



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: April 18, 2019  
Project Number: 125605628-010  
File Number: SDAB-D-19-047

**Notice of Decision**

- [1] On April 4, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on March 6, 2019. The appeal concerned the decision of the Development Authority, issued on February 11, 2019, to approve the following development:

**To construct outdoor speakers on an existing rooftop patio accessory to a Bar and Neighbourhood Pub (remove a condition from DP#125605628-003). (CRAFT Beer Market)**

- [2] The subject property is on Plan F Lots 29-30, located at 10013 - 101A Avenue NW, within the (CCA) Core Commercial Arts Zone. The Special Area Downtown Overlay and Capital City Downtown Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
  - The Development Officer’s written submissions;
  - The Appellant’s written submissions, including a petition of support;
  - Four emails in opposition to the proposed development; and
  - Twelve online responses in opposition to the proposed development.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Appellant’s speaking notes.
  - Exhibit B – Photos submitted by the Respondent.

**Preliminary Matters**

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

**Summary of Hearing***i) Position of the Appellant, Ms. S. Monnon:*

- [8] Ms. Monnon is an owner and resident of New Cambridge Lofts that abuts the subject site.
- [9] This permit is in contravention to *Bylaw 14600*, the Noise Bylaw, Part III – Noise Control, sections 21 and 22 that regulate daytime and overnight decibel limits for non-residential properties and section 90(2) of the *Edmonton Zoning Bylaw* that regulates outdoor seating associated with Specialty Food Services, Restaurants, Bars and Neighbourhood Pubs and Nightclubs.
- [10] The approved development impacts the City’s economic value and residential satisfaction and calls into question the values driving the City’s development.
- [11] This area is zoned (CCA) Core Commercial Arts Zone which is intended to be a high density, multi-use area. The permitted uses include Apartment Housing and Bars and Neighbourhood Pubs.
- [12] The Craft Beer Market is immediately surrounded by two large-scale apartment buildings, the McLeod Building to the east and Cambridge Lofts to the south. Both buildings have units that face directly onto the Craft Beer Market rooftop patio.
- [13] The Capital City Downtown Plan notes that residential development in the downtown core has proved an important ingredient in creating a sustainable local economy and that the strong residential population stimulates and makes viable retail and services.
- [14] Section 5.1.1(a) of the Alberta Gaming, Liquor and Cannabis Agency Licensee Handbook permits all licensed premises to operate from 10:00 a.m. to 2:00 a.m.
- [15] Craft Beer Market currently closes between 11:00 p.m. and 1:30 a.m., depending on the day of the week. It is therefore reasonable to believe that the recently approved outdoor speakers on the existing rooftop patio will be in operation during the maximum hours of operation of the business.

- [16] The use of the speakers to play music on the rooftop patio during these hours conflicts with the requirements of *Bylaw 12800*, section 90.2 which states that outdoor speakers or amplification systems shall not be allowed on a Site that abuts or is across the Lane from a Site zoned residential.
- [17] *Bylaw 14600* does not permit any sound exceeding 75 decibels as measured at the property line of a property zoned for use other than residential between 7:00 a.m. and 10:00 p.m., and restricts any sound exceeding 60 decibels as measured at the property line of a property zoned for use other than residential after 10:00 p.m. or before 7:00 a.m. For reference purposes, 60 decibels is the sound of a conversation in a restaurant and 75 decibels is approximately the sound of music in your living room.
- [18] In addition to Bylaw contraventions, there is also a larger economic cost/benefit analysis to consider. The City collects resources from residential and commercial properties alike through property taxes. However, the City addresses residential and commercial property taxes differently.
- [19] The City website states that “Edmonton’s property tax rates are among the lowest in the country”, “Edmonton does not have a business tax except in selected Business Improvement Areas ... Therefore, most businesses only pay a non-residential property tax”.
- [20] Specifics regarding the property tax assessments for Craft Beer Market could not be provided but based on the posted non-residential tax rate of \$1.78/square foot times the estimated 5,000 square feet for the size of the building, approximately \$8,900 would be owed in non-residential property tax. In comparison, the New Cambridge Lofts building generates approximately \$350,000 in residential property tax this year.
- [21] The residential property taxes collected from the residents of a large-scale apartment complex in one of, if not the most expensive locations in Edmonton, dwarfs the benefits to the City of the non-residential property taxes collected from the business in question.
- [22] It was acknowledged that Craft Beer Market provides additional benefits to employment, GDP, and sustaining the local economy.
- [23] She and 52 neighbouring property owners who have signed a petition and sent emails opposing the development, have significant concerns about the approved development permit.
- [24] The owner of Craft Beer Market stated that they have not received noise complaints as a result of the speakers which have already been installed and in use prior to the approval of this development permit and that they do their best to follow the requirements of *Bylaw 14600* by drastically reducing the volume of the music on the rooftop patio at 10:00 p.m.

