

Subdivision and Development Appeal Board Training for Members and Clerks

Resource Book

February 2023



Superseded

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CAUTION ON THE USE OF THE MATERIALS

The purpose of this Resource Book and accompanying materials is solely to facilitate delivery by the LPRT of the mandatory training for SDAB clerks and members required by regulation. They are not legal advice, and users should seek independent legal advice regarding specific issues that arise.

Superseded

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1 CASE LAW SUMMARIES

Below are summaries of cases that highlight significant issues with respect to decisions of the SDAB.

Citation	Summary
<i>Bowes v Edmonton</i> , 2005 ABQB 502; 2007 ABCA 347	LIABILITY: The municipality has a duty to disclose relevant information it has about risks of development and also to review that information before granting approval. The municipality will be liable if breach of this duty causes damage. (In this case, the 10 year general limitation period saved Edmonton from liability.)
<i>Beaverford v Thorhild (County No. 7)</i> , 2013 ABCA 6	BIAS: Traditional apprehension of bias test applies to SDABs - i.e., "Would a reasonable person, viewing the matter realistically and practically, and after having obtained the necessary information and thinking the matter through, have a reasonable apprehension of bias?" Context will affect what is "realistic and practical" - including that the MGA allows councillors to be members, and whether other members were available. Behaviour that shows a closed mind (which is an even stronger test) will result in a reasonable apprehension of bias - as in this case, where member called for a unanimous vote to prohibit gravel extraction right before a hearing about a permit for gravel extraction.
<i>Sihota v Edmonton (City)</i> , 2013 ABCA 43	ISSUE ESTOPPEL: Once the DA or SDAB has decided an issue, it can't be reopened later as between the same parties unless not to do so would be unfair. In this case, the DA could not approve a development permit for use as a post office 12 years ago, but decide on a later application by the same owner for the same property under the same bylaw that the use as a post office doesn't qualify as a permitted or discretionary use after all.
<i>Alberta Snyders Holdings v Newell (County No. 4) Subdivision and Development Appeal Board</i> , 2002 ABCA 282	<p>SUBDIVISION APPEAL FORM REQUIREMENTS: Appeal form requirement for legal land description on (s. 678(4)) is not mandatory if SDAB can still identify the affected land, since the requirement's intent is still fulfilled.</p> <p>STANDING OF COUNCIL TO APPEAL DECISION OF IMPC Also, Council cannot appeal an SA decision where the SA is an Intermunicipal MPC, because IMPC counts as MPC for purposes of 678(1)(c).</p>

<i>Canada Lands Co. (CLC) v Edmonton</i> , 2005 ABCA 218	SUBDIVISION CONDITIONS - LAND FOR ROADS: The SA can take a reasonable amount of land for public roads (up to the 30% cap) whether or not they are required to serve the subdivision as opposed to the general public.
<i>Rogers Wireless v Bighorn (Municipal District No. 8) Subdivision and Development Appeal Board</i> , 2006 ABCA 386	DEVELOPMENT CONDITIONS - SCOPE: Development conditions must relate to the proposed development and have a legitimate connection with valid planning and development considerations. In this case, this case the DA could not require ongoing research into the impact of a communications tower on birds, since the research would not affect the use of the tower once built. Nor could the DA attach a condition to a development permit requiring studies respecting future applications for development.
<i>Burnco Rock Products Ltd. v Rockyview (Municipal District No. 44)</i> , 2000 ABCA 129	DEVELOPMENT CONDITIONS – DISCRETIONARY VERSUS PERMITTED USES: LUB can give DA broad discretion to impose conditions on discretionary uses, but must specify particular conditions for permitted uses.
<i>Love v Flagstaff (County of) Subdivision and Development Appeal Board</i> , 2002 ABCA 292	BALANCING DISCRETIONARY AND PERMITTED USES: Encroachment on individual rights for private purposes should be narrowly construed. In this case, DA could not refuse a permit for a permitted residential use within the setback distance from a planned but as yet unpermitted discretionary use (feedlot).
<i>Edmonton (City of) Library Board v Edmonton (City of)</i> , 2021 ABCA 355 “Rundle”	POWER TO VARY LUB: The SDAB has broad discretion to vary LUB standards. It must decide whether the variance will cause negative effects described in s. 687(3)(d), taking into account the purpose of the standard, the degree of variance, and the relevant public and private interests involved.
<i>Thomas v Edmonton (City)</i> , 2016 ABCA 57	POWER TO VARY LUB: SDAB’s power to vary LUB requirements only applies to development standards – not to procedural requirements in the LUB like community consultation about proposed var.
<i>Rau v Edmonton (City)</i> , 2015 ABCA 136	POWER TO VARY LUB - PERMITTED USE: The MGA prohibits appeals of development permits for permitted uses unless the DA has “relaxed, varied or misinterpreted” the LUB provisions; however, this restriction cannot stop the SDAB from deciding whether the DA has relaxed, varied or misinterpreted the LUB.

