

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Wednesday, 9:00 A.M.
February 1, 2017**

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

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

I	9:00 A.M.	SDAB-D-17-023	Convert a Single Detached House to a Child Care Services (34 children) and to construct interior and exterior alterations 15421 - 79A Avenue NW Project No.: 232004667-001
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III	1:00 P.M.	SDAB-D-17-024	Order to Cease the Use (Non-Accessory Parking), REMOVE all signage associated with the Use (Non-Accessory Parking) from the site and PREVENT the recurrence of the Use (Non-Accessory Parking) by barricading the site to restrict vehicles from accessing the site for the Use (Non-Accessory Parking) on or before January 23, 2017 10617 - 105 Street NW Project No.: 230994782-002
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II	1:00 P.M.	SDAB-D-17-025	Order to Cease the Use (Non-Accessory Parking), REMOVE all signage associated with the Use (Non-Accessory Parking) from the site and PREVENT the recurrence of the Use (Non-Accessory Parking) by barricading the site to restrict vehicles from accessing the site for the Use (Non-Accessory Parking) on or before January 23, 2017 10430 - 106 Avenue NW Project No.: 238131880-001

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-17-023

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 232004667-001

APPLICATION TO: Convert a Single Detached House to a Child Care Services (34 children) and to construct interior and exterior alterations

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: December 16, 2016

DATE OF APPEAL: January 3, 2017

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 15421 - 79A Avenue NW

LEGAL DESCRIPTION: Plan 5580KS Blk 1 Lot 51

ZONE: (RF1) Single Detached Residential Zone

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: N/A

Grounds for Appeal

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

We would like to appeal the decision of the City of Edmonton for the proposed Childcare Services within the RF 1 that is on the corner lot which is situated at 15421-79 A, AVENUE, Edmonton, Alberta.

We had due consultation with the Community of the areas and they have no objection to have a childcare center being situated in this location.

Signatures were gathered and the community agreed.

We have enough parking space to accommodate incoming and outgoing traffic. We made several adjustment to accommodate the impact to the neighbors and all the residents.

This project will bring positive impact to the community that will serve their needs to have an affordable childcare that is geared towards the development of sustainable childcare that is responsive for the needs of family and everyone.

This lot is a corner lot and we have evidences to support this.

We have prepared for this project and the community is supporting this all the way.

Based on the denial they are denying the project based on parking and some other technicalities and we as a community based company are ready and able to make some adjustments to make this a very successful endeavors in the service of our community. [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 decision of refusal by the Development Officer is dated December 16, 2016. Fourteen days from the decision date is December 30, 2016 and the Notice of Appeal was filed on January 3, 2017.

Section 22(1) and (2) of the *Interpretation Act*, RSA 2000, c I-8, states:

22(1) If in an enactment the time limited for the doing of a thing expires or falls on a holiday, the thing may be done on the day next following that is not a holiday.

(2) If in an enactment the time limited for registration or filing of an instrument, or for the doing of anything, expires or falls on a day on which the office or place in which the instrument or thing is required to be registered, filed or done is not open during its regular hours of business, the instrument or thing may be registered, filed or done on the day next following on which the office or place is open.

The Board is advised the Subdivision and Development Appeal Board office was closed from December 24, 2016 until January 2, 2017 and re-opened on January 3, 2017.

Hearing and Decision

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*:

Under section 110.3(1), **Child Care Services** is a **Discretionary Use** in the (RF1) Single Detached Residential Zone.

Under section 7.8(2), **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 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 110.1 states that the **General Purpose** of the **(RF1) Single Detached Residential Zone** is:

...to provide for Single Detached Housing while allowing other forms of small scale housing in the form of Secondary Suites, Semi-detached Housing and Duplex Housing under certain conditions.

Section 814.1 states that the **General Purpose** of the **Mature Neighbourhood Overlay** is:

...to ensure that new low density development in Edmonton's mature residential neighbourhoods is sensitive in scale to existing development, maintains the traditional character and pedestrian-friendly design of the streetscape, ensures privacy and sunlight penetration on adjacent properties and provides opportunity for discussion between applicants and neighbouring affected parties when a development proposes to vary the Overlay regulations.

Development Officer's Determination:

1) Proposed Child Care Services is a Discretionary Use within (RF1) Single Detached Residential Zone (Reference Section 110.3(1)).

