

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Wednesday, 9:00 A.M.
July 19, 2017**

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

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

I 9:00 A.M. SDAB-D-17-132

To operate a Major Home Based Business
(Health Enhancement Centre - WARE
MASSAGE HEALTH CENTRE), expires May
31, 2022.

2221 - Ware Court NW
Project No.: 251733131-001

II 10:30 A.M. SDAB-D-17-506

WITHDRAWN

To construct a three-Storey Commercial
Building (main floor and second floor: Personal
Service Shop, third floor: Professional,
Financial and Office Support Service).

9851 – 70 Avenue NW
Project No.: 229287073-002

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

ITEM I: 9:00 A.M.

FILE: SDAB-D-17-132

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

APPELLANT:

APPLICATION NO.: 251733131-001

APPLICATION TO: Operate a Major Home Based Business (Health Enhancement Centre - WARE MASSAGE HEALTH CENTRE), expires May 31, 2022.

DECISION OF THE DEVELOPMENT AUTHORITY: Approved with conditions

DECISION DATE: May 31, 2017

NOTIFICATION PERIOD: June 6, 2017 through June 20, 2017

DATE OF APPEAL: June 19, 2017

RESPONDENT:

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 2221 - Ware Court NW

LEGAL DESCRIPTION: Plan 1323952 Blk 12 Lot 10

ZONE: (RSL) Residential Small Lot Zone

OVERLAY: N/A

STATUTORY PLAN(S): Windermere Area Structure Plan
Windermere Neighbourhood Structure Plan

Grounds for Appeal

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

I have had conversations with most of the immediate neighbours and all so far are in opposition due to both traffic / safety concerns as well as parking availability... already people park in front of home owners property making it difficult to leave their homes. In addition there is

concerns of property devaluation and security concerns with the new type of non-resident related traffic. The applicant has never approached us about their plans (immediate neighbour) and had they would have discouraged them proceeding based on several of ours and our neighbors concerns. I have consulted several neighbors and they have indicated additional concerns. I have let them know of my decision to appeal the permit and they have agreed to provide letters and signatures to support the denial of the permit.

- 1) NON-COMPLIANCE – Edmonton Zoning Bylaw 12800, in addition Bylaw 14750 December 12,2007 Bylaw 15036, February 2, 2009 http://webdocs.edmonton.ca/InfraPlan/ZoningBylaw/ZoningBylaw/Part1/Special_Land/75_Major_Home_Based_Business.htm
Major Home Based Business shall not be allowed within the same principal Dwelling containing a Secondary Suite or within the same Site containing a Garage Suite or a Garden Suite and an associated principal Dwelling, unless the Home Based Business is a Bed and Breakfast Operation and the Secondary Suite or the Garage Suite or the Garden Suite is an integral part of the Bed and Breakfast Operation.
 - a. My interpretation of the above would be that although there is not a separate suite there are two families residing in the residence during the majority of the year
- 2) TRAFFIC - This business would dramatically change the patterns of our cul-de-sac. It is a residential neighborhood as such we all purchased our property to have the absolute minimum of traffic, both pedestrian and vehicular.
- 3) SAFETY – concerned as we purchased on the cul-de-sac so our kids would only have to worry about local home owners traffic. This would bring a lot of people into the cul-de-sac increasing the chances for an accident.
- 4) RESALE - Either resale value reduced or salability reduced due to the business being in a cul-de-sac. The main reason people purchase in cul-de-sacs is for the extreme privacy that comes with them and lack of anything but local homeowner traffic.
- 5) PARKING - There is already a lack of parking for the home owners on the street and we still have a final lot to develop adding additional traffic. There is not enough parking for residents to add up to two additional 'employee's vehicles plus any number of clients. There are two family vehicles already.
- 6) OPERATIONAL –
 - a. BUSINESS - Hours of operation are a concern,
 - b. CLIENTAL – very broad range of type of cliental that could be entertained as part of this application.

