

# **Edmonton Subdivision and Development Appeal Board**

Churchill Building  
10019 - 103 Avenue NW  
Edmonton, AB T5J 0G9  
Phone: 780-496-6079 Fax: 780-577-3537  
Email: sdab@edmonton.ca  
Web: www.edmontonsdab.ca

Date: October 29, 2015  
Project Number: 162010978-005  
File Number: SDAB-D-15-243

## **Notice of Decision**

This appeal dated September 16, 2015, from the decision of the Development Authority for permission to:

Construct an uncovered deck (irregular shape, 6.61m x 10.28m @ 0.51m in Height) and to install a hot tub (2.21m x 7.92m)

On Plan 1027095 Blk 2 Lot 29, located at 7559 May Common NW, was heard by the Subdivision and Development Appeal Board on October 14, 2015.

### **Summary of Hearing:**

At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

The subject site is zoned RSL Residential Small Lot Zone, and is located within the Magrath Heights Neighbourhood Area Structure Plan.

The development permit application was refused because the proposed development is not in compliance with the major recommendations of the Geotechnical Report which provided the technical framework for the Top of Bank Restrictive Covenant that is attached to the subject property. The proposed Hot Tub is considered a Swimming Pool which is in contravention of Article 6.1 of the Top of Bank Restrictive Covenant which states that a Swimming Pool shall not be constructed or installed.

Prior to the hearing the following information was provided to the Board:

- An online response from an affected property owner in opposition to the proposed development;
- A written submission from the Development Officer dated October 7, 2015 including the Plot Plan, a memo from Transportation Services, drainage details, a copy of the Canada Post Confirmation and other building details; and

- The Board Officer provided a copy of the previous decision for SDAB-D-15-002, a copy of the Magrath Heights Neighbourhood Area Structure Plan, the Restrictive Covenant – Magrath Heights Stage 17 and the Restrictive Covenant – Top of Bank.

The Board heard from Mr. Kevin Haldane, Legal Counsel for the property owner, Mr. Miles Kohan, who was also in attendance. Mr. Haldane provided a detailed written submission, marked Exhibit “A” and made the following points in support of the appeal:

1. His client assumed that the hot tub was approved as part of the original development permit approval for the Single Detached House.
2. He did not become aware of the problem until a Stop Order was issued.
3. Mr. Haldane clarified that the address of the subject site is 7559, not 7557 May Common NW.
4. It was his opinion that the proposed development should have been approved as a Class “A” development permit.
5. Based on his research through the City of Edmonton web site, Mr. Haldane determined by reviewing City maps that the subject site does not fall within the North Saskatchewan River Valley and Ravine System Protection Overlay, and therefore regulations pursuant to Section 811 of the *Edmonton Zoning Bylaw* do not apply.
6. It was his opinion that the majority of the reasons for refusal reference the Top of Bank Restrictive Covenant which is not a proper planning consideration.
7. The requirements of Section 811 only apply to lands within or abutting the North Saskatchewan River Valley and Ravine System, and it was his opinion that the subject Site is neither.
8. Due to inaccuracies and inconsistencies in several City of Edmonton sources, Mr. Haldane had difficulty confirming the boundary of the North Saskatchewan River Valley and Ravine System Protection Overlay and the location of the top of bank.
9. Based on a search of the subject Site through SLIM Maps on the City website, it was his opinion that the subject Site was not located within the Overlay.
10. He subsequently called the Development Officer to clarify the situation and seek additional information in order to determine the boundary of the Overlay.
11. The Development Officer provided him with a copy of the zoning map contained at Tab 4 of his written submission. The map illustrated the location of the Natural Areas Protection Zone. The light blue area of the map indicated the boundary of the North Saskatchewan River Valley and Ravine System Protection Overlay.
12. The other map contained in Tab 4 of his written submission illustrated the location of the North Saskatchewan River Valley and Ravine System Protection Overlay as light green and clearly shows that the subject Site is neither located within this area, nor abutting it.
13. Based on a rough measurement, Mr. Haldane determined that the subject Site is located approximately 120 metres away from the Overlay as indicated in the light green area of the map.
14. Upon further research it was confirmed that the City of Edmonton’s SLIM Maps version of the North Saskatchewan River Valley and Ravine System Protective Overlay was outdated.
15. The Development Officer did not require an Engineering Report as part of the development permit application for the house on this Site.