<i>Garneau Community League v Edmonton (City)</i> , 2017 ABCA 374	POWER TO VARY LUB - DIRECT CONTROL DISTRICT: The SDAB's general power to vary the LUB does not apply in a DC district, and the SDAB must follow the directions of Council – just like the DA. Discretion to vary must be directed by Council.
<i>Hartel Holdings Co. Ltd. v the Council of the City of Calgary</i> , 1984 Canlii 137 (SCC) See also <i>Springfield Capital Inc. v Grande Prairie (SDAB)</i> , below	HIERARCHY OF LEGISLATION – LUB AND STATUTORY PLAN: A permitted use in an LUB will take precedence over inconsistent provisions in a statutory plan.
<i>McCauley Community League v Edmonton (City)</i> , 2012 ABCA 86	APPEALS OF “OTHER DECISIONS”: The MGA implicitly gives the SDAB power to hear an appeal of a DA's decision that a development permit has not expired; otherwise, there would be gaps and inconsistencies in the legislative scheme. The 14 day appeal period for such “other decisions” begins when the interested party has actual notice or ought to have realized the DA has made the decision. (Judicial review could still apply in cases where there is no way to tell if the DA has made a decision.) EXPIRY DATE FOR DEVELOPMENT PERMIT: Permit expires one year after issuance – not one year after conditions fulfilled.
<i>Site Energy Services Ltd. v Wood Buffalo (Regional Municipality)</i> , 2015 ABCA 106	SDAB POWERS - STOP ORDER APPEALS: If the DA issues a stop order requiring termination of a use for which there is no development permit and which is not authorized by the LUB, the SDAB can't override the stop order to permit indefinite continuation of the use.
<i>Focaccia Holdings Ltd. v Parkland Beach (Summer Village Subdivision and Development Appeal Board)</i> , 2014 ABCA 132	STOP ORDERS – TO ENFORCE DEVELOPMENT AGREEMENTS AS CONDITIONS OF SUBDIVISION: Development agreements have both contractual and public law elements, and cover complicated details of development that are impractical to put directly in the approval. The DA can issue a stop order if the developer breaches a requirement in a development agreement imposed as a condition of subdivision (e.g., to pave roads to municipal standards) even after the subdivision is registered. There is no need to pursue private remedies first.

<i>Legacy Inc v Red Deer (City)</i> , 2020 ABCA 105	<p>STOP ORDERS – NO LIMITATION PERIOD: Stop orders are not punitive measures; rather, they are intended to achieve compliance and run with the land to warn purchasers of non-compliance. Therefore, the 2 year limitation period applicable to prosecutions does not apply to stop orders.</p> <p>STOP ORDERS – NONCOMPLIANT USE OR DEVELOPMENT IN PREVIOUS MUNICIPALITY: If a permit is required for a use, and the land is then annexed, the annexing municipality can still issue a stop order. Non-permitted development or use is not cured because the land is annexed.</p>
<i>Springfield Capital Inc. v Grande Prairie (Subdivision and Development Appeal Board)</i> , 2018 ABCA 203	<p>ROLE OF APPROVING AUTHORITY at SDAB: The DA has a legitimate role at hearing, and can explain why it made its decision; also, there is a significant public policy element to land use planning decisions, so the DA's role includes describing the impact on the community. However, the DA should maintain an attitude of neutrality and not be overly aggressive or advocate a result – at least where adverse parties are all present.</p>

1.1 **BOWES V EDMONTON, 2005 ABQB 502; 2007 ABCA 347**

LIABILITY: *The municipality has a duty to disclose relevant information it has about risks of development and also to review that information before granting approval. The municipality will be liable if breach of this duty causes damage. (In this case, the 10-year general limitation period saved Edmonton from liability.)*

This case relates to the slope instability of three residences that were destroyed in October 1999 near the bank of the North Saskatchewan River.

The Court of Queen's Bench found the City of Edmonton could not be found liable for the claims brought by the property owners because of a limitations issue - the claims were brought more than 10 years after issuance of the relevant City permits and approvals. However, if the claims had not been barred by the limitations issue, the City would have been liable for negligent issuance of the permits and approvals.

Prior to considering subdivision of lands in the area, the City had commissioned a geotechnical report in relation to road construction. This report (referred to in the decision as the "1977 Hardy Report") indicated that the land between the road and the top of the bank was not developable, as the risk of subsidence was too great. This report was never disclosed to the developer or to the individuals who purchased the individual lots and built the homes. There were subsequent engineering reports that indicated that the land was developable, and that the risk of subsidence was not extreme, provided that certain conditions were followed (vegetation must be retained, no underground sprinklers, no swimming pools).

At trial, the City argued that the 1977 Hardy Report was not relevant to the issue of liability because the report (and its testing) focused on the risk of superficial subsidence, and not the risk of a deeper failure that the experts agreed was the cause of the subject collapse. Justice Clackson disagreed and stated:

- "The City is not a guarantor of the safety or suitability of a proposed development and is not responsible for every potential latent defect.
- The City is obliged to conduct itself carefully in granting or refusing permits.
- The City should have reviewed the materials in its possession bearing on the landowners applications and should have disclosed the 1977 Hardy Report to the applicants. The report would have caused a careful municipality to require a more detailed geotechnical opinion which would justify ignoring the 1977 Hardy Report.
- The City should have disclosed any information in its possession which might bear on the risk of development."

The decision was upheld on appeal. Two of the three members on the Court of Appeal panel agreed the City's conduct was negligent. All three agreed the limitations issue barred the claim.

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1.2 BEAVERFORD V THORHILD (COUNTY NO. 7), 2013 ABCA 6

BIAS: *Traditional apprehension of bias test applies to SDABs - i.e., “Would a reasonable person, viewing the matter realistically and practically, and after having obtained the necessary information and thinking the matter through, have a reasonable apprehension of bias?” Context will affect what is “realistic and practical” - including that the MGA allows councillors to be members, and whether other members were available. Behaviour that shows a closed mind (which is an even stronger test) will result in a reasonable apprehension of bias - as in this case, where member called for a unanimous vote to prohibit gravel extraction right before a hearing about a permit for gravel extraction.*

The SDAB dismissed the appellant developer’s application for a development permit for gravel extraction. The developer challenged the SDAB’s decision on the basis that one of the Members of the SDAB panel that heard the appeal was biased.