- [25] In conversations with other residents, she discovered without any prompting, that approximately 40 percent of residents complained about the noise from Craft Beer Market. Residents of the building told her that noise from the business, even when it was turned down, kept them awake and woke their children but they live with it as an annoyance of downtown living. Some residents who live in the building work shifts and have difficulty sleeping during the day before the music is turned down at 10:00 p.m.
- [26] When some of her neighbours called 311 to complain they were told that complaints about bars and pubs must be lodged through the AGLC.
- [27] It was her opinion that Craft Beer Market has not received noise complaints from the neighbours because the process for lodging a complaint is too burdensome not because the noise does not disturb the residents.
- [28] People do not want to live in a neighbourhood where they cannot sleep.
- [29] Even though noise currently generated from Craft Beer Market and other downtown sources is a cause of disruption, it has not yet unduly influenced the decision of those considering downtown living. However, increasing noise levels further by allowing speakers on a rooftop patio may outweigh the overall value of living downtown. Current residents may choose to leave and future residents may not choose to live downtown.
- [30] This would again impact the City's residential tax income from the Core Commercial Arts Zone.
- [31] This appeal is larger than just one residential building and one patio sound system. It is a philosophical question about the City's values and development priorities. Is it more important to live its new vision for downtown as being vibrant and supporting people, including residents, which the City claims in the Capital City Downton Plan to be "an important ingredient in creating a sustainable local economy, and that stimulates and makes viable retail and services" or is it more important to the City to support those businesses, even at the expense of the residents who live in the area and would support those businesses and the local economy?
- [32] The approval of this development permit negatively affects residents in the immediate area and may affect the long-term viability of residence in the CCA Zone which will also affect City income. This in turn may affect the sustainability of the local economy and viability of businesses in the area, including Craft Beer Market.
- [33] Craft Beer Market has not been negatively impacted by its current development permit and is a very popular business with or without outdoor speakers.
- [34] Ms. Monnon provided the following information in response to questions from the Board:

- a) An aerial photograph was referenced to clarify that the McLeod Building is located east of the subject site and the New Cambridge Lofts are located south of the subject site. There is a Nightclub located on the corner of Jasper Avenue and 100 Street, and a Temporary Work Agency and a Salon and Spa between New Cambridge Lofts and the nightclub.
- b) New Cambridge Lofts is an 18 storey building with a penthouse floor. The McLeod Building is a 9 storey building. Craft Beer Market is located in a three storey building.
- c) The windows of the units on the north side of her building overlook and have a clear view of the rooftop patio.
- d) The building was built in 1968 and the windows are original, single or double pane windows with metal frames that can be opened. Because of their age, the windows are drafty and do not block noise attenuation.
- e) Ms. Monnon confirmed that she resides in a unit located on the south side of the building along Jasper Avenue and the rooftop patio is located on the north end of the roof of the Craft Beer Market building.
- f) She could not confirm whether or not any of the residents of her building had measured the noise levels. However, as documented in the emails and on-line responses received from residents of the building, many residents and their children have been kept awake by the noise that also causes their dogs to bark.
- g) Some of the residents were not aware that the original development permit approval imposed a condition that prevented the use of outdoor speakers on the rooftop patio because they have always been used.
- h) Despite the fact that glass barriers have been installed in an attempt to reduce noise generated by the outdoor speakers, noise is still a problem for the residents.
- i) She has never made an attempt to contact the owners and has not personally been contacted by the owners of the Craft Beer Market. It was acknowledged that some discussion occurred when the original development permit application was made in 2013 but resident turnover is high in this building and no attempt was made to discuss this permit application with the neighbours.
- j) She personally felt that 10:00 p.m. would be a reasonable time to restrict the use of the outdoor speakers but this may not be acceptable to other residents in the building.
- k) There are other bars and pubs in the area, including Sherlock Holmes, the Underground Pub and Alibi. Even though there is some noise generated by customers coming and going, there are no outdoor speakers that impact New Cambridge Lofts.

