



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: September 19, 2019  
Project Number: 301232305-001  
File Number: SDAB-S-19-005

**Notice of Decision**

**August 7, 2019 Hearing:**

[1] The Subdivision and Development Appeal Board made and passed the following motion:

“That the appeal hearing be tabled to September 4, 2019 at the verbal request of the Appellant.”

**September 4, 2019 Hearing:**

Motion:

“That SDAB-S-19-005 be raised from the table”

[2] On September 4, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on July 9, 2019. The appeal concerned the decision of the Subdivision Authority, issued on June 27, 2019, to refuse the following development:

**Create two (2) additional single detached residential lots**

[3] The subject property is on Plan 5058ET Blk 16 Lot 3, located at 9739 - 155 Street NW, within the RF1 - Single Detached Residential Zone. The Mature Neighbourhood Overlay and Jasper Place Area Redevelopment Plan apply to the subject property.

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

- Copy of the refused Subdivision Letter with attachments, and proposed plans;
- The Subdivision Authority’s written submissions;
- The Appellant’s written submissions;
- A written submission from the Agent for the Appellant;
- A written submission from the West Jasper Place Sherwood Community League; and
- Numerous emails and online responses in opposition to the proposed subdivision.

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

- Exhibit A – Photographs of other infill projects developed in this neighbourhood
- Exhibit B – A rendering of the proposed Single Detached Houses submitted by the Appellant
- Exhibit C – A letter of support from the property owner who resides east of the subject site submitted by the Appellant

### **Preliminary Matters**

- [6] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [7] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [8] 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 the Appellant, Mr. Kogan, representing Caliber Master Builder, the property owner, Mr. B. Belostotsky and Mr. C. Dulaba, Beljan Developments, agent for the Appellant:*
- [9] Caliber Master Builder has been developing infill housing for more than 40 years. Twelve projects have been completed in Jasper Place, including large house renovations and multi-family developments.
- [10] Mr. Kogan lives one block away from the subject site and has a personal interest in this project. It is his intention to build affordable housing for young families without negatively impacting the neighbourhood. Photographs of other infill projects in this neighbourhood and a rendering of the proposed Single Detached Houses that will be developed as part of this project were submitted as Exhibit A and Exhibit B.
- [11] Mr. Dulaba is a professional planner with experience in land use planning and real estate.
- [12] The subject site is 677 square metres in size and the plan is to develop three single detached houses on three subdivided lots that will each be approximately 225 square metres in size.
- [13] There is a variety of low density housing including single detached bungalows, semi-detached housing and skinny houses located within 120 metres of the subject site.

- [14] The site is located within the Jasper Place Area Redevelopment Plan, within the West Jasper Place Neighbourhood Sub-area and is designated as Transit Oriented Housing. Within this designation, the following housing types are supported in the Area Redevelopment Plan: Row Houses, Duplexes/Semi-detached Houses, Garage or Garden Suites, Small lot Single Detached Houses, Secondary Suites in locations specified by the *Edmonton Zoning Bylaw* and small scale commercial with associated residential uses along arterial and collector roads.
- [15] The site is zoned (RF1) Single Detached Residential Zone and is within the Mature Neighbourhood Overlay.
- [16] It was his opinion that the Subdivision Authority did not properly consider section 41.1(3) of the *Edmonton Zoning Bylaw*. Section 41.1(3) states “The Subdivision Authority may not approve the subdivision of a Lot zoned RF1, as it existed on March 16, 2015 into more than two lots, notwithstanding the Site Width in the RF1 Zone. Subdivision into more than two Lots may only be approved where the proposed subdivision a) is supported by one or more City Council approved Statutory Plans or City Council approved Policies; or b) has a Site Width deemed by the Subdivision Authority to be in character with Lots on the same block”.
- [17] It was his opinion that the Subdivision Authority’s refusal did not consider the Jasper Place Area Redevelopment Plan which specifically identifies small lot housing as a preferred housing type within Transit Oriented Housing. The Subdivision Authority also argued that the lot depth and area are not in character with other adjacent lots on the block. However, section 41.1(3)(b) only references lot width, it does not reference lot area or lot depth as it relates to the subdivision of RF1 lots.
- [18] The subdivision proposes a lot width of 10.1 metres which is narrower than the other lots on this block which are approximately 15.24 metres wide. However, this regulation was amended by City Council to allow a lot width to a minimum of 7.5 metres in the RF1 Zone to encourage development in mature neighbourhoods. There are an increasing number of skinny houses being developed in this neighbourhood as a result of the reduction in the minimum required site width.
- [19] It was acknowledged that the proposed subdivision does not comply with the minimum site depth or site area requirements for Single Detached Housing. However, the proposed lot widths are not uncharacteristic with what can be developed today as of right in the RF1 Zone.
- [20] A Semi-detached House that was built by the Appellant located one block south of the subject site was referenced. It was noted that these lots do not meet the minimum required site depth of 30.0 metres. The site was subdivided into two separate titles. The westerly lot is 323 square metres in size and the easterly lot is 222 square metres in size. The lot depth is 22.8 metres which is similar to what this proposed subdivision. This subdivision application was approved by the Subdivision Authority.

- [21] The Subdivision Authority refused the subdivision application because it will create an unnecessary hardship for existing and future land owners. However, the most affected neighbour who resides immediately east of the subject site has provided a letter of support for the proposed subdivision, submitted as Exhibit C. It was his opinion that this addresses the concern raised by the Subdivision Authority.
- [22] He questioned why the Subdivision Authority believes that they have a responsibility to mitigate any future land owner hardship associated with the proposed subdivision.
- [23] The site as it exists does not have legal access to the lane located on the east side of the adjacent site. It does not and never will comply with the Residential Infill Guidelines. In fact, any development on this lot either through subdivision or the construction of a house will require access from either 155 Street or 98 Avenue and the driveway will have to cross a sidewalk as their no access from the rear lane. This condition exists with or without the proposed subdivision.
- [24] It was the opinion of the Subdivision Authority that the addition of two lots exacerbates the situation because two driveway crossings would be required. He questioned why Transportation Services supported the proposed subdivision if this was a major concern. The Transportation Engineers provided conditions on how to develop the sites to ensure appropriate safe driveway access and protect the mature boulevard trees.
- [25] This proposed subdivision is in line with the Council approved Statutory Plan which states that small lot housing is a preferred housing type within the Transit Oriented Housing land use. It will not materially impact the use and enjoyment of neighbouring property owners because the proposed Single Detached Housing forms are consistent with the existing built forms in the immediate vicinity.
- [26] The proposed subdivision supports the General Purpose of the RF1 Zone which is to provide for Single Detached Housing. The proposed lots will be oriented towards 155 Street which is in keeping with the orientation of exiting housing located south along this block face.
- [27] The most affected property owner who resides east of the subject supports the proposed subdivision application as well as 70 other property owners who have signed a petition of support.
- [28] Existing land owners and the community should acknowledge that the character of this neighbourhood is expected to change by virtue of the Statutory Plan that was approved by Council which designated these lands for transit oriented housing which allows a more intense and dense built form. City Council also amended development regulations contained in the RF1 Zone and the MNO to allow smaller types of housing forms, Secondary Suites and Garden Suites within mature neighbourhoods.

- [29] He owns seven other properties in this neighbourhood and is concerned about property values in this area. It was his opinion that this is a much better development than building skinny houses.
- [30] Mr. Dulaba, Mr. Kogan and Mr. Belostosky provided the following information in response to questions from the Board:
- a) The proposed design is unique and will allow the site coverage requirements to be met. The site plan shows a rear setback of 8.91 metres which complies with the minimum 40 percent rear setback required by the Mature Neighbourhood Overlay. However, it was acknowledged that some variances may have to be considered by the Development Officer at the development permit stage. It is not their intention to create lots that cannot be developed.
  - b) Granting the subdivision would be an acceptance of the site area within the context of the built form and how it applies to the Statutory Plan, the RF1 Zone and the Mature Neighbourhood Overlay. Although the lot size does not comply with the site area and site depth requirements, the creation of these lots is not unique for the development of single detached housing. The size of the house and the type of house that can be developed is in keeping with the overall character of the neighbourhood and the Statutory Plan that encourages the development of smaller housing.
  - c) All three of the proposed lots will be 10.16 metres wide which exceeds the minimum required width of 7.5 metres. The corner cut was requested by Transportation Services.
  - d) Transportation Services did not express any concern regarding the proposed driveway access from 155 Street. There are other lots along this block that have front access even though access is available from the rear lane.
  - e) Attempts have been made to comply with the minimum rear yard setbacks required by the Mature Neighbourhood Overlay.
  - f) The proposed subdivision is in keeping with the development regulations contained in the Mature Neighbourhood Overlay which encourages development closer to the street. The future redevelopment of any of the lots on this block with rear lane access will be encouraged to build closer to the street.
  - g) In certain situations, the development of a front access driveway is necessary. This lot could be subdivided to develop two Semi-detached Houses with front attached driveways that would all cross a public street. By virtue of the existing conditions, specifically no legal access to the rear lane, there will be a conflict because of the driveway.

