



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: December 7, 2017  
Project Number: 156166562-018  
File Number: SDAB-D-17-228

**Notice of Decision**

- [1] On November 22, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 20, 2017**. The appeal concerned the decision of the Development Authority, issued on October 19, 2017, to refuse the following development:

**Change the Use from General Retail to Minor Alcohol Sales (Unit-106, 107) and to construct interior alterations.**

- [2] The subject property is on Plan 4976KS Blk 40 Lots 3, OT, located at 6104 - 104 Street NW, within the (CO) Commercial Office Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
  - The Development Officer’s written submission;
  - The Appellant’s written submission; and
  - An e-mail from an adjacent business in opposition to the proposed development.

**Preliminary Matters**

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer 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.

**Summary of Hearing***i) Position of the Appellant, Mr. J Murphy, Ogilvie LLP:*

- [7] Mr. Murphy indicated that the e-mail received from a business in opposition to the proposed development was written by an employee and not the property owner and the e-mail does not address any specific planning reasons regarding the required variance.
- [8] The Board has the authority to grant the required variance if the proposed development meets the test of the Board pursuant to section 687(3) of the *Municipal Government Act*.
- [9] A development permit exists for an Alcohol Sales Use located within the minimum required 500 metre radial separation distance but it is not operating. In his opinion, this business is “dead” and never did operate as a full service liquor store. Even though it is not an active use, the Development Officer has taken the position that because a development permit exists for the use, it does not matter if the use is active or not.
- [10] The subject site is comprised of two lots, one lot zoned (CO) Commercial Office that fronts onto Calgary Trail and one lot to the west that is zoned (CB2) General Business. Two buildings have been constructed on the site. Each building contains commercial retail on the main floor and office space above. The proposed development will be located in the building that abuts onto Calgary Trail.
- [11] The subject site with the two lots is 2.04 hectares in size. When calculating the size of the site, the Development Officer did not include the lot immediately to the west. As noted by the Development Officer, the proposed Minor Alcohol Sales is located on the immediate periphery of the section 85 Non-Exemption Area. The lands to the immediate east are outside the Non-Exemption Area.
- [12] The Court of Appeal decision, *Newcastle Centre GP Ltd. v Edmonton (City)*, 2014 ABCA 295 was referenced. In this decision the Board found that even though it had the power to grant variances, the *Edmonton Zoning Bylaw* created a presumption of harm to the public and as such the Board could not intervene unless that presumption was rebutted by the Applicant. The Court of Appeal determined that this was an error. The legal test for the Board is contained in section 687(3)(d) of the *Municipal Government Act* which is to determine whether or not the proposed development will unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [13] In his opinion, the proposed development will not have any impact on the use, enjoyment or value of neighbouring properties and it will not affect the amenities of the neighbourhood, in fact, it will add an amenity to the neighbourhood.

- [14] Photographs of the subject site were referenced to illustrate the location of the site and the surrounding area. There is a service station located immediately north of the subject site on Calgary Trail. A food services supply business is located north of the service station. An employee of this business submitted the e-mail in opposition to the proposed development.
- [15] The non-operational Alcohol Sales Use is located approximately 113 metres from the subject site across Calgary Trail.
- [16] A photograph was referenced to show the west side of the building that will house the proposed alcohol sales and the second building on the site that backs onto the parking lot. The primary entrance to the proposed Minor Alcohol Sales will be from the rear of the building so that customers can use the parking lot at the rear.
- [17] A photograph of the non-operational alcohol sales was referenced to illustrate signage for the originally approved cold beer store that was going to be used as an off-sale outlet for the Ranch Roadhouse. New liquor laws now allow the sale of packaged, un-opened beer to be sold from a bar. It is his assumption that the original developers determined that the cold beer store was not a worthwhile venture and did not proceed.
- [18] An updated October 2017 Google Earth map was referenced to illustrate the completed buildings on the site and the configuration of the site. Three separate accesses will be provided to the site and he reiterated that the primary access for the proposed Minor Alcohol Sales will be from the rear of the building in order to allow customers to use the parking lot.
- [19] Billy Bob's Liquor Store was searched on the internet. The phone numbers provided were no longer in service and the working hours indicated that it was closed from Monday to Sunday.
- [20] Information obtained from a search of the Alberta Gaming and Liquor Commission website indicated that the seven closest liquor stores are located more than 500 metres from the subject site. The Alberta Gaming and Liquor Commission website does not list Billy Bob's Liquor Store because it does not have a licence. Therefore, the existing use is gone but the development permit still exists.
- [21] Residents have difficulty accessing the two closest liquor stores in the area adjacent to the subject site because Gateway Boulevard and Calgary Trail are one-way roadways. The proposed development will provide an amenity that is expected in most neighbourhoods and will not negatively impact the use, enjoyment or value of neighbouring properties because the site is large and will accommodate customer parking at the rear of the building.
- [22] The proposed use is a Permitted Use in this Zone that requires one variance and there is no land use planning reason that would suggest that the variance should not be granted.

[23] Mr. Murphy provided the following information in response to questions from the Board:

- a) The parking requirements have been met and the Applicant will comply with all of the CPTED regulations. The initial review of the proposed number of parking spaces and a possible deficiency was done prior to the identification of complementary uses on the site.
- b) In order to be in the exemption area, both the proposed development and Billy Bob's Liquor Store would have to be outside of the identified boundary. If either one is located inside the boundary, a variance would not be granted.

*ii) Position of the Development Authority, Mr. N. Shah*

[24] Mr. Shah provided a written submission and did not attend the hearing.

