

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Thursday, 9:00 A.M.
September 8, 2016**

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

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

TO BE RAISED

I	9:00 A.M.	SDAB-D-16-220	Convert an existing Single Detached House to Child Care Services and to construct interior and exterior alterations (120 children occupancy) 12520 - 110 Avenue NW Project No.: 186484308-002
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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-16-220

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

APPELLANTS:

APPLICATION NO.: 186484308-002

ADDRESS OF APPELLANTS: 1. 10986 – 126 Street NW
2. 10973 - 125 Street NW
3. 10995 - 126 Street NW
4. 10994 - 126 Street NW
5. 10998 - 125 Street NW

APPLICATION TO: Convert an existing Single Detached House to Child Care Services and to construct interior and exterior alterations (120 children occupancy)

DECISION OF THE DEVELOPMENT AUTHORITY: Approved with Notices

DECISION DATE: July 8, 2016

DATE OF APPEALS: 1. July 25, 2016
2. July 26, 2016
3. July 26, 2016
4. July 27, 2016
5. July 27, 2016

NOTIFICATION PERIOD: July 14, 2016 through July 28, 2016

RESPONDENT:

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 12520 - 110 Avenue NW

LEGAL DESCRIPTION: Plan RN39B Blk 47 Lots 19-20

ZONE: DC1-Direct Development Control Provision

STATUTORY PLAN: West Ingle Area Redevelopment Plan

Grounds for Appeal

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

1.

We are in support of a Daycare in our neighbourhood but would request that the Daycare be limited in size due to the following reasons:

1. The proposed Daycare does not have off street dedicated drop off/pick up parking for 120 children. They would require 13 spaces and currently have zero. We believe this will cause congestion and an unsafe environment to drop children as many will park across the street from the Daycare and jay walk to get into the daycare. The developer proposes that they have 12 parking spaces along the property line, however this is on City streets which are now utilized by residents in the area and are not owned by the developer. We are not allowed designated parking on the streets in front of our homes and are questioning why a Daycare would be allowed approval based on this fact?
2. The safety of our children and residents who walk daily to school would be compromised with additional traffic in our area. A daycare of 120 children would bring an estimated 60-80 vehicles twice per day into our neighbourhood. We already experience a problem with cut through traffic as 127 Street is a one way going North and during rush hour if 124 Street gets backed up. The increase in traffic during peak times will magnify the existing traffic issue.
3. Parking is currently a huge issue in our neighbourhood with neighbours constantly jockeying for parking spots. With street drop off of 120 children, this will increase our existing problem. We are an area with apartment buildings, condos and future infill development as well as a heritage area where many of our homes are on half lots necessitating the home owners to park on the street as back alley parking is very limited. Add to this the added drop off/pick up congestion on our already busy streets and avenues and the residents will not have room to park near their homes.
4. The noise factor of a large daycare is also a huge concern for residents. The developers proposal is to build a small outdoor play area at the front of the building and as that play area will only accommodate approximately 20 children, they are proposing to rotate the children's play times. This will cause outdoor playtimes to be from 0900 am to afternoon which is the majority of the day. Although the sound of children is inviting, breaks from it during the day will be welcomed by the residents, we do not believe a continual rotation of children will give any daily breaks from Daycare noise.
5. Although a small Daycare in the neighbourhood can be an asset to our neighbourhood, we have grave concerns that the vehicle congestion and noise factor of a large daycare will affect the future saleability of our homes.

With the above 5 reasons we are respectively asking the Appeal Board to limit the daycare numbers to a significantly less amount. I have petitioned our neighbours within 120 meters of the Daycare who have received notices of this proposed Daycare and as of today we have 71 signature representing 44 homes in close proximity of the proposed Daycare, supporting this request to limit the size of the daycare whereby containing it's negative impact on our neighbourhood and making it an asset to the neighbour.

Please consider our concerns. I will be submitting the petition and the signature pages via a separate email.

2.

