

**SUBDIVISION  
AND  
DEVELOPMENT APPEAL BOARD  
AGENDA**

**Thursday, 9:00 A.M.  
February 18, 2016**

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

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

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I	9:00 A.M.	SDAB-D-16-058	Change the Use from Convenience Retail Stores to Specialty Food Services (36 sq.m Public Space) (Grandma Pizza)  9837 - 113 Street NW, 9835 - 113 Street NW Project No.: 179263305-003
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II	10:30 A.M.	SDAB-D-15-238	Comply with an Order to comply with all conditions of Development Permit 149045660-001 or cease the Use and demolish all materials by September 25, 2015  13004 - 33 Street NE Project No.: 159957147-005

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

ITEM I: 9:00 A.M.

FILE: SDAB-D-16-058

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:	J & J Pizza Production
APPLICATION NO.:	179263305-003
ADDRESS OF APPELLANT:	9837 - 113 Street NW 9835 - 113 Street NW
APPLICATION TO:	Change the Use from Convenience Retail Stores to Specialty Food Services (36 sq.m Public Space) (Grandma Pizza)
DECISION OF THE DEVELOPMENT AUTHORITY:	Refused
DECISION DATE:	January 11, 2016
DATE OF APPEAL:	January 21, 2016
MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY:	9837 - 113 Street NW 9835 - 113 Street NW
LEGAL DESCRIPTION:	Plan 9023143 Unit 233, Condo Common Area (Plan 9023143)
ZONE:	RA9 High Rise Apartment Zone,
OVERLAY:	N/A
STATUTORY PLAN:	Oliver Area Redevelopment Plan

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<b><i>Grounds for Appeal</i></b>
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The Appellant provided the following reasons for appealing the decision of the Development Authority:

- There is no major development, since convenience store that was there before already installed all needed equipment. Also oven was installed time ago with all city permits.
- Residents of Victoria Park Tower (9835 - 113 Street) strongly support existence of food serving business in their building (126 Dwelling in the Condo Project).
- No parking needed. One is provided. Business is take out and delivery only.

- Similar food establishments exist in residential buildings in surrounding area.
- Photo's, V. Park residents petition and detail explanation will be attached in later time.

***General Matters***

**Appeal Information:**

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

**Grounds for Appeal**

**685(1)** If a development authority

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

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

**Appeals**

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

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

The decision of the Development Authority is dated January 11, 2016. The Notice of Appeal was filed on January 21, 2016.

**General Provisions from the *Edmonton Zoning Bylaw*:**

Section 230.1 states that the **General Purpose** of the **RA9 High Rise Apartment Zone** “is to provide for High Rise Apartment buildings.”

Under Section 230.3(19), “**Specialty Food Services**, for less than maximum seating of 40 occupants and 48 m<sup>2</sup> of Public Space, within developments containing 150 Dwellings or more” is a **Discretionary Use** within the RA9 High Rise Apartment Zone.

Under section 7.4(47), **Specialty Food Services** is defined as follows:

... development where limited types of prepared foods and beverages, excluding alcoholic beverages, are offered for sale to the public, for consumption within the premises or off the Site. This Use Class typically relies primarily on walk-in clientele, and includes coffee, donut, bagel or sandwich shops, ice cream parlours, and dessert shops.

*Use Definition*

**Development Officer's Determination**

The Development Officer referenced Section 230.3(19), and made the following determination:

The proposed Specialty Food Service does not qualify as a Discretionary Use, for the reason that the development has less than 150 dwellings.  
Proposed: 120 dwellings

Advisements: The minimum number of off street parking spaces required for the proposed development does not meet Section 54.2, Schedule 1 of the Zoning Bylaw.

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**Notice to Applicant/Appellant**

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

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**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-16-058



ITEM II: 10:30 A.M.

FILE: SDAB-D-15-238

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT: Jovnic Ltd.

APPLICATION NO.: 159957147-005

ADDRESS OF APPELLANT: 7823 – 34 Street NW

ORDER ISSUED TO: Comply with all conditions of Development Permit 149045660-001 or cease the Use and demolish all materials by September 25, 2015 (159957147-005).