- h) The most northerly lot that is oriented towards the avenue will have 3.0 metre front setback. The other two lots will have a larger front setback to accommodate the front driveways.
  - i) The Statutory Plan designates this land for transit oriented housing and as such the lot could be rezoned in order to develop a four dwelling row house and all of the units could have front driveway access.
  - j) A map was referenced to illustrate the subject site. This site may be within the 400 metre catchment of the future LRT. This neighbourhood is unique because there is access to three future LRT stations. The land use program is encouraging the development of built forms to make use of the LRT.
  - k) The subject site is located within one block of a major transit route along 156 Street.
  - l) Two skinny lots that front onto 98 Avenue would not require driveway access over a public sidewalk.
  - m) The notification map was referenced to illustrate where the individuals who signed the petition of support reside. All of the neighbours were shown the plans and renderings.
  - n) Transit-oriented housing encourages the development of row housing and semi-detached housing so this site could be rezoned to allow higher density housing.
  - o) The proposed garages are part of the footprint of the main floor design which does not provide adequate space to develop a secondary suite in the basement.
  - p) Many of the conventional zoning regulations do not align with some of the small lot housing aspirations of City Council. The new City Plan will be encouraging different types of subdivisions and land uses that are different than those supported by the conventional zones.
- ii) *Position of the Subdivision Authority, Ms. J. Sumaylo, Ms. J. Vos and Ms. P. Sundara, Transportation Services:*
- [31] The site is located in the Jasper Place Area Redevelopment Plan and is subject to the Mature Neighbourhood Overlay. The ARP designates the subject land as Transit Oriented Housing. The site is located in the RF1 Zone and Single Detached Housing is a Permitted Use.
- [32] The subdivision application proposes to create two additional single detached residential lots and the landowner intends to redevelop the site to accommodate three Single Detached Houses.

- [33] The proposed access for the two southern lots is from 155 Street while access to the northern lot will be from 98 Avenue.
- [34] The proposed subdivision was refused for the following reasons:
- a) The proposed subdivision does not comply with section 41.1(3) of the *Edmonton Zoning Bylaw*.
  - b) The proposed subdivision does not comply with the minimum Site Depth, Site Area, and exceeds the maximum allowable Site Coverage pursuant to the development regulations contained in the RF1 Zone. It also does not comply with the minimum required Front Setback pursuant to the Mature Neighbourhood Overlay.
  - c) The proposed subdivision creates a future development hardship for landowners.
  - d) The additional two proposed driveways do not align with the Residential Infill Guidelines and will have negative impacts on the streetscaping and pedestrian walkability.
  - e) The proposed subdivision is not within the character of the neighbourhood.
- [35] A subdivision can only occur once in the RF1 Zone in order to preserve the character of the neighbourhood since the addition of one lot is much more comparable with other existing lots. The proposed subdivision to add two additional lots does not conform to this Bylaw.
- [36] The minimum site depth in the RF1 Zone is 30 metres. Clear direction to enforce this minimum requirement was given to the Subdivision Authority by City Council to ensure a uniform urban fabric in the neighbourhood. The site depth of the proposed subdivision is 22.27 metres, which has a significant deficiency of 7.73 metres. The minimum Site Area in the RF1 Zone is 250.8 square metres and the proposed subdivision has a Site Area of 226.26 square metres.
- [37] Upholding the minimum Site Area and Site Depth requirements prevents uncharacteristically small lots in the neighbourhood and provides a consistent expectation for development across the city. It is important to honour these minimum standards to avoid creating hardships for future landowners.
- [38] The purposed Front Setback of 3.0 metres is 1.5 metres deficient. The proposed Site Coverage of 35 percent for the proposed Lot 3A exceeds the maximum allowable Site Coverage of 28 percent in the RF1 Zone.
- [39] Since the proposed lots do not meet the Site Depth and Site Area requirements, existing and future landowners may encounter challenges at the Development Permit stage. Even if the landowner decides to rezone to RF2, RF3 or RF4 after subdivision in order to not be subject to section 41.1(3), the minimum 30 metre site depth is still required for Single

Detached Housing or Semi-detached Housing. Variances will be required and may be difficult to obtain and an appeal may be required at the development permit stage.

- [40] Because there is no lane access to the existing site, access to the proposed lots must be from 155 Street or 98 Avenue. This does not align with the general intent of the Residential Infill Guidelines (City of Edmonton Policy C551 General Principle #8), which states that “Residential infill developments should respect the role of lanes not only as a primary vehicular access route but as a factor in maintaining the livability of neighbourhoods.”
- [41] This parcel requires access from the street or the avenue. Mature trees and turf will be impacted to accommodate the proposed driveway access. Paving over the boulevard can affect the roots of the trees. Landscaped boulevards act as a buffer for pedestrians and decreasing the area will reduce walkability and safety for pedestrians. It also breaks up the pedestrian oriented streetscape by expanding the amount of hard surface along the boulevard. The availability of on-street parking will be reduced because vehicles cannot park in front of driveways.
- [42] Access will be limited for the proposed Lot 3B because a proposed access must have a minimum 3.0 metre clearance from trees and a minimum 0.5 metre clearance from street lights. The proposed access to Lot 3B has a deficient minimum clearance to both a tree and a street light. This could result in a deficient driveway width. Site access will be further reviewed at the Development Permit stage, but in all likelihood a variance will be required.
- [43] The resulting deficiencies in Site Depth and Site Area does not support section 5.2.1.1 of the Municipal Development Plan which requires new development to “fit with the existing and planned neighbourhood context, to respect the scale, form, massing, style and materials of the neighbourhoods and to incorporate other design elements that create a transition between the new development and the existing neighbourhood”.
- [44] The neighbouring lots are characterized by large rear yards with an approximate site depth of 45 metres. The proposed lots are 50.5 percent smaller. An aerial photograph was referenced to show the difference in lot size.
- [45] The Jasper Place Area Redevelopment Plan states that a sense of space is an important feature of the neighbourhood character. One of the key consultation themes was that many valued sense of space crated by front yard landscaping. This subdivision application does not support the notion of preserving the character of the neighbourhood because it reduces landscaping opportunities by proposing two additional front driveways.
- [46] A streetscape diagram was referenced to provide a comparison of the sidewalk path with and without driveways. The area devoted to landscaping is reduced when driveways exist.



- [47] The Jasper Place Area Redevelopment Plan has set the framework for development for the next 15 to 25 years and determines the character of the neighbourhood. One of the guiding principles is that neighbourhood character should be enhanced by high quality development. The proposed subdivision does not support this Principle because the rear yards are significantly smaller than the adjacent lots. The additional driveways will create a risk for pedestrians, do not preserve the existing walkability and decrease pedestrian safety.
- [48] There are currently 30 conditionally approved subdivisions in West Jasper Place. However, the majority of these applications conform with the requirements of the *Edmonton Zoning Bylaw*, specifically the minimum required site depth and site area which helps to maintain a consistent urban fabric that respects the scale, form and massing of the neighbourhood. They also align with the Residential Infill Guidelines and the Area Redevelopment Plan. Access is provided primarily from the lane which maintains the pedestrian oriented streetscape.
- [49] There are other options available that Subdivision Planning would support. The site could be subdivided to create one additional lot facing 98 Avenue to develop two single detached houses, it could be subdivided to create one additional lot facing 98 Avenue to develop semi-detached housing and the site width could be adjusted depending on the type of development.
- [50] Ms. Sumaylo, Ms. J. Vos and Ms. P. Sundara provided the following information in response to questions from the Board:
- a) Access to the avenue is not an ideal situation but because the site is land locked they would be forced to support that application.
  - b) Ms. Sundara referenced the proposed plan of subdivision and advised that a site visit was conducted in order to measure the distances to the street light and the boulevard tree. A 0.5 metre clearance is required from the street light to the edge of the driveway and a 3.0 metre clearance is required from the trunk of the boulevard tree. The total distance required from the edge of the streetlight to the trunk of the tree is 6.0 metres which would result in a driveway that is only 2.5 metres wide. This does not comply with the minimum required driveway width of 3.5 metres. Transportation Services cannot support the development of a driveway that is only 2.5 metres wide.
  - c) Discussions about relocating the tree would have to be held with Forestry Services. There is a requirement to protect boulevard trees during construction by providing 3.0 metres clearance.
  - d) The Area Redevelopment Plan was adopted in 2015 which predates discussions about tiny houses. It was their opinion that the reference to small lot housing as skinny housing which aligns with the *Edmonton Zoning Bylaw*. The site is located approximately 500 metres from the transit station.

- e) There is an expectation about the surrounding area and back yard space provides an area for play and privacy and green space. It was her opinion that small back yards create an eyesore for neighbouring property owners. The Area Redevelopment Plan states that development must respond to local context and in their analysis they looked at lot dimensions, depth and width and rear yard space is significantly impacted by that.
- f) Community members also raised a concern about using a lack of private amenity area but this was not a reason for refusing the subdivision application.
- g) The property owner could apply to rezone the site and go through the community consultation process with City Council.
- h) The Subdivision Authority would like to limit the number of driveways crossing the sidewalk along 155 Street.