16. Section 811.2 states:

1. This [North Saskatchewan River Valley and Ravine System Protection] Overlay applies to:
    - a. all lands within the North Saskatchewan River Valley and Ravine System, as shown on Appendix I to this Overlay; and
    - b. all lands within 7.5 m of the North Saskatchewan River Valley and Ravine System as shown on Appendix I to this Overlay.
  2. Notwithstanding the boundary, as referenced in subsection 811.2 (1), the boundary is a general boundary and is subject to more precise location where such location is established through the approval of Plans of Subdivision or survey plans of the top-of-the-bank. In such cases, the Development Officer will amend the map to reflect the more precise boundary.
17. The map contained in Appendix I of the Overlay was never amended by the Development Officer to reflect the more precise boundary, and therefore the map as it currently exists on the City of Edmonton's SLIM Maps applies to the proposed development.
18. He referenced the plan of subdivision contained at Tab 5 of his written submission to illustrate that the top of bank location is not illustrated on the plan but there is a public walkway, approximately 10.42 metres wide, abutting the subject Site.
19. A map from the Magrath Heights Neighbourhood Area Structure Plan contained at Tab 6, illustrates the Top of Bank as a purple line and a walking trail marked as an orange line located west of the demarcation of the top of the bank.
20. The subject site is located at least 10 metres from the top of bank line.
21. He referenced City Policy, contained at Tab 6 of his written submission, which provided definitions for the following terminologies: Abutting; Crest; Top-of-the-Bank Walkway; Upland Area; and Urban Development Line.
22. City Policy states:
- 1.15 Crest means the dividing line between the slope and its Upland Area. The Crest is also referred to as the top-of-the-bank (TOB) line.
  - ...
  - 1.30 Top-of-the-Bank (TOB) Walkway means a public walkway situated within the Upland Area, on the river valley/ravine side of the Urban Development Line, and aligned approximately, parallel to the adjacent Crest.
23. Mr. Haldane referenced photographs of the existing walkway contained at Tab 6 of his written submission.
24. He reiterated his opinion that there are no concerns regarding the stability of the slope and that the requirements of the North Saskatchewan River Valley and Ravine System Protection Overlay do not apply to the subject Site.
25. The Development Officer's submission included engineering drawings but did not address any concerns regarding slope stability.

26. Mr. Haldane provided a copy of the Top of Bank Restrictive Covenant in Tab 8 of his written submission as well as a previous decision of the Board, wherein the Board held that it did “not have the authority to deal with or uphold the Restrictive Covenant” (SDAB-D-08-092 at p 4).
27. Mr. Haldane reiterated that Restrictive Covenants fall under the jurisdiction of private law, not public law.

Mr. Haldane provided the following responses to questions:

1. He acknowledged the concerns of the most affected neighbour who resides immediately south of the subject Site regarding potential leakage and noise. However, it was his opinion that this neighbour does not have a forum through the Board because the proposed development should have been issued as a Class “A” permit.
2. It was his opinion that the neighbour was attempting to enforce the Restrictive Covenant through the appeal process. It was his contention that enforcement of the Restrictive Covenant would have to be through the City of Edmonton rather than the neighbour.
3. The property owner has discussed the development with this neighbour and has made attempts to address their concerns through the installation of a Nilex membrane, and two drains tied into the storm system in the event of a catastrophic failure.
4. The hot tub can be moved and sits on top of the lower deck. It is located approximately 10 feet from his neighbour’s house and an 8 foot high wall will be erected to enclose the court yard and mitigate any noise concerns.
5. It was their opinion that the inclusion of the Nilex membrane, a secondary drainage system and electronic monitoring will sufficiently address any potential leakage problems.
6. The hot tub installation was not part of the original scope of application, nor was it included in the scope of the development permit.