The SDAB panel Member in question was a municipal councillor. The evidence put to the SDAB in support of the developer’s allegation of bias was with respect to events which occurred in March 2010, including:

- Copies of postings from the councillor’s social media account stating the councillor’s opposition to another gravel pit within the municipality, and describing the site as “a waste land for private profit.”
- An open letter and flier from the councillor to his constituents explaining that the councillor had introduced a motion before council to prohibit any further gravel extraction within the municipality unless it was for the municipality’s own use. The letter questioned the approval process used for the specific gravel pit posted about on the councillor’s social media account, and why the municipality was allowing the extraction of gravel for profit when it might require use of the resource in the future.

There was also evidence that on two occasions in July 2011, including July 26, 2011, the councillor made a motion at a council meeting to amend the municipality’s LUB to prohibit aggregate extraction on any Crown land within the municipality other than for the use of the County or provincial or federal transportation requirements. The councillor also suggested that any exception to the prohibition should require unanimous council approval.

The SDAB hearing occurred on September 22, 2011. The developer requested that the councillor recuse himself from hearing the appeal. The SDAB’s decision concluded that there was no evidence that the councillor had made any comments or taken any position with respect to the specific gravel pit before the SDAB, and therefore no reasonable apprehension of bias.

The test for reasonable apprehension of bias is “whether a reasonable person, viewing the matter realistically and practically, and after having obtained the necessary information and thinking the matter through, would have a reasonable apprehension of bias”. The Court of Appeal acknowledged that municipal councillors may, by virtue of their positions, have previously made public pronouncements on relevant issues. These public pronouncements do not necessarily create a reasonable apprehension of bias.

However, the Court of Appeal concluded that on the specific facts of this case, the history of the councillor’s adverse attitude -- specifically the July 2011 motions proposed by the councillor to prohibit gravel extraction and restrict a future council’s ability to alter the prohibition -- gave rise to a reasonable apprehension of bias. The Court of Appeal also found that a reasonable person would infer that the councillor had influence over the reasoning process of the panel as a whole, and sent the matter back to the SDAB for consideration without the councillor’s participation.

1.3 **SIHOTA V EDMONTON (CITY), 2013 ABCA 43**

ISSUE ESTOPPEL: *Once the DA or SDAB has decided an issue, it can't be reopened later as between the same parties unless not to do so would be unfair. In this case, the DA could not approve a development permit for use as a post office 12 years ago, but decide on a later application by the same owner for the same property under the same bylaw that the use as a post office doesn't qualify as a permitted or discretionary use after all.*

The appellant owned property in a strip mall zoned "Neighbourhood Convenience Commercial Zone". This zone allows for the use of "Professional, Financial and Office Support Services", but General Industrial Use is neither permitted nor discretionary. In 2000, the appellant applied for, and obtained, a development permit to operate a post office facility. The appellant operated the post office facility for 12 years, during which time neither the zoning of the lands nor the provisions of the applicable zoning bylaw changed.

In 2012, the appellant applied to construct an addition to the building to provide a washroom and lunchroom for his employees. The development authority determined the use was General Industrial, which is not permitted in the district, and refused the application. On appeal, the SDAB agreed with this characterization and concluded that at the time of the development permit application, the development authority was entitled to make a decision on the use that was being proposed.

The Court of Appeal disagreed with the SDAB conclusions. Instead, the Court of Appeal relied on the doctrine of "issue estoppel". This principle prevents a previous decision of a planning authority from being reopened during a subsequent approval process. In this case, the development authority decided in 2000 that the proposed use was "Professional, Financial and Office Support Services". The current development authority could not reopen the original decision on the proper characterization of the use. The Court of Appeal stated that "it would be unfair, and economically untenable, to permit significant investments in one year, and then allow the municipality to declare the intended use unlawful in a later year."

1.4 ALBERTA SNYDERS HOLDINGS V NEWELL (COUNTY NO. 4) SDAB, 2002 ABCA 282

SUBDIVISION APPEAL FORM REQUIREMENTS: *Appeal form requirement for legal land description on (s. 678(4)) is not mandatory if SDAB can still identify the affected land, since the requirement's intent is still fulfilled.*

STANDING OF COUNCIL TO APPEAL DECISION OF IMPC *Also, Council cannot appeal an SA decision where the SA is an Intermunicipal MPC, because IMPC counts as MPC for purposes of 678(1)(c).*

The Intermunicipal Planning Commission (the "IPC") of the Town of Brooks and the County of Newall No. 4 (the "County") approved the appellant's subdivision application, subject to conditions. The County appealed to the County's SDAB, which varied the conditions attached to the approval. The appellant challenged the SDAB's decision on the grounds that the notice of appeal filed by the County was deficient, and the County did not have legal standing to appeal a decision of its own subdivision authority.

Section 678(4)(a) of the MGA states that a notice of subdivision appeal must include the legal description of the land proposed to be subdivided. The Court of Appeal found that the purpose of this requirement is to enable the SDAB to identify the lands and provide the required notice of the appeal hearing. The allegedly deficient notice of appeal did not contain a legal description, however, it did contain a subdivision application number which allowed the SDAB to properly identify the lands and circulate in accordance with the legislative requirements. The Court of Appeal concluded that in the circumstances the absence of legal description of the lands in the notice of appeal was "not a fatal defect" and the SDAB did not err when it accepted the appeal.

However, the Court of Appeal also concluded that the IPC was the County's municipal planning commission and that the County did not have standing to appeal the approval. Section 678 (1)(c) of the MGA limits the municipality's right to appeal the subdivision authority's decision to situations where "the council, a designated officer of the municipality or the municipal planning commission of the municipality is not the subdivision authority". The Court of Appeal found the SDAB erred in law by hearing the appeal, and set aside the SDAB's decision.

1.5 CANADA LANDS CO. (CLC) V EDMONTON, 2005 ABCA 218

SUBDIVISION CONDITIONS - LAND FOR ROADS: *The SA can take a reasonable amount of land for public roads (up to the 30% cap) whether or not they are required to serve the subdivision as opposed to the general public.*

The Alberta Court of Appeal has given a broad interpretation of section 662 of the MGA. This provision allows a subdivision authority to require a landowner to provide lands for roads, public utilities or both, up to 30% of the developable area of the lands to be subdivided. There is a qualifier, though, if the owner has provided sufficient land for road and public utility purposes (even though the maximum amount has not been provided), the subdivision authority may not require the owner to provide additional amounts.