*iii) Position of Affected Property Owners in Opposition to the Appellant*

Ms. I. Blain, President of the West Jasper Place Sherwood Community League:

- [51] The validity of the petition of support that was submitted by the Appellant was questioned because she was advised by several residents that they received very little information about the proposed subdivision other than that three nice houses would be built. They were not told about the deficiencies and indicated that they wished they could remove their names from the petition.
- [52] The proposed attached front garages will break up the sidewalk and violate the Area Redevelopment Plan.
- [53] The proposed lot sizes are too small, are not characteristic of the majority of the lot sizes in this neighbourhood and will interfere with the amenities of the neighbourhood.
- [54] An aerial photograph was referenced to illustrate that Arthur Elliott Park, the only park in this neighbourhood is very small and serves over 3,000 residents. Therefore, it is important that new developments provide adequate private amenity space.
- [55] The most affected property owner will have three lots backing onto their property which has the potential to create privacy concerns. This will also affect the value of their property.
- [56] A map was referenced to identify the locations of similar subdivisions that face the avenue. However, many of these lots were subdivided before this area was annexed by the City of Edmonton. It was her understanding that the Subdivision Authority will no longer approve the creation of lots that are less than 30 metres deep.

- [57] If this subdivision is approved it will create a precedent for the entire City. In accordance with the *Edmonton Zoning Bylaw* lots must be a minimum of 30 metres deep in any zone and in an RF1 Zone only one subdivision is permitted. The Infill housing industry is connected and if this subdivision is approved, other applications referencing this decision will be advanced to the Subdivision Authority.
- [58] The Jasper Place Area Redevelopment Plan states as policy for all precincts that variances for front attached garages are not granted. Due to the location of the site and inaccessibility to the alley way any new development would be permitted to have an attached garage. However, needlessly creating more lots with a front driveway along the elm tree lined boulevard will reduce public green space and compromise or require the removal of mature trees.
- [59] The front driveways will also break up the public sidewalk and jeopardize pedestrian safety and walkability.
- [60] Waste Management trucks pick up garbage from the alley and avenue in this neighbourhood. If these lots are subdivided from the street they have no access to the alley and it would be difficult for residents to have their garbage removed.
- [61] It was her opinion that the developer should instead subdivide the lot once from the avenue to create two lots that are 37.5 feet by 100 feet which would comply with the *Edmonton Zoning Bylaw*. The front drive garages would not break up a public sidewalk because there is no sidewalk on the avenue side. The mature boulevard trees would be protected and it would be in character with other subdivisions in this neighbourhood and would provide adequate private green space for the new owners.
- [62] Since the spring most of the houses that were for sale in West Jasper Place have been sold. A photograph of a semi-detached house built by the Appellant on a lot that is 75 feet by 100 feet was referenced to illustrate that it conforms and is in character with the neighbourhood because driveway access is provided from the avenue. All of the unique subdivisions that have occurred in this neighbourhood provide access from the avenue.
- [63] Ms. Blain provided the following information in response to questions from the Board:
- a) She questioned what information was provided by the Appellant to the most affected property owner. There is a difference between having a lot flanking your property and having three abutting lots with small rear yards that enables overlook and creates privacy concerns.
  - b) It was her opinion that a rezoning application would not be supported by Development & Zoning Services because the lot depth has to be a minimum of 30 metres.
  - c) Pedestrians use 155 Street to access the bus route on 156 Street and the school.

Mr. Smith:

- [64] Mr. Smith resides west of the subject site.
- [65] He noted that the property owner who resides east of the subject site did not attend the hearing.
- [66] Photographs of the intersection were referenced to illustrate the existing mature trees and how this will change if the subdivision is approved.
- [67] He noted that there was a discrepancy between the petition of support and the petition of opposition in that some of the same signatures were contained on both petitions.
- [68] There is a lot of pedestrian traffic in this area and the addition of more vehicles will create a safety concern.
- [69] The lack of a rear yard amenity space is a concern.
- [70] He does not support the subdivision of this lot but if it would be possible to rezone this site from RF1 to RF3 in order to develop a Row Housing development, the proposed subdivision is the lesser of two evils.

*iv) Rebuttal of the Appellant*

- [71] Mr. Kogan clarified that there is an error on the Site Plan. The garage for the proposed house on the corner lot is attached, not detached as illustrated on the Site Plan. This will provide a much larger rear yard. The width of the driveways can be adjusted during the development permit process in order to maintain the proper distance from the trees and street lights. If necessary, an application to relocate the street light can be submitted to EPCOR in order to provide wider access.
- [72] Mr. Dulaba addressed the verbal concerns of Transportation Services regarding the orientation and location of driveways on 155 Street. The response provided by Urban Form and Corporate Strategic Development, Transportation Services, dated June 25, 2019 did not address any concerns regarding the proposed driveway width or access. The following conditions and advisements were recommended to the Subdivision Authority if the application was approved on appeal to the Board.

Condition:

The owner must dedicate road right-of-way for a 3 metre by 3 metre corner cut at 155 Street and 98 Avenue. Removal of the trees within the corner cut area is required prior to road decision, as shown on the Enclosure.

## Advisements:

1. There are existing boulevard trees adjacent to the site that must be protected during construction, as shown on the Enclosure. For information about tree protection please refer to the City of Edmonton web site (Trees and Construction).
2. There is an existing access to 98 Avenue that can be utilized for the proposed Lot 3A.
3. Access for the proposed Lot 3B is limited. A minimum clearance of 1.5 metres is required from the existing streetlight and a minimum of 2.5 metres is required from the existing boulevard tree. This will result in a driveway access of approximately 3.5 metres.

[73] Transportation Services had the right to object to this subdivision application on the basis that it would create driveway conflict with the two southern lots oriented to 155 Street but it was not referenced in their response to the Subdivision Authority. The subdivision application was supported and did not address this concern. The application was supported with conditions and advisements. He questioned why Transportation Services, based on the verbal evidence provided at the hearing, no longer supports the application based on this concern.

[74] The community has to acknowledge that these lands are designated for higher density housing. This site could be rezoned in order to develop a row house fronting onto 155 Street with driveways that conflict with the sidewalk. Even if the lot is not subdivided, there would be a driveway conflict. This land has been designated as Transit Oriented Housing and City Council has the aspiration to see these lands develop and intensity with higher density housing.

[75] In unique circumstances such as this because of the unorthodox orientation of the lot, subdivision applications that do not fully comply with the Infill Guidelines or the Mature Neighbourhood Overlay as they pertain to driveway conflict or pedestrian orientation have to be addressed.

[76] Mr. Belostosky reiterated that he discussed the plan of subdivision with the most affected property owner who resides east of the subject who has provided a letter of support, marked Exhibit C.

[77] Several other corner lots in this neighbourhood have been rezoned to allow higher density developments. If this subdivision application is refused, he will have no choice but to apply to rezone the lot to RF3 and apply for a higher density development. However, it was his opinion that the proposed subdivision that will allow the construction of three Single Detached Houses is much more desirable.

**Decision**

[78] The appeal is **DENIED** and the decision of the Subdivision Authority is **CONFIRMED**. The subdivision is **REFUSED**.

**Reasons for Decision**

[79] This was an appeal of a subdivision application to create two (2) additional single detached residential lots.

[80] The application was refused by the Subdivision Authority on June 27, 2019, for the following reasons:

- a) The proposed subdivision does not comply with Section 41.1(3) of the *Edmonton Zoning Bylaw 12800*.
- b) The proposed subdivision does not comply with the minimum Site Depth, Site Area, and exceeds maximum Site Coverage of its RF1 zone. It also does not comply with the minimum Front Setback of the Mature Neighbourhood Overlay.
- c) The proposed subdivision creates a future development hardship for landowners.
- d) The additional two (2) proposed driveways does not align with the Residential Infill Guidelines (City of Edmonton Policy C551 General Principle #8) and have negative impacts on the streetscaping and pedestrian walkability.
- e) The proposed subdivision is not within the character of the neighbourhood.

[81] The Board supports these reasons for refusal and finds the following:

- a) Allowing the subdivision to create two additional single detached residential lots would result in the creation of three hardship lots that will not comply with the minimum required Site Area or Site Depth requirements pursuant to section 110.4(1) of the *Edmonton Zoning Bylaw*.
- b) In order to develop these lots, the future owners will have to seek discretionary variances from the Development Authority. It is not desirable to create three lots which cannot be developed without the granting of significant variances by the Development Authority.
- c) Based on the evidence provided, the majority of lots in this neighbourhood are 45 metres deep. The proposed lots have a Site Depth of 22.27 metres which is 50 percent less than the existing lots on this block face. This will result in the creation of three extremely small lots that are not characteristic of this block. The Board also

finds that the proposed shape and area of the lots are not in keeping with the character of this mature neighbourhood.