In the opinion of the Development Officer, the number of children proposed (34) for the Child Care Service within the existing the existing single detached house, is excessive and would create a negative parking and noise impact. The proposed development would affect the use, enjoyment and value of neighbouring properties. [unedited].

Child Care Services Regulations

Section 80.4(b) states with respect to Development in Residential Zones:

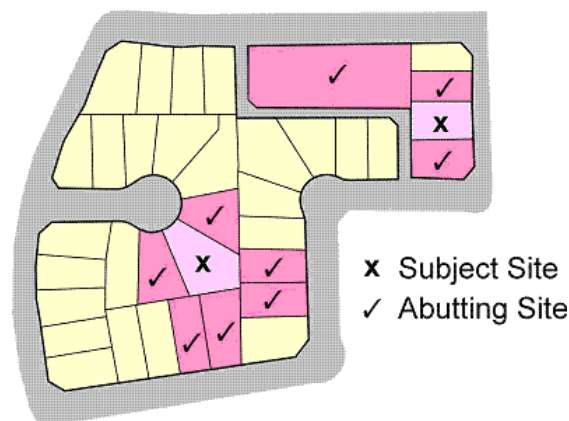
Where a Child Care Services Use is proposed as part of a Dwelling, or is proposed in a converted Single Detached Housing, the Use shall only be located:

- i. on a Corner Lot; or
- ii. on a Site Abutting a Site that is actively used for a Community, Educational, Recreational and Cultural Service Use Class; or
- iii. Abutting a Site with zoning that lists Apartment Housing, General Retail Stores or Convenience Retail Stores as a permitted Use.

Section 7.8 provides the *Community, Educational, Recreational and Cultural Service Uses*.

Under section 6.1(1), **Abut** or **abutting** means:

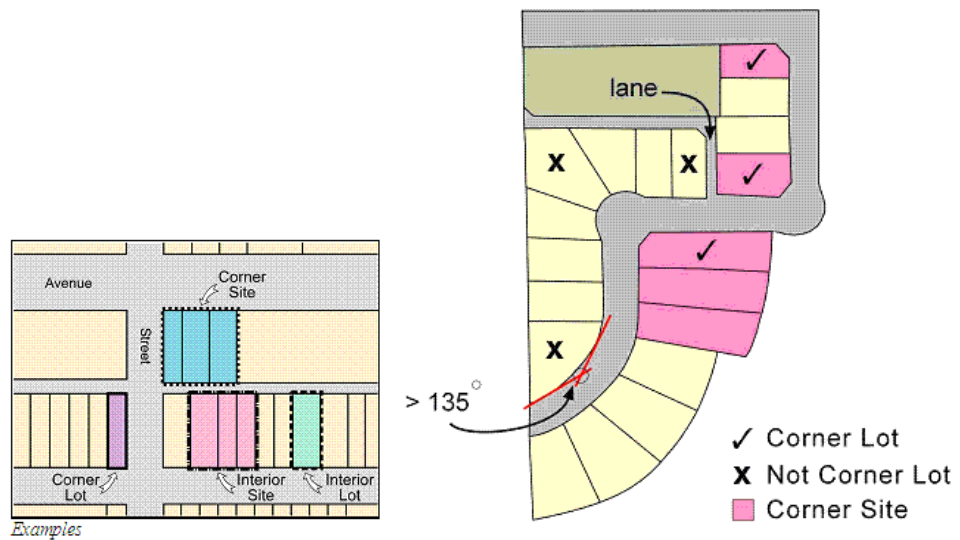
immediately contiguous to or physically touching, and when used with respect to a lot or Site, means that the lot or Site physically touches upon another lot, Site, or piece of land, and shares a property line or boundary line with it;



Under section 6.1(19), **Corner Lot** means:

- a. a Lot located at the intersection of two public roadways, other than Lanes; or
- b. a Lot located abutting a public roadway, other than a Lane, which changes direction at any point where it abuts the lot;

provided that in both cases the Lot shall not be considered a Corner Lot where the contained angle formed by the intersection or change of direction is an angle of more than 135 degrees. In the case of a curved corner, the angle shall be determined by the lines tangent to the property line abutting the public roadway, provided the roadway is not a Lane, at the point which is the extremity of that property line. In the case of a curved corner, the point which is the actual corner of the Lot shall be that point on the property line abutting the public roadway, provided the roadway is not a Lane, which is nearest to the point of intersection of the tangent lines.