The Court of Appeal considered the not uncommon scenario where the developer was being asked to dedicate road width beyond the roads strictly necessary to meet the needs of the subdivision; namely, to allow for road widening from four to six lanes. The Court supported the subdivision authority's decision to take a reasonable amount of land for public roads whether or not they were required to serve the subdivision. This power would not allow the Subdivision Authority to take land for purposes other than roads, or beyond the 30% maximum.

1.6 **ROGERS WIRELESS V BIGHORN (MUNICIPAL DISTRICT NO. 8)** **SDAB, 2006 ABCA 386**

DEVELOPMENT CONDITIONS - SCOPE: *Development conditions must relate to the proposed development and have a legitimate connection with valid planning and development considerations. In this case, this case the DA could not require ongoing research into the impact of a communications tower on birds, since the research would not affect the use of the tower once built. Nor could the DA attach a condition to a development permit requiring studies respecting future applications for development.*

The SDAB granted a development permit for a telecommunications tower to the appellant, subject to conditions requiring studies on the effects of the tower and other similar towers on bird migration. The LUB designated telecommunications towers as a discretionary use, and established the impact of telecommunications towers on migratory birds as a planning consideration.

The first condition appealed required the appellant to commission a long-term species mortality research study by accredited ornithologists in order to provide cooperative data on other towers owned by the appellant within the municipality.

A condition on a development permit must relate to the development under consideration in order to be valid. The Court of Appeal found that the first condition did not relate to the development under construction, and was improper. The decision distinguishes the impugned condition from a condition relating to the use of the development which has a legitimate planning purpose; for example, a condition on hours of operation to regulate traffic flow.

The second condition required the appellant to provide written acknowledgement that any applications it made in the future, for telecommunications towers elsewhere in the municipality, would be accompanied by a site-specific study of bird migration and estimates of mortality. The Court of Appeal concluded that this condition was an improper attempt to fetter the discretion of future decision makers and limit the appellant's ability to challenge future conditions. The Court of Appeal rejected the municipality's argument that the condition "clarified" the LUB noting that the municipality could not seek to amend its own bylaw, or advance its own interpretation of that bylaw, by attaching a condition to permit.

1.7 **BURNCO ROCK PRODUCTS LTD. V ROCKYVIEW (MUNICIPAL DISTRICT NO. 44), 2000 ABCA 129**

DEVELOPMENT CONDITIONS – DISCRETIONARY VERSUS PERMITTED USES:

LUB can give DA broad discretion to impose conditions on discretionary uses, but must specify particular conditions for permitted uses.

The development authority granted the appellant a permit for the discretionary use of sand and gravel mining operations. The permit included a condition restricting hours of operation, which the appellant appealed to the SDAB. Nearby landowners appealed the issuance of the development permit to the SDAB. The SDAB upheld the issuance of the development permit, but varied the conditions to include even more restrictive hours of operation.

The appellant challenged the SDAB's decision on the basis that the municipality's LUB, which authorized the development authority to impose any conditions it considered appropriate, did not give the development officer or SDAB specific authority to impose the condition in question.

The Court of Appeal's decision distinguishes between conditions on permitted versus discretionary use permits. An LUB must specify with particularity what conditions the development authority may impose on a permitted use, because an applicant for a permitted use is entitled to a permit if the LUB requirements are met. In contrast, a discretionary use may be refused for a variety of reasons, and it is not practical to identify all the potential conditions that might be imposed on a discretionary use. The Court of Appeal concluded an LUB can give the development authority broad discretion to impose conditions, provided they are connected to a legitimate planning purpose. It also found the hours of operation condition had a legitimate planning objective, and dismissed the appeal.

1.8 LOVE V FLAGSTAFF (COUNTY OF) SDAB, 2002 ABCA 292

BALANCING DISCRETIONARY AND PERMITTED USES: *Encroachment on individual rights for private purposes should be narrowly construed. In this case, DA could not refuse a permit for a permitted residential use within the setback distance from a planned but as yet unpermitted discretionary use (feedlot).*

The DA denied a permit for a single residence after receiving an incomplete application for an intensive animal operation from another nearby landowner, because the LUB prohibited residences within a certain distance of “proposed” intensive animal operations.

The Court had to interpret whether the planned feedlot was “proposed” under the bylaw. It applied a purposive and contextual approach to interpreting the LUB, which included looking at part 17 of the *Act*, the MDP, LUP, and other documents in the legislative framework (in this case an Alberta Agriculture Code of Practice).

The purpose of Part 17 is to regulate land planning and development in Alberta in a manner as consistent as possible with community values. This task requires balancing the rights of property owners and the larger public interest to achieve planned, orderly and safe development of lands. Also central to the s. 617 values of orderly and economical development are certainty and predictability in planning law. Encroachments on individual rights by private parties should be strictly construed.

With these principles in mind, the Court concluded an intensive animal operation wasn’t “proposed” until a permit had been granted. The right to a development permit crystallized at the time of application. This right could be defeated by a subsequent change in law (after application but before the DA makes its decision), but not by a subsequent application for a discretionary use permit.

1.9 EDMONTON (CITY OF) LIBRARY BOARD V EDMONTON (CITY OF), 2021 ABCA 355 (RUNDLE)

POWER TO VARY LUB: *The SDAB has broad discretion to vary LUB standards. It must decide whether the variance will cause negative effects described in s. 687(3)(d), taking into account the purpose of the standard, the degree of variance, and the relevant public and private interests involved.*

The City of Edmonton Library Board appealed an SDAB approval for a cannabis retail store that did not meet the minimum distance from a library in Edmonton's LUB. The Library argued onus should be on the applicant/developer to show why the SDAB should vary an LUB standard; further, it said the SDAB had improperly reversed this onus by requiring the City show there would be "negative effects" from the requested variance – i.e. that the proposed development would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land (per s. 687).