To appeal a development permit at 12520 - 110 Avenue NW for a 120 child care centre. The Community is aware that there was a previous Montessori School in the Unitarian Church in previous years. The residents on 125 Street are very concerned about the number of children, parking issues and transportation congestion for drop off and pick up of children.

3.

1. Lack of drop-off on a very busy residential street with a severe lack of parking.
2. Lack of a loading zone where the business has 120 children will necessitate the delivery by delivery trucks of food stuff etc.
3. Lack of staff parking.
4. Safety of existing neighbourhood kids.

4.

We are appealing the variance of zero (0) off-street pick-up/drop-off spaces instead of the required thirteen (13) as per the zoning by-law (Section 54.2, Schedule 1.33. (a)).

The proposed absence of parking has us deeply concerned for the safety of both the neighbourhood children and the daycare children. In light of the fact that there are no parking stalls designated for an anticipated 120 children and up to 20 or more staff members, we are concerned that with the current new commercial development on 127St/111Ave (and approvals for variances), the existing 56 unit condo on 127St/110 Ave and 2 multi-family apartment buildings on 127St/109-109a Ave, our neighbourhood is unlikely to be able to sustain this amount of extra traffic.

There is no marked crosswalk, and only a yield sign east to west that many vehicles fail to observe and with traffic from 111Ave and 124St often using 125 St and 126 St as cut through roads, we have been able to witness this firsthand. The number of vehicles the daycare will have, will only add to the likelihood of reduced safety as parents are often rushing to and from work.

120 children need supplies. It is unreasonable to expect that a zero loading zone is required. Any maintenance on stock would have to be done frequently.

As an urban family with 4 children, we recognize the need for daycare within communities, but this seems to be a violation of the intent of the Bylaw and feel that they have exploited this to the maximum allowance. The adjacent property (11006 125 St) has less than half the square footage of interior space but a marginally larger lot size. It is clear that, because there is no maximum square footage within the proposed daycare Bylaw, larger homes encourage disproportionate amount of children, thereby putting communities at risk with dangerous amounts of high traffic on narrow streets with uncontrolled intersections. Bylaw has not accounted for these size anomalies in structures, and should take this information into consideration.

The daycare owners have proposed an outdoor play schedule from 9 am to 2:45 pm, with anywhere from 10-21 children at a time. Though we love children, there would be no reprieve and we believe that this will interfere with our 'legally protected expectation of full use and quiet enjoyment of our property' as per the common property law. Not to mention the increase in road noise created by the volume increase in vehicles.

We believe that with amount of children scheduled for drop off, the minimum number of vehicles would be between 60-80 twice a day, each parking at a minimum 10-15 minute period and during peak-times-this-would congest the street even more and create illegal parking (ag. too close to yield double parking etc.) and or J walking all unsafe.

It is also unreasonable to monopolize the parking for that many drivers as currently new Bylaws are being proposed to further reduce parking variances from 2 to 1 per household.

To this end, there is no way to monitor how many parents will try to use this neighbourhood as a 'park and ride', which is already a point of frustration with.

The Westmount neighbours along the 102 Avenue corridor.

We feel that with the 124 St, 111 Ave transportation and the future LRT expansion only a few blocks south of this location, it is a very legitimate concern.

Finally,

There is a difference between a business SUPPORTING a community and NEGATIVELY impacting a community.

We are of the opinion that a parking allowance that would support 20-30 children would address our concerns.

5.

Area has existing and ongoing traffic/parking issues variances of 13 parking and 1 loading zone spot is excessive.

<i>General Matters</i>

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.

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

Appeals

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

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

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.