- c. SAFETY – Biohazard concerns as acupuncture as well as any other message related accessories or treatments that may be included in services. How would this be handled & controlled and inspected?
 - d. REFUGE – Additional refuge due to materials used in the business which is not in character of a residential area.
 - e. PARKING
 - i. Clientele
 - ii. Employees
 - iii. Business receiving of goods etc.
- 7) SIZE OF RESIDENCE - The applicant has had in-laws living with them for almost the entire time I have known them (2+ years, parents from both sides of the marriage)... concerns about how many people are there and if there would be enough room to even run such a business. Applicants have had parents help out with other businesses, concerns about working VISA status.
- 8) EYESORE - As it is, she already utilizes her back yard to air dry clothing all over, I would be extremely concerned how the increase of laundry utilized in such a business will impact the enjoyment of our yard.
- 9) SCHOOLS – Elementary school within 500 feet of business

<i>General Matters</i>

Appeal Information:

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

"That this appeal be scheduled on July 19 or 20, 2017."

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

Grounds for Appeal

685(1) If a development authority

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

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

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

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

- (a) in the case of an appeal made by a person referred to in section 685(1), after
 - (i) the date on which the person is notified of the order or decision or the issuance of the development permit, or

...

- (b) in the case of an appeal made by a person referred to in section 685(2), after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

Hearing and Decision

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

...

- (a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;

...

- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
 - (i) the proposed development would not
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

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

General Provisions from the *Edmonton Zoning Bylaw*:

Under section 115.3(6), a **Major Home Based Business** is a **Discretionary Use** in the (RSL) Residential Small Lot Zone.

Under section 7.3(7), **Major Home Based Business** means:

development consisting of the Use of an approved Dwelling or Accessory building by a resident of that Dwelling for one or more businesses that may generate more than one business associated visit per day. The business Use must be secondary to the Residential Use of the building and shall not change the residential character of the Dwelling or Accessory building. The Dwelling may be used as a workplace by a non-resident. This Use includes Bed and Breakfast Operations but does not include General Retail Sales.

Section 115.1 states that the **General Purpose** of the **(RSL) Residential Small Lot Zone** is:

to provide for smaller lot Single Detached Housing with attached Garages in a suburban setting that provides the opportunity for the more efficient utilization of undeveloped suburban areas and includes the opportunity for Secondary Suites.

Development Officer's Determination

Discretionary Use - Major Home Based Business is approved as a Discretionary Use (Section 115.3(6)). [unedited]

Major Home Based Business regulations

Section 75 states a Major Home Based Business shall comply with the following regulations:

1. there shall be no exterior display or advertisement other than an identification plaque or Sign a maximum of 20 cm x 30.5 cm in size located on the Dwelling;
2. there shall be no mechanical or electrical equipment used that creates external noise, or visible and audible interference with home electronics equipment in adjacent Dwellings;
3. the Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located;

4. the number of non-resident employees or business partners working on-site shall not exceed two at any one time;
5. there shall be no outdoor business activity, or outdoor storage of material or equipment associated with the business. Indoor storage related to the business activity shall be allowed in either the Dwelling or Accessory buildings;
6. the Major Home Based Business shall not change the principal character or external appearance of the Dwelling or Accessory buildings;
7. a Bed and Breakfast Operation, operating as a Major Home Based Business shall have a maximum of two Sleeping Units. Cooking facilities shall not be located within the Sleeping Units. In addition to any other parking requirements of this Bylaw, one additional parking space shall be provided for each Sleeping Unit;
8. in addition to the information requirements of subsection 13.1 of this Bylaw, each application for a Development Permit for the Use Major Home Based Business shall include a description of the business to be undertaken at the premises, an indication of the number of business visits per week, provision for parking, and where any materials or equipment associated with the business use are to be stored; and
9. the Major Home Based Business shall not be allowed if, in the opinion of the Development Officer, such Use would be more appropriately located in a Commercial or Industrial Zone having regard for the overall compatibility of the Use with the residential character of the area.
10. a Major Home Based Business shall not be allowed within the same principal Dwelling containing a Secondary Suite or within the same Site containing a Garage Suite or a Garden Suite and an associated principal Dwelling, unless the Home Based Business is a Bed and Breakfast Operation and the Secondary Suite or the Garage Suite or the Garden Suite is an integral part of the Bed and Breakfast Operation.

