they were the owners, and tried to cancel the Development Permit, the City should question the ownership.
- [70] He agreed that the validity of the previous Development Permits is not before the Board. If there is a valid permit, there will be no outstanding enforcement issues or building code issues.
- [71] If the Respondent has exclusive use of the rooftop patio, they can use that to cancel the Development Permit. If the Board allows the appeal, the permit comes to an end.
- [72] In response to a question by the Board, Ms. Stenzel stated that the Safety Codes Officer was called and an Engineer provided a report that the structure was safe so the Order was cancelled. The Development Permit is still valid.
- [73] The building was registered as a Condominium in 2006.
- [74] The building's roof drain is raised slightly and does not drain immediately. The roof is tapered with Styrofoam insulation. In 2005, a large hole was found and water was draining into the building. A new roof was built since water had to be directed off the side of the building.
- [75] The Board also has the option to stay the permit until such time as a Court decision or agreement is made.

ii) Position of Affected Property Owners in support of the Appeal

Mr. Tarapaskin

- [76] He is fine with the addition. He is concerned that the owners will get an expensive special assessment if these issues go to the Court of Queen's Bench.

iii) Position of the Development Officer, Mr. Angeles

- [77] He had nothing to add to his written submission, but would answer questions of the Board.
- [78] He confirmed that according to the City system, there is an active Development Permit still in effect from 2008 for the rooftop structure. There was a Building Permit applied for and approved, but more information is required for the Building Permit.
- [79] Law Branch has advised him that there is no statutory requirement to get an owner's consent for a Development Permit application. They are not required to have proof of the ownership when an application is made. The Applicant must check a box on the Application Form indicating they are the registered owner or have permission from the registered owner. In this instance, it was checked. This is considered sufficient confirmation of permission.
- [80] The consent of all of the condominium owners would be required to cancel a Development Permit under section 17.
- [81] They review Development Permit applications based on conformance with provisions of the *Edmonton Zoning Bylaw*, not ownership.

iv) Position of the Respondent, Bruce Yale

- [82] Mr. Yale is Chairman of the Building Committee. He is active in maintaining the property because previously it was determined that \$840,000.00 was needed for repairs. He believed this was too high and rallied owners to lower the amount. With the support of the Condominium Board and most owners, he completed most projects the reserve study called for. He did most of the work himself or supervised tradesman. He listed several projects that he completed to prove to the Board that he has the trust of the Corporation.
- [83] Mr. Yale is also Chairman of the Rooftop Committee. The sole goal of the committee is to resolve an 11 year problem and get the rooftop addition either fixed and legalized or removed.
- [84] He never had owners' specific permission on every project, but had general permission to use \$250,000.00 to make repairs.
- [85] As per Mr. Noce's submission, the "pink lines" represent walls that used to be in place below the roof prior to the condo conversion. The developer removed those walls without a permit.
- [86] The pool of water on the roof needs to be addressed.

- [87] When the City came out to inspect a cladding project, the rooftop addition came to their attention. On May 11, 2016, the City gave them a “red sticker” which stated that “the building permit was never issued...for an addition to an apartment (addition) access to roof top deck.”
- [88] Mr. Yale referenced his pictures and pointed out amongst other things, that water is pooling in 3 places which correspond to the locations where walls were removed. There is proof the roof is sagging. The Appellant took out non-loading bearing walls and added extra weight. Their engineer cannot properly inspect the area. It may be solid, but crooked. There are no leaks now but the roof has been damaged. The building inspector had issues with the addition.
- [89] The Appellant’s engineer says the addition is safe, but he believes that everything is fine until an accident happens.
- [90] The City asked the Appellant for six things and none were supplied, until ten years later when the Appellant provided an engineer report.
- [91] He disputes the Appellant’s submissions about the state of the addition. Mr. Yale provided a video and several pictures to show the poor quality of the railing and the worn down membrane. While it looks solid, that appearance is deceiving.
- [92] Mr. Yale explained that upon a mortgage renewal, a bank requests a condo plan. This condo plan does not show the addition. Thus many mortgages have been obtained fraudulently by unit owners. This is extremely prejudicial to everyone in the building. This is the fifth Condominium Board trying to resolve this issue. The Condominium Board passed a resolution to do everything in its power to remove the addition.
- [93] Upon questioning from the Board, Mr. Yale indicated the Building Committee existed prior to his appointment. There was no specific resolution to apply for the permit, but he is part of the Maintenance Committee and Rooftop Committee and it falls within his purview to apply for everything. He believed he had leeway to make the application for the permit under appeal.
- [94] Asked whether he was an employee or a paid consultant to the Corporation, Mr. Yale confirmed that he has put in hundreds of volunteer hours for the Corporation, but more recently he charges the Condominium Corporation for his time.

v) *Position of Affected Property Owners in opposition to the Appeal*

Ms. D. McDonald

- [95] Ms. McDonald stated the Board of Directors determined in June 2016 that the Appellant's illegal structure must be removed. She clarified which City Order and Building Permit had been cancelled.
- [96] This situation has been ongoing for 10 years and it remains unresolved. The Appellant clearly has no intention to remove the addition.
- [97] There is an application, but no Building Permit in place for the addition.
- [98] The Condominium Board has every right to apply for this permit. They wanted to be ready to proceed in a timely fashion when the Court action is completed so they applied for the permit.
- [99] They were aware that Mr. Yale was going to apply for this permit. There are Board minutes creating a maintenance consultant. He is paid hourly. They do not pay a management company. He was nominated as Building Committee Chair. He acts as a liaison between the City and anything to do with building.
- [100] Everyone present at this hearing here is on the board of directors: D. McDonald, J. Mercer, M. Aquiletti; B. Watson, F. Nayebi, and R. Bourbeau.
- [101] The Corporation must be able to govern its property and has a duty to protect the building. The litigation is not about ownership. The judicial application is about access to the suite and getting a proper engineering report. Ownership is not in dispute. The Appellant may own the materials, but it is the Corporation's roof. They have a report indicating that the structure is damaging the roof. Even if it is the Appellant's structure, that does not mean it can remain where it currently is.
- [102] This has been a lengthy process. They want the Development Permit upheld so they remove it and have a proper condo plan.
- [103] It is fully within the Corporation's rights to remove something that is damaging the roof.
- [104] The Appellant's engineering report is irrelevant. It is the Corporation's roof and no development should occur without the Corporation's consent.
- [105] The City instructed them to board up patio and board up the panes of glass. Then the City Inspectors called the Appellant and the order was rescinded. This was in error. The Appellant should have never been contacted about the order.

- [106] Because of the structure, they were only able to renew their insurance for 6 months. Then they had to find a new insurance company. This situation is affecting residents and owners. It is detrimental to everyone, including the Appellants themselves.
- [107] The Appellant was given 30 days to comply after the May 16 notice. When no action was taken, the Condominium Board resolved to take action. After access to the unit was denied, Mr. Noce was retained. The Corporation then also retained a lawyer.
- [108] On September 22, 2016, they formally resolved to remove a structure and passed a new and improved resolution drafted by their lawyer and dated November 22, 2017.
- [109] Even they were originally unaware of the problems with the structure. With all this new information, the problems can no longer be ignored.
- [110] Ownership is not the key. The whole roof around the addition belongs to the Corporation.
- [111] They are aware this is only a Development Permit and that it only deals with compliance with the Bylaw. They understand that it is not permission for anything else. This is a first step. They want to start resolving these issues. They want the permit despite understanding they might or might not be able to act on it.