## **Decision**

[25] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

1. No parking, loading, storage, trash collection, outdoor service or display area shall be permitted within a Setback (Reference Section 360.4(4));
2. Immediately upon demolition/ alterations of the building, the site shall be cleared of all debris;
3. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51);
4. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. (Reference Section 54.1(1)(c));
5. Parking spaces for the disabled shall be provided in accordance with the Alberta Building Code in effect at the time of the Development Permit application, for which no discretion exists and be identified as parking spaces for the disabled through the use of appropriate signage, in accordance with Provincial standards. (Reference Section 54.1(3));

6. The off-street parking, loading and unloading (including aisles or driveways) shall be hard surfaced, curbed, drained and maintained in accordance to Section 54.6;
7. All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer in accordance with Sections 55(4) & (5).

#### NOTES

- 1) This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
- 2) Signs require separate Development Applications.

[26] In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. Section 85(1) is waived to allow the proposed Minor Alcohol Sales to be less than 500 metres from any other Major Alcohol Sales or Minor Alcohol Sales.

#### **Reasons for Decision**

[27] Minor Alcohol Sales is a Permitted Use in the (CO) Commercial Office Zone.

[28] The proposed development complies with all of the development regulations pursuant to section 85 of the *Edmonton Zoning Bylaw* with the exception of the minimum required 500-metre separation distance from any Major or Minor Alcohol Sales Use.

[29] The Board grants the required variance for the following reasons:

- a) The proposed Minor Alcohol Sales Use and the existing Minor Alcohol Sales Use are both located in commercial, non-residential Zones. Therefore, the proximity of the two businesses will not have a negative impact on any nearby residences.
- b) The proposed development will be located on the ground floor of a new commercial office complex located on Calgary Trail, a major arterial highway and will not cause any significant increase in traffic.
- c) The proposed development will be separated from a defunct cold beer store by at least four lanes of arterial level traffic. This in and of itself creates a significant buffer that will mitigate the variance granted in the minimum required separation distance.

- d) The existing cold beer store located 89 metres from the proposed development does not front onto Calgary Trail and therefore the proposed Minor Alcohol Sales will not increase the visual proliferation of liquor stores.
- e) Parking will be provided in a large parking lot located west of the subject Site behind the building that will house the proposed Minor Alcohol Sales Use which will further mitigate the variance required in the separation distance.
- f) The subject Site is located on the periphery of the section 85 Non-Exemption Area.
- g) No one attended the hearing in opposition to the proposed development and the Board notes that the only letter of opposition received provided an exhortation about the necessity to follow the rules set out in the *Edmonton Zoning Bylaw* but did not provide any planning reasons that would cause the Board to consider not granting the required variance.
- h) The Court of Appeal decision set out in *Newcastle Centre GP Ltd. v Edmonton (City)*, 2014 ABCA 295, directs the Board to make a decision on a requested variance based on planning reasons. Based on those reasons, the Board must determine whether or not the proposed development will unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, pursuant to section 687(3)(e) of the *Municipal Government Act*.
- i) For all of the above reasons, the Board finds that the proposed development, with the required variance, will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

Board members in attendance: Mr. V. Laberge, Mr. L. Pratt, Mr. A. Peterson, Ms. E. Solez

**Important Information for the Applicant/Appellant**

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

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



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**SDAB-D-189**

**Application 246478239-001**

An appeal to Construct two Commercial Use buildings (Building 1: Health Services in CRU's 101, 102, 201 - 203; General Retail in CRU's 103 - 108; P.F.O. in CRU's 111 - 115, 204, 205; Restaurant (119 sq.m. of Public Space) in CRU 109; Specialty Food Service (119 sq.m. of Public Space) in CRU 110; Building 2: P.F.O. in CRU 116-0, General Retail in CRU 117-0, Restaurant (88 sq.m. of Public Space) in CRU 118-0) with an underground parkade and demolish an existing building at 5120 - 122 Street NW was **WITHDRAWN**





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Date: December 7, 2017  
Project Number: 259441393-001  
File Number: SDAB-D-17-198

**Notice of Decision**

- [1] On October 25, 2017 and November 22, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 3, 2017**. The appeal concerned the decision of the Development Authority, issued on September 11, 2017, to approve the following development:

**Change the use of a Professional, Financial and Office Support Service and Automotive and Minor Recreation Vehicle Sales/Rentals building to a Religious Assembly (Minor) and to construct exterior alterations (new vestibule).**

- [2] The subject property is on Plan 0222822 Blk J Lot 3, located at 12320 - Mount Lawn Road NW, within the (IB) Industrial Business Zone. The Yellowhead Corridor Area Structure Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
  - The Development Officer’s written submission; and
  - The Appellant’s submissions.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Photographs and a map from Legal Counsel for the Respondent; and
  - Exhibit B – Highlighted portions of the Public Health Act, *Food Regulation*, submitted by Legal Counsel for the Respondent.

**Preliminary Matters (October 25, 2017)**

- [5] The Board made and passed the following motion:

That SDAB-D-17-198 be tabled to November 22, 2017.

[6] **Reasons for the Decision**

1. Mr. A. Slawsky confirmed he was seeking a postponement as he had just recently hired legal counsel. He provided a letter from Mr. T. Shandro of Wilson Laycraft as confirmation.
2. Mr. M. Gunther and Mr. I. Welch of the City took no position regarding the postponement request.
3. Mr. J. Murphy, legal counsel for the Respondent, did not oppose the postponement.