- l) The rooftop patio is located on the third storey of the Craft Beer Market building. There is a five storey parkade located west of New Cambridge Lofts.
- m) The residential units are located between Floor 2 and Floor 18 with a penthouse above.
- n) Her unit faces onto Jasper Avenue and she has not personally heard any noise from the outdoor speakers.
- o) All of the residents who signed the petition live in units located on the north side of the building. She did not speak to any of the other residents who reside on the south side of the building. She could not confirm whether or not discussions occurred between the owner of Craft Beer Market and the Condominium Board.
- p) There is a salon and spa located in the immediately adjacent building to the south.

[35] Ms. Monnon submitted a copy of her speaking notes, marked Exhibit A.

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

**Ms. Kates:**

- [36] She resides in the McLeod Building and questioned why a variance was granted to allow outdoor speakers on a building that abuts residential properties.
- [37] Several condo units in the building have windows that face a very narrow, 3.2 metre wide alley between their building and the Craft Beer Market.
- [38] She resides on the fourth floor of the building.
- [39] Ms. Kates provided the following information in response to questions from the Board:
- a) She has been impacted by the noise generated from the rooftop patio, a combination of music and people talking. However, she has found the music noise to be louder.
  - b) The windows in the building can be opened.
  - c) She is able to see customers on the rooftop patio from her west facing window.
  - d) The use of the outdoor speakers between 11:00 a.m. and 9:00 p.m. would be acceptable to her.
  - e) Nine units overlook the rooftop patio that runs the entire length of the building.

- f) She has never filed a complaint because the noise has never kept her up too late.
- g) She can also hear traffic noise from vehicles and motorcycles as well as noise from other bars in the area, including Sherlock Holmes.
- h) She has never called Craft Beer Market because of excessive noise but she has called Sherlock Holmes to lodge a complaint about noise.

**Ms. Ranger:**

- [40] She resides on the 14<sup>th</sup> floor of New Cambridge Lofts and her unit faces north.
- [41] She enjoys living downtown and is a patron of both the Craft Beer Market and Sherlock Holmes Pub but her primary concern is the accumulation of noise.
- [42] It has been her experience that during the summer months the worst noise in the area is generated by vehicles and motorcycles using the top level of the parkade which is more intrusive than the noise generated by outdoor patios at Craft Beer Market or Sherlock Holmes Pub.
- [43] However, she is concerned that noise on top of noise could impact her ability to sell her condominium in the future.
- [44] All of the units have one large window with a small opening at the bottom. The building does not have air conditioning so her window is always open during the summer months.
- [45] She is opposed to the approval of the development permit if it is going to add noise in this area.
- [46] Ms. Ranger provided the following information in response to questions from the Board:
  - a) She can hear people talking on the patio and music from Sherlock Holmes Pub but is not sure if music noise is also coming from the Craft Beer Market as well.
  - b) Her concern is whether or not the approval of this development will add another level of noise.

*iii) Position of the Development Officer, Mr. P. Adams:*

- [47] Mr. Adams did not attend the hearing but provided a written submission that was considered by the Board.

*iv) Position of the Respondent, Mr. P.J. L'Heureux:*

- [48] It is his goal as the owner/operator of Craft Beer Market to co-exist with the neighbours.
- [49] Considerable time was spent consulting with neighbours prior to the original development permit application that was made in 2013. However, he acknowledged that not enough time has been spent discussing this development permit application with the neighbours.
- [50] The speakers on the rooftop patio have been operating since they opened and the approval of this development permit will not change anything.
- [51] They were not aware that a condition had been imposed on the original development permit that speakers could not be installed on the rooftop patio. The neighbouring restaurants and pubs have outdoor speakers.
- [52] The original development permit application was reviewed by the Edmonton Design Committee who supported the redevelopment of a derelict building and the activation of the rooftop patio because it would bring more vibrancy into the downtown core.
- [53] It was always their intention to have speakers on the rooftop patio that would be operated within the Bylaw regulations.
- [54] The original approval in September, 2012, contained a rooftop patio that was twice as large with 200 more seats. This would have resulted in the extension of the patio further to the south. However, the number of seats and the size of the rooftop patio were subsequently reduced in order to develop the patio at the north end of the building to take advantage of the views toward Rice Howard Way.
- [55] Craft Beer Market opened in December, 2013 and the rooftop patio opened the next summer. There was a separate development permit for the patio which resulted in the confusion regarding the outdoor speakers. All of the Inspectors that came to the building through the development process were always aware that the outdoor speakers were there and operating.
- [56] At that time there was a bar/nightclub operating on the ground floor of the McLeod building and they had an outdoor patio with speakers. Sherlock Holmes also has an outdoor patio with speakers that generate a lot of noise towards the McLeod Building.
- [57] The rooftop patio was opened in the spring of 2013 and the speakers have operated since that time. One complaint was received from the McLeod Building since the patio opened. A concern was raised regarding the sight lines from their building onto the patio. In response to the concern, the glass walls between their building and the patio were raised