Mr. F. Nayebi

- [112] He is a mechanical engineer. He purchased his property last December. When he purchased the property, he was aware of the illegal structure and the ongoing issues. He was surprised by the severity of cracks and misalignment.
- [113] This is an illegal structure erected without consent from the Corporation and not represented in the Condominium Plan.
- [114] This roof is common property. The Board can make decisions about it, just like they did in previous decision on staircases and entrances.
- [115] Even if owners were entitled to build on the roof, they would still require Condominium Board approval.
- [116] There are cracks appearing on his west wall and they are worsening
- [117] This illegal structure must be removed.

Mr. B. Watson

[118] Mr. Watson has been on the board for three or four months and has owned a unit for one year.

[119] When he bought his condo, he was notified about the illegal structure and at that time it looked like the issue would be resolved shortly.

[120] He is concerned about the liability associated with structure.

[121] It was deemed illegal and it impacts the building.

Mr. M. Aquiletti

[122] He is the owner of Suite 101. He is the incoming treasurer. He is also a professional engineer.

[123] He referenced a marked up copy of Schedule B-2 of the Appellant's Engineering report, marked Exhibit C. This report is limited in scope. The author looked at the structure but did not look at the rafters. There is obviously deflection occurring as shown by the pooling water. The snow piles up on the sides of the addition adding to the load on the roof.

[124] He is not suggesting this is a fraudulent report, just that it is limited in scope, based on "as-built" drawings and with no analysis of the roof.

[125] The structure is not on the condominium plan. It was built without a permit on a roof which was neither conceived nor designed to hold its weight. The structure does not belong and it needs to go.

[126] Upon questioning from the Board, he confirmed that it appears that the engineer crossed out lines which were not included in his review and then he initialed them to indicate that he had crossed them out.

Ms. J. Mercer

[127] There are two different engineering reports. She wonders how this structure can be allowed to stay when it is clear that damage is occurring. For her, safety is the primary concern, not money.

vi) Rebuttal

- [128] Evidence before the Board shows that there is no resolution by the Condominium Board of Directors with respect to the Development Permit. This in itself calls into question the validity of the application.
- [129] Mr. Yale's reference to the pink lines on the plan deal with his own unit, not the Appellant's unit. Mr. Yale's video is not relevant to this appeal.
- [130] There is a conflict between the evidence concerning the motivations of Mr. Yale, who either wants the addition legalized or removed, and Ms. McDonald, who wants it removed.
- [131] There has been no Condominium Board resolution for a Development Permit. A Condominium Corporation is not a "natural person." It can only act by board resolution. Thus the application is *void ab initio*.
- [132] Contrary to what has been said, the Court will determine ownership. One cannot apply for a permit without ownership. The Court is the only forum where the legality of the structure can be decided.
- [133] While Mr. Aquiletti is an engineer, he is a chemical engineer and has not personally conducted any testing.
- [134] There is an existing Development Permit. It does not matter if that permit was for an existing without permit structure. This does not affect the validity of the issued Development Permit.
- [135] No evidence was provided to explain why the Development Permit for demolition is required now. The ongoing issues should be resolved first and then the parties can apply again for a Development Permit if one is needed.
- [136] The Board asked Mr. Noce whether, apart from a dispute regarding ownership, there is any noncompliance with the *Edmonton Zoning Bylaw* that would make this permit invalid. He indicated that the application was light in specifics for the demolition permit and how that process would be undertaken. He noted that while the application was deficient in details as this is more than just a removal of a fence, the City accepted it and was probably not aware of the ongoing dispute.

Decision

[137] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as applied for to the Development Authority.

Reasons for Decision

[138] This is an appeal of an application “to construct exterior alteration to an existing Apartment building (removing the rooftop addition and rooftop patio, 5.54 metres by 4.04 metres)”

[139] Apartment Housing is a Permitted Use in the RA7 Low Rise Apartment Zone. The subject building is a condominium development with several unit owners including the Appellant and the Respondent (Applicant).

[140] This appeal occurred within the context of a longstanding dispute amongst the Appellant, the Respondent and other interested parties who are also owners of units in the building, some of whom are members of the Condominium Board. This dispute concerns an addition constructed on the roof of the Apartment building which may be fully accessed only through the Appellant’s unit.

[141] As part of this dispute, the Condominium Corporation filed an application in the Court of Queens’ Bench seeking, in addition to other remedies, a declaration that the roof top addition, including the patio and fence constitute a trespass upon the common property of the Corporation and an order permitting the Corporation and its agents access to the premises to remove the addition and to repair, inspect and plan the removal.

[142] The concurrent judicial proceeding raises issues involving: the structural impact and soundness of the addition; ownership of the roof and other portions of the building; responsibility for compliance with various regulations and bylaws; the legality of previously issued Development Permits relating to the addition; and, the application of other property law principles and statutes including, but not limited to, the *Alberta Safety Codes Act*, RSA 2000, c S-1, the *Condominium Property Act*, RSA 2000, c C-22 and the condominium bylaws specific to this Apartment building.

[143] The Appellant argued that the issued Development Permit is premature and must be vacated because:

- i) The applicant, Mr. Yale, was not properly authorized by a written resolution of the Corporation to apply for the Development Permit; and,

- ii) Given that the issue of ownership is in dispute before the courts and raises issues beyond the jurisdiction of this Board, there is no jurisdiction to determine ownership and therefore no jurisdiction for this Board to issue a Development Permit.

[144] The Board had difficulty reconciling the Appellant's argument that the City was required to verify consent of the owner through a written resolution of the Condominium Board as a precondition to accepting the application with the Appellant's assertion that neither the Development Authority, nor the Board, had any jurisdiction to decide issues of ownership.

[145] The Board accepts the Development Officer's submission that there is no statutory or Bylaw requirement to obtain an owner's consent for a Development Permit application, nor to have proof of the ownership when an application is made. This makes sense as the purpose of obtaining a Development Permit is solely to verify the compliance of the proposed use or development with the regulations under the *Edmonton Zoning Bylaw* in order to comply with section 683 of the *Municipal Government Act*.

[146] Section 683 of the Act states "except as otherwise provided in a land use bylaw, a person may not commence any development unless the person has been issued a development permit in respect of it pursuant to the land use bylaw."

[147] Thus, while a Development Permit is a prerequisite to legal development, it is not a decision about ownership, nor about the Applicant's ultimate legal entitlement to carry out the development.

[148] Informational requirements for a received Development Permit application are set out in the Bylaw in section 13.2.(1):

The applicant shall submit the appropriate application form fully and accurately completed in accordance with the following requirements.

- (a) the municipal address of land and buildings presently occupying the Site, if any;
- (b) a legal description of the land on which the proposed development is to occur, by lot, block, subdivision and registered plan numbers;
- (c) the applicant's name, address, interest in the land, and confirmation of the owner's authorization to apply for the Development Permit;

[149] To meet the information requirements in section 13.2, the City of Edmonton requires all Applicants to affirm one of the following:

- i) I am the registered owner of the above noted property.

- ii) I have entered into a binding agreement to purchase the above noted property with the registered owner(s).
- iii) I have permission of the registered owner(s) of the above noted property to make the attached application for a Development Permit.
- iv) I have permission of the registered owner(s) of the above noted property to make the attached application for a Combination Permit, which includes an application for a Development Permit and Building Permit.