**Preliminary Matters (November 22, 2017)**

- [7] 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.
- [8] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [9] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.
- [10] The Chair noted that the Appellant, Mr. A. Slawsky had provided detailed submissions several hours prior to the hearing. The Chair asked Legal Counsel for the Respondent, Mr. J. Murphy and Legal Counsel for the City, Mr. M. Gunther, if they had any concerns regarding the timing of the submission. Mr. Murphy expressed concern but did not foresee any difficulties. However, he reserved his right to request a postponement during the hearing if it became necessary. Mr. Gunther indicated that he had not had an opportunity to review the Appellant's submissions but did not feel that an adjournment was required.
- [11] Mr. T. Shandro, Legal Counsel for the Appellant, indicated that if either party felt prejudiced he would support an adjournment request. However, if the Board decides not to consider a submitted document, it was his opinion that it would be more appropriate to postpone the hearing to allow for a review.
- [12] Mr. Murphy expressed concern about postponing the hearing again because it would seize the Board panel and further suspend the approved development permit.
- [13] The Chair indicated that these matters would be dealt with during the hearing if there is an issue.

## Summary of Hearing

*i) Position of the Appellant, Mr. A. Slawsky, Baron Real Estate Investments Ltd.:*

- [14] Mr. Slawsky was represented by Mr. T. Shandro, Legal Counsel. Mr. Shandro introduced the parties who would be providing evidence on behalf of the Appellant.
- Mr. D. Starchuk, will provide context in terms of the contamination of the subject site based on personal experience.
  - Mr. M. McCormick is an environmental engineer who will address the contamination concerns.
  - Mr. S. Enders is a real estate agent who will address the material effect of the proposed development on the Appellant's site.
  - Mr. M. Hewitt may provide further context regarding the submissions of the Development Authority and the Respondent.
- [15] Mr. Shandro indicated that the applicable legislation and policies includes the *Edmonton Zoning Bylaw* (the "Bylaw"), the Yellowhead Corridor Area Structure Plan (the "ASP"), the Municipal Development Plan, "*The Way We Grow*" (the "MDP"), the *Municipal Government Act* (the "Act"), the *Subdivision and Development Regulation*, Alta Reg 43/2002 (the "SD Regulation") and the City of Edmonton Environmental Site Assessment Guidebook (the "Guidebook").
- [16] Mr. Slawsky filed the appeal because the proposed development contravenes the legislation and because the on-site parking is insufficient. Therefore, the proposed development will unduly interfere with the amenities of the neighbourhood and materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.
- [17] Mr. Slawsky's site is zoned (IH) Heavy Industrial ("IH Zone"). The general purpose of this zone is to provide for industrial Uses that, due to their appearance, noise, odour, risk of toxic emissions, or fire and explosion hazards, are incompatible with residential, commercial and other land uses.
- [18] Some uses such as a lawyer's office or engineer's office located on the subject site would support and service the surrounding industrial Uses, but the proposed development will not.
- [19] The proposed development contravenes the purpose and objectives of the ASP, specifically policy 3.1.2 which states that the purpose of the plan is to preserve and rejuvenate the industrial character of the Yellowhead Trail Corridor. The objective in

policy 3.2.2(iv) is to limit the intrusion of commercial uses in the industrial areas of the Corridor. Therefore, Religious Assemblies should not be scattered throughout the Zone.

[20] Section 13(3) of the SD Regulation states:

(3) Subject to subsection (5), a development authority shall not issue a development permit for a school, hospital, food establishment or residence, nor may a school, hospital, food establishment or residence be constructed if the building site:

- (a) is within 450 metres of the working area of an operating landfill,
- (b) is within 300 metres of the disposal area of an operating or non-operating landfill,
- (c) is within 450 metres of the working area or disposal area of a non-operating hazardous waste management facility,
- (c.1) is within 450 metres of the working area or disposal area of an operating hazardous waste management facility, or
- (d) is within 300 metres of the disposal area of an operating storage site.

[21] Section 13(1)(a) of the SD Regulation defines a “disposal area” as those areas of a parcel of land that (i) have been used and will be used again for the placing of waste material, or where waste processing or (ii) a burning activity is conducted in conjunction with a hazardous waste management facility or landfill.

[22] Section 1(1)(c) of the SD Regulation states that “food establishment” means food establishment as defined in the *Food Regulation*.

The *Food Regulation*, Alta Reg 31/2006 defines a food establishment as:

a place where food is handled. (section 1(1)(r))

Handle is defined as:

in relation to food, the supply, sale, offering for sale, processing, preparation, packaging, providing, display, service, dispensing, storage or transportation of any food that is intended for public consumption. (section 1(1)(v))

Food is defined as:

Any substance, including water and ice, intended for use in whole or in part for human consumption, but does not include a drug, medication, or health related product regulated under the *Pharmaceutical Profession Act* or the *Food and Drugs Act* (Canada). (section 1(1)(p))