and tinted in an attempt to screen the view. They were happy with this change and no other complaints have been received.

- [58] Photographs were submitted, marked Exhibit B, to illustrate the design of the rooftop patio which has been designed and constructed to hold in the noise. The speakers face onto Rice Howard Way or the parkade to the west instead of the residential buildings to the south and east unlike the outdoor speakers at Sherlock Holmes Pub. Fifteen foot glass walls have been erected around the rooftop patio in an attempt to contain noise on the patio and limit the impact on the surrounding residential buildings. One complaint was received after the patio was opened and it was dealt with immediately. The rooftop patio has been operated over the past six summers without any further complaints.
- [59] A development permit application was made in 2016 for an outdoor patio at the front of the building on the city sidewalk. This development permit was approved for 30 seats and does not prohibit the use of outdoor speakers on the patio. This is appropriate because all of the neighbouring bars and restaurants have speakers on their street level patios.
- [60] The Craft Beer Market is community oriented and happy to be in Edmonton. They also operate a restaurant with a similar outdoor patio in Vancouver. While a decibel level test has not been done in Edmonton, a test was conducted in Vancouver which determined that noise generated at all hours of the day and night was under 60 decibels. The only noise that exceeded 60 decibels was the background noise which is generally expected and is generated by buses, cars, motorcycles.
- [61] It was reiterated that they did not realize that the outdoor speakers were not permitted. Numerous civic and corporate events have been held on the patio and Bylaw Enforcement has been on site many times and it has never been brought to their attention. They want to co-exist with the neighbours and ensure that music played on the patio is white noise which not only helps to improve the atmosphere but also drowns out voices. It was his opinion that events held at Churchill Square generate more noise and are much louder than anything that happens at their location.
- [62] The AGLC regulations do not supersede the City Bylaws. The City Bylaw requires that noise from the speakers must be under 60 decibels and a decibel test can be conducted at any time. This regulation has been complied with in the past and will be complied with in the future.
- [63] This location was chosen because they believe in the downtown core. Craft Beer Market has contributed to the development of a vibrant and livable downtown core which has changed significantly since 2012.

[64] Mr. L'Heureux provided the following information in response to questions from the Board:

- a) He was aware that a condition was imposed on the development permit that was issued in 2012 that speakers were not allowed on the rooftop patio.
- b) The Development Officer advised him that this condition was typically imposed but that most businesses had outdoor speakers that were operated in compliance with the Bylaw requirements. The neighboring restaurants and pubs had speakers so it was his assumption that they could have speakers as well. The site was inspected numerous times with the speakers in place and it was never raised as an issue.
- c) Removing the speakers would result in a reduction in business because many of their customers would choose a neighbouring establishment that had an outdoor patio with music.
- d) Studies have found that white noise helps to alleviate other noise. It is his experience that voices can be heard over the music.
- e) None of the neighbours have ever approached them regarding their inability to sleep because of the noise. It is hard to believe that this problem would not have been brought to the restaurant or the City over the past six years.
- f) They talked to both Condominium Boards prior to their development permit application in 2012. There are numerous regulars who attend the restaurant from both of the Condominiums.
- g) The 15 foot glass walls on the south and west sides of the patio were installed when the patio was constructed. There are four speakers that face towards the glass walls. A drawing was referenced to confirm the location of the speakers and that they do not face either of the residential buildings.
- h) The operation of the patio is weather dependent. Last year the patio was closed frequently because of the smoky conditions. It is typically open from May to September and the hours of operation follow the interior hours, Monday to Wednesday, 11:00 a.m. to 12:00 p.m., Thursday, 11:00 a.m. to 1:00 a.m. and Friday and Saturday, 11:00 a.m. to 2:00 p.m. The patio closes one hour before the restaurant.
- i) The complaint received in July 2017 was related to a private wedding that was held on the rooftop patio.
- j) This development permit application was made at the request of the City who although aware that the speakers have been installed and operating, asked them to complete the process and obtain a development permit.