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing. Bylaw No. 11136 requires that a verbal announcement of the Board's decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.



Project Number: 251733131-001
Application Date: MAY 12, 2017
Printed: June 20, 2017 at 8:22 AM
Page: 1 of 3

Home Occupation

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

Applicant	Property Address(es) and Legal Description(s) 2221 - WARE COURT NW Plan 1323952 Blk 12 Lot 10
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Scope of Permit
To operate a Major Home Based Business (Health Enhancement Centre - WARE MASSAGE HEALTH CENTRE), expires May 31, 2022.

Permit Details # of business related visits/day: 5 Administration Office Only?: N Class of Permit: Class B Do you live at the property?: Y Outdoor storage on site?: N	# of vehicles at one time: 1 Business has Trailers or Equipment?: N Description of Business: Health Enhancement Practitioner, maximum 5 clients per day, by appointment only, no overlapping appointments, 9am to 5 pm weekdays. Expiry Date: 2022-05-31 00:00:00
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I/We certify that the above noted details are correct.
Applicant signature: _____

Development Permit Decision
Approved

The permit holder is advised to read the reverse for important information concerning this decision.



Project Number: **251733131-001**
 Application Date: MAY 12, 2017
 Printed: June 20, 2017 at 8:22 AM
 Page: 2 of 3

Home Occupation

Subject to the Following Conditions

Unless otherwise stated, all references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw #12800, as amended.

1. The business owner must live at the site. The business use must be secondary to the residential use of the building and shall not change the residential character of the Dwelling or Accessory Building (Section 7.3(7)).
2. There shall be no exterior display or advertisement other than an identification plaque or sign a maximum of 20 cm (8") x 30.5 cm (12") in size located on the dwelling (Section 75.1).
3. The Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located (Section 75.3).
4. If non-resident employees or business partners are working on-site, the maximum number shall not exceed the number applied for with this application.
5. If there are visits associated with the business the number shall not exceed the number applied for with this application.
6. Clients visit must be by-appointment only and appointments shall not overlap.
7. There shall be no outdoor business activities, or outdoor storage of material or equipment associated with the business (Section 75.5).
8. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
9. The business use must maintain the privacy and enjoyment of adjacent residences and the characteristic of the neighborhood.
10. All parking for the Dwelling and Home Based Business must be accommodated on site unless a parking variance has been granted for this Major Home Based Business.
11. This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details changes (Section 17.2).
12. This approval is for a 5 year period from the date of this decision. A new Development Permit must be obtained to continue to operate the business from this location. This Development Permit expires on May 31, 2022.

Notes:

1. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the Edmonton Building Permit Bylaw or any caveats, covenants or easements that might be attached to the Site (Section 5.2).
2. This Development Permit is not a Business License.
3. Subject to the right of appeal. The permit is not valid until the required Notification Period expires (date noted below in accordance with Section 21.1 and 17.1).

VariANCES

1. Discretionary Use - Major Home Based Business is approved as a Discretionary Use (Section 115.3(6)).

The permit holder is advised to read the reverse for important information concerning this decision.