A minority of the ABCA panel agreed with the Library's argument, but the majority found the SDAB reasons actually explained why it thought the circumstances meant varying the setback from the cannabis store would not create negative effects. For example, the SDAB reasons noted that although the distance between the library and the cannabis store was only 79 m instead of the minimum 200 m, there was no direct route from the store to the library, and the practical effect was that users of the library and the cannabis store would be separated.

The ABCA majority also explained the SDAB's has very broad discretion to grant variances, and that SDAB appeals are not like civil litigation, which involves a dispute between two parties over legal rights. Rather, the SDAB has to consider facts relating to various policy considerations raised by multiple parties to the appeal, and then exercise its discretion taking into account what it hears. The appeal board may also consider planning criteria and community interests that transcend or are in addition to the interests of the parties before it, and the cumulative impact of the proposed development together with existing developments.

In this context, the failure to meet an LUB standard does not create a presumption of negative effects, and the SDAB must simply hear from those affected and then use its discretion to make a decision that takes into account the purpose of the LUB standard and balances relevant interests.

1.10 *THOMAS V EDMONTON (CITY)*, 2016 ABCA 57

POWER TO VARY LUB: *SDAB's power to vary LUB requirements only extends to development standards – not procedural requirements in the LUB like community consultation about proposed variances.*

The appellants were residents of a mature neighbourhood in the City of Edmonton. The municipality's LUB required developers proposing residential development which did not comply with the requirements of the land use bylaw, i.e., for which a variance was required, to undertake a community consultation process. The community consultation process involved contacting neighbours and community leagues within a 60 m radius of the proposed development to solicit input, and documenting any opinions or concerns and what modifications were made to address the concerns.

The developer, a residential home builder, chose not to conduct community consultation with respect to a proposed development. The development officer did not require the developer to undertake the community consultation, but instead denied the application for a development permit on the basis that the setback requirements of the LUB had not been met. The SDAB concluded it had the authority under s. 687(3)(d) of the MGA to waive the community consultation requirements, and granted the developer a development permit with a variance to the setback requirements.

The Court of Appeal disagreed, and concluded that the SDAB did not have the ability to waive compliance with the community consultation requirements of the LUB. The variance power granted to the SDAB under s. 687(3)(d) of the MGA is a development standard variance which relates only to the physical attributes of the development in question, and cannot be applied to community consultation requirements. The developer's failure to comply with the community consultation requirements was a breach of procedural fairness.

The Court of Appeal quashed the development permit and sent the matter back to the SDAB to be heard, directing that the SDAB takes the necessary steps to ensure that the developer complied with the community consultation requirements of the LUB.

1.11 *RAU V EDMONTON (CITY)*, 2015 ABCA 136

POWER TO VARY LUB - PERMITTED USE: *The MGA says there is no appeal of development permits for permitted uses unless the DA has “relaxed, varied or misinterpreted” the LUB provisions; however, this restriction cannot stop the SDAB from deciding whether the DA has relaxed, varied or misinterpreted the LUB.*

The developer applied for a development permit for the construction of a house. The development officer concluded that proposed development complied with the LUB, and issued a development permit. Neighbouring landowners appealed the decision to the SDAB, arguing that the height of the building exceeded the maximum height allowed by the LUB.

The SDAB referred to s. 685(3) of the *MGA*, which states that “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”. The SDAB raised the preliminary question of whether it had jurisdiction to hear the appeal. The SDAB proceeded to consider the substance of the appeal in order to determine whether there had been a misinterpretation of the LUB, but then concluded it did not have the jurisdiction to hear the appeal on the merits.

The Court of Appeal clarified that the question raised by s. 685(3) is not jurisdictional in nature. The SDAB has the ability to hear appeals from the issuance of a development permit for a permitted use, and determine whether there has been a relaxation, variation or misinterpretation of the LUB; if the SDAB concludes there was not, the appeal must be dismissed.

1.12 GARNEAU COMMUNITY LEAGUE V EDMONTON (CITY), 2017 ABCA 374

POWER TO VARY LUB - DIRECT CONTROL DISTRICT: *The SDAB's general power to vary the LUB does not apply in a DC district, and the SDAB must follow the directions of council – just like the DA. Discretion to vary must be directed by Council.*

The developer applied for a development permit to construct an apartment dwelling in a direct control district. The development officer refused the application, which was for a discretionary use. The developer appealed to the SDAB, which allowed the appeal and granted a development permit to the developer, relying upon the variance power granted to the SDAB by s. 687(3) of the *MGA*.

Section 685(4) of the *MGA* (s. 641(4)(b) at the date of this decision) provides that if a decision with respect to a development permit application in a district control district is made by a development authority, then:

... the appeal is limited to whether the development authority followed the direction of council, and if the subdivision and development appeal board finds that the development appeal did not follow the direction it may, in accordance with the directions, substitute its decision for the development authority's decision.

The Court of Appeal agreed with the SDAB's conclusion that the development officer had not followed the directions of council set out in the LUB for the direct control district. The SDAB was entitled to substitute its own decision, provided that the decision accorded with council's directions. The SDAB did not, however, have the ability to rely upon the general variance power set out in s. 687(3) of the *MGA* to vary the requirements of the LUB where the appeal related to a direct control district.