- d) The subject site is located within the Mature Neighbourhood Overlay. Pursuant to section 814 of the *Edmonton Zoning Bylaw*, the General Purpose is to:

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

- e) The proposed subdivision will create three lots, the northern most lot will be accessed from 98 Avenue and the two southern lots will require access from 155 Street. This results in the need for two new vehicular access points that will cross over a heavily treed boulevard onto 155 Street.
- f) The proposed subdivision will result in the creation of significant concrete and hardsurfacing along 155 Street which does not maintain the pedestrian-oriented design and is not in keeping with the General Purpose of the Mature Neighbourhood Overlay. This is particularly significant because there is no sidewalk located along the north side of the subject site or on the south side of 98 Avenue. This increases the importance of maintaining pedestrian friendly access along 155 Street.
- g) Based on the evidence provided by Transportation Planning at the hearing, the location of mature boulevard trees along 155 Street will make the development of the proposed vehicular access points difficult, if not impossible.

[82] For all of the above noted reasons, the appeal is denied and the decision of the Subdivision Authority is confirmed. The proposed subdivision is refused.

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

Board Member in Attendance: Ms. K. Cherniawsky, Mr. L. Pratt, Ms. E. Solez, Mr. A. Peterson

**Important Information for the Applicant/Appellant**

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

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





**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: September 19, 2019  
Project Number: 285187885-004  
File Number: SDAB-D-19-139

**Notice of Decision**

- [1] On September 4, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on August 8, 2019. The appeal concerned the decision of the Development Authority, issued on July 17, 2019 to approve the following development:

**To change the Use of a Bar and Neighbourhood Pub to a Restaurant**

- [2] The subject property is on Plan 2552S Blk 2 Lots 38-39, located at 12720 - Fort Road NW, within the DC1 Direct Control Provision. The Major Commercial Corridors Overlay and Belvedere Station Area Redevelopment Plan apply to the subject property.

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

- 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;
- The Respondent’s written submission;
- A written submission from Legal Counsel for the Appellant; and
- Numerous emails and online responses.

**Preliminary Matters**

- [4] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

- [6] 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*”).
- [7] The Chair referenced section 685(4) of the *Municipal Government Act* which states that despite subsections (1), (2), and (3), if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority’s decision. The Board has a more limited capacity when dealing with land located in a Direct Control Zone. Therefore, if some submissions are restricted, it is not because they are not important, but rather because the Board’s capacity is limited by the *Municipal Government Act*.

### **Summary of Hearing**

- i) *Position of the Appellant, Ms. D. Fuhlendorf, Executive Director, Fort Road Business and Community Association and Mr. R. Noce, Q.C., Legal Counsel:*
- [8] This site is zoned DC1 (Area F). There are a number of provisions in the DC1 Bylaw that provide direction as to how this property is to be developed.
- [9] The rationale of this DC1 Zone (Area F) is to accommodate commercial development with commercial uses developed on the ground floor of a number of buildings as part of this development project.
- [10] The issue today is about the proposed Use and not the good work that the User does in the community.
- [11] Section 3 of the DC1 Bylaw provides a list of the Uses that can be developed on this site. City Council has determined that these are the Uses that they want to see developed on this site. Section 4(d) is also relevant and states that “only Commercial Uses shall be located on the first (ground) floor in the areas identified on Appendix I”. Appendix I includes the subject site. In addition, section 4(w) states that “the owner submit a Crime Prevention Through Environmental Design (CPTED) Assessment that shall be reviewed and accepted by the Development Officer prior to the issuance of a Development Permit to ensure that development on the Site provides a safe urban environment in accordance with the guidelines and principles established in the Design Guide for a Safer City”. It is noted that this report is not contained in the information provided by the Development Officer. This report was never prepared or submitted and the Development Officer completely ignored Council’s direction to provide this information.

- [12] The *Municipal Government Act* clearly states that the Development Officer must follow the direction of Council and then the Board has to determine if the directions were followed. In this case, the direction of Council provided in section 4(w) was not followed.
- [13] Section 5 of the *Edmonton Zoning Bylaw* requires that anyone who operates in the City of Edmonton must do so with a development permit. This operation has been in place for two years without a valid development permit.
- [14] Section 7.1(3)(b) provides discretion to the Development Officer to “fit a square peg into a round hole”. In a Court of Appeal decision, Justice Cote addressed the mysteries of this section and how it is to operate.
- [15] Section 7.4(46) of the *Edmonton Zoning Bylaw* defines a Restaurant as “development where the primary purpose of the facility is the sale of prepared foods and beverages to the public for consumption within the premises or off the Site. Minors are never prohibited from any portion of the establishment at any time during the hours of operation. This Use typically has a varied menu, with a fully equipped kitchen and preparation area, and includes fast food and family restaurants”.
- [16] Section 7.4(48) defines Specialty Food Services as “development where limited types of prepared foods and beverages, excluding alcoholic beverages, are offered for sale to the public, for consumption within the premises or off the Site. This Use typically relies primarily on walk-in clientele, and includes coffee, donut, bagel or sandwich shops, ice cream parlours, and dessert shops”.
- [17] The definitions of Community Recreation Services, Private Clubs and a Religious Assembly were also referenced.
- [18] The *Municipal Government Act* also provides direction on how to address and deal with this appeal.
- [19] Section 641(2) states that “If a direct control district is designated in a land use bylaw, the council may, subject to any applicable statutory plan, regulate and control the use or development of land or buildings in the district in any manner it considers necessary”.
- [20] Section 683 states that “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”. This Use has been operating from this location for the past two years without a development permit which is in violation of both the *Edmonton Zoning Bylaw* and the *Municipal Government Act*.

- [21] Section 685(4)(b) states that “despite the basis of the appeal, if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision of the development authority’s decision”.
- [22] The Development Officer failed to follow Council’s direction by not asking the Applicant to provide a CPTED report which is a requirement of the development regulations contained in this DC Bylaw.
- [23] As a result of section 685(4)(b) of the *Municipal Government Act*, the variance powers of section 687 are not in play in this appeal.
- [24] Mr. Noce asserted that neither the Development Authority nor the Board can use the deeming provisions of section 7.1(3)(b) of the *Edmonton Zoning Bylaw*. The Development Officer states in the written submission dated August 14, 2019 that “the application proposes a change of Use from an existing Bar and Neighbourhood Pub within the Transit Hotel to a Restaurant (as deemed by the Development Officer)”. However, when the initial decision was made, the Development Officer did not reference section 7.1(3)(b) on the approved development permit application at all. The development was simply approved without conditions as a Restaurant. It was his opinion that if the deeming provision was used, the Development Officer should have noted it on the approved development permit at the time the initial decision was made.
- [25] His view is further supported because the permit was issued as a Class A development permit. It was therefore his assumption that the Development Officer decided to use the deeming provision after the appeal was filed because this is clearly not a Restaurant Use. If the Development Officer was going to use the deeming provision, this would not have been issued as a Class A permit because that triggers the notice provisions. This is also an error.
- [26] The Board does not have the ability to deem a Use in a DC Zone either. Section 7.1(3)(b) states that the deemed Use shall be considered a Discretionary Use whether or not the Use is listed as a Permitted Use or a Discretionary Use within the applicable zone. There are no Permitted or Discretionary Uses in a DC Bylaw. Council decides what the Uses are because this is not a conventional zone. Therefore, it is his opinion, that if the Board uses section 7.1(3)(b) of the *Edmonton Zoning Bylaw* as the basis to deem the Soup Kitchen as a Restaurant, then the Restaurant Use becomes a Discretionary Use.
- [27] The Court of Appeal in *Rossdale Community League (1974) v. Edmonton (Subdivision and Development Appeal Board)*, 2009 ABCA 261 (“*Rossdale*”), paragraph [14], found that “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”.