Project Number: 251733131-001
Application Date: MAY 12, 2017
Printed: June 20, 2017 at 8:22 AM
Page: 3 of 3

Home Occupation

Rights of Appeal

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

Issue Date: May 31, 2017 Development Authority: LEE, RACHEL

Signature: _____

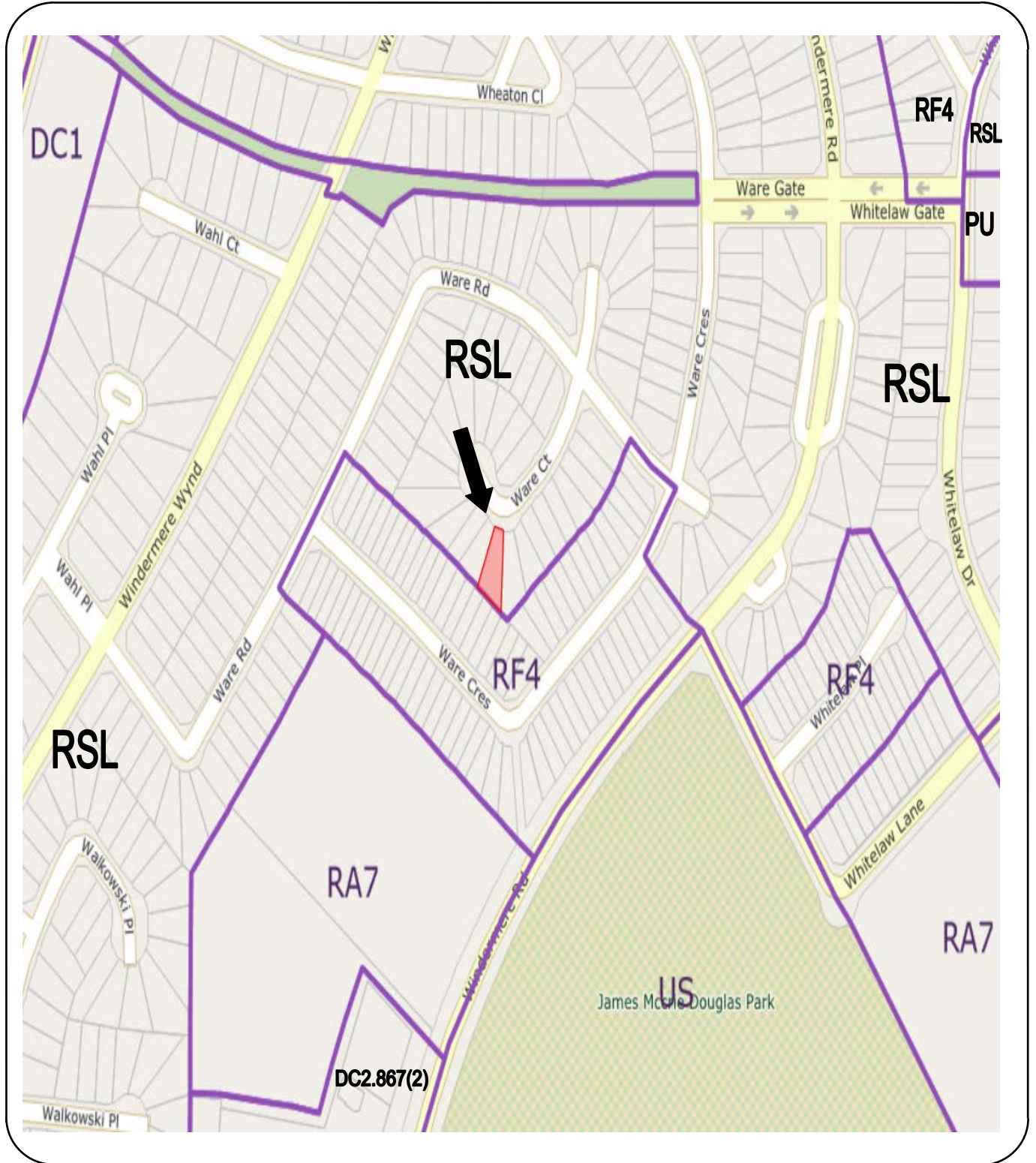
Notice Period Begins: Jun 06, 2017

Ends: Jun 20, 2017

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Dev. Application Fee	\$309.00	\$309.00	04119575	May 12, 2017
Total GST Amount:	\$0.00			
Totals for Permit:	\$309.00	\$309.00		

The permit holder is advised to read the reverse for important information concerning this decision.