1.13 HARTEL HOLDINGS CO. LTD. V CALGARY, 1984 CANLII 137 (SCC)

HIERARCHY OF LEGISLATION – LUB AND STATUTORY PLAN: *A permitted use in an LUB will take precedence over inconsistent provisions in a statutory plan.*

Calgary amended its statutory plans to identify an area in the LUB's Agricultural district as a future park. The owner said the amendment should trigger a statutory requirement to purchase the land, since it could no longer be used for purposes other than parks. However, the Supreme Court of Canada found the land could still be used for permitted uses in the Agricultural district and that the statutory plan must be read down to the extent it was inconsistent such use. Therefore, the statutory obligation to purchase was not engaged.

1.14 **MCCAULEY COMMUNITY LEAGUE V EDMONTON (CITY), 2012 ABCA 86**

APPEALS OF “OTHER DECISIONS”: *The MGA implicitly gives the SDAB power to hear an appeal of a DA’s decision that a development permit has not expired, since otherwise there would be gaps and inconsistencies in the legislative scheme. The 14 day appeal period for such “other decisions” begins when the interested party has actual notice or ought to have realized the DA has made the decision. (Judicial review could still apply in cases where there is no way to tell if the DA has made a decision.)*

EXPIRY DATE FOR DEVELOPMENT PERMIT: *Permit expires one year after issuance – not one year after conditions fulfilled.*

The developer applied for a development permit for a 42-unit residential building, to provide housing and support services to hard-to-house individuals. The development officer classified the facility as apartment housing, which was a permitted use in the land use district, and issued a development permit on May 5, 2008. The municipality’s LUB did not require notification of development permits for permitted uses to be provided where no variance was required; no notice of issuance of the permit was circulated.

The municipality’s LUB also required construction to commence within one year of the date of the approval in order for a development permit to remain valid. The developer did not begin construction until November 2010, at which time the appellant community league noticed the construction activity and made inquiries with the municipality. On January 7, 2011, the municipality confirmed in writing that a development permit for the permitted use of apartment housing had been issued, taking the position that the permit had not expired because the one year time limit did not begin to run until the conditions of the permit were fulfilled in February 2010. The community league filed an appeal to the SDAB on January 17, 2011.

The SDAB concluded that the municipality’s decision that the development permit had not expired was not capable of being appealed, and declined to hear the appeal. The SDAB also concluded that the community’s league’s notice of appeal was filed outside of the appeal period, on the basis that the community league had notice of the development permit in November 2010.

Section 685(2) of the *MGA* grants a right of appeal to any person affected by a decision made by a development authority. The Court of Appeal decided that the provision should be given a broader meaning than that adopted by the SDAB, and that the determination of whether a development permit had expired (which engages similar considerations to other development decisions which can be appealed) is a decision of the development authority which is capable of being appealed to the SDAB. The Court of Appeal also considered the substantive question of whether or not the development permit had expired and concluded that based on the wording of the LUB, which required

construction to commence within one year “from the date of approval”, the permit has expired on May 5, 2009.

The appeal period began to run from the time when the appellant knew, or should have known, that the municipality had made the decision or was taking the position that the development permit remained in effect. When the community league made inquiries with the municipality regarding the construction occurring on the site, they were initially advised that more information was required to determine whether the development permit was valid. The community league’s unchallenged evidence was that the confusion about the status of the permit was not resolved until the municipality’s written correspondence on January 7, 2011. The Court of Appeal concluded that the community league had actual or constructive notice of the decision on January 7, 2011, and its appeal was filed within the appeal period.

1.15 **SITE ENERGY SERVICES LTD. V WOOD BUFFALO (REGIONAL MUNICIPALITY), 2015 ABCA 106**

SDAB POWERS - STOP ORDERS: *If the DA issues a stop order requiring termination of a use for which there is no development permit and which is not authorized by the LUB, the SDAB can't override the stop order to permit indefinite continuation of the use.*

The appellant developer began erecting temporary offices, washrooms, security and fuel storage facilities to support its work on a pipeline project. The developer then applied for a development permit for an "Industrial Support Facility", which was neither a permitted nor a discretionary use in the land use district, which was refused. The developer did not appeal the refusal, but continued its operations.

The municipality issued a Stop Order under s. 645 of the *MGA* on the basis that the operations were an unauthorized development and the use was not permitted or discretionary in the land use district. The SDAB upheld the Stop Order and refused the developer's request to issue a development permit. The developer applied for permission to appeal the SDAB's decision, arguing that the SDAB erred in finding that it did not have jurisdiction to grant a development permit in the circumstances.

The Court of Appeal dismissed the application for permission to appeal on the basis that the developer's arguments did not have a reasonable prospect of success. The developer did not challenge the DA's classification of the proposal's use by appealing the development permit. The development officer characterized the use as one that was neither permitted nor discretionary in the land use district. The Court of Appeal concluded that the SDAB was correct in concluding that it had no jurisdiction to override the Stop Order and permit the indefinite continuation of a use for which a development permit could not be granted.

1.16 FOCACCIA HOLDINGS LTD. V PARKLAND BEACH (SUMMER VILLAGE SDAB), 2014 ABCA 132

STOP ORDERS – TO ENFORCE DEVELOPMENT AGREEMENTS AS CONDITIONS

OF SUBDIVISION: *Development agreements have both contractual and public law elements, and cover complicated details of development that are impractical to put directly in the approval. The DA can issue a stop order if the developer breaches a requirement in a development agreement imposed as a condition of subdivision (e.g., to pave roads to municipal standards) even after the subdivision is registered. There is no need to pursue private remedies first.*

The municipality required the appellant developer, as a condition of subdivision approval, to enter into a development agreement with the municipality which required the developer to construct infrastructure including roads to municipal standards. The municipality and developer negotiated and entered into a development agreement. The developer then failed to complete paving of the roads and other work required under the development agreement. The municipality issued a Stop Order against the developer under s. 645 of the *MGA*, on the basis that the lands were in breach of the development agreement and therefore in breach of the conditions of the subdivision approval. The SDAB upheld the Stop Order.