Section 641(4) of the *Municipal Government Act*, RSA 2000, c M-26, states despite section 685, if a decision with respect to a development permit application in respect of a direct control district

- (a) is made by a council, there is no appeal to the subdivision and development appeal board, or
- (b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

Section 2 of the *Edmonton Zoning Bylaw* concerning Repeal, Enactment and Transition Procedures states the following:

- 2.4 Subject only to the provisions in the *Municipal Government Act* respecting legal non-conforming Uses and notwithstanding the effect it may have on rights, vested or otherwise, the provisions of this Bylaw govern from the Effective Date onward. In particular, no application for a Development Permit shall be evaluated under the procedural or substantive provisions of the previous Land Use Bylaw after the Effective Date, even if the application was received before the Effective Date.
- 2.6 Any Direct Control Districts that were in effect immediately prior to the Effective date are hereby deemed to continue in full force and effect and are hereby incorporated into Part IV of this Bylaw.
- 2.7 Unless there is an explicit statement to the contrary in a Direct Control District or Provision, any reference in a Direct Control District or Direct Control Provision to a land use bylaw shall be deemed to be a reference to the land use bylaw that was in effect at the time of the creation of the Direct Control District or Provision.

At the time of the creation of the subject DC site, the *City of Edmonton Land Use Bylaw 5996* was in effect. A Court of Appeal decision in *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309 concluded that section 2.7 of the *Edmonton Zoning Bylaw* only applies if there is an express cross-reference in a Direct Control bylaw passed before 2001 to a provision of the old *Land Use Bylaw*. In the absence of an express reference in the Direct Control Bylaw to the *Land Use Bylaw 5996*, it does not prevail over section 2.4 of the *Edmonton Zoning Bylaw*.

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

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

...

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

...

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

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

(i) the proposed development would not

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

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

and

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

General Provisions from the *Edmonton Zoning Bylaw*:

Section 1 of the DC1 (Direct Development Control) District For The Westmount Architectural Heritage Area states the **General Purpose** is to establish a Direct Control District for single detached residential development and associated uses, as found under the RF1 (Single Detached Residential) District, in the Westmount Architectural Heritage Area so as to continue the tradition of heritage and community as originally conceived in the subdivision and architecture of the Area. The District is based on the RF1 Regulations but with additional Development Criteria and accompanying voluntary Architectural Guidelines, as written and developed by residents of the Area, that are intended to preserve the

Area's unique historical streetscape and architectural features, reflecting the character, location and proportions of existing structures from the early 1900s in the Area, including: Boulevards with mature trees; continuous sidewalks; rear lane access to on-site parking; verandahs; and other features as originally conceived in subdivision plans and architectural designs of the early 1900s.

Section 3 of the DC1 (Direct Development Control) District For The Westmount Architectural Heritage Area states the following:

3. Uses

The following uses are prescribed for lands designated DC1 pursuant to Section 710.3 of the Land Use Bylaw.

...

g. Child Care Services

...

Under Section 7.8(2) of the *Edmonton Zoning Bylaw*, Child Care Services means a development intended to provide care, educational activities and supervision for groups of seven or more children under 13 years of age during the day or evening, but does not generally include overnight accommodation. This Use Class typically includes daycare centres; out-of-school care centres; preschools; and dayhomes/group family care providing child care to seven or more children within the care provider's residence.

Section 4 of the DC1 (Direct Development Control) District For The Westmount Architectural Heritage Area states the following:

4. Development Criteria

The following development criteria shall apply to the prescribed uses pursuant to Section 710.4 of the Land Use Bylaw:

- (a) The regulations of the RF1 District shall apply, except where superseded by the development criteria contained herein.