- [23] Both the subject site and Mr. Slawsky's site are non-operating landfills or non-operating hazardous waste management facilities.
- [24] It was noted that section 2(2) of the *Food Regulation* states that this regulation does not apply to food handling for the purpose of operating (a) a bake sale, (b) a restricted function, a (c) potluck or (d) a private dwelling.
- [25] Section 1(1)(mm) of the *Food Regulation* defines a Restricted Function as a function that is:
- (i) run by a community organization or an individual exclusively for the benefit of the members of an organization or the individual's family, and
  - (ii) not open to the general public,
- where attendance is by personal invitation and food is provided for attendees by volunteer caterers, including, without limitation, meetings, retreats and family reunions.
- [26] Section 1(1)(hh) of the *Food Regulation* defines Potluck as a gathering of individuals where some or all of the attendees bring food to be shared with the other attendees at no cost to the attendees and includes, without limitation, company or church picnics and neighbourhood block parties. Policy 9.5.1.2 of the MDP requires the investigation of potentially contaminated sites for selected planning applications and requires remediation to ensure site suitability, which has not been complied with for the subject site and the site is not suitable for the proposed use.
- [27] The Guidebook is not a regulatory or a statutory plan but rather a policy developed by the City. The site requires a Phase 1 Environmental Site Assessment be completed if the Development Officer has reason to believe that a site may be contaminated and/or the *Bylaw* establishes these requirements through a DC1 or DC2 direct control area. In reviewing this development permit application, the Development Officer did not believe this was the case for this site.
- [28] The Development Officer should have considered that the Religious Assembly may serve food from this site before or after services, and a Children's Church will offer Sunday services.
- [29] The proposed Religious Assembly may create parking problems in this industrial zone. The abutting roadways are very narrow and it could create a safety issue. There is truck traffic on these roadways 24 hours a day, 7 days per week. The Applicant did not consider the impact of the surrounding land uses.

- [30] Mr. Shandro reserved comments on the *Bylaw* regulations.
- [31] Mr. McCormick advised the Board that he has worked in this field for over 25 years and has experience working in Edmonton with contaminated sites and landfills. He has been retained by the City of Edmonton and has conducted numerous assessments on the subject site and many of the surrounding sites. Several environmental assessments were conducted on the subject site.
- [32] His two major concerns are that there is an old landfill located immediately north of the subject site. A parcel of land abutting the northwest end of the subject site was subdivided 10 to 12 years ago. The subdivision removed a sliver of land at the north end because it contained landfill debris. The landfill was operated by the City of Edmonton in the 1950s and was never properly capped or closed.
- [33] A Religious Assembly is a sensitive land use because it allows the inclusion of children, groups and long term occupancy. It provides a public gathering place and food will be available. A 300 metre setback is required from a closed landfill. The subject site is 3.0 metres from the landfill and does not comply with the setback requirement. Gas tanks were removed from under the front portion of the building on the subject site and he is unsure if the Applicant is aware. The fact that the landfill has not been removed causes a clear and present danger for any sensitive land use.
- [34] His second concern is that the subject site is located immediately adjacent to sites that are zoned IH. This zone allows uses like chemical handling and storage, and storage and transportation of dangerous goods. These uses are allowed within Alberta Environment approval. A hazardous waste transfer facility was located within a few metres of the subject site. A buffer zone needs to be provided between properties that are zoned IH and a sensitive land use to ensure that there is no direct impact. Dangerous goods are transported on the only road into these sites that creates a concern for the users of the subject site.
- [35] Mr. McCormick provided the following information in response to questions from the Board:
- a) A sensitive land use is defined under the Alberta Environmental Protection and Enhancement Act.
  - b) Mr. Slawsky could be held accountable if there is a leak or an incident on his site that impacts other properties in this area.
  - c) The objective of section 3.2.2(iv) of the ASP is to limit the intrusion of commercial uses in the industrial areas of the Corridor. Even though the proposed Religious Assembly is not listed as a commercial or industrial use, attempts should be made to limit these types of non-industrial uses.

- d) Based on a review of the application and the information provided by the Development Authority, this site has not been remediated to a level suitable for the intended use prior to the development and does not comply with policy 9.5.1.1 of the MDP.
  - e) In his opinion an investigation of the subject site and remediation was not completed to ensure site suitability to comply with policy 9.5.1.2 of the MDP.
  - f) He concluded that remediation was not complete based on information obtained from an environmental engineer who advised that the subject site was not suitable for the proposed use.
  - g) He supports policy 9.5.1.3 of the MDP to promote and facilitate brownfield redevelopment to add vitality to established communities but it was his opinion that policy 9.5.1 has to be read and considered together. The subject site is not a brownfield site because it has an active (IB) Industrial Business Zoning and in his opinion, adding vitality to an established Industrial community by putting people at risk is not acceptable.
  - h) The City of Edmonton Traffic Bylaw 5990 (“Traffic Bylaw”) requires that all dangerous goods storage locations be offset from sensitive land uses.
  - i) The Development Officer should have requested an Environmental Site Assessment as part of the review.
  - j) A designated kitchen could not be identified on the proposed floor plan but in his opinion, the inclusion of a nursery and a celebration space is indicative of food handling.
- [36] Mr. Slawsky expressed concern as to whether or not the previous land owner undertook due diligence on the subject site. Many of the adjacent sites are contaminated and there is evidence of contamination on the subject site as is reported in the many Environmental Site Assessment reports contained in his submission, some of which were prepared by Mr. McCormick.
- [37] Mr. Starchuk managed a hazardous waste management company that previously operated from Mr. Slawsky’s property. He has over 20 years of experience working in the industry. He addressed safety concerns resulting from the odours, fumes and dangerous goods handled on the site. Traffic is often bottle-necked on the one roadway in and out of this area because of trucks moving hazardous goods to and from the site.
- [38] Neighbouring property owners were consulted about the Emergency Response Plan in the event of an incident that required evacuation of the neighbourhood. In his opinion the people attending the proposed Religious Assembly would be at risk.