[150] The Development Authority does not look behind this affirmation.

[151] The written submissions confirm that Mr. Yale checked off: “I have permission of the registered owner(s) of the above noted property to make the attached application for a Development Permit” and so the Development Officer proceeded to determine the application.

[152] The Board finds that the informational requirements of the Bylaw were met.

[153] The Board agrees with the parties that the judicial litigation raises issues far beyond its authority, but does not agree that the Board has no jurisdiction to determine this appeal until a court resolves those outstanding issues. The Board was not persuaded that there are any factors which preclude it from proceeding to hear this matter, although it recognizes that as a practical matter the project cannot proceed unless the Corporation wins the judicial application.

[154] This is because a Development Permit merely confirms compliance with the applicable Zoning Bylaw. Obtaining a Development Permit does not relieve an applicant from the requirements of any other applicable federal, provincial or municipal legislation, the conditions of any caveat, covenant, easement or other instrument, including in this case the *Alberta Safety Codes Act*, or the *Condominium Property Act* and the applicable condominium bylaws. In other words, an applicant can obtain a Development Permit, but for other legal reasons be precluded from proceeding with the development.

[155] As the Board agrees with the parties that many issues in the judicial application are beyond its purview, it makes no findings with respect to: the structural impact and soundness of the addition; ownership of the roof and other portions of the building; responsibility for compliance with various regulations and bylaws; the legality of previously issued Development Permits relating to the addition; or, the application of the *Alberta Safety Codes Act*, the *Condominium Property Act* and the condominium bylaws for this building.

[156] Finally, the Board notes that the Appellant also objected to the Development Permit, without reference to any particular development regulation, based on the general premise that the application provided insufficient details.

[157] The Board notes that the application was reviewed and approved by the Development Officer on August 21, 2017 as a class B development with a single notation under the heading Variance: “Non-conforming Building – The Apartment Housing which may have changed since it was originally constructed, no longer conforms to current zoning rules. (Section 11.3.3).” No insufficiencies or variances to any applicable development regulations are noted in the approval.

[158] Therefore, Board declines to vacate the permit based on this general argument.

[159] For the above reasons, the decision to issue the Development Permit is affirmed and the appeal is dismissed.



Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance

Mr. B. Gibson; Ms. S. LaPerle; Ms. E. Solez; Mr. A. Nagy

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.



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-
3537
sdab@edmonton.ca
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SDAB-D-17-232
Application No. 258470653-003

An appeal by _____ to add (1) additional Dwelling to an existing (13) Dwelling Apartment House for a total of 14 Dwellings and to construct exterior alterations (additional window for egress), was **TABLED TO JANUARY 31, 2018.**



**EDMONTON
TRIBUNALS**

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Date: December 8, 2017
Project Number: 024987724-009
File Number: SDAB-D-17-233

Notice of Decision

- [1] On November 23, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **November 1, 2017**. The appeal concerned the decision of the Development Authority, issued on October 20, 2017, to refuse the following development:

Change the Use of the site from an Automotive and Minor Recreation Vehicle Sales/Rentals to a temporary Non-accessory Parking lot (surface parking lot with 52 vehicular parking stalls), and to construct exterior alterations (adding landscaping) that is valid for up to 5 years

- [2] The subject property is on Plan B3 Blk 4 Lot 211, located at 10617 - 105 Street NW and Plan B3 Blk 4 Lots 209-210, located at 10430 - 106 Avenue NW, within the CB1 Low Intensity Business Zone. The Central McDougall / Queen Mary Park Area Redevelopment Plan (the “Area Redevelopment Plan” or “ARP”) apply to the subject property.

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

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions;
- The Appellant’s written submissions;
- Central McDougall Community League’s written submission;
- Neighbour in opposition’s written submission; and
- Online responses.

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

- Exhibit A – *Lillo’s School of Modern Music Ltd. v. Edmonton (City of)*, 2004 ABCA 37
- Exhibit B – Letter from Subdivision Planning to Appellant
- Exhibit C – Partial Copy of Development Permit #24987724-006

Preliminary Matters

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

The parties in attendance asked some questions of the Board.

Summary of Hearing

- i) *Position of Mr. Noce, Legal Counsel for the Appellant, Jutt Management Inc., who was accompanied by Mr. Jutt*

- [8] Mr. Jutt is the corporate representative for Jutt Management Inc.
- [9] Mr. Noce indicated that he will be challenging some of the individuals in attendance as to their residence in proximity to the subject Site and if they are an affected party under Section 687 of the *Municipal Government Act*.

The Presiding Officer indicated that only the people in attendance that are within the 60 metre notification radius and the Community League wanted to make a presentation.

Mr. Noce stated that he no longer had an issue with the parties in attendance.

- [10] The proposed application is to change the Use of the subject Site which is zoned CB1 Low Intensity Business Zone to allow for a temporary Non-accessory Parking lot.
- [11] Mr. Jutt referred to his PowerPoint presentation.
- [12] Mr. Jutt stated that Jutt Management Inc. owns and operates several properties and businesses in the area.
- [13] He referred to a photograph that showed the previous state of the property.
- [14] Their goal is to invest in the community. The parking lot will be for students, event goers and LRT commuters while planning a residential/ commercial high-rise with his professional architectural team. Their plans highly rely on the future development of surrounding area.

- [15] He referred to photographs showing the parking lots in the area.
- [16] They intend on operating a safer and more appealing parking lot to the community. He believes a temporary parking lot is more suitable for this site than a vacant lot with a temporary surrounding construction fence.
- [17] He referred to the rendering of the parking lot showing two access points that has been approved by Transportation.
- [18] He referred to a page showing the surveillance cameras that would be used on the parking lot.
- [19] He referred to a graffiti mural that will be professionally done on the fence separating the parking lot and the Condominium building.
- [20] He referred to a picture showing that site is paved with asphalt, the new fence and light posts that have been installed on the subject Site.
- [21] He stated that they want to invest in their community.
- [22] Mr. Noce stated that all of the concerns relating to the landscaping from the previous development permit application have been addressed.
- [23] Individuals were double and triple parking on the subject Site. The proposed parking lot will now have 52 marked parking spaces which will address this issue.
- [24] The previous development permit did not have a Setback but that has changed in the proposed application.
- [25] Landscaping will consist of the installation of sod, shrubs, bark mulch, and planting of several trees totaling approximately \$25,000. Landscaping is the most significant change in the proposed development.
- [26] A buffer will be installed between the side lot, the trees on the perimeter of the property, and in the parking lot.
- [27] If the proposed parking lot is approved, the Appellant will need to reapply for a parking lot after five years or apply for another Use.
- [28] A fence will be developed between the Condominium building and the parking lot to mitigate any concerns.
- [29] The parking lot be kept clean, will be aesthetically pleasing, and will have onsite security.