Development Officer’s Determination:

2) Where a Child Care Services Use is proposed as part of a Dwelling, or is proposed in a converted Single Detached Housing, the Use shall only be located:

- i) on a Corner Lot; or
- ii) on a Site Abutting a Site that is actively used for a Community, Educational, Recreational and Cultural Service Use Class; or
- iii) Abutting a Site with zoning that lists Apartment Housing, General Retail Stores or Convenience Retail Stores as a permitted Use. (Reference Section 80.4(b)).

The proposed Child Care Service is not on a Corner Lot; is not abutting a Site that is actively used for a Community, Educational, Recreational and Cultural Service Use Class; and not abutting a Site with zoning that lists Apartment Housing, General Retail Stores or Convenience Retail Stores as a permitted Use.

Advisement: The subject property does not qualify as a corner lot for the reason that it abuts a public utility lot, Lot 52U, Block 1, Plan 5580LKS. [unedited].

Off-street Parking and Loading Regulations

Section 54.1(2)(f) states “Unless otherwise specified in this Bylaw, no required parking spaces shall be provided as Tandem Parking.”

Under section 6.1(108), **Tandem Parking** means “two parking spaces, one behind the other, with a common or shared point of access to the manoeuvring aisle.”

Development Officer’s Determination:

3) Unless otherwise specified in this Bylaw, no required parking spaces shall be provided as Tandem Parking (Reference Section 54.1(2)(f)).

The development proposes tandem parking to accommodate required off-street parking, contrary to Section 54.1(2)(f) [unedited].

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: 232004667-001
Application Date: OCT 04, 2016
Printed: December 16, 2016 at 10:21 AM
Page: 1 of 2

Application for Major Development Permit

This document is a Development Permit Decision for the development application described below.

Applicant	Property Address(es) and Legal Description(s) 15421 - 79A AVENUE NW Plan 5580KS Blk 1 Lot 51
	Specific Address(es) Suite: 15421 - 79A AVENUE NW Entryway: 15421 - 79A AVENUE NW Building: 15421 - 79A AVENUE NW

Scope of Application
To convert a Single Detached House to a Child Care Services (34 Children) and to construct interior and exterior alterations

Permit Details	
Class of Permit: Gross Floor Area (sq.m.): 221.85 New Sewer Service Required: N/A Site Area (sq. m.):	Contact Person: Lot Grading Needed?: N/A NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none)

I/We certify that the above noted details are correct.

Applicant signature: _____

Development Application Decision
Refused

THIS IS NOT A PERMIT



Project Number: **232004667-001**
 Application Date: OCT 04, 2016
 Printed: December 16, 2016 at 10:21 AM
 Page: 2 of 2

Application for Major Development Permit

Reason for Refusal

1) Proposed Child Care Services is a Discretionary Use within (RF1) Single Detached Residential Zone (Reference Section 110.3(1)).

In the opinion of the Development Officer, the number of children proposed (34) for the Child Care Service within the existing the existing single detached house, is excessive and would create a negative parking and noise impact. The proposed development would affect the use, enjoyment and value of neighbouring properties.

2) Where a Child Care Services Use is proposed as part of a Dwelling, or is proposed in a converted Single Detached Housing, the Use shall only be located:

- i) on a Corner Lot; or
- ii) on a Site Abutting a Site that is actively used for a Community, Educational, Recreational and Cultural Service Use Class; or
- iii) Abutting a Site with zoning that lists Apartment Housing, General Retail Stores or Convenience Retail Stores as a permitted Use. (Reference Section 80.4(b)).

The proposed Child Care Service is not on a Corner Lot; is not abutting a Site that is actively used for a Community, Educational, Recreational and Cultural Service Use Class; and not abutting a Site with zoning that lists Apartment Housing, General Retail Stores or Convenience Retail Stores as a permitted Use.

Advisement: The subject property does not qualify as a corner lot for the reason that it abuts a public utility lot, Lot 52U, Block 1, Plan 5580LKS.

3) Unless otherwise specified in this Bylaw, no required parking spaces shall be provided as Tandem Parking (Reference Section 54.1(2)(f)).