- [39] Mr. Starchuk provided the following information in response to questions from the Board:
- a) There is only one point of access/egress from Mr. Slawsky's site.
  - b) The Professional/Financial/Office Support Service that previously operated from the subject site never had to be evacuated due to an incident during his time operating the business. He has not operated his business from Mr. Slawsky's property since 2014.
  - c) There is currently a City of Edmonton storage yard and an EPCOR storage facility on Mr. Slawsky's site.
  - d) If this development permit application is approved it will sterilize Mr. Slawsky's site and make it almost impossible to find a tenant.
- [40] Mr. Slawsky advised that he is currently remediating the contamination that was caused by the operation of this business for a portion of his property.
- [41] Mr. Hewitt, an employee of Baron Real Estate Investments, explained the preparation of the spreadsheet comparing the subject site to Religious Assemblies that are located in other Industrial Zones in the City. He visited each site to do a site assessment and take photographs. Detailed information is contained in the written submission. The proposed Religious Assembly is located next to Wayne Gretzky Drive which has a higher traffic volume than any of the roadways located close to any of the other Religious Assemblies located in an Industrial zone. Most of the other Religious Assemblies are surrounded by warehousing, or office buildings, and not heavy industrial sites.
- [42] Mr. Enders, a real estate agent who specializes in industrial real estate advised that clients looking at industrial land consider the surrounding land uses and access points. IH Zone properties are usually not on the market very long. In his opinion, the proposed Religious Assembly will result in less interest in the Appellant's site, and a Religious Assembly always creates parking and traffic issues.
- [43] In his view, the approval of the Religious Assembly will decrease the value of Mr. Slawsky's property by 20 to 30 percent.
- [44] Mr. Enders provided the following information in response to questions from the Board:
- a) Other General Industrial Uses may be less impacted by a Religious Assembly.



- b) In his opinion, a Religious Assembly will have more of an impact than the Professional Office building that previously operated from the subject site because of the increased number of people who will visit the facility.
- c) Access to Mr. Slawsky's property from Wayne Gretzky Drive and Yellowhead Trail make it a highly sought after property.

- [45] Mr. Slawsky indicated that parking will be a problem because the proposed Religious Assembly is located on an island. There is no on-street parking available, no sidewalk, no access to public transit and the street is too narrow to accommodate the heavy truck traffic. Religious Assemblies have been approved in other Industrial zones if shared parking is available. He referenced a diagram he drew of the subject site to support his contention that the loading zones, aisle widths and some of the on-site parking spaces do not comply with the location and size requirements of the *Bylaw*. It is his estimate that there are 15 illegal parking spaces on the site.
- [46] The previous tenant of the subject building wanted to lease parking spaces from him because parking on the site was inadequate.
- [47] Current tenants have advised him that they will leave if the development is approved.
- [48] In his opinion, the Development Officer should have based his decision on a site assessment, not the previous use of the site.
- [49] Mr. Slawsky referenced numerous documents, including The Way We Move, the Transportation Master Plan, the Capital Region Growth Plan and the MDP to support his opinion that it is the intent of the City to protect industrial sites similar to his because of the optimal location in the East Yellowhead Corridor. Complementary uses should be clustered together in industrial areas. City plans encourage the maximization of industrial sites that take advantage of the proximity to logistical adjacent roadways. Wayne Gretzky Drive is identified as a key goods and services movement corridor.
- [50] Mr. Slawsky referenced drawings and aerial photographs to review the history of the subject site and the location of an old landfill. The City did not disclose the location of the old landfill and the proposed development must be setback 300 metres. After the City received an Environmental Site Assessment in 2002, the subject site was subdivided to remove the portion that contained the landfill.
- [51] His review of Religious Assemblies located in industrial areas revealed that most of them are located in converted office buildings, sidewalk access is provided, and they are not located on busy arterial roadways adjacent to IH Zones where dangerous goods are handled.
- [52] Currently, EPCOR leases space on his site to train their technicians and he is concerned they will not renew their lease if the Religious Assembly is approved. A garbage hauling

company rents the yard and there are some garbage bins on site. The City of Edmonton leases storage space for high value materials that cannot be left outside. Tri-Arrow Industrial was evicted in 2015 because they were contaminating the site and caused damage to the building. He advised that he would not consider leasing this space to this type of business in the future because of the associated risks. This portion of the site is currently being remediated. This building has never been vacant since he purchased the site.

[53] The City of Edmonton Northeast Transit Garage that is being constructed on an adjacent parcel of land will increase the value and utility of neighbouring properties.

[54] Mr. Slawsky reiterated that the proposed development will negatively impact the value of his property.

*ii) Position of the Development Authority, Mr. I. Welch and Mr. M. Gunther, Legal Counsel for the City:*

[55] Mr. Gunther indicated that the City as a whole does not take a position on the appeal between the Appellant and the Respondent, but is in attendance to clarify some legal issues.

[56] Although the IH Zone is the most intensive Industrial Zone in the *Bylaw*, development still has to comply with any other regulatory requirements.

[57] The subject site was rezoned in 2002 and a Phase 2 Environmental Site Assessment occurred on April 5, 2002.

[58] A Land Development Application (“LDA”) is limited to subdivisions and rezoning only. An LDA is not used for development permit applications.

[59] With regard to development permit applications for Discretionary Uses, the focus of the Development Authority ought to be on other existing Uses, not the other way around. If there is an IH Heavy Industrial Use that could potentially affect adjacent properties and the Applicant is in a position to accept the downsides of those impacts and still seek a development permit approval, the Board should be careful not to put the emphasis on someone else’s property.

[60] The proposed development does not have a kitchen or food preparation area. When the Development Officer made his decision he did not think the development should be deemed a food preparation use.