- [30] Allowing for a temporary parking lot will not offend or be contrary to any of City Council's approach to parking lots. Council approved the rezoning of a property north of Rogers Place but on a temporary basis.
- [31] The Development Officer refused the proposed development because the proposed Non-accessory Parking lot (surface parking lot) is located in Precinct B: Medium Rise Apartments of the ARP. Precinct B is designated in the ARP for the purpose of preserving and maintaining the residential character of the area of Medium Rise Apartments under the existing RA8 (Medium Rise Apartment) Zone. (Reference: pages 22 & 64). In the opinion of the Development Officer, a Non-accessory Parking lot is not a suitable Use for the site, that is adjacent to existing apartment housing. The subject site is located in an area that is designated for the purpose of medium-rise apartments. The second listed Reason for Refusal is that Non-accessory Parking is a Discretionary Use. This is just a conclusionary statement and not really a Reason for Refusal.
- [32] They are not tearing down any buildings but want to retain the purpose of the vacant land with a parking lot, which is not taking away from the site. They are not breaching the objectives to the Precinct provision in the ARP.
- [33] This is a compatible infill development and the Board needs to look at the zoning to see if it is compatible or not.
- [34] Transportation did not have an objection to the proposed parking lot with the objectives in Precinct B.
- [35] They will preserve the exiting trees and plant additional trees which will be aesthetically pleasing to the area. They will be complying with all the requirements for a parking lot.
- [36] The site is zoned CB1 Low Intensity Business Zone which is for commercial Uses. He reviewed the Permitted Uses listed in the *Edmonton Zoning Bylaw*.
- [37] Apartment Housing on the subject Site is a Discretionary Use under the current zoning. Apartment Housing under this zone is a residential development. An applicant is entitled to rely on the zoning for their development rights.
- [38] A Bar and Neighbourhood Pub, for less than 200 occupants and 240 square metres of Public Space, is a Permitted Use. If an individual can open a Bar and Neighbourhood Pub and comply with all the requirements with the development regulations under the zone, the community would have no say as it is a Permitted Use.
- [39] Section 685(3) states that 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.

- [40] If a Bar and Neighbourhood Pub with no variances was approved and opened in the area, the neighborhood would have no valid reasons to file an appeal. However, the community would rather have a residential development which is only a Discretionary Use.
- [41] Section 330.5 outlines Additional Development Regulations for Discretionary Uses
1. The following regulations shall apply to Apartment Housing developments:
 - a. Apartment Housing shall be permitted only in buildings where the first Storey is used for commercial purposes;
 - b. the housing component shall have access at Grade, which is separate from the access for the commercial premises;
-
- [42] This would apply in a building where the first storey is used for commercial purpose. A walk up development cannot be built without commercial development on the main level.
- [43] Under the current CB1 Low Intensity Business Zone, the Non-accessory Parking use is a Discretionary Use like an Apartment House is a Discretionary Use.
- [44] He referred to developments that are Permitted Uses in the CB1 Zone and stated that these types of developments could all have parking issues.
- [45] The proposed parking lot will not be used every day and parking will most likely be limited to students at Grant MacEwan and people going to events at Rogers Place.
- [46] The Non-accessory Parking Use with the addition of the landscaping and setback will be a low impact Use.
- [47] The proposed parking lot will be an advantage for the community as it will clean up the lot and will be temporary for five years.
- [48] Mr. Noce referred to the *Lillo's School of Modern Music Ltd. v. Edmonton (City of)*, 2004 ABCA 37 Court of Appeal Decision outlining that the correct test on a Discretionary Use applies requires the Board to consider general planning principles (Exhibit "A").
- [49] He stated that if a proposed development is a Discretionary Use and meets all the Bylaws development standards, the application should be approved.
- [50] He referred to the petition that was submitted at the previous hearing and also at this hearing. The Board cannot rely on this petition or the photographs in the Respondent's submission since it is not recent material.

- [51] They have made considerable changes to the proposed development and the petition would not have outlined those changes and should be disregarded.
- [52] The photos taken do not reflect what is being proposed and also requested their material be discarded.
- [53] The letter from Catholic Social Services submitted in Ms. Strate's submission has no date on it and was submitted at the last hearing.
- [54] Some of the materials submitted by the Community League were submitted at the previous hearing and should be disregarded.
- [55] The Appellant has spent a significant amount of money making changes to the proposed development to minimize any concerns.
- [56] In response to questions by the Board, Mr. Noce stated that when there is a conflict between the underlying Zone and the ARP, the underlying zone should govern.
- [57] He reiterated that if the development application was for a bar with no variances, it would be approved. The Development Officer would have no discretion as it is a Permitted Use. The proposed development is not taking away the residential component as this is not a residential site.
- [58] The Site Plan for the parking lot indicates that there will be 52 parking stalls.
- [59] The property was purchased in 2014 and previously operated as a used car lot.
- [60] The Board asked the Appellant about the reference to a temporary permit in the previous decision. The permit they originally applied for was a permanent permit, but they asked the Board to consider a temporary option. The Board advised them to reapply if they wanted a temporary permit.
- [61] The Development Officer's written submission confirms that there is access from the site to 105 Street, 106 Avenue, and the alley. The submission also confirms that the existing commercial access to 105 Street from the north property line must be removed and the curb, gutter and sidewalk constructed and boulevard restored.
- [62] They presented the plan over five years which Transportation approved. They submitted a copy of an email (marked "Exhibit B"):

"Based on the temporary and short-term use of the development, the most southerly access to 105 Street may remain open to facilitate the site. The most northerly access to 105 Street will require to be filled-in. The access to 106 Avenue is also acceptable. Please note that changes to the accesses will be required with redevelopment of the site in the future.

As discussed, the plans submitted appear to show a different width for the southerly access. Should you choose to use the existing access, please show the current access width on a revised site plan.

You may choose to reduce the width as shown on the submitted plan to meet onsite setbacks or concerns, although, a fill-in is needed in addition to the fill-in permit required for the north access.

A site plan with dimensions, including existing utilities, and landscaping in PDF format is acceptable and can be emailed to me. Cindy Louie may require a hard copy. Please check with her for requirements.”

- [63] He referred to the drawing showing access to the parking lot which circulated to Transportation and has been approved.
- [64] The Condominium Board offered to pay for half of the fence if it was built a certain way. They were not in agreement to the design, so Mr. Jutt agreed to pay for the whole fence.
- [65] People cut through the parking lot on a regular basis. Although it was not a requirement, they installed a temporary construction fence in September 2017 to close it off.
- [66] With regard to Community Consultation, they stated that Mr. Jutt met with the Business Association. He chose not to continue to discuss the development further with Mr. Champion because it would be unproductive. He met with Ms. Strate several times and offered her compensation, cameras to be installed, and a fence would be developed. He was told that she would reply back to him and she chose not to.
- [67] They could not confirm the zone of the parking lots shown in their PowerPoint.
- [68] If the proposed parking lot is not approved, people will park there illegally and the City could ask them to block off the site.
- [69] If there is an issue with the residents, they are willing to block the alley entrance at the beginning of the events at Rogers Place so the only entrance will be on 105 Street and 106 Avenue. The alley entrance can be reopened when vehicles start to leave.
- [70] They are willing to close off entrances to address any concerns.
- [71] A parking lot attendant will be on the site two hours prior to events taking place and security cameras will be installed.
- [72] If the parking lot is approved and if congestion occurs in the area, they will be in breach of the approval.

ii) Position of the Development Officer, Ms. Louie

[73] Ms. Louie provided written submissions and did not attend the hearing.

*iii) Position of Affected Property Owners*Mrs. D. Strate and Mr. K. Strate

[74] Mr. and Mrs. Strate are the owners of an apartment building located adjacent to the parking lots across the Lane to the east and rents out the units.

[75] She appreciates the changes Mr. Jutt made to the plans for the proposed parking lot indicating that it will be different.

[76] With regard to her presentation, the photographs, and the people she spoke to in the neighbourhood, it was not based on a property that would look different if a parking lot was for 30 to 50 spaces.