The development proposes tandem parking to accommodate required off-street parking, contrary to Section 54.1(2)(f)

Rights of Appeal

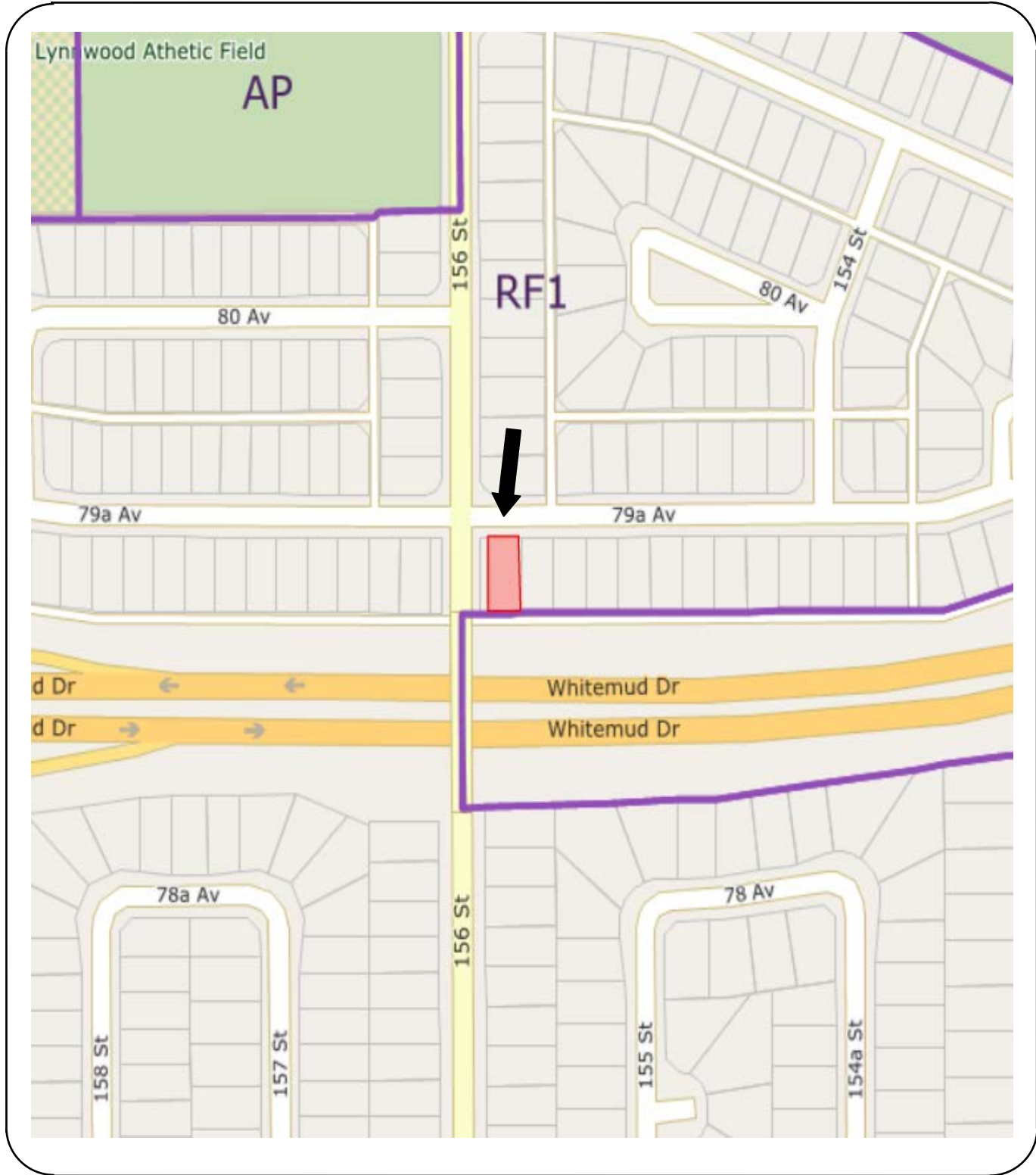
The Applicant has the right of appeal within 14 days of receiving notice of the Development Application Decision, as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.

Issue Date: Dec 16, 2016 Development Authority: SHAH, NIKHIL Signature: _____

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$306.00	\$306.00	03653679	Oct 04, 2016
Total GST Amount:	<u>\$0.00</u>			
Totals for Permit:	\$306.00	\$306.00		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-17-023



ITEM II: 1:00 P.M.