The developer argued that a Stop Order could only be issued for a breach of the conditions of the subdivision approval and that the developer had complied with the condition by entering into the development agreement. The condition did not specifically require the developer to comply with the development agreement.

The Court of Appeal concluded that in light of the applicable provisions of the *MGA* and its overall purpose and intent, the SDAB's decision was correct:

The objective of the provisions, read together, is to provide for a practical and orderly method of regulating the subdivision of land, which is a complicated process. The development agreement is a part of that regulatory process, and on the proper interpretation of the statute a breach of a development agreement can support a stop work order.

1.17 LEGACY INC V RED DEER (CITY), 2020 ABCA 105

STOP ORDERS – ANNEXATION WITH NONCOMPLIANT USE OR DEVELOPMENT IN PREVIOUS MUNICIPALITY; NO LIMITATION PERIOD: *If a permit is required for a use, and the land is then annexed, the annexing municipality can still issue a stop order. Non-permitted development or use is not cured because the land is annexed. Also, stop orders are not punitive measures, but are intended to achieve compliance and run with the land to warn purchasers. Therefore, the 2 year limitation period applicable to prosecutions does not apply to stop orders.*

In this case, the landowner had Red Deer County redesignate adjacent AG land to allow a small business; however, the landowner then expanded the business onto the subject land to include RV storage, which was a discretionary AG use requiring a permit. When the City of Red Deer annexed the land, it amended the bylaw to allow existing uses and development as approved by the County, and issued a stop order against the unpermitted RV storage.

The Court upheld the stop order, finding annexation does not cure or put noncompliant use or development in the old municipality out of enforcement reach of the new municipality (para 19). The section 643 protection against nonconforming use would only apply if the use conformed prior to the bylaw change.

Unlike prosecutions under Part 13, Division 5, stop orders are not punitive measures; rather, they are intended to achieve compliance and run with the land to warn purchasers of non-compliance. Therefore, the 2 year limitation period applicable to prosecutions does not apply to stop orders.

1.18 **SPRINGFIELD CAPITAL INC. V GRANDE PRAIRIE (SDAB), 2018 ABCA 203**

This case considered inconsistency between the ASP (which allowed retail uses only), and the LUB (which had recycle depots as a permitted use). The SDAB and ABCA both found the LUB permitted use must prevail over ASP's provision restricting uses to retail only.

Consistent with *Hartel Holdings*, the ABCA describes the LUB as the primary implementation tool for uses:

[s. 640(2) says the LUB] must “divide the municipality into districts” and, other than for direct control districts, “prescribe with respect to each district” permitted and discretionary uses. Area structure plans, on the other hand, are to provide “a framework for subsequent subdivision and development”, with either general or specific “land uses proposed for the area”: s. 633. The structure of the planning provisions of the Act therefore supports the concept that, in terms of uses at least, “the land use bylaw rather than statutory plans [is] the primary implementation tool of the planning process”. This is consistent with the wording of Figure 2, which merely says that it sets out “proposed” uses. (para 13)

Similarly, it concluded a permit can't be refused based on use, if it is a permitted use. However, it clarified the SDAB need not always read down any stat plan to be the same as the LUB, and should comply with both documents where possible. (para 8) The Court also observed in the case before it:

- The ASP didn't show Council intend for the ASP to displace all LUB uses other than retail – otherwise, it would have been a kind of DC district, making the actual district redundant.
- Also, Council had previously refused an application to make “recycle depot” a discretionary use.

In addition to describing the interplay between the ASP and LUB, the ABCA explained the role of the DA when it appears at an SDAB hearing. The DA has a legitimate role and is free to explain why it made its decision. In addition, there is a significant public policy element to land use planning, so the DA's role includes describing impact of the decision on the community (para 20). The DA should maintain attitude of neutrality and not be overly aggressive or advocate a result – at least where adverse parties are all present (para 19).

2 EXERCISES

Assume you are sitting on a SDAB panel. The materials in the exercises that follow relate to an appeal which you are about to hear. Please review the materials, consider, and be prepared to discuss the questions at the end of each exercise.

Superseded

EXERCISE 1

1. SDAB Agenda

COUNTRY COUNTY

Application: This is an appeal of the Subdivision Authority decision refusing the creation of two 0.61 hectare (1.51 acre) parcels from an existing 1.22 hectare (3.02 acre) parcel within the Green Acres subdivision.

Background: William and Benita Cadwallader are getting ready to retire and are looking to facilitate estate planning. They have two children and they would like to be able to leave a property to each of them.

As a result, they propose to subdivide the property into two smaller parcels. However, the lots will be smaller than are allowed for the Country Residential One (CR-1) land use district and in the Green Acres Area Structure Plan. The application was refused on that basis.

2. Subdivision Authority Report

Subject Site: The site is located in an existing country residential subdivision.

Existing Land Use Classification: CR-1 – Country Residential District

Adjacent Land Use & Land Use Districts: North: Grain production operation (AG – Agriculture)
South: Residence (CR-1 Country Residential)
East: Grain production operation (AG – Agriculture)
West: Residence (CR-1 Country Residential)

Proposed Subdivision: Subdivide existing 1.22 ha lot in half to create two 0.61 ha lots.