The Board then heard from Mr. Kirk Bacon, representing the City of Edmonton’s Sustainable Development Department, who provided the following information:

1. He confirmed that the hot tub installation was not part of the original development permit application for the Single Detached House and that a condition prohibiting the installation of a swimming pool was imposed on that development permit approval.
2. Mr. Bacon confirmed that several maps for the North Saskatchewan River Valley and Ravine System Protection Overlay on the City website have not been updated.
3. The top-of-bank line is at the ravine crest. However, the actual boundary of the Overlay is at the Urban Development Line which is setback 10 to 15 metres from the top-of-bank line. He determined that the rear lot line was the boundary for the North Saskatchewan River Valley and Ravine System Protection Overlay.
4. Under Section 811 of the *Edmonton Zoning Bylaw*, he has authority to determine the boundary of the Overlay. Accordingly, he determined that the boundary shall follow the Urban Development Line, and refused the proposed development pursuant to the Development Regulations under Section 811. However, he did acknowledge that the map contained in Appendix I had not been amended to reflect that authority.
5. The submitted Plot Plan showed the location of the development’s Setback line.

6. The refusal was based on recommendations contained in the Geotechnical Report that was prepared and reviewed as part of the subdivision plan.
7. His refusal was not based on the provisions of the Top of Bank Restrictive Covenant because it is not part of the development permit decision making process.
8. It was his opinion that the installation of a hot tub at this location cannot be issued as a Class "A" permit.
9. Any Geotechnical materials submitted by the Appellant would have to ensure that the installation of a hot tub on any of the lots along the top of the bank would not have an adverse impact.

Mr. Haldane made the following points in rebuttal:

1. If Section 811 of the *Edmonton Zoning Bylaw* does not apply to this development, there are no development regulations and a Class "A" permit should be issued.
2. A map was not provided to confirm that the rear lot lines constitute the boundary for the North Saskatchewan River Valley and Ravine System Protection Overlay.
3. Most of the information contained in the Geotechnical Report refers to the Restrictive Covenant and not engineering concerns.
4. The development permit is the only item holding up the development.
5. It was his opinion that classifying the hot tub as a swimming pool is not relevant to the issue before the Board.

**Decision:**

The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority.

**Reasons for Decision:**

The Board finds the following:

1. The proposed uncovered Deck and Hot Tub is Accessory to Single Detached Housing which is a Permitted Use in the RSL Residential Small Lot Zone.
2. Section 685(3) of the *Municipal Government Act* states that despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a Permitted Use unless the provisions of the *Land Use Bylaw* were relaxed, varied or misinterpreted.
3. Based on the evidence provided, the proposed development does not require any relaxations, or variances to the provisions of the *Edmonton Zoning Bylaw*.
4. The Development Officer determined that Section 811 of the *Edmonton Zoning Bylaw* applied to the proposed development and accordingly the requirements of Section 811.3 had to be followed.
5. The Appellant disagreed and submitted that Section 811 does not apply to the subject Site and therefore the requirements of Section 811.3 have no effect on the development of the proposed Deck and Hot Tub installation.
6. The issue turns on whether or not the subject Site falls within the North Saskatchewan River Valley and Ravine System Protection Overlay.