DECISION OF CURRENT PLANNING: Order Issued

DECISION DATE: August 26, 2015  
(159957147-005)

DATE OF APPEAL: September 16, 2015

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 13004 - 33 Street NE

LEGAL DESCRIPTION: Plan 8920191 Blk 3

ZONE: IH Heavy Industrial Zone  
IM Medium Industrial Zone

OVERLAY: Edmonton-Strathcona County Joint Planning Study Area Secondary, Garage and Garden Suites Overlay

STATUTORY PLAN: Aurum Industrial Business Park Area Structure Plan  
Yellowhead Corridor Area Structure Plan

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***Grounds for Appeal***

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

The Stop Order was wrongfully issued as there is already a development permit for all developments on the subject site that require development permits. [unedited]

***General Matters***

**Appeal Information:**

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

**Grounds for Appeal**

**685(1)** If a development authority

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

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

**Appeals**

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

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

The Order by the Development Authority is dated August 25, 2015. The Notice of Appeal was filed on September 16, 2015.

On October 1, 2015, the Subdivision and Development Appeal Board passed the following motion:

That SDAB-D-15-236 / 237 / 238 / 239 / 240 / 241 be TABLED to November 19, 2015, at the written request of Mr. J. Murphy of Ogilvie LLP, counsel for the Appellant. Mr. M. Gunther, City of Edmonton Law Branch, who is representing the City of Edmonton Sustainable Development Department, has provided his written consent to the tabling.

On November 19, 2015, the Subdivision and Development Appeal Board made the following decision:

SDAB-D-15-236 / 237 / 238 / 239 / 240 / 241 are TABLED to February 17, 2016, or February 18, 2016.



**Authority of the Subdivision and Development Appeal Board**

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

**Hearing and decision**

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

...

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

and

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

***Stop Order***

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

**Stop order**

**645(1)** Despite section 545, if a development authority finds that a development, land use or use of a building is not in accordance with

- (a) this Part or a land use bylaw or regulations under this Part, or
- (b) a development permit or subdivision approval,

the development authority may act under subsection (2).

**(2)** If subsection (1) applies, the development authority may, by written notice, order the owner, the person in possession of the land or building or the person responsible for the contravention, or any or all of them, to

- (a) stop the development or use of the land or building in whole or in part as directed by the notice,
- (b) demolish, remove or replace the development, or
- (c) carry out any other actions required by the notice so that the development or use of the land or building complies with this Part, the land use bylaw or regulations under this Part, a development permit or a subdivision approval,

within the time set out in the notice.

(3) A person who receives a notice referred to in subsection (2) may appeal to the subdivision and development appeal board in accordance with section 685.

The *Edmonton Zoning Bylaw* states:

**5. Approval Required for Development:**

**5.1 No Person:**

- 1. shall commence, or cause or allow to be commenced, a Development without a development Permit therefor issued under the provisions of Section 12 of this Bylaw; or
- 2. shall carry on, or cause or allow to be carried on a development without a Development Permit therefor issued under Section 12 of this Bylaw.

Under Section 420.1(5), **General Industrial Uses** is a **Permitted Use** in the IM Medium Industrial Zone.

Under Section 430.2(1), the following is a **Permitted Use** in the IH Heavy Industrial Zone:

**General Industrial Uses** that are characterized by one or more of the following features:

- a. large land requirements for storage, outdoor service, assembly, processing or fabricating operations;
- b. the creation of nuisances that extend beyond the boundaries of the Site and that may have a deleterious effect on other Zones due to their appearance, noise, or odour; and
- c. the use of materials or processing operations that requires separation from other developments, due to risk of toxic emissions or fire and explosion hazards.

Section 7.5(2) defines:

**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.

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Notice to Applicant/Appellant

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

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MAILING ADDRESS:  
5th Floor, 10250 - 101 Street NW  
Edmonton, AB T5J 3P4

August 25, 2015

Our File: 159957147-005

JOVNIC LTD  
7823 - 34 STREET NW  
EDMONTON AB T6B 2V5

PCL CONSTRUCTION GROUP INC.  
9915 - 56 AVENUE NW  
EDMONTON, ALBERTA T6E 5L7

Dear Sir/Madam:

A check with Land Titles Office discloses that Jovnic LTD. is the registered owner of the property located at 13004 - 33 STREET NE, legally described as Plan 8920191 Blk 3.