FILE: SDAB-D-17-024

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 230994782-002

ORDER TO: Cease the Use (Non-Accessory Parking), REMOVE all signage associated with the Use (Non-Accessory Parking) from the site and PREVENT the recurrence of the Use (Non-Accessory Parking) by barricading the site to restrict vehicles from accessing the site for the Use (Non-Accessory Parking) on or before January 23, 2017

DECISION OF THE DEVELOPMENT AUTHORITY: Order Issued

DECISION DATE: December 23, 2016

DATE OF APPEAL: January 5, 2017

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 10617 - 105 Street NW

LEGAL DESCRIPTION: Plan B3 Blk 4 Lot 211

ZONE: (CB1) Low Intensity Business Zone

OVERLAY: N/A

STATUTORY PLAN: Central McDougall / Queen Mary Park Area Redevelopment Plan

Grounds for Appeal

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

We are in the process of having this matter being sent to the alberta court of appeal and we have a date of Feb 22. We are asking this be put off until after the decision from the court of appeal. [unedited]

General Matters

Appeal Information:

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.

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.

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

...

Hearing and Decision

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*:

Under section 330.3(25), **Non-accessory Parking** is a **Discretionary Use** in the CB1 Low Intensity Business Zone.

Under Section 7.4(39), **Non-accessory Parking** means:

development providing vehicular parking which is not primarily intended for the Use of residents, employees or clients of a particular development. Typical Uses include surface parking lots and parking structures located above or below Grade.

Section 330.1 states that the **General Purpose** of the **CB1 Low Intensity Business Zone** is:

...to provide for low intensity commercial, office and service uses located along arterial roadways that border residential areas. Development shall be sensitive and in scale with existing development along the commercial street and any surrounding residential neighbourhood.

Approval Required for Development

Section 5 states:

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.

Previous Subdivision and Development Appeal Board Decision

<u>Application Number</u>	<u>Description</u>	<u>Decision</u>
<u>SDAB-D-16-283</u>	To demolish an existing Automotive and Recreational Vehicle Sales/Rentals building and change the use of the site to Non-accessory Parking.	November 24, 2016: “The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.”

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*.



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

Our File: 230994782-002

Dear Sir/Madam:

A check with Land Titles Office discloses that you are the registered owner(s) of the property located at 10617 - 105 STREET NW, legally described as Plan B3 Blk 4 Lot 211.

This property was inspected by Development Compliance Officer Michael Doyle, on December 22, 2016. City of Edmonton Development Compliance Officers have the authority to conduct site inspections and exercise development powers under Section 624 of the Municipal Government Act.

LAND USE INFRACTION:

This property is zoned CB1 (Low Intensity Business Zone) in accordance with Section 330 of the Edmonton Zoning Bylaw. Our investigation revealed that a Non-Accessory Parking Use has been developed. The City of Edmonton has not issued a development permit to develop a Non-Accessory Parking Use, which is contrary to Section 683 of the Municipal Government Act, R.S.A. 2000, c.M-26.1.

Section 5.1 states 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.

Non-accessory Parking means development providing vehicular parking which is not primarily intended for the Use of residents, employees or clients of a particular development. Typical Uses include surface parking lots and parking structures located above or below Grade.

ORDER:

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

CEASE the Use (Non-Accessory Parking), REMOVE all signage associated with the Use (Non-Accessory Parking) from the site and PREVENT the recurrence of the Use (Non-Accessory Parking) by barricading the site to restrict vehicles from accessing the site for the Use (Non-Accessory Parking).

This order is to be complied with on or before January 23, 2017.

CONSEQUENCES FOR NON-COMPLIANCE:

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 or after January 24, 2017 to determine compliance with this Order.

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

YOU ARE HEREBY NOTIFIED that if the Use (Non-Accessory Parking) has not CEASED, the signs have not been REMOVED and the perimeter of the site has not been barricaded to PREVENT vehicular access by the deadline, the City will carry out the Order pursuant to Section 646 by entering the property and doing what is necessary to carry out the Order, 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 780-423-5374.

Regards,

Michael Doyle
Development and Zoning
Development Services
Phone Number: 780-423-5374
Email Address: Michael.Doyle@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.