7. All parties agreed that the subject Site was not shown to be within the North Saskatchewan River Valley and Ravine System Protection Overlay according to the map contained in Appendix I of Section 811.
8. The question is whether or not the subject Site is located in the North Saskatchewan River Valley and Ravine System Protection Overlay and is subject to the purview of the Overlay.
9. Section 811.2(2) of the *Edmonton Zoning Bylaw* provides a mechanism whereby the Development Authority can alter the precise boundaries of the North Saskatchewan River Valley and Ravine System Protection Overlay upon receipt of more precise survey plans that are submitted through the subdivision approval process.
10. The Board accepts the evidence provided that survey plans were received by the City of Edmonton when the subdivision plan for this area was approved and registered in 2010.
11. Section 811.2(2) of the *Edmonton Zoning Bylaw* states that “In such cases, the Development Officer will amend the map to reflect the more precise boundary”.
12. Based on evidence provided by the Development Officer, the map contained in Appendix I of the North Saskatchewan River Valley and Ravine System Protection Overlay has not been amended to reflect the more precise boundary. Therefore, the subject Site is not located in the North Saskatchewan River Valley and Ravine System Protection Overlay as reflected on the map contained in Appendix I of the Overlay.
13. The Board makes no comment on the applicability or enforceability of the Top of Bank Restrictive Covenant No. 102447456 that has been registered against the subject Site.
14. The Subdivision and Development Appeal Board does not have the authority to either interpret or enforce the requirements of a Restrictive Covenant. Interpretation or enforcement of the restrictive covenant lies with the courts. Accordingly, the appeal is allowed.

### **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 5<sup>th</sup> Floor, 10250 – 101 Street, Edmonton.
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*, RSA 2000, c S-1;
  - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
  - d) the requirements of any other appropriate federal, provincial or municipal legislation; and
  - 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 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 5th Floor, 10250 – 101 Street, Edmonton.

*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.*

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

c.c.

# **Edmonton Subdivision and Development Appeal Board**

Churchill Building  
10019 - 103 Avenue NW  
Edmonton, AB T5J 0G9  
Phone: 780-496-6079 Fax: 780-577-3537  
Email: sdab@edmonton.ca  
Web: www.edmontonsdab.ca

Date: October 29, 2015  
Project Number: 173652582-003  
File Number: SDAB-D-15-244

## **Notice of Decision**

This appeal dated September 21, 2015, from the decision of the Development Authority for permission to:

Change the use from a Flea Market to General Industrial Uses

On Plan 2239X Blk 16 Lot 28, located at 9938 - 70 Avenue NW, was heard by the Subdivision and Development Appeal Board on October 14, 2015.

### **Summary of Hearing:**

At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

The subject Site is zoned IM Medium Industrial Zone.

The development permit application was refused because the Development Officer determined that the proposed development does not qualify as a General Industrial Use and because of a deficiency in the minimum required number of Parking spaces.

Prior to the hearing the following information was provided to the Board:

- A submission from the Appellant dated October 8, 2015;
- A letter of opposition from the Landlord and owner of the subject property dated October 5, 2015;
- A letter of opposition from a neighbouring property owner dated October 13, 2015; and
- A written submission from the Development Officer dated October 7, 2015 containing a copy of the development permit, permit review and a copy of the Canada Post Confirmation of Delivery.



The Board heard from Ms. Nikki Uhryn and Ms. Lori Uhryn, representing the Appellant, Ware's and Wear Ventures Inc., who provided the following information in support of the appeal:

1. The proposed Use complies with the General Industrial Use in the IM Medium Industrial Zone.
2. 75 percent of the floor space is dedicated to manufacturing and wholesale operations for their business.
3. The remainder of the space on the lower floor and second floor is comprised of office space to support the use.
4. There is some storage space upstairs as well as a training room which is part of their marketing to provide general information related to the business.
5. Ms. Uhryn reviewed the timeline of events leading up to their development permit application.
6. The City did not object to their development permit application until the Edmonton Journal ran an article about their business operations which they found to be somewhat suspicious.
7. Their development permit application was subsequently refused by the Sustainable Development Department.
8. Advertising for their business is minimal because they rely on word of mouth referrals.
9. They do not rent any space to third parties. Speakers are occasionally brought in to host classes as well as experts to explain the products that they manufacture.
10. Liquor is not available at their Site but they did recently obtain a liquor license to host a retirement party.
11. A fee is charged to attend classes, between \$2 and \$5 dollars or whatever an individual chooses to pay.
12. Revenue from classes is approximately \$500 per month compared to wholesale revenue which is approximately \$25,000 per month.
13. They do not sell their products directly to the public.
14. There are approximately 20 parking spaces available on the Wholesale Club site located across the street which could be leased for their use from the owner.
15. Clients can request products to be custom made on site.
16. The Edmonton Journal article indicated that space in the building was available to rent. However, there is no rental space available in the building.
17. They initially did rent out space in early September but their website has been updated to reflect this change.
18. Ms. Uhryn referenced the Neighbourhood Impact Assessment contained in her written submission. She spoke with all of the businesses located along 70 Avenue and 99 Street. None of the business owners, including the most affected, had any objection to the proposed business.
19. If the development permit is approved they might apply for a parking variance.

They provided the following responses to questions:

1. Ms. Uhryn reiterated that they no longer rent space in their building even though the website still contains a booking calendar and rental information.

2. Classes are held for store owners, staff and customers.
3. They sell their products to five stores in Edmonton, twelve in Alberta, and several others throughout North America.
4. They currently employ one full time sales person and two part-time staff.
5. The Wares and Wear website has been revised and updated. They own five websites but waresandwear.com is the main site.

The Presiding Officer asked the Board Officer to access the website for Wares and Wear Ventures Inc. and print the website information as Exhibit "A". The Board Officer projected the website so that it could be viewed by the Board and all other parties. The Board reviewed the information contained on the website, and Ms. Uhryn provided the following responses to questions:

1. Ms. Uhryn indicated that the website was updated on September 2, 2015. However, she did not know why the information regarding renting space on the second floor had not been removed from the website.
2. Custom consultations are held on Friday and Saturday.
3. They have a web designer who manages their website and he was responsible for updating the website.
4. Marketing classes are held for 40 or 50 people and are always held at 7:00 p.m.
5. There are three dedicated parking spaces at the back of the building as well as on street parking.
6. Two of their employees drive and the others bicycle or use public transit.
7. There were two other references to party events contained on the website as it exists today.

The Board then heard from Mr. Welch, representing the Sustainable Development Department and Mr. Michael Gunther, representing the Law Branch, who provided the following information:

1. Mr. Welch indicated that there were discrepancies between the verbal statements by the Appellant and the information submitted with the development permit application that he used to make his decision.
2. He was advised that classes would be held for 20 to 40 individuals once or twice a week and that groups could rent the training rooms for general instruction purposes.
3. Based on the information provided by the Applicant and available on their website, it was clear to him that the development as proposed did not meet the definition of a General Industrial Use which is a very specific Use Class.
4. He therefore used the discretion provided by the *Edmonton Zoning Bylaw* to assign Use Classes based on the information provided.
5. The proposed development involves BDSM classes which in his opinion does not comply with Section 7.5(2)(f) of the *Edmonton Zoning Bylaw* which states that "General Industrial Uses means development used principally for one or more of the following activities.... the training of personnel in general industrial operations."
6. It was his opinion that the offering of this type of class is more compatible with the Commercial School Use Class.