Our investigation on July 15, 2015 revealed that PCL Construction Group INC. occupy the property located at 13004 33 Street NE, legally described as Plan 8920191 Blk 3.

**LAND USE INFRACTION:**

This property is zoned IM (Medium Industrial Zone) and IH (Heavy Industrial Zone) in accordance with Sections 420 and 430 of the Edmonton Zoning Bylaw. Our investigation on July 15, 2015 revealed that the developed area in the North West corner of the site, has not been developed in accordance with Development Permit Number 149045660-001 issued on July 4, 2014. This is in contravention of Section 15 of Edmonton Zoning Bylaw 12800 and Section 650 of the Municipal Government Act, R.S.A. 2000, c.M-26.1.

Please see the conditions of Development Permit 149045660-001 attached.

**ORDER:**

Pursuant to Section 645 of the Municipal Government Act, R.S.A. 2000, ALL PARTIES ARE HEREBY ORDERED TO:

1) COMPLY WITH ALL CONDITIONS OF DEVELOPMENT PERMIT 149045660-001

OR,

2) CEASE THE USE AND DEMOLISH AND REMOVE ALL MATERIALS BY SEPTEMBER 25, 2015.

**CONSEQUENCES FOR NON-COMPLIANCE:**

This serves as a Violation Notice in accordance with Section 23.3 of Edmonton Zoning Bylaw 12800.

In the event that a person fails to comply with an Order issued under Section 645, Section 646 of the Municipal Government Act authorizes the City to enter on the land and take any action necessary to carry out the Order. Section 553(1)(h.1) of the Act provides that the costs and expenses of carrying out an order may be added to the tax roll of the property and Section 566(1), subject to subsection (2), a person who is found guilty of an offence under this Act is liable to a fine of not more than \$10,000.00 or to imprisonment for not more than one year, or to both fine and imprisonment.

The property will be inspected on September 28, 2015 to determine compliance with this Order.

Failure to comply will result in action as described in Section 646.

YOU ARE HEREBY NOTIFIED THAT IF YOU HAVE NOT:

1) COMPLIED WITH ALL CONDITIONS OF DEVELOPMENT PERMIT 149045660-001

OR,

2) CEASED THE USE AND DEMOLISHED AND REMOVED ALL MATERIALS BY SEPTEMBER 25, 2015.

the City may carry out the Order by entering onto the land and performing remedial actions pursuant to Section 646, and all the costs and expenses in doing so will be added to the tax roll pursuant to Section 553(1)(h.1) of the Municipal Government Act R.S.A. 2000.

Following are Sections 553, 645, 646, 683, 685 and 686 of the Municipal Government Act, R.S.A. 2000, c.M-26.1, which provides you with the right to appeal this Order and enables the City to add all costs associated with this action to the tax roll of the property.

If you have any questions in regards to this matter, please contact the writer at 780-496-2687.

Regards,

Justin Young  
Development and Zoning  
Current Planning  
Phone Number: 780-496-2687  
Fax Number: 780-496-6054  
Email Address: Justin.Young@edmonton.ca

**Adding  
Amounts  
Owing to tax  
roll**

- 553(1)** A council may add the following amounts to the tax roll of a parcel of land:
- (a) unpaid costs referred to in section 35(4) or 39(2) relating to service connections of a municipal public utility that are owing by the owner of the parcel;
  - (b) unpaid charges referred to in section 42 for a municipal utility service provided to the parcel by a municipal public utility that are owing by the owner of the parcel;
  - (c) unpaid expenses and costs referred to in section 549(3), if the parcel's owner contravened the enactment or bylaw and the contravention occurred on all or a part of the parcel;
  - (d), (e) repealed 1999 c11 s35;
  - (f) costs associated with tax recovery proceedings related to the parcel;
  - (g) if the municipality has passed a bylaw making the owner of a parcel liable for expenses and costs related to the municipality extinguishing fires on the parcel, unpaid costs and expenses for extinguishing fires on the parcel;
  - (g.1) if the municipality has passed a bylaw requiring the owner or occupant of a parcel to keep the sidewalks adjacent to the parcel clear of snow and ice, unpaid expenses and costs incurred by the municipality for removing the snow and ice in respect of the parcel;
  - (h) unpaid costs awarded by a composite assessment review board under section 468.1 or the Municipal Government Board under section 501, if the composite assessment review board or the Municipal Government Board has awarded costs against the owner of the parcel in favour of the municipality and the matter before the composite assessment review board or the Municipal Government Board was related to the parcel;
  - (h.1) the expenses and costs of carrying out an order under section 646;
  - (i) any other amount that may be added to the tax roll under an enactment.