- k) Jasper Avenue is a noisy area and it is somewhat quieter on Rice Howard Way. Craft Beer Market is a restaurant and is quite a bit quieter than some of the surrounding nightclubs. Sherlock Holmes Pub has music playing continuously at a louder level than their establishment, but they are a great neighbour and he did not see anything wrong in what they are doing.
  - l) It was his opinion, based on the responses received from neighbours, that a lot of them did not realize that there were speakers on their patio.
  - m) They considered installing a roof on the patio but the building is not able to hold the structure. They are currently looking at the possibility of installing an awning type roof that will capture a lot of the sound.
  - n) The music on the rooftop patio is turned down at 10:00 p.m.
  - o) He is not involved in the day to day operations but visits the restaurant at least once per month. The Manager has not received noise complaints.
  - p) It was conceded that it is possible that there has been a communication breakdown between the residents and the restaurant.
  - q) It was acknowledged that the original development permit contained a condition that did not allow speakers on the rooftop patio.
  - r) He did not expect the amount of opposition received regarding this permit. He did not canvas the residents to obtain feedback regarding the proposed development.
  - s) It would be his preference to adhere to the same hours of operation for the speakers as neighbouring businesses but they will always adhere to the Bylaw requirements. They would be prepared to install an additional barrier on the east side of the patio abutting the McLeod Building.
  - t) Outdoor speakers have been operating on the rooftop patio for six years without complaint. It was his opinion that most of the residents who responded were not aware that the speakers were already operating on the rooftop patio.
  - u) There is evidence that there are no issues with the City or Bylaw Enforcement.
  - v) *Rebuttal of the Appellant, Ms. Monnon:*
- [65] Ms. Monnon is not anti-business and appreciates that Craft Beer Market is trying to co-exist with residents and is a community oriented business. She supports Craft Beer Market but does not support the installation and operation of speakers on the rooftop patio.

- [66] The owner has acknowledged that the speakers have been operating without an approved development permit and justifies the issuance of the permit based on the fact that other businesses in the area have speakers on their outdoor patios.
- [67] This overlooks the experience of residents in the area regarding noise coming from this and other establishments which are outside the scope of this appeal. As a resident and patron of the business, she is never asked if she is a resident of the area and if so, what her experience is regarding the noise.
- [68] Although there was a restaurant operating on the ground floor of the McLeod Building that would be subject to the development requirements contained in section 90.2, it has not been operating since 2017. This is the only other facility that would be subject to these requirements in the CCA Zone.
- [69] The Applicant's argument misinterprets the scientific behavior of noise. Noise is a wave that reflects off hard surfaces. The six speakers are pointed toward the parkade that has a vertical concrete wall and the glass walls on the rooftop patio, all of which are not sound absorbing. They simply echo the noise up and off the patio. Even though steps have been taken to mitigate the impact of noise, appropriate sound absorbent material has not been installed to protect the residents.
- [70] Decibel testing was done in Vancouver and not in Edmonton. The details of the testing are not clear and do not reflect this situation and are therefore not relevant to this appeal.
- [71] While she appreciates the vibrancy that this business brings to the area, the appropriate steps have not been taken to mitigate the impact on residents and the owner is not prepared to make any changes to address the concerns that have been raised despite his insistence that he is a community oriented business manager.

## Decision

- [72] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority, subject to the **CONDITIONS** imposed by the Development Authority.
- [73] In granting the development, the following variance to the *Edmonton Zoning Bylaw* is allowed:
1. Section 90.2, which states that Outdoor speakers or amplification systems shall not be allowed on a Site that abuts or is across the Lane from a Site zoned residential, is waived.