Parking Spaces

Section 54.2, Schedule 1(33), states Child Care Services requires the following minimum number of Parking Spaces:

a) Passenger pick-up/drop-off spaces shall be provided at the rate of 2 pick-up/drop-off spaces for the first 10 children, plus 1 additional pick-up/drop-off space for every 10 additional children.

i) Passenger pick-up/drop-off spaces shall be designated with signs to reserve the parking spaces for Child Care Service pick-up/drop-off, to the satisfaction of the Development Officer.

ii) Passenger pick-up/drop-off spaces shall be located as close as possible to the main entrance used by the Child Care Service, and shall not be located further than 100 metres from the main entrance used by the Child Care Service. The distance between the farthest parking space in the pickup/drop-off area and the main entrance of the Child Care Service shall be measured along the shortest publically accessible pedestrian route.

iii) An on-street loading zone shall satisfy a portion of the passenger pick-up/drop-off parking space requirement without a variance if the Development Officer, after consultation with Transportation Operations, is satisfied with the proposal.

b) employee parking shall be provided at the rate of:

i) 1 parking space per 33.5 square metres of Floor Area; or

ii) 1 parking space per 117.0 square metres of Floor Area where the Child Care Service is proposed within 400 metres of an LRT Station, Transit Centre, Transit Avenue, or all Lots within the boundaries of the Oliver Area Redevelopment Plan, as adopted by Bylaw 11618, as amended, or all Lots within the boundaries of the Strathcona Area Redevelopment Plan, as adopted by Bylaw 11890, as amended; or

iii) Where the Child Care Service is for a dayhome/group family care providing care to 7 or more children within the residence of the child care provider, 1 parking space for each non-resident employee, in addition to the parking required for the primary Dwelling. Where a Front Yard Driveway provides access to a parking space that is not within the Front Yard, the Development Officer may consider this Driveway as the provision of a parking space that is in tandem.

Development Officer's Determination

Off-street passenger pick-up/drop-off spaces - The site has zero (0) off-street passenger pick-up/drop-off spaces instead of thirteen (13). (Section 54.2, Schedule 1.33.(a) of the Edmonton Zoning Bylaw)

Loading Spaces

Section 54.4, Schedule 3(2), states any development within the Residential-Related, Basic Services or Community, Educational, Recreational and Cultural Service Use Classes and Professional, Financial and Office Support Services, excluding Limited Group Homes, with a total Floor Area of Building of up to 2800 square metres, requires a minimum of 1 loading space.

Development Officer's Determination

Loading Stall - The site has zero (0) Loading Stall, instead of one (1). (Section 54.4, Schedule 3 of the Edmonton Zoning Bylaw)

Notice to Applicant/Appellant

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



Project Number: **186484308-002**
Application Date: MAR 18, 2016
Printed: July 25, 2016 at 1:08 PM
Page: 1 of 3

Major Development Permit

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

Applicant RANU, NASIB <input type="text"/>	Property Address(es) and Legal Description(s) 12520 - 110 AVENUE NW Plan RN39B Blk 47 Lots 19-20 Specific Address(es) Entryway: 12520 - 110 AVENUE NW Building: 12520 - 110 AVENUE NW
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Scope of Permit
To convert an existing Single Detached House to Child Care Services and to construct interior and exterior alterations (120 children occupancy).

Permit Details Class of Permit: Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.):	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none)
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I/We certify that the above noted details are correct.
Applicant signature: _____

Development Permit Decision
Approved

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



Project Number: **186484308-002**
Application Date: MAR 18, 2016
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Major Development Permit

Subject to the Following Conditions

1. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Notification Fee of \$100.
2. The fence shall not impede any sightlines for vehicular or pedestrian traffic.

Transportation Planning and Engineering requires the following conditions:

1. Access from the site to the alley exists. The proposed expanded parking area must be hard-surfaced and area between the parking area and the alley driving surface must be paved, to the satisfaction of Transportation Planning and Engineering. The applicant must contact Loli Fernandez (780 944 7683) a minimum 48 hours prior to construction, to arrange for inspection.
2. The parking stalls off the alley must be signed as "staff parking only", as shown on the Enclosure. The curb stops must be set a minimum of 5.5 m from the east property line to ensure that full length parking stalls are provided, and that no portions of the vehicles will encroach onto the City road right-of-way. Transportation Planning and Engineering does not support short stalls backing onto the alley.
3. There may be utilities within the road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.
4. Any alley, sidewalk or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Planning and Engineering, as per Section 15.5(f) of the Zoning Bylaw. The alley, sidewalks and boulevard will be inspected by Transportation Planning and Engineering prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

Notes:

This Development Permit is NOT valid until the Notification Period expires in accordance to Section 21.1. (Reference Section 17.1)

An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the Edmonton Building Permit Bylaw or any caveats, covenants or easements that might be attached to the Site (Section 5.2).