[77] There are a large number of patrons and event goers that walk by from Rogers Place through their property. Even if the property is fenced, they cut across the parking lot late at night and can be loud.

[78] She referred to photographs in her submission showing the sidewalk in close proximity to their building where people walk and the proximity of the alley to the building.

[79] Regardless of where the entrance points are, there will be vehicles in the parking lot with lights shining on their building.

[80] The landscaping plan does not show the construction taking place, the LRT, and 105 Street which is currently a one-way access point.

[81] Traffic on 106 Avenue can get backed up when the LRT arms are down. When the alley is not blocked off, traffic can get backed up even if the LRT arms are up or down.

[82] The alley is in disrepair and can be a hazard to traffic. Large vehicles, such as garbage trucks, can barely maneuver in the alley.

[83] She walked the Board through her PowerPoint Presentation. She read a letter from K. Uhl, who was in opposition to the proposed development.

[84] She referred to all of the letters in her PowerPoint Presentation.

- [85] She referred to her PowerPoint Presentation and stated that the proposed development is not compatible with the ARP for the lands in that area.
- [86] The ARP Purpose helps guide City decision regarding land use and development issues and the provision of civic services. Success of the Plan depends on the leadership and volunteer resources in each community and their ability, and willingness to initiate action on the priorities areas they identified.
- [87] The proposed parking lot is within the impacted ARP Area.
- [88] The ARP is an important part of reinvestment in the North Edge area and is creating vibrancy and sense of place. They are trying to maintain the character of the area.
- [89] She reviewed the ARP Strategic Priorities: Foster a pedestrian friendly neighborhood; increase recreational opportunities; reduce crime and increase safety; encourage non-vehicular modes of transportation; and maintain the current character of the area.
- [90] She referred to a picture of their property with the upgrades that they have done.
- [91] She referred to the Neighbouring Residential Investment map of the area from her submission.
- [92] She referred to a photograph in her submission of the alley and the parking lot that is need is repair. She contacted the City to pour asphalt to deal with the drainage issues.
- [93] Since the temporary fence was installed, vehicles do not cut across the lot.
- [94] The Site is not attractive or inviting of the area.
- [95] She referred to the photographs in her submission showing people walking across the lot and vehicle lights shining into their building.
- [96] She referred to the comments she received from neighbouring property owners and their concerns with the lot.
- [97] In her opinion, if a wooden fence is installed, people will do personal business along the fence as it is taking place already. People hit her balconies.
- [98] There is no on-street parking or parking near their building.
- [99] When the parking lot was operating, panhandlers knew when to come and ask patrons for money. Panhandlers would look in the car windows for items that may be left on the seats.
- [100] The city did not grant Mr. Jutt a development permit prior to this hearing but he chose to pour asphalt on the lot anyhow. Water from the lot drains onto the alley.

- [101] They spoke to a commercial realtor and read their response from her submission outlining that the proposed parking lot may affect tenants' desire to live nearby.
- [102] One of her tenants gave notice and moved out of the building due to the issues with the subject Site. She does not want more vacancies in her building.
- [103] She referred to her submission and what is opposite of the ARP Vision: Unsuitable use of lands that prove negative impact.
- [104] There is drug dealing that takes place in the area and the parking lot will contribute to this happening more.
- [105] She attended the City Council Public Hearing and outlined her concerns to City Council who did not support the Use of lands as a temporary parking lot.
- [106] Parking lots will start as temporary but will continue on after they are approved.
- [107] Transportation may approve additional access beyond the alley but she not certain how this will happen.
- [108] She referred to a video in her submission showing people walking right next to her building. People only walk by her building after they park. Individuals coming and going are just for the use of this parking lot. If the lot was blocked off, this would change.
- [109] She referred to the petition in her submission and stated that the signatures received in opposition speak for themselves.
- [110] They do not want the subject Site to be turned into a large parking lot for Rogers Place.
- [111] In response to questions by the Board, she stated that the parking lot might not negatively impact her if there was no vehicular access onto the alley. However, Transportation would have to support full access from 106 Avenue.
- [112] She referenced her PowerPoint presentation showing the parking lot, the alley, and their building. On the other side of the alley, are three sites that are open to the alley. With the proposed landscaping there will be two openings to the alley.
- [113] The fence on the east side of the lot stops traffic in the alley and vehicles not go onto 106 Avenue but that has not stopped people walking along the sidewalk along her property.
- [114] It is not possible for two vehicles to pass each other in this area as vehicle congestion increases with the LRT that goes up to 106 Avenue and to the Royal Alexandra Hospital.
- [115] In her opinion, people walking in this area are not walking to neighbouring residences.

- [116] Even though there is no parking available on 106 Avenue, the City installed No Parking Signs in this area.
- [117] In her opinion, Mr. Jutt needs to develop this lot in a different way rather than operate a parking lot.
- [118] A chain link fence around the site will help keep vehicles out but it will not address the people walking in the area, the garbage, and noise.
- [119] She agreed that a commercial development on the site will still have vehicles and people in the area but not as much if as a parking lot would create.

Mr. P. Zygmunt

- [120] Mr. Zygmunt advised that he owns a condominium in the building immediately to the north of the parking lot.
- [121] His parking faces the proposed parking.
- [122] When the parking lot was previously being operated, attendants were only present beginning of the night.
- [123] People illegally park in his spot.
- [124] There are photos currently showing parking of 12 or 13 cars. He is not sure if the Appellants are getting paid.
- [125] He wonders if the proposal would plans interfere with their garbage and recycle bin trucks going through there.
- [126] He would be fine with other developments.
- [127] Homelessness has increased since the operation of the Parking lot.
- [128] He has been offered parking for free during Oilers game.
- [129] He conceded the fence has helped the situation.

Mr. Champion, speaking on behalf of the Central McDougall Community League

- [130] Mr. Champion submitted a partial copy of Development Permit #24987724-006 (Exhibit "C").
- [131] Mr. Champion argued that there is a "bigger vision at stake" than just the proposed development.

- [132] This is the 7th time the Applicant has come back.
- [133] The only way to secure the site is by fence.
- [134] It makes sense that a building gets built there. The Community League is happy to support rezoning. There has been no attempt to file a development permit or build anything.
- [135] The Applicant decided to demolish without permit.
- [136] Consideration should be given as to what is healthy for the whole community not just one developer.
- [137] Parking lots are addictive. It takes a small amount of money to set up and reap this guaranteed cash flow.
- [138] He has no idea what is going to happen in future. But he is confident that after 5 years, the Applicant will most likely to apply again. A development permit should not be dependent on other developers.
- [139] On November 3, the parking lot had 12 cars parked there.
- [140] Mr. Champion referenced Enclosure B of his written submission. Page 84 of the ARP states:
- The goal of the Downtown North Edge Development Concept Precincts 'B' and 'G' is to maintain the existing stock of housing while continuing to allow for redevelopment. In order to preserve the existing streetscape and character of these portions of the North Edge area, any redevelopment in Precincts 'B' and 'G' should occur under the zoning that meets the development criteria for these precincts. For Precinct '13', Medium Density Residential Precinct, the zone that meets the development criteria is the (RA8) Medium Rise Apartment Zone.
- [141] Currently in the area, there are three CB1 zoned properties. Two of them have properties on them.
- [142] The North Edge Study took three years and several people to complete. It is the most complex redevelopment proposal next to Blatchford.
- [143] The Applicant has right to talk to you about it being a Discretionary permit, but the Board should look at the vision and the amount of money, time, and expertise put into developing it.