- [61] Mr. Welch indicated that section 14 of the *Bylaw* provides authority to the Development Officer to ask for an Environmental Site Assessment under certain conditions. However, this is usually done at the rezoning stage.
- [62] There was a Phase 2 Environmental Site Assessment completed for the subject Site in 2002 during the rezoning process.
- [63] Environmental Site Assessments on development permits are included if there are environmental warnings and they are put on notices during the building permit stage. However, because the subject site already went through an Environmental Site Assessment, there was no need to include it on this Development Permit.
- [64] Mr. Welch provided the following information in response to questions from the Board:
- a) The last permit issued on the Appellant's property was a construction permit in 2003 for a General Industrial Use.
  - b) The parking layout on the subject site was created with the approval for the original building and it meets the current *Bylaw*. If the parking layout had to change there is enough land to revise the plan.
  - c) There is an excess of the minimum required parking spaces and the dimensions of the parking spaces are all within the minimum requirements. The site required 25 parking spaces and the Applicant is proposing 50 parking spaces.

*iii) Position of the Respondent, Mr. J. Murphy, Legal Counsel for Maltby Prins Architects:*

- [65] Mr. Murphy submitted photographs and a map, marked Exhibit A.
- [66] IH Zones are regulated as are any other zones in Edmonton and truck traffic associated with IH Uses must be accommodated on its site. He acknowledged that industrial uses in the IH Zone can affect adjacent properties. Rules are in place to ensure that sites are run properly and these rules make uses compatible.
- [67] The Sands Hotel is a food establishment that is located approximately 200 metres away from the subject site.
- [68] The ASP does not exclude the proposed Religious Assembly at the subject site. Policy 5.3.7.2 addresses the specific plan for this area. The plan for the proposed land uses is to create a "Prestige" Business Industrial area, Medium Industrial uses, to retain the existing Multiple Family Residential development in its current location, and to restrict commercial opportunities in this area to locations of high accessibility and visibility as shown in Figure C-6 and that land use opportunities and development regulations be implemented through the DC2 Provision. Commercial development opportunities in any

other portion of this Sub-area must also be provided through the use of the DC2 Provision.

- [69] Figure C-6, the Proposed Land Uses Schedule, does not include the IH Zone. The map contained in his submission illustrates that the sites located in this area are aligning with the vision of the ASP with the exception of the sites zoned IH. The long term plan is to upgrade this section of the Yellowhead Trail Corridor by excluding heavy industrial uses.
- [70] In order to determine whether or not the proposed Religious Assembly is compatible with land uses in this area, it is necessary to look at what currently exists and the long term plan of the ASP, which is to phase out the IH Zone.
- [71] The current uses on the Appellant's site are all storage type uses; EPCOR and the City of Edmonton store equipment and materials on the site and there is a garbage hauling business operating from the site. These are all benign uses for the IH Zone. Dangerous goods are no longer transported or stored on this site and it is no longer being used as a waste transfer station. The garbage waste that comes to the site is incidental.
- [72] In his opinion, the Appellant will not lease the vacant bay to a user that could potentially drive away EPCOR or the City of Edmonton based on the evidence of the Appellant that he does not want to lose EPCOR as a tenant.
- [73] The Religious Assembly will not impede the aim of the ASP, which is to guide and direct future growth and change in ways that are compatible with the efficient operation of the Trail and the industrial character of the area, pursuant to Objective 3.1 and it is in keeping with Objective 3.1.2 to preserve and rejuvenate the industrial character of the Yellowhead Trail Corridor. The long term vision is to establish a "Prestige" business industrial area, not heavy industrial.
- [74] Photographs from Exhibit A were referenced to illustrate how the proposed development will enhance the aesthetics of the area. An aerial photograph was referenced to show the location of the subject site in relation to the Appellant's site. The subject site is an island that contains a wide landscaped buffer around the entire site. In his opinion, this development is envisioned by the ASP.
- [75] The subject site was created as the result of a subdivision that was completed in 2002. A Phase 2 Environmental Site Assessment was completed as required as part of the subdivision application.
- [76] Objective 3.2.2(ii) and (iv) of the ASP is to maintain and rejuvenate the medium industrial areas in the Yellowhead Trail Corridor; maintain the existing supply of rail serviced land and to limit the intrusion of commercial uses in the industrial areas of the Corridor. The proposed development is not a commercial use. Pursuant to section 7.8 of the *Bylaw*, a Religious Assembly is a Community, Educational Recreational and Cultural

Services Use. Therefore, Objective 3.2.3 of the ASP to prohibit the intrusion of scattered commercial development in industrial areas is not applicable.

[77] The definitions of food and food establishment are very broad. Technically, anywhere that an employee sits down to have lunch could be considered a food establishment. Therefore, the Public Health Act only requires permits for certain types of food establishments.

[78] Section 13(3)(b) of the SD Regulation states:

Subject to subsection (5), a development authority shall not issue a development permit for a school, hospital, food establishment or residence, nor may a school, hospital, food establishment or residence be constructed if the building site is within 300 metres of an operating or non-operating landfill.

[79] Section 1(1)(c) of the SD Regulation states that a “food establishment” means food establishment as defined in the *Food Regulation*. Mr. Murphy submitted a copy of the *Food Regulation*, with highlighted sections, marked Exhibit B.

[80] Section 1(1)(r) of the *Food Regulation* defines “food establishment” as a place where food is handled. Section 2(2) states that this regulation does not apply to food handling for the purpose of operating (a) a bake sale, (b) a restricted function or (c) a potluck. Therefore any function held at the proposed Religious Assembly that involves food is not covered by the *Food Regulation*.