**Stop order**

- 645(1)** Despite section 545, if a development authority finds that a development, land use or use of a building is not in accordance with
- (a) this Part or a land use bylaw or regulations under this Part, or
  - (b) a development permit or subdivision approval,
- the development authority may act under subsection (2).
- (2)** If subsection (1) applies, the development authority may, by written notice, order the owner, the person in possession of the land or building or the person responsible for the contravention, or any or all of them, to
- (a) stop the development or use of the land or building in whole or in part as directed by the notice,
  - (b) demolish, remove or replace the development, or
  - (c) carry out any other actions required by the notice so that the development or use of the land or building complies with this Part, the land use bylaw or regulations under this Part, a development permit or a subdivision approval, within the time set out in the notice.
- (3)** A person who receives a notice referred to in subsection (2) may appeal to the subdivision and development appeal board in accordance with section 685.

**Enforcement of  
stop order**

- 646(1)** If a person fails or refuses to comply with an order directed to the person under section 645 or an order of a subdivision and development appeal board under section 687, the municipality may, in accordance with section 542, enter on the land or building and take any action necessary to carry out the order.
- (2)** A municipality may register a caveat under the Land Titles Act in respect of an order referred to in subsection (1) against the certificate of title for the land that is the subject of the order.

- (3) If a municipality registers a caveat under subsection (2), the municipality must discharge the caveat when the order has been complied with.

**Permit**

- 683** Except as otherwise provided in a land use bylaw, a person may not commence any development unless the person has been issued a development permit in respect of it pursuant to the land use bylaw.

**Grounds for appeal**

- 685(1)** If a development authority

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

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

- (2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal to the subdivision and development appeal board.
- (3) 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.

**Appeals**

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

- (a) in the case of an appeal made by a person referred to in section 685(1), after
  - (i) the date on which the person is notified of the order or decision or the issuance of the development permit, or
  - (ii) if no decision is made with respect to the application within the 40-day period or within any extension under section 684, the date the period or extension expires,