- [144] In 2006, when the area was being redevelopment, no one knew there was going to be an arena.
- [145] The Board is there to determine how development should occur and why and how the proposed development supports the vision.
- [146] The Applicant should have the property zoned, and then he can truly find out what council thinks.
- [147] The Katz Group argued vigorously with City Council to get a 3 year permit on their lot.
- [148] There are no parking lots on the north side of 106 Avenue from 101 Street to 109 Street. This would be only one.
- [149] The Community League monitors the area nightly. Creating a parking lot is not conducive to the area.
- [150] All parking south of 106 Avenue is illegal.
- [151] The Community League supported the Katz group parking lot because they are investing in the community.
- [152] In smart progressive cities, a surface parking lot is called a “cancer”.
- [153] The Applicant forced to put a fence.
- [154] As free parking dries up, a surface parking lot is very lucrative.
- [155] This is not event driven surface parking, parking will be all day and night.
- [156] The traffic down 106 Avenue is overwhelming. They can potentially have 90 cars parking there. The last time before the Board, it was made clear that the Applicant not be able to access 105 Avenue because of the LRT. Between LRT and the curb is only 12 feet. Big trucks that park on site are not able to navigate that small area. He is surprised at Transportation’s support of the development (Exhibit B). This makes no sense.
- [157] He referenced page 47 of the ARP (Enclosure 7):

Strategic Priority #4 - Encourage non-vehicular modes of transportation (walking, bus, LRT, cycling) that are convenient, safe and accessible to all.

[158] He referenced page 48 of the ARP (Enclosure 8):

Other strategic priorities that were mentioned include:

...

minimize the impact of surface parking lots;

...

An amalgamation of the group's ideas and strategic priorities were used to create the community vision for the North Edge area. The vision for the North Edge area has been used to guide the preparation of the development concept.

[159] He referenced page 50 of the ARP (Enclosure 9):

PROMOTE WALKABILITY

Blank walls or surface parking lots that front directly on the street shall be avoided.

[160] The North Edge runs from 105 Avenue to 108 Avenue.

[161] A surface parking lot is not high on the priority list.

[162] Mr. Champion does not believe the Board is just there to process paper. There is a vision. This is the last opportunity for developer or community to be heard.

[163] Everything that has been done would be a waste if someone can open surface parking lot. It does not jive with intent of the plan, it does not foster anything. He would far rather see it fenced off, at least not promoting safety issues.

[164] The only real parking lot is on east side of street, not bothering to substantial degree the residential area.

[165] If you put people in area to live, need something productive, need to look view at vision.

[166] He referenced page 51 of ARP (Enclosure 10):

EMPHASIZE HIGH QUALITY AESTHETIC CHARACTER AND DEVELOPMENT

Design regulations should be created to promote high quality design and development. Creating a safe, attractive and comfortable pedestrian environment should also be a key consideration.

[167] He referenced page 54 of the ARP (Enclosure 11):

Avenue to 106 Avenue contains a mixture of vacant lots, office, commercial and light industrial uses. There is a general lack of ambience and street activity due to large surface parking areas, vacant lots and minimal landscaping and/or streetscaping.

[168] He referenced page 55 of the ARP (Enclosure 12):

outdoor storage and considerable areas of surface parking lots create a visually unattractive environment, devoid of street life and greenery.

[169] That site empty is better than filled with cars.

[170] He referenced page 57 of ARP (Enclosure 13):

Density

...

concentrating development on existing underutilized sites such as blighted areas and surface parking lots; and

Active Streetfronts

Create street-level pedestrian activity to enhance the appeal of the area by:

...

sculptural relief; placing parking and loading in the rear of new development with lane access; and • ensuring active residential frontages through individual private street level unit access.

[171] He referenced page 59 of the ARP (Enclosure 14):

Transit-Oriented Development (TOD)

Support TOD Development by:

promoting higher density development in proximity to transit stations and corridors;

. managing parking in the Study area to encourage walking and transit use;

. creating a 'sense of place' at each transit station;

providing for bicycle parking at transit stations;

. encouraging pedestrian-supportive land use patterns; and

. separating vehicular and pedestrian circulation.

Vehicular Parking, Access and Loading

Adverse effects of vehicular parking, access, and loading within the Study area will be reduced by:

- . where above-grade structured vehicular parking is provided, requiring it to provide active uses adjacent to the street;
- . encouraging the use of fencing and planting to screen surface vehicular parking;
- . orienting surface vehicular parking and loading accesses

[172] He referenced page 64 of the ARP (Enclosure 15):

Precinct B: Medium Rise Apartments

Purpose

To preserve and maintain the residential character of the area by maintaining the existing low-rise (walk-up) apartment building stock and allowing compatible 6 storey infill at higher densities under the existing (RA8) Medium Rise Apartment Zone.

Objectives

- . Preserve existing rental housing stock;
- . Allow compatible infill development;
- . Replacement of sidewalks and road rehabilitation as required by the Transportation and Streets Department;
- . Preserve existing treed streets; and
- . Provide consistent front yard setbacks.

[173] He is here to represent the community interest.

[174] In the rest of the Precincts approved, surface parking lots cannot front on 105 Avenue. This is not in this Precinct, because never thought it would happen.

[175] Why would City Council approve multiuse system if wanted surface parking.

[176] No surface vehicular parking areas are permitted abutting any public roadway, other than a Lane in (DC1) Direct Development Control Provision (Area 1 - Precinct 'C') (Enclosures 19 - 21).

[177] He has inquired with Legal Counsel what action they have against city with illegal parking lots.

- [178] Referencing Enclosure 6, he stated that there were open house meetings and things were decided in public meetings.
- [179] This is orphan or non-conforming property. If someone going to buy a property in area of change, pull zoning, Area Redevelopment Plan and North Edge Study and find out what is actually happening and what community is doing.
- [180] He invites the Applicant to go to City Council, who would not approve of this development. He invites him to bring forth an idea. A bar would probably not work. A restaurant is not feasible either.
- [181] Two hotels are proposed and third one with a condo. The goal is to provide residential to the south.
- [182] In North Edge, allowed to build a commercial development on ground floor of a high rise, however this is meant to be residential area.
- [183] Council envisioned an Urban Village. The Urban Village requires people.
- [184] He is asking the Board to deny the Appeal and encourages the Applicant to develop something else or sell it.
- [185] The surface parking lots south of Army Navy makes too much money to redevelop.
- [186] The Applicant will be back once the Development Permit expires. Once it is there, harder to turn down.
- [187] The CB1 Low Intensity Business Zone only allows 3 storey building with commercial on the main floor. The CB1 Zoning is orphan zoning.
- [188] Since the operation of this parking lot, drug use has escalated dramatically. They have started to watch this site. On two separate occasions, people soliciting for drugs were observed. This happens frequently on parking lots.
- [189] This is a different area than the area near Rogers Place. People are not living there.
- [190] 106 Avenue is divided line between industrial area and developed area with no surface lots.
- [191] People are meeting, openly drinking, and creating noise etc.
- [192] The last application included substantial discussion about it being temporary.
- [193] These are issues the dominated around Commonwealth Stadium.