[81] With regard to policy 9.5.1 of the MDP, to promote the responsible management of contaminated sites to protect public health and the environment, he indicated that approximately a dozen Environment Site Assessments have been done on the subject site although he could not comment on the results. Therefore, this policy contained in the MDP is not relevant to the hearing.

[82] A Phase 2 Environmental Site Assessment was completed on the subject site in 2002 as part of the subdivision and rezoning process. The Subdivision Authority cannot approve a subdivision unless it is proven that the land is suitable for proposed uses.

[83] With regard to the Guidebook referenced by the Appellant, Mr. Murphy indicated that he has never heard of that document. It was his assumption that it contains policies of the City of Edmonton but has not been adopted by City Council. Section 4 of the Guidebook refers to an LDA (Land Development Application) and that only applies to subdivision and rezoning applications.

[84] The proposed number of on-site parking spaces exceeds the minimum number required. On street parking is not permitted on the abutting roadways.

[85] The Traffic Bylaw requires dangerous goods to be stored 50 metres away from a neighbouring site. Another use on the subject site would require the same separation

space and the same protection. However, this regulation only applies for proposed dangerous goods development; it does not require the Religious Assembly to be setback 50 metres from a dangerous goods site.

- [86] A Religious Assembly is allowed in the IB Zone because it is a higher scale development that does not impact other users.
- [87] It is difficult to understand the incremental impact of a change of use from a Professional, Financial and Office Support Service to a Religious Assembly and how it affects the Appellant's ability to lease out one bay of his building once it is remediated. The existing use did not deter the City of Edmonton or EPCOR from leasing space on the Appellant's site.
- [88] The proposed development complies with all of the development regulations of the *Bylaw* and there is no relevant planning reason to refuse this application.

*iv) Rebuttal of the Appellant, Mr. A. Slawsky, accompanied by Mr. T. Shandro*

- [89] Mr. Slawsky referenced photographs and diagrams of the parking lot to reiterate his concern that the on-site parking spaces and loading zones are illegal. It was his estimation that 25 legal on-site parking spaces could be provided. One of the handicapped parking spaces is illegal as are the tandem parking spaces.
- [90] He disagreed with the evidence provided by Mr. Murphy regarding the site contamination and the steps that were made to remediate the problem and reiterated his concerns about the contamination of the site. Mr. McCormick completed the Phase 2 Environmental Site Assessment in 2002 and it was determined that the site was contaminated because of the landfill and methane gas. In his opinion, the site has never been proven to be clean.
- [91] The City never installed a liner or a methane extraction trench and never warned any of the neighbours. They just determined where the landfill ended and that portion of the lot was subdivided from the subject site.
- [92] The SD Regulation clearly states that the proposed development is not allowed within 300 metres of a disposal area of an operating or non-operating landfill and it will be located less than one metre away from the contaminated site.
- [93] Section 14 of the *Bylaw* requires a Development Officer to obtain information from an environmental engineer in order to determine appropriate setbacks.
- [94] Alternative modes of transportation to the subject site are not possible and public transit is a 19 minute walk away.
- [95] A photograph was referenced to illustrate that the subject site is interconnected with the infrastructure and not an island as referenced by Mr. Murphy.

- [96] His site is located in a strategic location close to all access routes.
- [97] The *Transportation of Dangerous Goods Act* is federal legislation that regulates dangerous goods. Provincial legislation requires the City to establish appropriate setbacks. Dangerous goods are different from hazardous waste. Dangerous goods are regulated by the Environmental Protection Agency which is a federal government agency.
- [98] A dangerous goods storage site does not have to be regulated as long as it is zoned correctly.
- [99] He evicted his previous tenant because of the risks they were taking and they were in contravention of the requirements of the lease. He advised the Board that he would allow a future similar use if it was operated properly.
- [100] Mr. Shandro stated that there is insufficient information to come to the conclusion that food handling that may occur on the site is captured correctly by the exemptions of the regulations. Based on the extent of the contamination on the site, the Board should apply the broader food regulations and allow the appeal. The use of Mr. Slawsky's site should not be limited because of the proposed development.

## Decision

- [101] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority.

## Reasons for Decision

- [102] Religious Assembly (Minor) is a Discretionary Use within the (IB) Industrial Business Zone.
- [103] No variances or waivers of any development regulation in the *Bylaw* have been sought, or are needed for the granting of this Development Permit. As such, the Board will deny the appeal and approve the development, unless it can be shown that the proposed use of Religious Assembly (Minor) on the subject site is incompatible with the existing neighboring uses.

[104] Before the issue of the compatibility with existing uses is discussed, however, the Board must deal with specific submissions made by the appellant.

### **The SD Regulation**

[105] First, the appellant argued that the Development Authority failed to abide by the SD Regulation, specifically, s. 13(3):

[106] Section 13(3) of the SD Regulation states (emphasis added):

(3) Subject to subsection (5), a development authority shall not issue a development permit for a school, hospital, **food establishment** or residence, nor may a school, hospital, food establishment or residence be constructed if the building site:

- (a) is within 450 metres of the working area of an operating landfill,
- (b) is within 300 metres of the disposal area of an operating or non-operating landfill,
- (c) is within 450 metres of the working area or disposal area of a non-operating hazardous waste management facility,
- (c.1) is within 450 metres of the working area or disposal area of an operating hazardous waste management facility, or
- (d) is within 300 metres of the disposal area of an operating storage site.

[107] The appellant alleges that the proposed Religious Assembly is a food establishment, and therefore triggers the operation of this subsection.