or

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

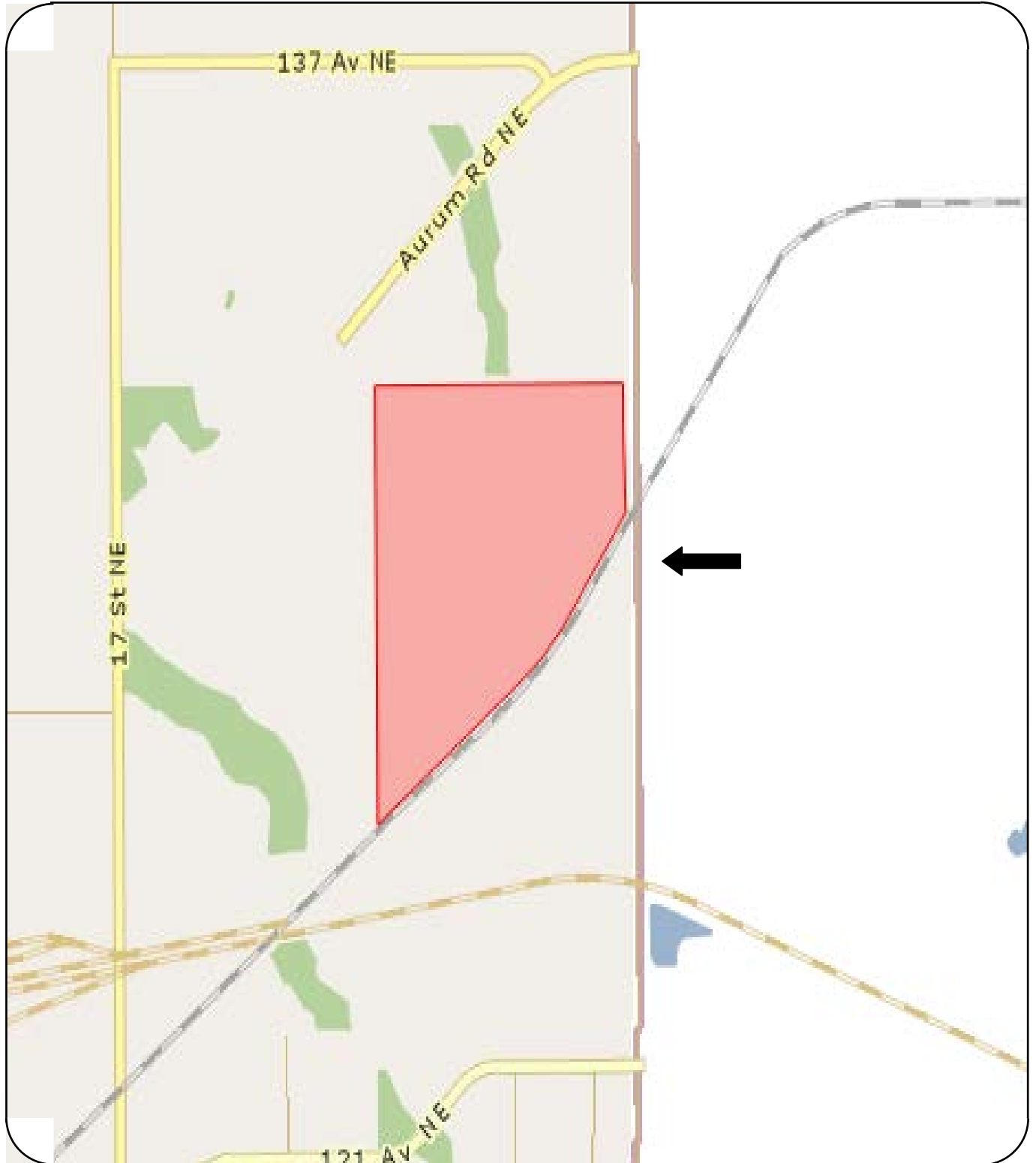
- (2) The subdivision and development appeal board must hold an appeal hearing within 30 days after receipt of a notice of appeal.
- (3) The subdivision and development appeal board must give at least 5 days' notice in writing of the hearing
- (a) to the appellant,
  - (b) to the development authority whose order, decision or development permit is the subject of the appeal, and
  - (c) to those owners required to be notified under the land use bylaw and any other person that the subdivision and development appeal board considers to be affected by the appeal and should be notified.
- (4) The subdivision and development appeal board must make available for public inspection before the commencement of the hearing all relevant documents and materials respecting the appeal, including
- (a) the application for the development permit, the decision and the notice of appeal, or
  - (b) the order under section 645.
- (5) In subsection (3), "owner" means the person shown as the owner of land on the assessment roll prepared under Part 9.



# APPENDIX A







**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-15-238



***BUSINESS LAID OVER***

SDAB-D-15-285	An appeal by <u>Sakaw Daycare</u> to convert an existing Single Detached House into a Child Care Services Use Building (60 Children, 2- 12-18 months, 6 – 19 months-3 yrs, 32 – 3-4.5 yrs, 20 – above 4.5 yrs) and to construct interior and exterior alterations <b><i>March 2 or 3, 2016</i></b>
SDAB-D-15-247	An appeal by <u>Kennedy Agrios LLP VS. Eton-West Construction (Alta) Inc.</u> change the use of "Building E" from Professional, Financial and Office Support Services to General Retail Stores and to construct interior and exterior alterations (increase building size and change dimensions, revision to parking layout and Drive-thru). <b><i>March 9 or 10, 2016</i></b>
SDAB-D-16-049	An appeal by <u>Petwin 104 Corporation</u> to develop a Parking Area Accessory to an existing Apartment House. <b><i>March 9 or 10, 2016</i></b>
SDAB-D-16-501	An appeal by <u>Darren Crocker / Brownlee LLP</u> to demolish an existing building. <b><i>March 30 or 31, 2016</i></b>