- [194] It is bad enough that every Community Board Member talked to the City.
- [195] This proposed development set a bad precedent.
- [196] The Board asked Mr. Champion to reference Enclosure 8, the reference in the Area Redevelopment Plan, which states “minimize the impact of surface parking lots”, not prohibit them. Mr. Champion indicated this was poor word choice.
- [197] The Area Redevelopment Plan was completed long before Rogers Place. The Plan is updated constantly just depends on the City and funding.
- [198] Mr. Champion was asked if City Council was averse to parking, why is the use allowed in CB1 Low Intensity Business Zone. There are only three orphan properties, Council did not see the need to address it.
- v) *Rebuttal of Legal Counsel for the Appellant, Mr. Noce*
- [199] Mr. Noce stated that Ms. Strate’s presentation was submitted at the appeal hearing last year.
- [200] Mr. and Mrs. Strate supported the closure of the back lane. Mr. Noce stated that Mr. Jutt is support of that as well if it will minimize the impact on the residential community.
- [201] Mr. Jutt is willing to plant additional shrubs along the lane to minimize the impact on the neighbourhood.
- [202] With regard to the Use not being compatible, he stated that the Use of a Non-accessory parking lot does not impact the provisions of the CB1 Low Intensity Business Zone.
- [203] Section 687(3)(b) is not the test of a Discretionary Use.
- [204] The Residents have had issue with Roger Place in this area and the parking lot will not increase those concerns.
- [205] This is a Commercial Zone not a Residential Zone.
- [206] Mr. Zygmunt indicated that at one time there were 80 to 90 vehicles parked on the subject Site. Mr. Noce stated that the maximum number of parking stalls on the site will be 52.
- [207] Individuals are using the site to park illegally, but Mr. Jutt is not operating a parking lot there and is not enforcing that it is being used illegally.
- [208] With regard to garbage along the alley. Mr. Noce stated that garbage trucks cannot go onto the parking lot to collect garbage for the adjacent building.

- [209] Mr. Noce clarified that this is the fourth time Mr. Jutt has been before the Board, not seven as indicated by Mr. Champion. Mr. Jutt has owned the site since 2014.
- [210] Mr. Noce stated that the buildings on the site were demolished before Mr. Jutt purchased the property.
- [211] In response to the comment that there are no surface parking lots north of 106 Avenue, Mr. Noce indicated he researched and found two parking lots on 106 Street, and 107 Avenue. Surface parking is available north of Rogers Place.
- [212] As highlighted in Enclosure #8 of Mr. Champion's written submission, he stated that Mr. Jutt will take steps to minimize the impact of surface parking lots. With regard to Enclosure #9, he stated that on-street parking will be avoided.
- [213] With regard to Enclosure #19, he stated that the proposed parking lot is in Precinct C and not Precinct B which is a different zoning.
- [214] With regard to Mr. Champion stating that the parking lot is Non-conforming, Mr. Noce stated that Non-conforming has a legal definition to it and if a development permit is granted it will be conforming.
- [215] With regard to Exhibit C, Enclosure 1, a page from the Major Development Permit submitted by Mr. Champion, Mr. Noce referred to the reasons for refusal and stated that they have all been addressed.
- [216] Mr. Noce concluded by saying that the proposed development is a Discretionary Use and within Precinct B. The Appellant has addressed the issues of neighbouring property owners and what is taking place on the site.

Decision

- [217] 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 Permit is valid up until December 8, 2022.
 - 2) The proposed Development shall be constructed in accordance with the stamped approved revised site plan.
 - 3) Vehicular access to the parking lot from the Laneway shall be eliminated by the installation of a six feet (1.83 metre) high chain link fence from the (north) abutting building fence along the (east) lot line to the south edge of the parking lot as per the stamped approved revised site plan.

Shrubbery arrangements of sufficient mass and height shall be installed to minimize vehicle lights shining on the adjacent buildings to the east and shall be planted along the Laneway fence to the satisfaction of the Development Officer.

- 4) Landscaping shall be in accordance with the approved landscaping plan, Section 55 of the Zoning Bylaw and to the satisfaction of the Development Officer.
- 5) Any changes to an approved Landscape Plan requires the approval of the Development Officer prior to the Landscaping being installed.
- 6) 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.
- 7) A Guaranteed Landscaping Security in the amount of \$25,055.42 shall be provided to the City of Edmonton at the time of Development Permit Inspection, to the satisfaction of the Development Officer.
- 8) PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall provide a guaranteed security to ensure that landscaping is provided and maintained for two growing seasons. The Landscape Security may be held for two full years after the landscaping has been completed.

This security may take the following forms:

- a) cash to a value equal to 100% of the established landscaping costs;
or
- b) an irrevocable letter of credit having a value equivalent to 100% of the established landscaping costs.

Any letter of credit shall allow for partial draws. If the landscaping is not completed in accordance with the approved Landscape Plan(s) within one growing season after completion of the development or if the landscaping is not well maintained and in a healthy condition two growing seasons after completion of the landscaping, the City may draw on the security for its use absolutely. Reference Section 55.6

- 9) The applicant shall comply with the requirements of Traffic Bylaw No. 5590 Part II (59) regarding boulevard landscaping. For information call the Parks Branch at 780-496-TREE.
- 10) PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay for the following:
 - 1) Lot Grading Fee of \$227.00.

- 2) Sanitary Sewer Trunk Fund fee of \$1,636.89. All assessments are based upon information currently available to the City. The SSTF charges are quoted for the calendar year in which the development permit is granted. The final applicable rate is subject to change based on the year in which the payment is collected by the City of Edmonton.
- 11) There shall be no parking, loading, storage, trash collection, outdoor service or display area permitted within the required 3.0 metres (9.8 feet) Setback. (Reference Section 330.4(3) and 330.4(5).)
- 12) The off-street parking, loading and unloading (including aisles or driveways) shall be hardsurfaced, curbed, drained and maintained in accordance to Section 54.6
- 13) Exterior lighting shall be developed to provide a safe lit environment to the satisfaction of the Development Officer, and be in accordance with Section 51 and 58.
- 14) Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51 of the *Edmonton Zoning Bylaw* 12800.)

Subdivision Planning (Transportation) provide the following conditions:

1. Access from the site to 105 Street, 106 Avenue and the alley exists. Any modification to the existing accesses requires the review and approval of Subdivision Planning.
2. The existing 5 metres commercial access to 105 Street located 14 metres from the north property line of Lot 211 must be removed and the curb, gutter and sidewalk constructed and boulevard restored. The owner/applicant must obtain a permit to remove the access, available from the Development and Zoning Services Branch, 2nd Floor, 10111-104 Avenue. The applicant must contact Gary Kerr (780-944-7683) 48 hours prior to removal or construction within city road right-of-way.
3. There is an existing power pole in the alley that may interfere with access to the site. Should relocation of the pole/guy-wire be required, all costs associated with relocation must be borne by the owner/applicant. The applicant should contact Ron Hewitt (780-412-3128) of EPCOR Customer Engineering for more information.
4. Any parking access card devices must be located on site, a minimum of 3 metres inside the property line.
5. A barrier must be placed between the parking stalls and the alley/roadway.

6. Any proposed gates must not swing out over road right-of-way. It must either swing into the property or slide along the fence. No objects are permitted to encroach onto, over or under road right-of-way.
7. All required landscaping for the development must be provided on site.
8. There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.
9. Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. OSCAM permit applications require Transportation Management Plan (TMP) information. The TMP must include:
 - the start/finish date of project;
 - accommodation of pedestrians and vehicles during construction;
 - confirmation of lay down area within legal road right of way if required;
 - and to confirm if crossing the sidewalk and/or boulevard is required to temporarily access the site.