7. The development also proposed sales to the general public which is more compatible with the General Retail Use Class.
8. The Applicant advised him that individuals are allowed to attend classes and buy products which constitutes sales to the general public.
9. The rental of space to groups falls within the Indoor Participant Recreation Services Use Class.
10. The processing and creation of specialized products on site cannot accurately be described as industrial, therefore, this Use falls within the Creation and Production Establishment Use Class.
11. Information regarding the percentage of floor space used for special purposes was submitted after the decision was made and does not reflect the information that was presented at the hearing.
12. After an objective review, it was determined that the proposed development met the respective definitions of four Use Classes.
13. There appears to be an inherent interconnectedness to the four Uses and it is therefore impossible to separate the several deemed Uses in such a way as to allow for the non-listed Uses to be Accessory to a primary listed Use that would otherwise be allowed under Section 50 of the *Edmonton Zoning Bylaw*.
14. The deficiency in the minimum required number of Parking spaces was not used as a reason for refusal because of the four proposed Uses.
15. Mr. Welch visited the website during his review and stated that it did not appear significantly different from the website information that was reviewed during the hearing.
16. Section 50 of the *Edmonton Zoning Bylaw*, which pertains to Accessory Uses and Buildings, does not apply because the proposed development includes four primary Uses.

Mr. Welch provided the following responses to questions:

1. Even if a condition to prohibit the rental of space to third parties was imposed, he could not approve the development permit application because of the other three Uses.
2. It was his opinion that the other Uses are not Accessory to the Creation and Production Establishment Use Class.
3. The determination of principal functions and land uses are not solely based on the amount of Floor Area occupied, but is also based on how the functions and the land uses operate within a given space.
4. The combination of Uses in practice makes them all primary. This is a very unusual case in that you cannot remove one Use without fundamentally changing the proposed Use.
5. Based on the information provided by the Appellant, classes will be held more frequently with more attendees.
6. Product use classes will occur twice per week and involve 30 to 60 attendees.
7. The Board has to determine whether the four proposed Uses are separate Uses or whether there is a primary Use with Accessory Uses, and then determine whether the Uses are allowed based on that determination.
8. There can be multiple primary uses on a site.
9. BDSM classes will be held on site and additional specialized training is required. It was his opinion that this type of Use falls within the Commercial Schools Use Class even if the classes are held to promote sales.

10. The only Permitted Use on this site is General Industrial. If the other proposed Uses were conditioned, the Enforcement Branch would handle compliance.

The Board then heard from Ms. Elisabeth Grandau, the property owner and landlord, and Ms. Angela Grundau, who provided the following information in opposition to the proposed development:

1. The lease agreement with their tenant is very specific and states that the premises shall only be used for warehousing and shipping retail goods, and oilfield safety courses.
2. They did not realize that the building was being used for anything but what was stated on the agreement until they read the article published in the Edmonton Journal at the end of August 2015.
3. She was approached by the current tenant in July 2015 regarding a Development Permit application to rezone the building from Flea Market to General Industrial. She agreed because the property was never a Flea Market and she assumed that General Industrial described what it had been all along.

At this point, the Chairman advised Ms. Grandau that she could hire a lawyer to deal with any issues pertaining to the lease agreement because that is outside the purview of the Board.

Ms. Grandau continued with the following information:

1. The atmosphere in the neighbourhood has changed since the Edmonton Journal article was published.
2. She was shocked when she checked the Internet to get information about the business currently operating from their building.
4. The tenants have been deceptive during the leasing process.
5. The building has 3300 square feet on two floors.
6. It was her opinion that 75 percent of the space is not being used for warehousing.
7. The proposed business violates the terms of the lease.
8. Information contained on their website differs from the Appellant's submission at the hearing.
9. All of the proposed Uses are intermingled and cannot operate in this building according to the signed lease agreement.

Ms. Uhryn made the following points in rebuttal:

1. The only party that has ever been held in the building was a recent retirement party for one of the owners.
2. If this development permit is approved, they will apply for a Parking variance.
3. Kinkspace is a trade name, the business name is Ware's and Wear Ventures Inc.
4. When the Principal of the neighbouring school approached them to rent space, they advised him that the school could not rent space in the building because minors were not allowed.
5. Ms. Uhryn referenced the letter of permission received from the landlord regarding the proposed change in Use from Flea Market to General Industrial Use.