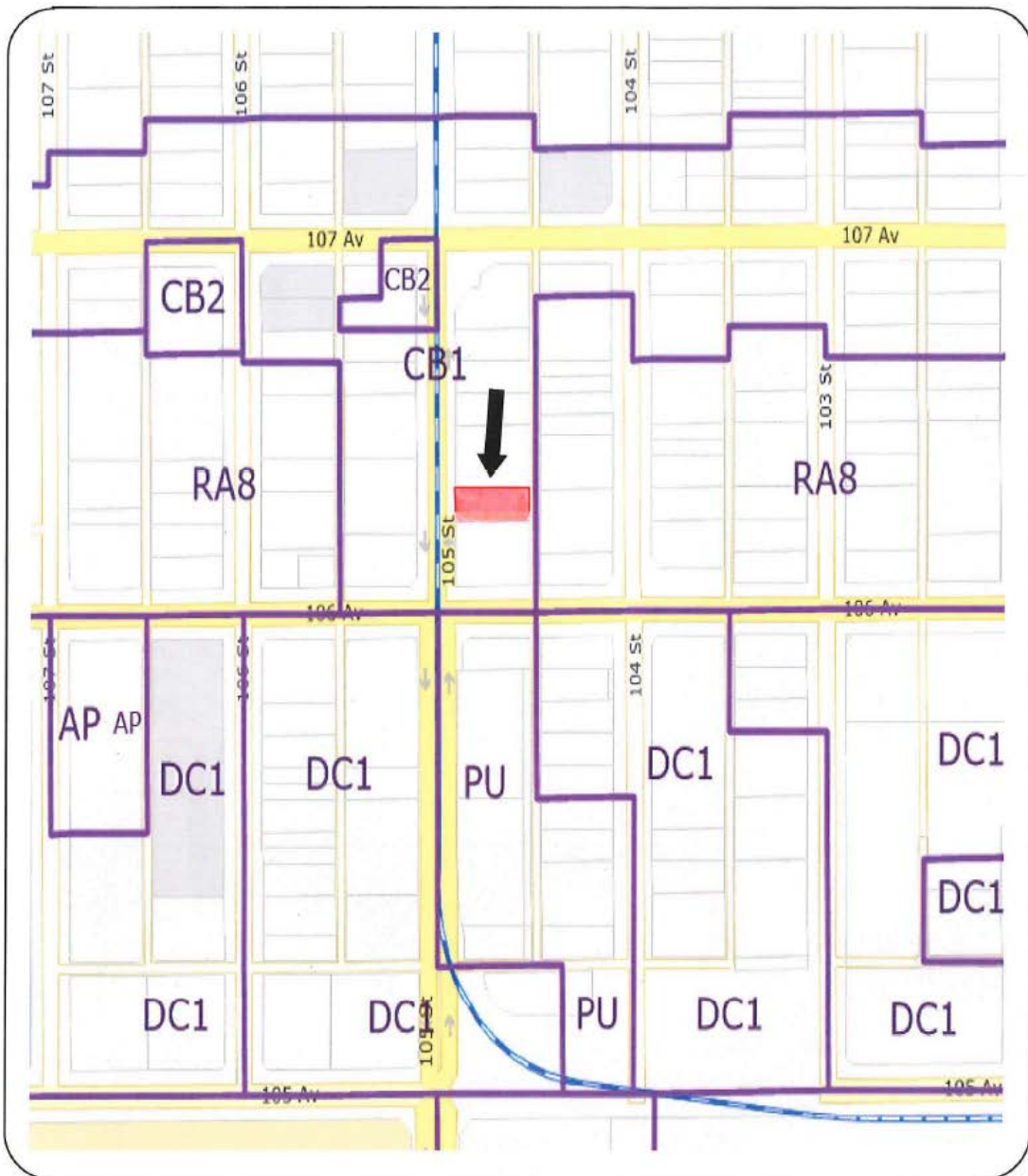
- (3) The subdivision and development appeal board must give at least 5 days' notice in writing of the hearing

- (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.



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-17-024

▲
N

ITEM III: 1:00 P.M.

FILE: SDAB-D-17-025

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 238131880-001

ORDER TO: Cease the Use (Non-Accessory Parking), REMOVE all signage associated with the Use (Non-Accessory Parking) from the site and PREVENT the recurrence of the Use (Non-Accessory Parking) by barricading the site to restrict vehicles from accessing the site for the Use (Non-Accessory Parking) on or before January 23, 2017

DECISION OF THE DEVELOPMENT AUTHORITY: Order Issued

DECISION DATE: December 23, 2016

DATE OF APPEAL: January 5, 2017

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 10430 - 106 Avenue NW

LEGAL DESCRIPTION: Plan B3 Blk 4 Lots 209-210

ZONE: (CB1) Low Intensity Business Zone

OVERLAY: N/A

STATUTORY PLAN: Central McDougall / Queen Mary Park Area Redevelopment Plan

Grounds for Appeal

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

We are in the process of having this matter being sent to the alberta court of appeal and we have a date of Feb 22. We are asking this be put off until after the decision from the court of appeal. [unedited]

General Matters

Appeal Information:

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.