- [28] That test works well in a conventional zone but not in a Direct Control Zone because if the Board starts the process and assesses the type and character of the Use in this application, including intensity and compatibility with adjacent uses, it was his opinion that the Board would be breaching section 685(4) of the *Municipal Government Act*. The Board is bound by the decision of the Court of Appeal in *Rossdale*. The *Municipal Government Act* does not provide the ability to assess a Discretionary Use in a Direct Control Zone and apply the test as set out by the Court of Appeal. The discretionary test does not work well in Direct Control Zone because of the conflict with the parameters of the appeal under the *Municipal Government Act*. Even if the Board could assess the Discretionary Use in a Direct Control Zone and apply the test, the evidence will clearly show that the proposed Soup Kitchen is not compatible with adjacent Uses.
- [29] There are several Court of Appeal decisions that provide guidance to the Board and are binding on the Board. First, *Edmonton (City) v. Edmonton (Subdivision and Development Appeal Board)*, 2017 ABCA 140. In this decision, the Court of Appeal confirmed that the Board must not deem development to be a Use if it does not conform with the key aspects of the Use Class definition. In this case, the Board must determine if the proposed Use conforms to the key aspects of the Restaurant definition and if it does not, the Board does not have the power to deem it. In that case, the Court of Appeal did not consider the provisions of section 7.1(3)(b).
- [30] In *Garneau Community League v. Edmonton (City)*, 2017 ABCA 374, the Court of Appeal states that the Subdivision and Development Appeal Board is limited to the variance power provided to the Development Authority and not the general variance power provided in section 687 of the *Municipal Government Act*. In this case, the Board is limited to the variance power provided to the Development Authority in this DC Bylaw (Area F) and there are no variance powers or deeming provisions provided in the Bylaw. Therefore, the Board does not have any variance power or the ability to use the deeming provisions provided in section 7.3(1) of the *Edmonton Zoning Bylaw*.
- [31] If City Council wanted to allow the Development Authority some ability to “fit a square peg into a round hole”, to deem a Use if it was not listed, a provision to provide that power would have been included in the DC Bylaw.
- [32] The Court in *Rossdale* at paragraph [13] made the comment that the Discretionary Use is not a use in and of itself that would confer the City carte blanche to engage in any different or intensified use so long as it is a Discretionary Use. The Court of Appeal made it clear that this does not provide power to deem something.
- [33] In *McCauley Community League v. Edmonton (City)*, 2012 ABCA 314, Justice Cote struggled to understand the parameters and what triggered the mysteries of section 7.1(3)(b) of the *Edmonton Zoning Bylaw*. There are no Court of Appeal decisions that clearly address this provision.

- [34] In response to a question from the Chair, it was clarified that the argument is that in a Direct Control Zone, the Use has to fit within the four corners of the listed Uses unless variance power is provided to the Development Authority to vary those Uses in exceptional circumstances. However, in this case, variance power has not been provided.
- [35] The Soup kitchen has been operating illegally for two years as indicated in the written submission of the Respondent which states that “Mawacihitowin Otah (The Gathering Place) opened its doors at the Transit Hotel two years ago and has quickly grown into a place where people of many descents, old and young come for support and a hot meal”.
- [36] During the past two years, the Fort Road area has changed dramatically and not for the better. The City’s efforts to revitalize the area have failed as supported by the Global news article dated July 6, 2019, contained at Tab 6 of the written submission.
- [37] The Chair reminded all parties in attendance to focus their submissions on the unique circumstances of the DC provisions and help the Board understand what is actually happening at this site. Based on that information, the Board will be able to properly classify the Use and determine whether or not the Development Authority followed the directions of Council.
- [38] Ms. D. Fuhlendorf indicated that this area does not want to be forgotten. The revitalization program started in 2004 and has turned into an odyssey. The community has been waiting for many years for redevelopment to begin but it has seemed to stall along with the Station Pointe development. There is currently social disorder in this area and it is not what the community expected. She has received numerous telephone calls and emails from business owners who are frustrated and upset by what is happening. This area is being destroyed not revived. It is the opinion of the business owners and the Business Association that the rules for this DC1 Zone should be followed.
- [39] There are a number of letters filed in opposition to the proposed Soup Kitchen from business owners as well as residents of this community. Photographs and crime statistics from EPS have also been provided to illustrate that criminal occurrences in this community are on the rise.
- [40] Over the past several years, the Fort Road Business Association has lost 33 businesses. It is not safe to walk along Fort Road or 66 Street which is supported by the statistic provided by EPS.
- [41] The Business Association is working hard to obtain grants which will help improve and revitalize the area.
- [42] Through both the land use regulations of the Direct Control Zone and the investment into the revitalization of this area by the City, it is clear that it is the intent of Council to change the perception of this area. The proposed Use is inconsistent with the objectives of the community and the DC Bylaw. There is nothing in the Belvedere Station Area

- [43] Redevelopment Plan that speaks to a Soup Kitchen anywhere along Fort Road. The Area Redevelopment Plan speaks to the commercialization of Fort Road, businesses thriving, people wanting to come to this area to live, work, play and feel safe.
- [44] Section 3.8 of the Belvedere Station Area Redevelopment Plan, Retail Development states: “The Fort Road Commercial Strip should be revitalized, convenience shopping should be provided at the station, and retail outlets located in industrial districts should be environmentally upgraded, Action (b) locate retail development in areas shown on Figure 13”. Figure 13 clearly identifies the Transit Hotel area. This area is designated by the Area Redevelopment Plan as commercial, the DC Bylaw identifies commercial uses, and all the listed uses are commercial. There is no community or educational use listed or any other type of Uses considered for this strip. Therefore, the introduction of a Soup Kitchen flies in the face of both the Area Redevelopment Plan and the DC Bylaw.
- [45] The *Edmonton Zoning Bylaw* defines Commercial Uses in section 7.4. The presumption of a Commercial Use is the expectation of a financial return. The definition of a Restaurant is more explicit in that it states that the primary purpose is the sale of prepared goods and the Court of Appeal has determined that the Board needs to consider that. The *Edmonton Zoning Bylaw* governs the use of a commercial property but not the entity operating the development. Therefore, a non-profit group could operate a Restaurant that generates money. But, in this case, the Use itself, a Soup Kitchen, is not a Restaurant.
- [46] The Development Officer erred in deeming this Use to be a Restaurant. The services offered at The Gathering Place are not consistent with a Restaurant Use as supported by their written submission which states that they offer the following: “Cultural Support including daily smudges/ceremony; Elder connection; Artisan development and Family programs and community connection”. These are all valuable services for the community but not allowed on this site. Personal supports are also offered including “breakfast and lunch served 3 days a week; access to laundry services, change of clothes, tax preparation, ID and government forms; access to fax, computer and phones, contact information to persons who can assist with resume and job search and contact information to access health care in the community”. Housing Support is also offered “contact information to Housing Support Workers to assist in finding a safe and secure place to live.
- [47] The hours of operation provided state that breakfast is served from 9:00 to 9:30 a.m. and lunch is served from 11:45 a.m. to 12:15 p.m. Based on this information, the primary focus of this establishment is not food; this is not a Restaurant but rather a community hub for individuals who require help. This appeal is not an attack on the valuable work done by this organization, but rather an attack on the City of Edmonton for issuing a development permit for a Use that is not allowed at this location.
- [48] While a Soup Kitchen is not a defined Use in the *Edmonton Zoning Bylaw*, there are uses under the Community, Educational, Recreational and Cultural Service Uses that permit food preparation as part of the Use Class. It was his opinion that a more appropriate Use

Class would be a Private Club which allows for food preparation. Section 7.8(8) of the *Edmonton Zoning Bylaw* defines a Private Club as “development used for the meeting, social or recreational activities of members of a non-profit philanthropic, social service, athletic, business or fraternal organization, without on-site residences. Private Clubs may include rooms for eating, drinking and assembly. This Use does not include Cannabis Lounges.” Everything that is happening on this site fits this definition, but a Private Club is not a listed use in this Direct Control Zone.

- [49] The Development Officer erred by approving a Use that is not listed in Area F of this Direct Control Bylaw. The Development Officer states in his report dated August 14, 2019 that “the proposed operations do not conform to any other use within the *Edmonton Zoning Bylaw*”. This statement is incorrect in law or fact. There are available uses in the *Edmonton Zoning Bylaw* for this type of Soup Kitchen. If the Gathering Place wants to use the premises for the proposed use, an application must be made to rezone the land. It was his opinion that the addition of this Use on Fort Road is such a significant change to the intent of the Direct Control Bylaw and the Area Redevelopment Plan that the only place this issue should be debated at is at City Council. This location is not appropriate for a Soup Kitchen and approving it will further destroy this area.
- [50] The Development Officer did not have the authority or power to deem the Soup Kitchen as a Restaurant. There is a more appropriate Use in the *Edmonton Zoning Bylaw* to allow the development. The Development Officer also failed to obtain a Crime Prevention Through Environmental Design Assessment which is a requirement of this Direct Development Control Provision.
- [51] It was his opinion that the Board did not have the authority to deem the Soup Kitchen as a Restaurant. The Development Officer did not follow the direction of Council and the development permit should be revoked immediately.
- [52] It was Mr. Noce’s opinion that a Temporary Shelter may be an option for the Applicant to consider but regardless of whether the Use is classified as a Temporary Shelter or a Private Club it requires the blessing of City Council because neither of these Uses are listed in the Direct Development Control Provision.
- [53] Mr. Noce and Ms. Fuhlendorf provided the following information in response to questions from the Board:
- a) Properties located south of Fort Road were expropriated to accommodate the expansion of Fort Road from four lanes to six lanes and many of the businesses have never returned. All of the attempts made by the Association to revitalize the area have failed.
  - b) Based on what they have witnessed, this site is not operating as a Restaurant.