6. The primary Use on the site is wholesale manufacturing and distribution of product.
7. It was her opinion that the classes are part of the marketing for the General Industrial Use.
8. The classes help advertise their business through word of mouth.
9. Restricting the business to warehousing and removing their ability to hold classes will remove the ability to market their product, and they would have to move the business out of the City of Edmonton.

**Decision:**

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

**Reasons for Decision:**

The Board finds the following:

1. The Board had to determine the nature of the proposed Use or Uses applied for in this development permit application.
2. The Board considered evidence from all affected parties, including the following:
  - a) The Appellant;
  - b) The Development Authority;
  - c) The Landlord/property owner; and
  - d) Two versions of the website, waresandwear.com.
    - i. The first version was submitted by the landlord/property owner and was dated September 2, 2015.
    - ii. The second version was accessed by the Board, with the consent of the Appellant, during the hearing to review the information contained on the website at the time of the hearing.
3. The Board finds, based on the evidence provided, that the development permit application is comprised of several different Use Classes.
4. Pursuant to Section 7.5(2) of the *Edmonton Zoning Bylaw*:

General Industrial Uses means development used principally for one or more of the following activities:

- a. the processing of raw materials;
- b. the making, manufacturing or assembling of semi-finished or finished goods, products or equipment;
- c. the cleaning, servicing, repairing or testing of materials, goods and equipment normally associated with industrial or commercial businesses or cleaning, servicing and repair operations to goods and equipment associated with personal or household use, where such operations have impacts that would make them incompatible in Non-industrial Zones;
- d. the storage or transshipping of materials, goods and equipment;
- e. the distribution and sale of materials, goods and equipment to institutions or industrial and commercial businesses for their direct use or to General

- Retail Stores or other sales Use Classes defined in this Bylaw for resale to individual customers; or
- f. the training of personnel in general industrial operations.

This Use Class includes vehicle body repair and paint shops. This Use Class does not include Major Impact Utility Services and Minor Impact Utility Services or the preparation of food and beverages for direct sale to the public.

5. The Board finds that some of the proposed Uses can be classified as General Industrial Uses, in particular the making, manufacturing or assembling of semi-finished or finished goods, products or equipment as well as the warehousing and distribution of these goods which falls within the definition of General Industrial Uses, pursuant to Section 7.5(2) of the *Edmonton Zoning Bylaw*.
6. Section 7.4(13) of the *Edmonton Zoning Bylaw* defines Creation and Production Establishments as follows:

Creation and Production Establishments means development used for the custom creation or small-scale fabrication of goods produced in limited quantity, or for the creation, training and rehearsal of performance arts. Accessory Uses may include the retail sale of goods produced on Site. Typical uses include literary, visual, craft, design, and interdisciplinary and performance arts studios.

7. The Appellants provided evidence that in addition to the mass production and distribution of goods, a significant part of their business involves custom creation and small scale fabrication of goods in a more limited quantity and involves customers attending by appointment to consult about the creation of these goods, which fits the definition of Creation and Production Establishments, pursuant to Section 7.4(3) of the *Edmonton Zoning Bylaw*.
8. Creation and Production Establishments are a Discretionary Use in the IM Medium Industrial Zone, pursuant to Section 420.3 of the *Edmonton Zoning Bylaw*.
9. Section 7.4(22) defines General Retail Stores as follows:

General Retail Stores means development used for the retail or consignment sale of new goods or merchandise within an enclosed building, not including the sale of gasoline, heavy agricultural and industrial equipment, alcoholic beverages, or goods sold wholesale. Accessory Uses may include the assembly or repair of products sold on Site, or minor public services such as postal services or pharmacies. This Use Class does not include Aircraft Sales/Rentals, Automotive and Minor Recreation Vehicle Sales/Rentals, Flea Market, Gas Bars, Greenhouses, Plant Nurseries and Market Gardens, Pawn Stores, Major Alcohol Sales, Minor Alcohol Sales, Major Service Stations, Minor Service Stations, Secondhand Stores, and Warehouse Sales.