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.

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

...

Hearing and Decision

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*:

Under section 330.3(25), **Non-accessory Parking** is a **Discretionary Use** in the CB1 Low Intensity Business Zone.

Under Section 7.4(39), **Non-accessory Parking** means:

development providing vehicular parking which is not primarily intended for the Use of residents, employees or clients of a particular development. Typical Uses include surface parking lots and parking structures located above or below Grade.

Section 330.1 states that the **General Purpose** of the **CB1 Low Intensity Business Zone** is:

...to provide for low intensity commercial, office and service uses located along arterial roadways that border residential areas. Development shall be sensitive and in scale with existing development along the commercial street and any surrounding residential neighbourhood.

Approval Required for Development

Section 5 states:

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.

Previous Subdivision and Development Appeal Board Decision

<u>Application Number</u>	<u>Description</u>	<u>Decision</u>
<u>SDAB-D-16-283</u>	To demolish an existing Automotive and Recreational Vehicle Sales/Rentals building and change the use of the site to Non-accessory Parking.	November 24, 2016: “The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.”

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*.



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

December 23, 2016

Our File: 238131880-001

Dear Sir/Madam:

A check with Land Titles Office discloses that you are the registered owner(s) of the property located at 10430 - 106 AVENUE NW, legally described as Plan B3 Blk 4 Lots 209-210.

This property was inspected by Development Compliance Officer Michael Doyle, on December 22, 2016. City of Edmonton Development Compliance Officers have the authority to conduct site inspections and exercise development powers under Section 624 of the Municipal Government Act.

LAND USE INFRACTION:

This property is zoned CB1 (Low Intensity Business Zone) in accordance with Section 330 of the Edmonton Zoning Bylaw. Our investigation revealed that a Non-Accessory Parking Use has been developed. The City of Edmonton has not issued a development permit to develop a Non-Accessory Parking Use, which is contrary to Section 5.1 of the Edmonton Zoning Bylaw 12800 and Section 683 of the Municipal Government Act, R.S.A. 2000, c.M-26.1.

Section 5.1 states 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.

Non-accessory Parking means development providing vehicular parking which is not primarily intended for the Use of residents, employees or clients of a particular development. Typical Uses include surface parking lots and parking structures located above or below Grade.

ORDER:

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

CEASE the Use (Non-Accessory Parking), REMOVE all signage associated with the Use (Non-Accessory Parking) from the site and PREVENT the recurrence of the Use (Non-Accessory Parking) by barricading the site to restrict vehicles from accessing the site for the Use (Non-Accessory Parking).

This order is to be complied with on or before January 23, 2017.

CONSEQUENCES FOR NON-COMPLIANCE:

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 January 24, 2017 to determine compliance with this Order.

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

YOU ARE HEREBY NOTIFIED that if the Use (Non-Accessory Parking) has not CEASED, the signs have not been REMOVED and the perimeter of the site has not been barricaded to PREVENT vehicular access by the deadline, the City will carry out the Order pursuant to Section 646 by entering the property and doing what is necessary to carry out the Order, 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 780-423-5374.

Regards,

Michael Doyle
Development and Zoning
Development Services
Phone Number: 780-423-5374
Email Address: Michael.Doyle@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