- c) The problem with applying section 7.1(3)(b) of the *Edmonton Zoning Bylaw* to a development in a Direct Control Provision is that it opens the door to other issues in that the Board and the Development Authority are assessing the compatibility of a deemed Use but now a Discretionary Use. The Use that is occurring on this site today is not a Restaurant and does not fit within any of the listed Uses in this Direct Control Provision. Therefore, the Development Officer did not follow the direction of Council.
- d) The Development Officer did not follow the direction of Council because the General Purpose of the Direct Control Bylaw is that only commercial uses be developed on the ground floor of buildings. This direction is also reflected in one of the development regulations. The Development Officer failed to obtain a Crime Prevention through Environment Design Assessment which is a requirement of the Bylaw. The proposed development is not a Restaurant Use and does not conform to any of the definitions for the listed Uses in the DC Bylaw.

ii) *Position of Affected Property Owners in Support of the Appellant*

Mr. R. Walmsley, President, Belvedere Community League:

[54] There has been no public consultation with the Community League with regards to this use. The Mosaic Centre is located one block east of this site and offers similar services. If it is truly a Restaurant, food should be sold and should be sold to anyone.

[55] He has only seen people waiting to go inside. He has not been inside the building. It is open three days per week for breakfast and lunch.

Mr. R. Hong, owner of an adjacent building, Plaza 66:

[56] Mr. Hong and his father own the property directly across from the Transit Hotel.

[57] In a DC1 Zone, a developer needs to work with the City and the community. This type of zoning allows flexibility for uses not contained in certain zones. When Station Pointe was proposed, the intent was to provide for more flexibility and opportunities for developers. He did not expect that a 75 dollar application could impact his investment. He invested in this area because he believed it was ripe for commercial redevelopment.

[58] There was no consultation done on this development.

[59] The City bears some responsibility because it expropriated businesses to expand Fort Road.

[60] The development is not advertised as a Restaurant. There is a back door entrance, which is difficult to see. The development is more of a club than an open Restaurant. They have no expectation of profit in a business revitalization area. There has been no effort to work with the community. Residents are invested in this area. Individuals frequenting the building do not live in this area. Individuals come from downtown and loiter in the area. This is more of a social service than a restaurant.

Mr. J. Mowatt and Mr. B. Sekhon, Edmonton Police Service

[61] Constable Sekhon and Constable Mowatt provide neighbourhood patrol services to this area.

[62] The building is open in the morning, serving both breakfast and then lunch. Individuals stay in the building, and walk back and forth to the Mosaic Centre. Many of the individuals that use this service are suffering from addiction and travel from downtown. In addition to receiving a hot meal, they receive assistance with housing needs, addiction counselling, health care advice, and personal services for health and hygiene.

[63] They are called to the area but not specifically for anything happening inside the building. From their experience, calls associated with restaurants usually depend on whether or not alcohol is involved and typically involve failure to pay for meals. Some of the individuals that use the services offered are not members of the community and create problems because they loiter outside the building.

*iii) Position of the Development Officer, Mr. M. Harrison and Mr. M. Gunther, City of Edmonton, Law Branch:*

[64] Mr. Harrison explained his rationale for making the determination that the proposed development is a Restaurant Use. The application and the floor plan were reviewed. The development was described to him during discussions with the Applicant as a Soup Kitchen, to provide food to those in need as well as providing desk top computers to prepare job resumes and conduct job searches.

[65] Because a Soup Kitchen is not a listed use in the Direct Development Control Provision, other possible listed Uses in the Bylaw were reviewed, including a Temporary Shelter Service, Private Club, Religious Assembly and Restaurant.

[66] The history of approvals for other Soup Kitchens that operate in the City was researched and it was determined that they had been approved as either Religious Assemblies or Temporary Shelters. The issue is that those operations were slightly different than the proposed development because if they were approved as a Religious Assembly, the soup kitchen was being operated from a Church. The Hope Mission is the best example of a Soup Kitchen that was approved as a Temporary Shelter Service. Hope Mission is a true Temporary Shelter Service because overnight accommodation is provided. Overnight

accommodations are not provided at the subject site. The membership component of a Private Club definition raised a concern because anyone can use the proposed Soup Kitchen. A Restaurant Use raised a concern because food has to be sold. A determination was made that a Restaurant Use was most compatible because food is prepared for clientele; the simple difference is the transaction of money.

- [67] In response to a question, it was clarified that all of the other uses addressed today were not included on the initial development permit application. The details provided on the development permit application by the Applicant were that the proposed development was a Soup Kitchen with a seating area and two desk top computers that were used to prepare resumes and conduct job searches.
- [68] The details of the development permit application were referenced. The proposed business activities included “soup kitchen, drop in centre for homeless – working poor individuals”.
- [69] If someone applies for a development permit for a Restaurant in a DC Zone, they are in all likelihood entitled to that permit. The next step in the analysis is when will something that has the characteristics of a Restaurant be found not to be a Restaurant. Is the existence of computers on site any different than an Internet café. There are circumstances when there is no development permit for ancillary services that co-exist with a restaurant. This becomes a development compliance issue. In this case, the details of the development permit stated that this was a Soup Kitchen with computer use. That is what the Development Authority approved and what the Board is being asked to approve.
- [70] In this case, the Applicant made an error on the development permit application because they were not aware of the previous approved Use at this site. The oldest development permit that could be found was for a Hotel and there are numerous subsequent development permits pertaining to the tavern area as well as the Restaurant area of the hotel. The tavern area was identified as a Bar and Neighbourhood Pub for the proposed change in Use application.
- [71] The Hotel has not operated for more than six months and the outdoor patio was not included in the scope of this development permit application.
- [72] If the Board determines that this is a Restaurant and then the services are expanded, that becomes a problem from a development compliance perspective. In this case, the Development Officer reviewed the development based on the information that was provided on the development permit application. It was noted that the Applicant could clarify exactly what is occurring on this site during their submissions to the Board.
- [73] The Court of Appeal has not addressed this point. No one is suggesting that what is being proposed fits squarely in the four corners of a Restaurant Use. It was his opinion that a practical application of the *Edmonton Zoning Bylaw* allows the deeming provision to be used when necessary.

- [74] Four Court of Appeal cases were referenced, *Rossdale Community League v. Edmonton (City)*, 2017 ABCA 90 (“*Rossdale #2*”); *Thomas v. Edmonton (City)*, 2016 ABCA 57 (“*Thomas*”); *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309 “*Parkdale-Cromdale*”); and *Garneau Community League v. Edmonton (City)*, 2017 ABCA 374 (“*Garneau*”).
- [75] The principal is *Garneau* was that the powers of the Board are no more expansive than those of the Development Officer. For an appeal in a Direct Control Zone, the Board has to determine whether or not the Development Officer followed the direction of Council and if the Development Officer erred then the Board can substitute its decision. *Garneau* does not say that there can never be variance power in a Direct Control Bylaw or that there can never be discretion in a Direct Control. What *Garneau* says is that if there is a variance power it has to be found in the direction of Council wherever that is provided. In this case, the direction of Council includes the circumstances of section 7 of the *Edmonton Zoning Bylaw*. Because there is no actual listed use that matches what is proposed, then this discretionary element comes into play.
- [76] Mr. Noce disagreed with the application of section 7 by the Development Officer because the development would become a Discretionary Use which then by default makes the Board’s exercise discretionary. This is unconventional and there is no case law. In this case, section 7 would apply, and the Board would conduct an analysis as to whether or not a Restaurant is the best Use class and then have discretion to apply the test that is discussed in *Rossdale* and make a determination if as a Discretionary Use it would be appropriate.
- [77] This is the only logical way to follow the outcome of *Garneau* on the facts of this case. *Parkdale-Cromdale* supports that section 7 is a component of the instructions of Council. The general provisions of the *Edmonton Zoning Bylaw* apply notwithstanding the fact that the parcel of land is in a Direct Control Provision.
- [78] In *Thomas*, the Court of Appeal dealt with the Board’s ability to dispense with community consultation requirements. It also reinforces that the *Edmonton Zoning Bylaw* is the law. The *Edmonton Zoning Bylaw* is legislation of City Council and only where there is exception to the law whether that is through section 687(3)(d) of the *Municipal Government Act* or in the context of a DC Bylaw, some ability to dispense with a requirement, is the law not strictly the law.
- [79] The starting point is not to determine if section 7 applies. The right question to ask by the Board and the Development Officer is why section 7 would not apply. That is the best interpretation of the law in light of *Thomas* and *Parkdale-Cromdale*.
- [80] *Rossdale #2* provides direction on how to ascertain the direction of Council when there are multiple provisions contained in one piece of legislation. Paragraph [11] states “...Municipal planning documents should be interpreted harmoniously, both internally and collectively. Each particular planning document should be read as a whole, to extract

is proper meaning. Further, when there are numerous applicable planning documents, an attempt should be made to read them all in a harmonious fashion". The directions of Council can be found in more than one planning document.