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/transportation/on_your_streets/on-street-construction-maintenance-permit.aspx

10. Any alley, sidewalk or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Development Inspections, as per Section 15.5(f) of the *Edmonton Zoning Bylaw*. The alley, sidewalks and boulevard will be inspected by Development Inspections prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

Subdivision Planning provide the following advisements:

1. Subdivision Planning recognizes that the subject application is a temporary use for up to 5 years. The applicant is strongly advised that modifications including removal of the existing accesses will be required with redevelopment of the site.

NOTES:

1. 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.
 2. This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
 3. All signage including for hoarding shall require a separate Development Application.
 4. 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.
 5. The applicant/owner is responsible for ensuring that the proposed development does not encroach on or impair the operation of any existing hydrants and/or valves that are located either in the boulevard, sidewalk, or the street. If a conflict exists then it will be responsibility of the applicant/owner to rectify the problem by:
 - 1) redesign of the proposed development followed by a resubmission for approval to the City or,
 - 2) relocation of the utility which is to be done by the City staff at the sole expense of the applicant/owner.
- For further information, please contact the Drainage Branch of the Asset Management and Public Works Department at 780-496-5460.
6. 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.
 7. Residential Sales Trailers require a separate development permit. Construction trailers must be located on private property or within the hoarded area.

Reasons for Decision

[218] The subject site falls under a statutory plan, the Central McDougall/Queen Mary Park Area Redevelopment Plan (Area Redevelopment Plan), and specifically Precinct B: Medium Rise Apartments. The Purpose is to “to preserve and maintain the residential character of the area by maintaining the existing low-rise (walk-up) apartment building stock and allowing compatible 6 storey infill at higher densities under the existing (RA8) Medium Rise Apartment Zone.” The current zoning of the subject property, CB1 Low Intensity Business Zone, was in place prior to the implementation of the Area Redevelopment Plan and does not match the zoning of the Plan.

[219] Section 687(3)(a.2) of the *Municipal Government Act* provides that the Subdivision and Development Appeal Board must comply with any applicable statutory plans. The Board finds that the Area Redevelopment Plan does not specifically prohibit the proposed Use, Non-accessory Parking, in Precinct B. The Board notes the following Precincts specifically refer and appear to limit Non-accessory Parking lots:

- Precinct A (page 63): New surface parking lots fronting main streets should be discouraged.
- Precinct D (page 68): Surface vehicular parking lots shall not be permitted fronting onto 105 Avenue (Multi-use Trail) or any north/south street.
- Precinct E (page 72): Surface vehicular parking lots shall not be permitted fronting onto 105 Avenue (Multi-use Trail)

[220] At most, for Precinct B, that Area Redevelopment Plan stresses the importance of minimizing any impacts of the Use. For instance:

- Strategic Priority #5: ...minimize the impact of surface parking lots (page 48)
- Vehicular Parking, Access and Loading (page 59)

Adverse effects of vehicular parking, access, and loading within the Study area will be reduced by:

- ...
- encouraging the use of fencing and planting to screen surface vehicular parking;
- ...
- requiring the proper lighting, surfacing, and drainage of surface vehicular parking areas.

[221] The Board concludes that there is nothing in the Area Redevelopment Plan prohibiting Non-accessory Parking in Precinct B or on the subject site.

[222] While the Board is not bound by precedent, it must be consistent in its decisions of previous applications particularly given this is an application for the same use on the same property. The Board has determined that this application is substantively different than the previous decision SDAB-D-16-283. It makes this determination for the following reasons:

- a) This is an application for a temporary Development Permit.
- b) There are no variances being sought.
- c) The number of stalls has been reduced.
- d) Based on the temporary and short-term use of the development, Subdivision Planning (Transportation) has allowed the most southerly access to 105 Street and access to 106 Avenue to remain open to facilitate the site. One access to 105 Street has been removed.
- e) The removal of Laneway access combined with the additional condition of a constructing a 6 foot fence with further landscaping being added along the lane side of this development will ensure additional foot and vehicular traffic in the lane is mitigated as well as the visual impact on neighbouring properties is reduced.

[223] The proposed development, a temporary Non-accessory Parking lot, is a Discretionary Use in the CB1 Low Intensity Business Zone.

[224] In *Lillo's School of Modern Music Ltd. v. Edmonton (City of)*, 2004 ABCA 37, the Court of Appeal sets of the following test for a Discretionary Use:

[15] The applicants also claim that the correct test requires the SDAB to consider general planning principles. In this respect the applicants rely on a statement made by Professor F.A. Laux:

Even though an application for a discretionary use meets all the bylaw's development standards, the application may be refused by the development authority if it has a sound planning basis for concluding the development is inappropriate.

Planning Law and Practice in Alberta (3rd ed. 2001) at 9-22

[225] This test was further articulated by the Court of Appeal in *Rossdale Community League (1974) v. Edmonton (Subdivision and Development Appeal Board)*, 2009 ABCA 261:

The object and purpose of a discretionary use is to allow the development authority to assess the particular type and character of the use involved, including its intensity and its compatibility with adjacent uses.

[226] As set out by the Court of Appeal above, the Board's test in granting an appeal for this specific Discretionary Use application is to determine whether or not the proposed Use is reasonably compatible with the neighbourhood.

[227] The Board finds the proposed development is reasonably compatible with surrounding development for the following reasons:

- a) The maximum number of parking stalls will be 52 on the site. This constitutes a reduction from the amount proposed under the previous application and a reduction from the site's potential of 80 to 90 cars (from evidence provided to the Board).
- b) Based on the temporary and short-term use of the development, Subdivision Planning (Transportation) has allowed the most southerly access to 105 Street and access to 106 Avenue to remain open to facilitate the site. Further, under the Board's conditions, a fence must be provided blocking off Laneway access, which alleviates some of the pressure on the lane.
- c) A minimum Setback of 3.0 metres has been provided in accordance with Section 330.4(3) of the *Edmonton Zoning Bylaw*.
- d) The Development, through the Board's conditions, must provide sufficient landscaping, landscaped islands, and perimeter planting in accordance with Section 54.2 and Section 55 of the *Edmonton Zoning Bylaw*.
- e) The Board has imposed additional fence and shrubbery conditions to minimize any potential impacts of the proposed development.
- f) There are at least two other surface parking lots operating in Precinct B and several other large surface parking lots operating within a 3 or 4 block radius.
- g) This development application is fully compliant with all regulations contained within the CB1 zone of the *Edmonton Zoning Bylaw* and has no identified variances.

[228] The proposed development is approved on a temporary basis for a five year term to provide an opportunity for the neighbourhood to reassess the Development Permit in light of the mitigating factors and/or allow time for the Area Redevelopment Plan to be amended.

[229] The Board acknowledges the concerns cited by neighbors and the Community League. However, many of them stem from the increased activity associated with the opening of the new arena and not planning reasons specific to the CB1 Low Intensity Business Zone. The Board recognizes that there is need for the Area Redevelopment Plan to be updated as it was prepared prior to Rogers Place being constructed which has impacted pedestrian and vehicular traffic along the north side of that venue specific on 106 Avenue.

[230] For the above reasons, the appeal is allowed with conditions imposed.

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

Board Members in Attendance

Mr. V. Laberge; Mr. A. Peterson; Ms. E. Solez; Mr. A. Nagy

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.