A Building Permit is Required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.

Signs require separate Development Applications.

This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.

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



Project Number: **186484308-002**
 Application Date: MAR 18, 2016
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Major Development Permit

Variations

Note: A variance was granted for this Development Permit pursuant to Sections 11.3 and 11.4. Subject to the right of appeal the permit is NOT VALID until the required Notification Period expires (date noted below) in accordance with Sections 21.1 and 17.1.

1. Off-street passenger pick-up/drop-off spaces - The site has zero (0) off-street passenger pick-up/drop-off spaces instead of thirteen (13). (Section 54.2, Schedule 1.33.(a) of the Edmonton Zoning Bylaw)
2. Loading Stall - The site has zero (0) Loading Stall, instead of one (1). (Section 54.4, Schedule 3 of the Edmonton Zoning Bylaw)

Rights of Appeal

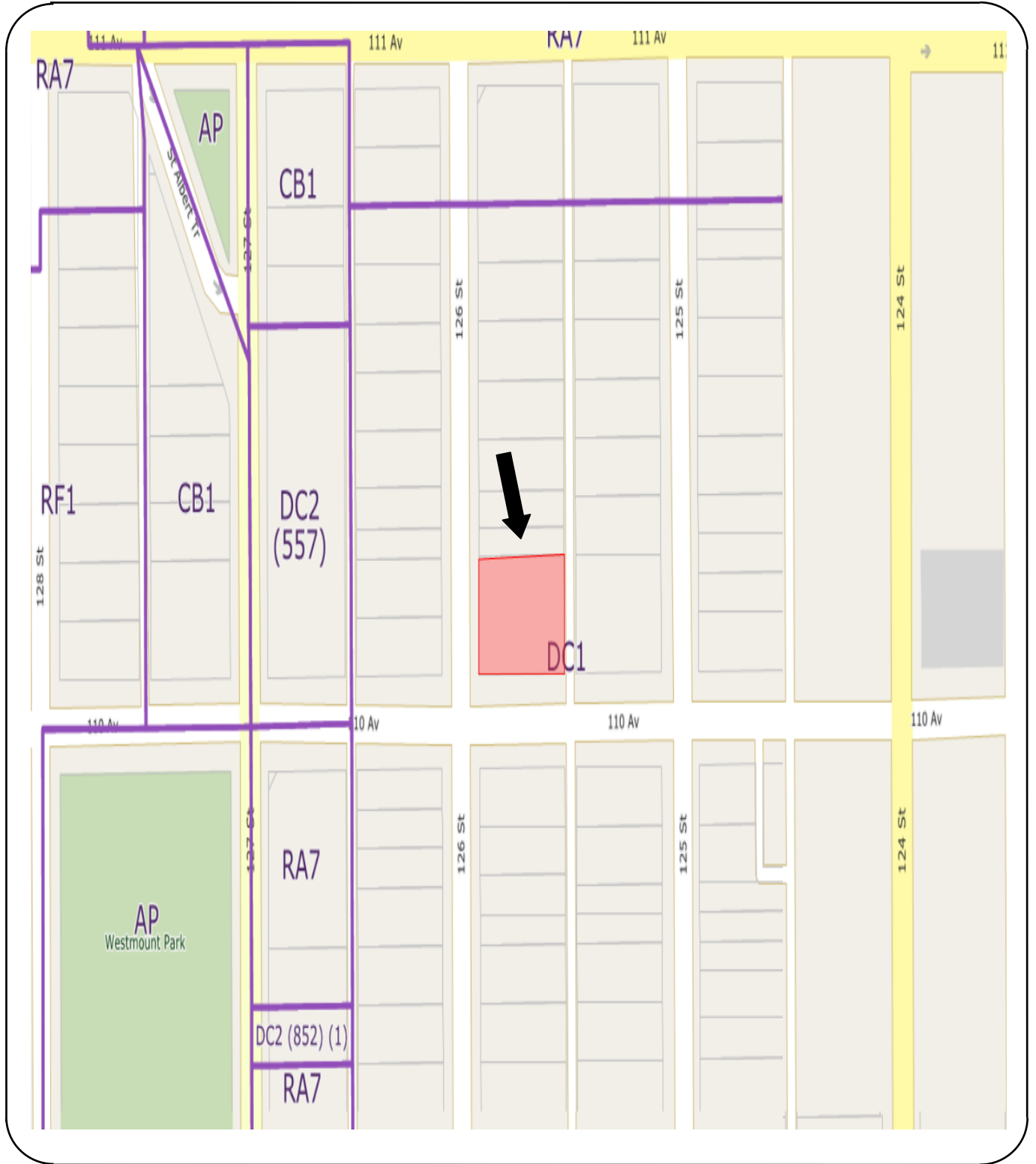
This approval is subject to the right of appeal as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.