- [81] A CPTED Assessment was not provided which is problematic because of the express direction of Council pursuant to section 4(w) of the Direct Control Bylaw. However, the Board has the authority to approve this development based on the decision of the Court of Appeal in *Thomas*. The Court of Appeal directed the Board to deal with the issues and take the necessary steps to ensure that community consultation was completed. In this case, the Board can approve the development with a condition that a CPTED Assessment be provided. The second simpler option is contained in section 13 of the *Edmonton Zoning Bylaw* which was not considered in *Thomas*. Section 13.1(2) states that "notwithstanding subsection 13.1(1)(b), the Development Officer may consider an application if the development is of such a nature as to enable a decision to be made on the application without all of the information required in this Section. Section 13.1(1)(b) states that "applications for a Development Permit are not complete until the applicant has submitted all information required pursuant to Section 13 of this Bylaw; and submitted any information specifically required pursuant to the regulations of the applicable Zone or any other Section of this Bylaw, including any special information required by the Development Officer pursuant to Section 14 of this Bylaw".
- [82] Before the Development Officer can assess the development permit application, all the required information must be submitted. However, that information can stem from the applicable zone or any other section of the Bylaw. In this case, it stems from the DC Zone which contains a requirement that the Applicant provide a CPTED Assessment. Section 13.1(2) provides authority for the Development Officer to make a decision without all of the information. This was not considered in *Thomas*. Secondly, the requirement to provide a CPTED Assessment is more applicable to new construction, not a building that is 110 years old and not physically changing.
- [83] It was his opinion that these reasons could be used by the Board to invoke this section and waive the requirement to provide a CPTED Assessment.
- [84] In response to a question, the Development Officer clarified that it was not a conscious decision not to require the submission of a CPTED Assessment.
- [85] Some discussion occurred regarding the process that the Board undertook in the *Thomas* appeal and the decision of the Court of Appeal.
- [86] That fact that a CPTED Assessment was not submitted is problematic and there is not a practical remedy. The Court of Appeal determined in *Thomas* that section 687 was not applicable. In this case, there is an ability prescribed to the Development Officer to deal with situations of an analogous nature which can also be relied on by the Board because of the Direct Control zoning. In this case, the Board has the statutory ability to remedy the situation.

- [87] Section 710.4(5) states that “all regulations in this Bylaw shall apply to development in the Direct Development Control Provision, unless such regulations are specifically excluded or modified in a Direct Development Control Provision”.
- [88] It was acknowledged that the failure to require a CPTED Assessment in this case was an oversight and an error. However, the hearing could be postponed in order to allow the preparation of a CPTED Report if that was the reason that the Board decided to refuse this application.
- [89] Information is simply being provided to the Board so that they can understand how the Development Officer arrived at this decision not to advocate for one party or the other.
- [90] In light of the case law, there has to be an analysis of what the Soup Kitchen is and which Use Class is most appropriate.
- [91] The deeming provision was considered in *McCauley Community League v. Edmonton (City)*, 2012 ABCA 314. It is a strange provision but there is a finite number of things that are Uses in the City of Edmonton and there is an infinite number of things that an individual can do with their land.
- [92] Even for future situations, there has to be some resolution to this issue.
- [93] Mr. Harrison indicated that he is more confused today based on the evidence that has been provided regarding some of the accessory uses including laundry services. He would want to see the layout of the building in order to determine the primary and secondary uses. This development is more complicated than what was reflected in the details of the development permit application.
- iv) *Position of the Respondents, representing Niginan Housing Ventures, Mr. Ward, Ms. Cunningham and Mr. Hews:*
- [94] Ms. Cunningham acknowledged and honoured the land that we live in and work in which is Treaty 6. This land belonged to the Cree, Nakota Sioux, the Dene, the Inuit, and the Métis people. The Gathering Place was named Mawacihitowin Otah because it has always been a gathering place for all of their people long before the Europeans settled in this area. They came from Saddle Lake, Fishing Lake, Frog Lake, Cold Lake, Beaver Lake First Nation and gathered in this area on Fort Road to decide what they would trade when they got to the Fort in Edmonton. They are not infringing on anyone’s territory but simply coming back to help their people in this area.
- [95] Niginan Housing Ventures also operate Ambrose Place which is in close proximity to this site. Ambrose Place provides housing for homeless Indigenous people. She was contacted by numerous community members to discuss their concerns regarding the number of homeless indigenous people in this area that needed services.

- [96] The original plan was to partner with the Mosaic Centre and they received funds from the Community Foundation to provide housing support for people in the area. However, what they discovered was that people were hungry. They had a philosophical disagreement with a Christian based organization and needed to find a place where the hungry could be fed.
- [97] A discussion occurred with the owner of the Transit Hotel who advised them that there was a Restaurant in the hotel and that he had a permit. He invited them to use space in his building. It was not until they were approached by the City a year and a half later that they became aware that the Restaurant did not have a valid development permit.
- [98] Discussions were subsequently held with the City and it was determined, based on the services that they were providing that the most appropriate Use Class was a Restaurant. They do not offer laundry services. It was her assumption that this information was taken from the services that they offered at the Mosaic Centre. There are several computers on site.
- [99] Their first priority is to feed people. You cannot discuss housing options with people who are starving. Children come before school to have breakfast. Out of the 474 people that they fed in August, 2019, only 67 males and 39 females identified as homeless. The rest of the individuals coming to eat in this facility are working poor who live in this neighbourhood.
- [100] Many community members support their work and offer to volunteer. Donations are accepted from local community members who want to help.
- [101] Addiction services are provided at Ambrose Place. Individuals are referred from the Gathering Place to Ambrose Place if necessary. Housing support staff makes contact with individuals at the Gathering Place.
- [102] Ms. Cunnginham, Mr. Hews and Mr. Ward provided the following information in response to questions from the Board:
- a) The drop in centre is used to link people up with required resources and refer them to the appropriate agency. The computers can be used to prepare resumes and apply for jobs. Referrals are also made for housing support. A local barber comes to the community barbecue and offers free haircuts.
  - b) Food is the focal point of the facility. Once a week a group is organized to go into the neighbourhood to pick up garbage. He has never heard any complaints. They are helping children and families so that they can have breakfast before school. A bag lunch can be provided if required.
  - c) The Chair reiterated that the issue is not whether or not this is a valid program. The issue is the zoning and Use of the subject site.

- d) The City has been very supportive and suggested the Restaurant Use. They have nothing to hide about their service delivery. The requirement for Community Consultation was never addressed. The issues associated with this part of the City are not driven by their service delivery. It has probably mitigated the challenges in this community that have developed over the course of decades.
- e) They are not trying to avoid discussions with the community. Over 50 percent of the homeless people are Indigenous. Niginan is one of the few service providers trying to reach that population and support from the City is critical.
- f) The facility is open from 9:00 a.m. to 1:00 p.m. and meals are provided as shown on the signs in the file. They do not charge for meals, but sometimes some community members make a contribution to the costs. Breakfast is served so that people can have a hot meal on their way to work and school. There is preparation time for breakfast and preparation time for lunch. The motivation around trying to be specific about service times is to ensure some time to prepare for lunch. Time has to be provided to transition between breakfast and lunch.
- g) During the time between breakfast and lunch people can use the board games and computers that are available. Most people leave the facility after they eat. There may be a handful of people who stay in the facility to access the support services that are available at Ambrose Place.
- h) Once breakfast is finished people start to leave and go about their day.
- i) An Elder is on site and they pray and smudge every day. If it is determined that their cultural approach can be classified as a Religious Assembly they are open to that. They operate under the principle of natural law to show kindness, sharing and caring which leads to building strength. The extension of services from Ambrose Place to the Gathering Place is to ensure that their philosophy is articulated and shared with community members who access the service.
- j) Some individuals are artistic and create home crafts and they are provided access to a market place where they can sell their wares.
- k) Ms. Cunningham clarified that whoever prepared their written submission took pieces of the delivery service that is offered at Mosaic Centre. However, evidence has been provided today regarding the services that actually occur at this facility.
- l) Telephones are available for individuals to use to book appointments etc.
- v) *Position of Affected Property Owners in Support of the Respondent*

Mr. D. Ruzycski, owner of the Transit Hotel:



- [102] Mr. Ruzycki has family owned this property since 1987. He was raised in this community. He has the most money and history invested in this building.
- [103] There have been many changes in the neighborhood. There have been increases and decreases in crime. When crime increases, more funding is provided.
- [104] The Transit Hotel was always a Hotel and a Bar and Neighborhood Pub with a Restaurant. The Applicants approached him to use the Restaurant to operate a support centre. The restaurant was leased when he owned the hotel.
- [105] He has an informal lease with the Applicants, but nothing in writing. It is open to the entire community, including families with children. No alcohol is served.
- [106] When the City identified the development permit problem, they indicated that the property was a Hotel with the addition of a Restaurant. He was told that it should be fairly easy to approve the Restaurant. He worked with the City in an attempt to remove the Hotel use and have the Restaurant as the primary use.
- [107] The neighbourhood has had ups and downs for many years. The Transit Hotel was never a community hub. Individuals frequented the hotel from outside the community. It is hard to believe that the Transit Hotel is the primary problem in this area.
- [108] The hotel is closed. There is an entrance from the parking lot and one from the front.
- [109] A smoking area has been fenced in an attempt to improve the aesthetics of the site.
- [110] Niginan operates special programs to keep the site clean.