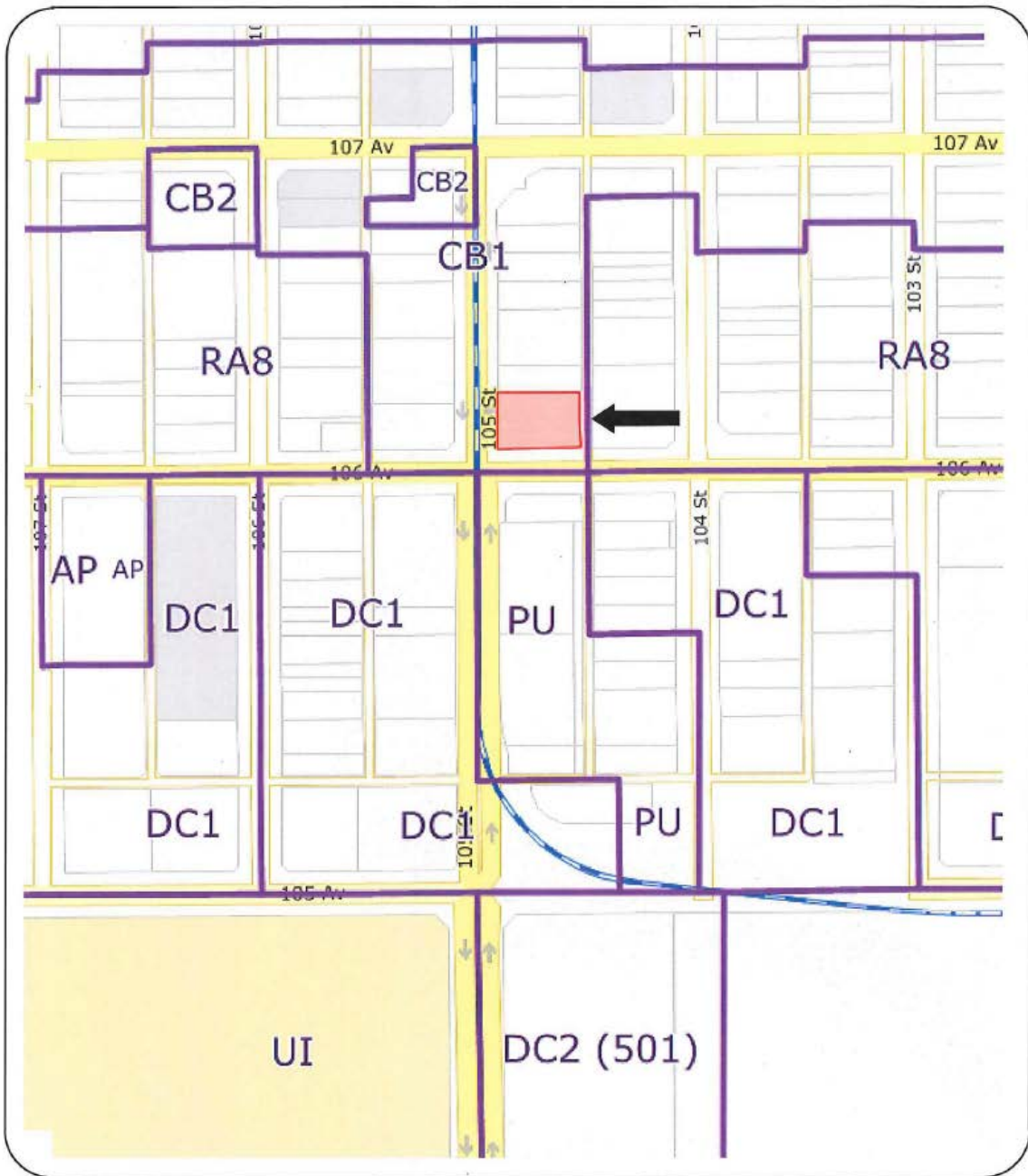
- 686(1)** A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

- (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.



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-17-025

N

BUSINESS LAID OVER

SDAB-D-17-007	An appeal by <u>1223382 Alberta Ltd.</u> to comply with an Order to revert the building back to a Single Detached House AND acquire a Development Permit for interior alterations to complete the work AND reduce the number of occupants living in the building down to a single Household. This Order must be complied with before January 17, 2017. <i>February 8, 2017</i>
SDAB-D-16-144	An appeal by <u>Kiewit Energy Canada Corp</u> 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>To be Determined</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, located north of 41 Avenue SW and west of James Mowatt Trail SW; Desrochers; located at 3304 – 127 Street SW <i>July 19, 2017</i>

APPEAL HEARINGS TO BE SCHEDULED

152674334-001	An appeal by <u>A&E Architectural & Engineering Group Inc.</u> to construct an Auctioneering Establishments building and operate an Auctioneering Establishment on the entire Site (including existing storage building and shed), and demolish an existing storage building (Osman Auction Inc.) <i>February 22, 2017</i>
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