Issue Date: Jul 08, 2016 **Development Authority:** YEUNG, CARMAN **Signature:** _____
Notice Period Begins: Jul 14, 2016 **Ends:** Jul 28, 2016

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$340.00	\$340.00	03139701	Mar 18, 2016
Total GST Amount:	\$0.00			
Totals for Permit:	\$340.00	\$340.00		

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



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-16-220



BUSINESS LAID OVER

SDAB-D-16-204	An appeal by <u>Omer Moyen</u> to develop a Secondary Suite in the basement of a Single Detached House, existing without permits <i>September 21 or 22, 2016</i>
SDAB-D-16-192	An appeal by <u>Vishal Kapoor</u> to change the Use from General Retail to Minor Alcohol Sales (AKP Liquors) <i>September 21 or 22, 2016</i>
SDAB-D-16-205	An appeal by <u>Rossdale Community League & Gabe Shelley VS Edmonton Fire Rescue Services</u> to continue and intensify the use of an existing Protective and Emergency Services Use (Fire Station 21 with a 24/7 crew) and to allow interior and exterior alterations <i>October 6, 2016</i>
SDAB-S-14-001	An appeal by <u>Stantec Consulting Ltd.</u> to create 78 Single Detached residential lots, 36 Semi-detached residential lots, 31 Row Housing lots and three (3) Public Utility lots from SE 13-51-25-4 <i>October 31, 2016</i>
SDAB-D-16-144	An appeal by <u>Kiewit Energy Canada Corp</u> to construct 6 Accessory General Industrial Use buildings - existing without permits (Kiewit Energy Canada Corp - 3 lunchroom buildings, 2 office buildings, and 1 office/lunch building) <i>November 30 or December 1, 2016</i>

APPEAL HEARINGS TO BE SCHEDULED

178340926-011	An appeal by <u>Habitat Studio & Workshop Ltd.</u> to construct a two-storey Accessory Building (rear detached Garage - 8.99 metres by 9.60 metres) <i>September 21 or 22, 2016</i>
169544513-002	An appeal by <u>Michael Skare</u> to construct an Accessory Building (Shed 1.98m x 4.57 m). <i>September 28 or 29, 2016</i>
188282372-001	An appeal by <u>Kennedy Agrios</u> to change the use from general Retail to a Bar and Neighbourhood Pub (maximum of 400 occupants and 691 square metres of Public Space) <i>November 2 or 3, 2016</i>
188283359-001	An appeal by <u>Kennedy Agrios</u> to change the use from a Flea Market Use to a Night Club and Major Amusement Establishment (1757 square metres of Public space) <i>November 23 or 24, 2016</i>