[108] However, the proposed Religious Assembly is not a food establishment as per the SD Regulation. It has no food preparation areas. It does have a large room that could be used for potlucks, or bake sales, or perhaps for dinners for the church members themselves. Those types of uses are specifically exempted from the operation of subsection 13(3) of the SD Regulation.

[109] Section 1(1)(c) of the SD Regulation states that a “food establishment” means food establishment as defined in the *Food Regulation*. Section 1(1)(r) of the *Food Regulation* defines “food establishment” as a place where food is handled. However, Section 2(2) of the *Food Regulation* states that this Regulation does not apply to food handling for the purpose of operating a bake sale, a restricted function or a potluck.



[110] Section 1(1)(mm) of the *Food Regulation* defines a Restricted Function as a function that is:

- (i) run by a community organization or an individual exclusively for the benefit of the members of an organization or the individual's family, and
- (ii) not open to the general public,

where attendance is by personal invitation and food is provided for attendees by volunteer caterers, including, without limitation, meetings, retreats and family reunions.

[111] Therefore any function held at the proposed Religious Assembly that could involve food would not be the type of function that would make the proposed development a food establishment within the meaning of the *Food Regulation*, and therefore, it would not be a food establishment within the meaning of the SD Regulation, meaning that subsection 13(3) of the SD Regulation is not engaged.

### **The Yellowhead Corridor Area Structure Plan**

[112] A second submission made by the appellant was that the proposed development was not in accordance with the ASP, in particular, that it contravenes the purpose and objectives of the ASP, specifically policy 3.1.2 which states that the purpose of the plan is to preserve and rejuvenate the industrial character of the Yellowhead Trail Corridor, and the objective in policy 3.2.2(iv) which is to limit the intrusion of commercial uses in the industrial areas of the Corridor.

[113] Objective 3.2.2(ii) and (iv) of the ASP is to maintain and rejuvenate the medium industrial areas in the Yellowhead Trail Corridor; maintain the existing supply of rail serviced land and to limit the intrusion of commercial uses in the industrial areas of the Corridor. The proposed development is not a commercial use. Pursuant to section 7.8 of the *Bylaw*, a Religious Assembly is a Community, Educational Recreational and Cultural Services Use. Therefore, Objective 3.2.3 of the ASP to prohibit the intrusion of scattered commercial development in industrial areas is not applicable to the proposed development.

[114] In addition, the proposed development is in a sub area of the ASP that is governed by section 5.3.7.2 of the ASP, which addresses the specific plan for this sub area. The plan for the proposed land uses is to create a "Prestige" Business Industrial area, Medium Industrial uses, to retain the existing Multiple Family Residential development in its current location, and to restrict commercial opportunities in this area to locations of high accessibility and visibility. Even if the religious assembly were to be considered a commercial opportunity, which it is not, it would still be allowed in an area of high accessibility and visibility, which this site is, given that it is visible from the intersection of Wayne Gretzky Drive and Yellowhead Trail, two of the city's largest and busiest roads.

- [115] Finally, it should be noted that the ASP, which guides City Council when making zoning decisions, did not prevent City Council from zoning the subject site in the IB zone, which allows for the construction of a religious assembly.

### **The Municipal Development Plan**

- [116] The appellant also argued that the proposed development was in violation of the MDP, in particular Policy 9.5.1.2. Policy 9.5.1.2 of the MDP requires the investigation of potentially contaminated sites for selected planning applications and requires remediation to ensure site suitability.
- [117] The appellant spent much time at the hearing pointing out the environmental issues that have been at play on this land in the past.
- [118] However, the appellant failed to note that Policy 9.5.1.2 of the MDP was followed with respect to the subject site. Numerous and extensive environmental investigations were made in 2002 and earlier, at the time when the land was being rezoned and subdivided. As pointed out by the representatives for the Development Authority, all those investigations were done, as is typical, when the land was being zoned and subdivided, so that it would not have to be considered for each development permit application. The appellant's argument on this point also fails.

### **Parking**

- [119] The appellant also complained about parking. This can be dismissed out of hand: the proposed development has 50 stalls of onsite parking, twice the 25 stalls that is required by the *Bylaw*. Parking is not a concern.

### **Compatibility with Current Neighboring Uses**

- [120] This brings us to the issue of compatibility with the current neighboring uses of the land. This is the test for Discretionary Uses. The appellant argued at length that the religious assembly was not compatible with the existing uses on his land.
- [121] The current uses on the appellant's site are all storage type uses; EPCOR and the City of Edmonton store equipment and materials on the site and there is a garbage hauling business operating from the site, but garbage is not stored on the site. These uses are not incompatible with a religious assembly. Being next door to a religious assembly will in no way impede the industrial uses that are currently operating on the appellants' land. While perhaps at one time dangerous goods were on the appellant's land, by his own admission they are no longer transported or stored on this site and his land is no longer

being used as a waste transfer station. The garbage waste that comes to the site is incidental.

[122] As the Board finds that the proposed development is not incompatible with current neighbouring uses, requires no variances from the development regulations in the *Bylaw*, and that the proposed development is not in violation of the ASP or the MDP, the appeal is denied, and the development granted.

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

Board Members in Attendance: Mr. V. Laberge; Mr. L. Pratt, Mr. A. Peterson, Ms. E. Solez

**Important Information for the Applicant/Appellant**

7. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
8. Obtaining a Development Permit does not relieve you from complying with:
  - f) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
  - g) the requirements of the *Alberta Safety Codes Act*,
  - h) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - i) the requirements of any other appropriate federal, provincial or municipal legislation,
  - j) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
9. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
10. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
11. 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.
12. 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.*