**Reasons for Decision**

- [74] This appeal initiated was by an affected party who received notice of a decision of the Development Officer approving an application to construct outdoor speakers on an existing rooftop patio accessory to a Bar and Neighbourhood Pub located in the (CCA) Core Commercial Arts Zone. Noise is the main concern cited by the Appellant and other parties in opposition to the approval.
- [75] A development permit was first issued for this Use on September 5, 2012. It authorized the Applicant “to construct an addition (3<sup>rd</sup> Storey) and exterior alterations, and to operate a Bar and Neighbourhood Pub (Craft)”. This development permit was for a total of 657 occupants with 217 occupants on the rooftop patio (3<sup>rd</sup> Floor) and included a variance to section 90(1) to allow a portion of the proposed outdoor seating area (third floor rooftop patio) on the east half of the site.
- [76] A second development permit was issued on April 22, 2013 “to construct exterior alterations to a Bar and Neighbourhood Pub (Craft)”. It revised the previously approved permit and deleted the 3<sup>rd</sup> floor addition. This application reduced the total occupants to 507, with a maximum of 126 occupants on the rooftop patio.
- [77] Both development permits contained the following condition: “There shall be no outdoor speakers or amplification systems on the proposed rooftop patio.”
- [78] Bar and Neighbourhood Pub, for more than 200 occupants and 240 square metres of Public Space, is a Discretionary Use in the CCA Zone.
- [79] All properties to the north, west and south of the subject site are also within the CCA Zone. The subject site faces several commercial developments across Rice Howard Way to the south, including Sherlock Holmes Bar and Neighbourhood Pub which is equipped with outdoor speakers. A commercial building is located immediately to the west with commercial businesses at ground floor and a three story parkade above. There is a commercial building immediately across the lane to the south. There are other bars and nightclub developments within a block of the subject site. A 219 unit Apartment Housing Use (New Cambridge Lofts) is located southeast of the subject site across the lane within the CCA Zone facing Jasper Avenue. An Apartment Housing Use with several residential units (the McLeod Building) is located on a site abutting the rooftop patio to the east. That site is zoned Direct Control Development Control Provision and lists Apartment Housing as an available Use.
- [80] Section 90(2) of the *Edmonton Zoning Bylaw* states: Outdoor speakers or amplification systems shall not be allowed on a Site that abuts or is across the Lane from a Site zoned residential.
- [81] The Board finds that the proposed development is subject to section 90(2). In the current application, the Applicant has asked for authority for the existing outdoor speakers to

continue to be used and for the previously imposed condition noted above to be removed. This requires a variance waiving section 90(2).

- [82] The Board's authority to grant the variance is found in section 687(3(d) of the *Municipal Government Act* which provides: In determining an appeal, the subdivision and development appeal board may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion, the proposed development conforms with the use prescribed for that land or building in the land use bylaw and the proposed development would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [83] The Board considered the following factors in determining whether a variance should be granted pursuant to section 687(3)(d) of the *Act* to allow outdoor speakers on the rooftop patio.
- [84] The Board considered evidence from the Applicant:
- a) In spite of the imposition of this condition, it has always been his assumption that outdoor speakers were permitted on the rooftop patio and they have been operational since the rooftop patio opened in the spring of 2013. He is not seeking to change the soundscape with removal of the condition and intends to continue to follow any noise bylaw. The sound levels will not be increased.
  - b) He believes steps have been taken to lessen the noise and that it is blocked in part by glass walls and the walls of the adjacent parkade. He provided no evidence about the current decibel levels attributable to the outdoor speakers, nor about the transmission and dissipation of noise from this source.
  - c) Apart from an isolated incident, he was not aware of any noise complaints concerning the outdoor speakers.
  - d) He believes the development is supported by many nearby residents and adds to the vibrancy of an area the City had wanted redeveloped. He provided no letters of support.
  - e) The current application was prompted by an inspection rather than a complaint.
- [85] The Board considered the location and zoning. The subject site and the majority of the surrounding properties are commercial Uses and are zoned (CCA) Core Commercial Arts Zone.
- a) Section 910.5(1) of the *Bylaw* states that the General Purpose of this zone is:

To provide a Zone for a variety of high density and quality development that accommodates office, retail, service, institutional, residential, arts and

entertainment Uses and meet the Use objectives for the Commercial Cultural Core. The intent is to further strengthen the Downtown's central area by providing continuous retail at ground level, enhancing arts and entertainment activities, accommodating Residential uses and making the Core more pedestrian friendly.