10. Based on the evidence provided, customers attend the site to purchase new goods which fits the definition of General Retail Stores, pursuant to Section 7.4(22) of the *Edmonton Zoning Bylaw*.
11. A General Retail Store is neither a Permitted nor Discretionary Use in the IM Medium Industrial Zone, pursuant to Section 420 of the *Edmonton Zoning Bylaw*.

12. Section 7.8(4) of the *Edmonton Zoning Bylaw* defines Indoor Participant Recreation Services as follows:

Indoor Participant Recreation Services means development providing facilities within an enclosed building for sports and active recreation where patrons are predominantly participants and any spectators are incidental and attend on a non-recurring basis. Typical Uses include athletic clubs; health and fitness clubs; curling, roller skating and hockey rinks; swimming pools; rifle and pistol ranges, bowling alleys and racquet clubs.

11. The Board finds that conflicting evidence was provided by the Appellant and a review of the current website wearsandware.com, regarding the use of space within the building for private parties and public bookings. However, if space within the building is being used for this purpose, it fits the definition of Indoor Participant Recreation Services, pursuant to section 7.8(4) of the *Edmonton Zoning Bylaw*.
12. The Appellant provided evidence to the Board that the wearsandwear.com website had been updated and any references to private rentals and bookings had been removed. However, a review of the website as it existed at the time of the hearing confirmed that references to private rentals and bookings had not been removed.
13. Accordingly, the Board finds that the mix of Uses listed above includes Indoor Participant Recreation Services.
14. An Indoor Participant Recreation Service is neither a Permitted nor Discretionary Use in the IM Medium Industrial Zone, pursuant to Section 420 of the *Edmonton Zoning Bylaw*
15. The Board then considered whether or not the above listed Uses are Accessory Uses to the General Industrial Use.
16. Pursuant to Section 6.1(2) of the *Edmonton Zoning Bylaw*, "Accessory means, when used to describe a Use or building, a Use or building naturally or normally incidental, subordinate, and devoted to the principal Use or building, and located on the same lot or Site."
17. The Board finds that the Uses listed above are not "naturally or normally incidental, subordinate and devoted to the Principal General Industrial Use".
18. Pursuant to Section 7.5(2)(f) of the *Edmonton Zoning Bylaw*, "General Industrial Uses means development used principally for... the training of personnel in general industrial operations."
19. Based on the evidence provided, the proposed classes are not for the training of personnel in general industrial operations and are not normally incidental to a General Industrial Use.
20. The use of space within this building for private parties and bookings fits the definition of Indoor Participant Recreation Service which is not an Accessory Use to a General Industrial Use.
21. Based on evidence provided by the Appellants, the educational classes are an integral part of their business and cannot be removed from the General Industrial portion of the business.
22. Therefore, the Board finds that the proposed development is a combination of several Uses, including General Industrial, Commercial Schools, Creation and Production Establishments, General Retail Stores and Indoor Participant Recreation Services.
23. A General Industrial Use is the only Permitted Use in the IM Medium Industrial Zone and a Creation and Production Establishment Use is the only Discretionary Use in this Zone. The other proposed Uses are neither Permitted nor Discretionary Uses in the IM Medium Industrial Zone.

24. The Board finds that the proposed development is comprised of four Use Classes that are intertwined. This makes it impossible to separate the several deemed Uses in such a way as to allow for the non-listed Uses to be Accessory to the Primary Listed Use, pursuant to Section 50 of the *Edmonton Zoning Bylaw*.
25. Therefore, the proposed development does not meet the definition of a General Industrial Use and is neither a Permitted nor Discretionary Use in the IM Medium Industrial Zone, and the appeal is denied.

---

### **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 5th Floor, 10250 – 101 Street, Edmonton.

*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.*

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

c.c.