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-17-132



ITEM II: 10:30 A.M.

FILE: SDAB-D-17-506

APPELLANT:

APPLICATION NO.: 229287073-002

APPLICATION TO: Construct a three-Storey Commercial Building (main floor and second floor: Personal Service Shop, third floor: Professional, Financial and Office Support Service).

DECISION OF THE DEVELOPMENT AUTHORITY:

DECISION DATE: N/A

DATE OF APPEAL: June 22, 2017

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 9851 – 70 Avenue NW

LEGAL DESCRIPTION: Plan 2306HW Blk 18 Lot 4

ZONE: (CNC) Neighbourhood Convenience Commercial Zone

OVERLAY: N/A

STATUTORY PLAN: N/A

WITHDRAWN

Grounds for Appeal

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

We are solicitors for FYZ River West Developments Ltd., the Applicant in the above noted matter. Our client’s Development Permit Application was accepted as complete prior to April 21, 2017, and no decision has been made thereon by the Development Authority. On behalf of our client, and pursuant to section 684 of the *Municipal Government Act*, we accept the lapse of time as a deemed refusal of our client’s application. We hereby appeal from that deemed refusal on the following grounds:

1. The proposed development constitutes a Permitted Use in the CNC Zone.

2. The proposed development will not negatively impact on the use, enjoyment, or value of neighbouring properties nor will the same, negatively impact on the amenities of the neighbourhood.
 3. Such further and other reasons as may be presented at the hearing of the within appeal.
-

<i>General Matters</i>

Appeal Information:

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

Permit deemed refused

684 An application for a development permit is, at the option of the applicant, deemed to be refused if the decision of a development authority is not made within 40 days after receipt of the application unless the applicant has entered into an agreement with the development authority to extend the 40-day period.

The application for a development permit was accepted September 30, 2016.

Grounds for Appeal

685(1) If a development authority

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

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

Appeals

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- (a) in the case of an appeal made by a person referred to in section 685(1), after
 - (i) the date on which the person is notified of the order or decision or the issuance of the development permit, or

...

Hearing and Decision

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

...

- (a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;

...

- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;

- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

- (i) the proposed development would not

- (A) unduly interfere with the amenities of the neighbourhood, or

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

and

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

General Provisions from the *Edmonton Zoning Bylaw*:

Under section 310.2(3), **Personal Service Shop** is a **Permitted Use** in the (CNC) Neighbourhood Convenience Commercial Zone.

Under section 310.2(4), **Professional, Financial and Office Support Services** is a **Permitted Use** in the (CNC) Neighbourhood Convenience Commercial Zone.

Under section 7.4(41), **Personal Service Shop** means:

development used for the provision of personal services to an individual which are related to the care and appearance of the body, or the cleaning and repair of personal effects. This Use includes barbershops, hairdressers, beauty salons, tailors, dressmakers, shoe repair shops, and dry cleaning establishments and laundromats. This Use does not include Health Services.

Under section 7.4(42), **Professional, Financial and Office Support Services** means:

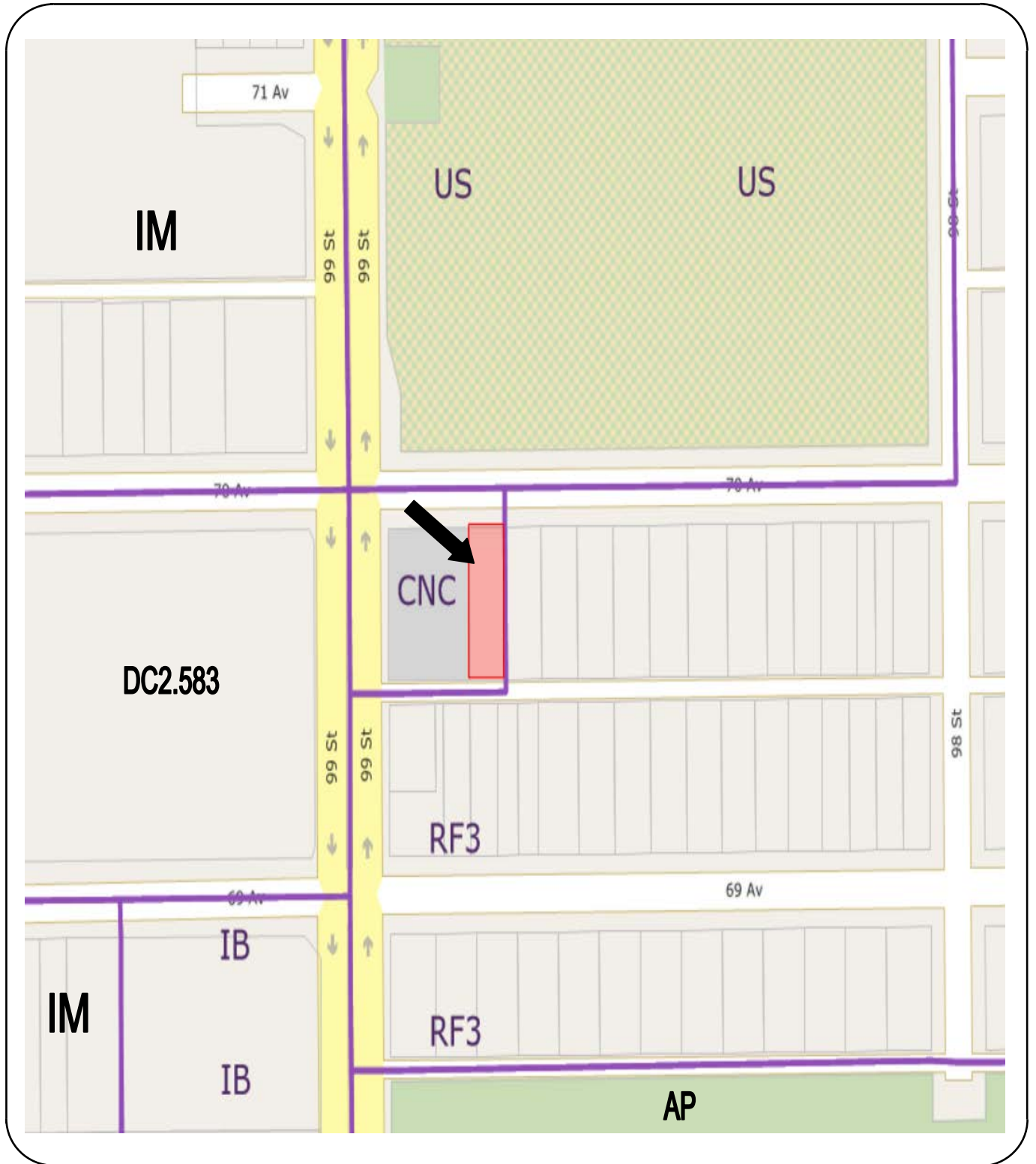
development primarily used for the provision of professional, management, administrative, consulting, and financial services, but does not include Health Services or Government Services. Typical Uses include: the offices of lawyers, accountants, engineers, and architects; offices for real estate and insurance firms; clerical, secretarial, employment, telephone answering, and similar office support services; and banks, credit unions, loan offices and similar financial Uses.

Section 310.1 states that the **General Purpose** of the (CNC) **Neighbourhood Convenience Commercial Zone** is:

to provide for convenience commercial and personal service uses, which are intended to serve the day-to-day needs of residents within residential neighbourhoods.

Notice to Applicant/Appellant

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SURROUNDING LAND USE DISTRICTS

Site Location 

File: SDAB-D-17-506