- b) The CCA Zone recognizes that there will be a number of Uses in this area. Therefore, a higher level of ambient noise is a reasonable expectation because of the mix of Uses and is part of a vibrant downtown as contemplated in the Core Commercial Arts Zone and the Special Area Downtown Overlay. The Board heard evidence from the parties in attendance at the hearing that other nearby developments and downtown traffic are louder and generally more annoying than noise emanating from the outdoor speakers operating on the subject site.

[86] The Board considered the Appellant's submissions, particularly with respect to her personal experience with the outdoor speakers:

- a) She objected to the removal of this condition because it is an unfair compromise between competing Uses.
- b) She resides in a dwelling unit within New Cambridge Lofts that faces south towards Jasper Avenue. She has never heard noise from the rooftop patio in her residence despite the fact that the speakers have been operating since 2013.
- c) The Appellant objects to the development if it will add to the aggregate soundscape.
- d) In her view, noise currently generated from the outdoor speakers and other downtown sources while disruptive, has not to date unduly influenced the decision of those considering downtown living. However, she also believes that increasing the noise may prompt current residents and discourage future residents.
- e) She believes the Applicant's mitigation efforts are not effective and that sound bounces up and out. She provided no evidence about the current decibel levels attributable to the outdoor speakers, nor about the transmission and dissipation of noise.

[87] The Board has taken the totality of this evidence to mean that the development, as it is currently operating, has not to date created a material adverse impact for her personally.

[88] The Appellant also submitted a petition of support for the appeal, containing 40 signatures of residents of the New Cambridge Lofts living in units located on the north side of the building which overlooks the subject site. The petitioners ask the Board to revoke the approval of outdoor speakers on an existing rooftop patio accessory to a Bar and Neighbourhood Pub because the development permit conflicts with the development regulations contained in section 90(2) of the *Edmonton Zoning Bylaw* and Bylaw 14600,

the Community Standards Bylaw. The Board has considered, but put less weight on the petition for several reasons.

- a) The petition is unclear about whether the objection is to the approval of new speakers which will add to the existing soundscape or of preexisting speakers which will not add to the existing soundscape.
- b) The Board notes that it is authorized to allow variances to the *Edmonton Zoning Bylaw* based on the test in section 687(3)(d) of the *Municipal Government Act*.
- c) Evidence was not provided that the operation of the speakers on the rooftop patio has not historically complied with the development regulations contained in Bylaw 14600. In any event, this Board has no authority whatsoever to exempt a party from compliance with Bylaw 14600 through the issuance of a development permit. It is beyond the purview of the Board.

[89] The Board considered the oral submissions of the two affected property owners who also appeared in person to oppose the proposed development.

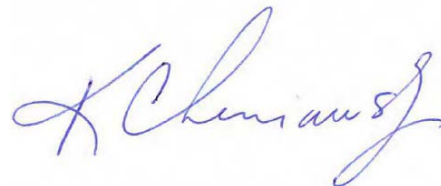
[90] A resident of New Cambridge Lofts who resides in a dwelling unit that faces north onto the subject site, advised the Board that a vibrant soundscape is part of living downtown and that she enjoys some of the background noise. She can discern noise generated by the Craft Beer Market and does not find the noise as it currently exists to be troublesome. In her experience, noise emanating from Sherlock Holmes Pub is much louder. The Board has taken the totality of her evidence to mean that the development, as it is currently operating, does not create a material adverse impact for her.

[91] A resident of the McLeod Building who lives in the closest proximity to the rooftop patio attended in opposition to the proposed development. She told the Board that the noise emanating from the rooftop patio has never created a problem for her unlike the noise generated by Sherlock Holmes Pub which is much louder even though it is located further away from her residence. She has complained in past about Sherlock Holmes, but has never complained about noise from the outdoor speakers at the proposed development. The Board concluded from the totality of her evidence that allowing the development to operate as it has been, without a condition that outdoor speakers are not allowed, will not have an adverse material impact for her.

[92] The Board reviewed the numerous written responses received from affected property owners. All the responses expressed concern regarding noise related to the removal of the condition prohibiting speakers on the rooftop patio. The Board notes that many (but not all) of the concerns appear to be the result of a misunderstanding that the removal of this condition will result in additional noise being generated by the installation of new outdoor speakers. Some of the responses suggest that the parties opposing the development permit were not even aware that the outdoor speakers have been operating for over five years.