*vii) Rebuttal of the Appellant*

- [111] The information was provided to the City in the application form at paragraph 12. This is not a Restaurant, but a drop-in centre for homeless and the working poor.
- [112] In the Development Officer's report, he did consider Religious Assembly and Temporary Shelter Service but does not reference a Private Club. If it was considered, he did not record it in his report. Reviewing the definition of a Private Club and based on the information provided, he questioned if the Development Officer's decision would have been different if it was considered. He appreciated the Development Officer's candour when he stated that he is more confused today than when the decision was made.
- [113] If this Board considers this a Discretionary Use and uses the test set out in the *Rossdale* decision, then the Board should have heard the affected parties speak of issues related to this use. The Board focused individuals to stay with the DC issue. If the Board now

decides this is a Discretionary Use and consider compatibility, then the people in attendance should have been allowed to speak about compatibility.

[114] Mr. Noce disagreed that the Board can correct the omission of the CPTED report. The Development Officer failed to follow the directions of Council and the permit should be revoked. The *Thomas* decision prevents the Board from dealing with his defect.

[115] The evidence of the Applicant about what occurs between meals confirms this is a drop-in centre.

[116] Based on the evidence presented, this is not a Restaurant. The Development Officer advised the Board that he now questions his initial decision based on that evidence and is more confused about the proposed development than when he reviewed the development permit application.

[117] Based on that, the only conclusion is for the Board to refuse the development permit because it does not comply with the direction of City Council set out in the Direct Control Provisions.

### **Decision**

[118] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **REFUSED**.

### **Reasons for Decision**

[119] The subject site is located within the DC1 Direct Development Control Provision (Area F) established under Bylaw 14653.

[120] As this proposed development is located in a DC1 Direct Development Control area, this appeal is limited in scope by the operation of section 685(4)(b) of the *Municipal Government Act*.

**685(4)** Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

(a) ...

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

- [121] The Board therefore must determine if the Development Authority followed the directions of Council in determining whether or not to grant the development that is proposed and applied for.
- [122] The Applicant applied for a Development Permit for a “Soup Kitchen, Drop-In Centre for Homeless/Working Poor Individuals”.
- [123] In a subsequent email to the Development Authority dated July 3, 2019, the Applicant elaborated and advised that they wanted to operate “The Gathering Place” which would be open three days per week, 8:30 a.m. to 1:00 p.m. to serve breakfast and lunch to the working poor, children, and homeless and to provide computers for individuals to use to conduct job searches and to prepare resumes. A referral service for individuals who require housing is also provided.
- [124] Before this Board, in its written submission, the Applicant, Niginan Housing Ventures, elaborated on the nature of its operation which includes aspects of cultural support: daily smudges/ceremonies; elder connection; artisan development; family programs and community connections. It also included the provision of personal supports, including breakfast and lunch served three days per week; laundry services, changes of clothes, tax preparation, ID and government forms; access to a fax machine, computer and phones; contact information to persons who could assist with resumes and jobs; health care and contact information for housing support workers.
- [125] In their oral submissions, the representatives for Niginan Housing indicated that some of the above list of services may have been taken from the services provided at their other locations and they denied the existence of laundry services or fax machines being available on the subject site. They did, however, confirm that the other services listed in their written submission were offered at the subject site.
- [126] There are several references contained in Direct Development Control Provision (Area F) that mandates that the subject site be used for Commercial Uses. Firstly, all of the Uses listed in section 3 of the Direct Control Bylaw are commercial uses with the exception of Apartment Housing, Minor Home Based Business and possibly Residential Sales Centers. Secondly, the rationale of the Direct Control Bylaw set out in section 2 states “To accommodate infill and intensification of the existing Fort Road commercial area as part of a transit-oriented, residential mixed use development that creates a liveable “urban village” environment through the retention of identified heritage structures, use of urban design regulations, and the introduction of a diversity of housing types within walking distance to the Belvedere LRT Station. **Commercial uses will be developed on the ground floor of a number of the buildings as part of this development project** [emphasis added].”

- [127] Thirdly, section 4(d) of the development regulations stipulates that “Only Commercial Uses shall be located on the first (ground) floor in the areas identified on Appendix I.” Appendix I indicates that the subject site is part of the area that shall be used for commercial frontage.
- [128] Faced with this, the Development Authority decided to categorize the proposed development as a Restaurant.
- [129] Under section 7.4(46) of the *Edmonton Zoning* Bylaw, a Restaurant is defined as “development where the primary purpose of the facility is the sale of prepared foods and beverages to the public, for consumption within the premises or off the Site. Minors are never prohibited from any portion of the establishment at any time during the hours of operation. This Use typically has a varied menu, with a fully equipped kitchen and preparation area, and includes fast food and family restaurants.”
- [130] By classifying the proposed development as a Restaurant (a commercial use, and a listed use in the DC Bylaw), the Development Authority was able to issue the development permit.
- [131] The problem is that the proposed development is not a Restaurant. A Restaurant must have as its primary purpose the sale of prepared foods and beverages to the public. In this case food is not sold to the public because this is not a commercial enterprise but more of a social service type of use. Meals are offered free of charge.
- [132] Further, even with the clarification provided by the Respondent during their oral submissions that laundry services are not provided and fax machines are not available on site, it is clear that several community and cultural service uses are operating at this location. There are more uses occurring on this site than the provision of meals. This was further clarified by the signage posted on the building indicating that the hours of operation are 8:30 a.m. to 1:00 p.m. Monday to Wednesday with breakfast served from 9:00 a.m. to 9:30 a.m. and lunch from 11:45 a.m. to 12:15 p.m.
- [133] Based on the evidence provided by the Respondent, while many individuals leave the building after eating, others stay to play board games, cards, watch TV, use the computers or access other referral services operated by the Gathering Place in between the posted meal times, when food is not being prepared.
- a) It is clear that this is not a Restaurant and not a commercial Use.
  - b) There are other Use Class definitions contained in the *Edmonton Zoning Bylaw* which, although not exact, contain the characteristics of the proposed development. These include:

Community Recreation Services means development used for recreational, social, arts, or multi-purpose Use in a building without fixed seats and an occupancy capacity of fewer than 500 persons, primarily intended for local community purposes. Typical Uses include

community halls, community centres, and community league buildings operated by a local residents' organization. (Section 7.8(1))

Private Clubs means development used for the meeting, social or recreational activities of members of a non-profit philanthropic, social service, athletic, business or fraternal organization, without on-site residences. Private Clubs may include rooms for eating, drinking and assembly. This Use does not include Cannabis Lounges. (Section 7.8(8))

Temporary Shelter Services means development sponsored or supervised by a public authority or non-profit agency for the purpose of providing temporary accommodation for persons requiring immediate shelter and assistance for a short period of time. Typical Uses include hostels and overnight shelters. (Section 7.3(10))

- c) The Board does not have to determine which of these Uses best describes the proposed Use. The Board must determine whether or not the proposed development is a commercial Use, specifically a Restaurant. The Board finds that the proposed development is not a Restaurant or a commercial Use.
- d) For this reason, the Board finds that the Development Authority failed to follow the directions of Council. Council was very clear that this area, on the main floor, at this location is to be used for commercial frontage as part of a greater plan for business revitalization.
- e) For community, educational and cultural service uses such as the proposed development to be allowed in this area, the Bylaw would have to be amended by City Council.
- f) This Board does not have the jurisdiction to do anything other than to determine whether or not the Development Authority followed the directions of Council and in this case, the Board finds that the Development Authority did not.
- g) The proposed use is not a commercial Use and it does not comply with any of the definitions for the listed Uses in the DC Bylaw. It does not comply with the rationale of the DC Bylaw and does not comply with section 4(d) of the DC Bylaw.

[134] In addition, there is a further reason why the appeal must be allowed. The DC bylaw creates a precondition for the granting of a development permit in section 4(w). Section 4(w) states that “the owner shall submit a Crime Prevention Through Environmental Design (CPTED) Assessment that shall be reviewed and accepted by the Development Officer prior to the issuance of a Development Permit to ensure that development on the Site provides a safe urban environment in accordance with the guidelines and principles established in the Design Guide for a Safer City.”

- [135] The Development Authority advised that the Applicant did not provide a CPTED and the Development Authority did not review or accept the CPTED assessment. As a CPTED assessment must be submitted, reviewed and accepted “prior to the issuance of a development permit”, it is a “condition precedent to obtaining a valid development permit”, as per the Court of Appeal in *Thomas v Edmonton (City)*, 2016 ABCA 57 (paragraph 65).
- [136] This is not something that can be cured by the Board, even if this was an appeal from a standard Zone. A development permit cannot be issued by the Development Authority until that assessment is complete. This defect is compounded in a DC provision because it is a clear failure of the Development Authority to follow an explicit, mandatory direction from City Council.
- [137] For both of these reasons, the appeal is allowed, the decision of the Development Authority is revoked and the proposed development is refused.

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

Board members in attendance: Ms. K. Cherniawsky, Mr. L. Pratt, Ms. E. Solez, Mr. A. Peterson

**Important Information for the Applicant/Appellant**

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

*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.*