- [93] Finally, the Board considered the written report of the Development Officer. He approved the removal of the prohibition on outdoor speakers on the rooftop patio because there were only two noise complaints related to the outdoor patio (received in August 2017). There were no other known complaints for the existing outdoor patio. In addition, the Development Authority found that the Applicant had taken measures to reduce the impact of noise reaching the abutting residential developments. These included the addition of glass barriers, limiting the sound levels emanating from the speakers, and communicating with the community to ensure that their needs are met.
- [94] Based on information from the majority of written responses in opposition, the Applicant's evidence, the Development Officer's search of City records and the evidence of the parties in attendance, over the past five years during which the outdoor speakers have been in operation, there have been only either one or two isolated occasions over the past five years when the noise from the subject site was particularly problematic and the issue was addressed. The Board notes that the Applicant is not proposing to increase the sound from the past level.
- [95] While the Board does not condone the Appellant's failure to comply with the conditions in the earlier permits, given that the outdoor speakers have been operating for five years it did consider the frequency of prior complaints in assessing the potential adverse impacts of the requested variance.
- [96] Based on all of the above, the Board concludes that removal of the above condition and allowing a variance to waive section 90(2) to permit outside speakers as shown in the application will strike a reasonable balance amongst the allowable Uses as contemplated in the general purpose of the vibrant mixed use (CCA) Core Commercial Arts Zone and that it 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.



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

Board members in attendance: Ms. P. Jones, Ms. L. Gibson, Ms. S. McCartney, Mr. A. Nagy

**Important Information for the Applicant/Appellant**

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

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



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
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Date: April 12, 2019  
Project Number: 107494670-003  
File Number: SDAB-D-19-048

**Notice of Decision**

- [1] On April 4, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on February 13, 2019. The appeal concerned the decision of the Development Compliance Officer to issue an Order to comply with the following:

Complete all outstanding conditions of approval on or before February 22, 2019 or acquire a Development Permit that reflects the current development on the site before February 22, 2019

- [2] The subject property is on Condo Common Area (Plan 0225899, 0226017, 0826604), located at 5450 - Calgary Trail NW, within the (CB2) General Business Zone. The Major Commercial Corridors Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Order;
  - Several e-mails from various parties.

**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 (the “*Municipal Government Act*”).

**Summary of Hearing***i) Position of the Appellant, 1203472 Alberta Ltd.*

- [7] E. Giovannoni of 1203472 Alberta Ltd. did not appear; however, he submitted a request via e-mail that the appeal hearing be postponed. The email stated:

I would like to formally request a postponement of the hearing scheduled for April 4, 2019.

The reasons for the appeal are as follows:

Just today, I received notification, by way of email, from Justin Young of the City of Edmonton, that a new DP has been issued for the site.

I do not have a copy of the DP.

I cannot comment on the DP until I obtain a copy and have my consultants review same.

This cannot be accomplished before Thursday.

Please provide a suitable postponement.

*ii) Position of the Development Compliance Officer, J. Hogberg*

- [8] J. Hogberg appeared to represent Development & Zoning Services. He was accompanied by his supervisor, J. Young.
- [9] They confirmed that the terms of the Stop Order have been complied with and a Development Permit has been issued.
- [10] J. Hogberg confirmed that he was properly authorized to issue the Stop Order. As the Stop Order has been complied with, he has closed the file.

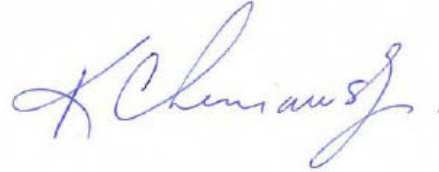
**Decision**

- [11] The Postponement Request is DENIED and the appeal is DISMISSED.

**Reasons for Decision**

- [12] The Appellant did not appear; however, the Board was presented with his e-mailed request for a postponement.

- [13] The Development Compliance Officer and his supervisor appeared before the Board and confirmed that the subject Stop Order has been complied with.
- [14] Based on the material before the Board, the terms of the Stop Order have been fully complied with thus rendering this matter moot.
- [15] Accordingly, the postponement request is denied and the appeal is dismissed.

A handwritten signature in blue ink, appearing to read "K. Cherniawsky". The signature is fluid and cursive, with a large initial "K" and a trailing flourish.

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

Board members in attendance:

Ms. P. Jones, Ms. L. Gibson, Mr. A. Nagy

**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.
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