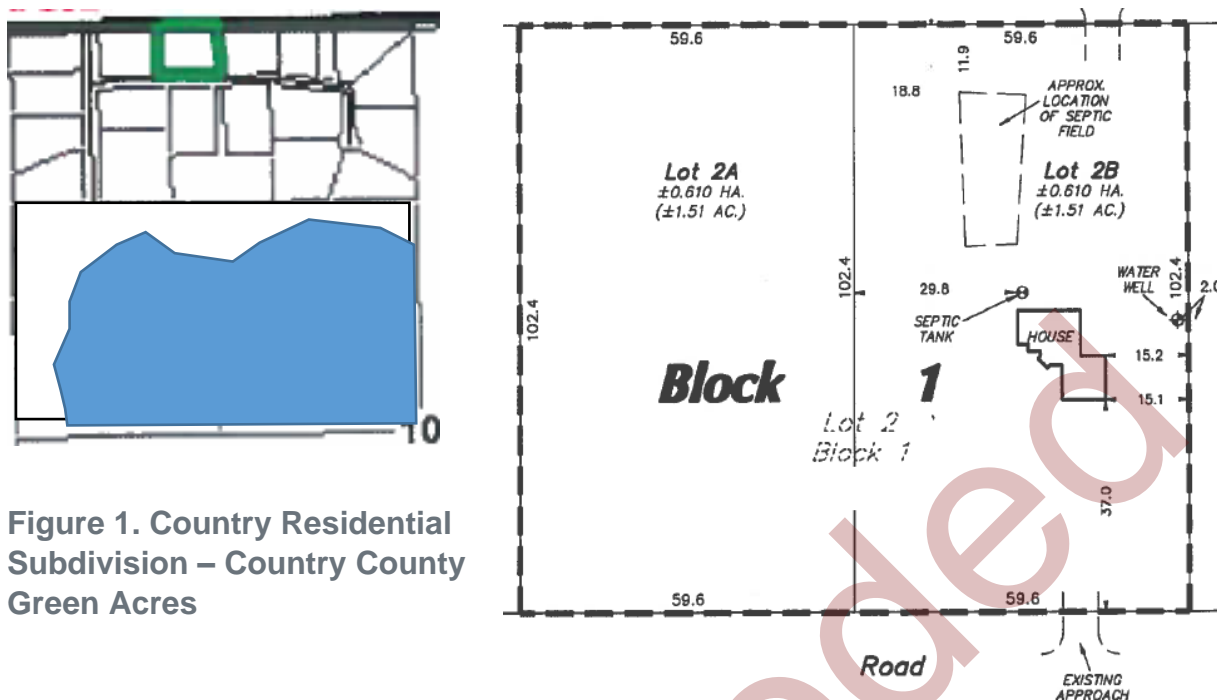


Figure 1. Country Residential Subdivision – Country County Green Acres

Additional Information:

- All but one lot in the subdivision conform to the 1.0 hectare (2.47 acres) minimum area requirement.
- The Cadwalladers have asked the neighbours to sign a letter of non-objection; 9 of the neighbours have signed it. Two other residents in the subdivision raised concerns. One was concerned about additional traffic that would be generated by another residence in the Green Acres subdivision. The other was worried about water supply, and potential contamination of the lake from higher density development, including the additional septic system that would be required.
- The proposed new lots will meet building setbacks and will conform to the other regulations contained in the land use district.
- The Municipal Development Plan does not contain specific size requirements for CR lots, but does encourage the efficient use of land and the preservation of agricultural land.
- Water is provided by a combination of wells and cisterns.

Decision: This application was refused for the following reasons:

- The proposed subdivision is contrary to the *MGA*, which states that a subdivision must conform to the provisions of any statutory plan and be subject to any land use bylaw that affects the land proposed to be subdivided.
- The Land Use Bylaw (CR-1 District) and the Green Acres Area Structure Plan both require a minimum lot size of 1.0 hectare (2.47 acres).

3. *Applicant's Statement*

Country County
Subdivision and Development Appeal Board
County Hall

Dear Sir or Madam:

We wish to appeal to the Subdivision and Development Appeal Board regarding the refusal of our subdivision application. We are hoping to retire soon and are thinking about our estate planning. We have two daughters and they both want to live in this location eventually. Subdivision will let our older daughter build another residence here in the short term. The younger one already lives with us, and plans to continue living in the existing residence when we move to a location closer to medical facilities. (We both have heart conditions we are worried about.)

We have the support of 9 of our neighbours. We tried to contact everyone in the subdivision, but couldn't get hold of everyone. Of those who responded to us, the overwhelming majority support the subdivision (9 out of 11). They think the two objections we received are not supported, and have difficulty understanding why they are objecting.

We ask you to use your discretionary powers under the Municipal Government Act to overturn the decision of the Subdivision Authority.

Yours sincerely,

William and Benita Cadwallader

4. Questions for Consideration

- Does the SDAB have jurisdiction to hear the appeal?
- Does the SDAB have the authority to approve the subdivision?
- What would be your reasons for allowing, dismissing, or not hearing the appeal?
- What, if any, additional information is required before making a decision?
- If applicable, what conditions would be imposed on the decision?

Superseded

EXERCISE 2

1. SDAB Agenda

CITY OF URBANA

Application:

Appeal against the Development Officer's approval of a discretionary use development application for a new residential building designed to accommodate a group care facility. (NOTE: In Urbana the Development Officer has the authority to make discretionary use application decisions.)

Background:

The subject site is designated R-1 Low Density Residential District in the Land Use Bylaw. Single detached dwellings are a permitted use, while there are a number of discretionary uses including "group care facility."

Several adjacent residents launched the appeal following letters of notification sent to surrounding property owners and the community association.

50 residents attended the hearing and want to make submissions to the SDAB.

2. Development Officer's Report

Proposed Development: The new building will be a 2 story home with 2500 sf on the main and second floor. The main floor will have a kitchen, laundry facilities and a communal living room while the second floor will house 3 bedrooms. There will be two additional bedrooms in the basement. Each floor will have a bathroom with showers upstairs and in the basement.

The group home has been proposed by a local service group in conjunction with a social services agency which assists troubled youths in their efforts to get back on their feet, gain employment and re-enter the community. When the property became available the service agency jumped at the opportunity to take part in the project. Several community meetings were held to explain the project. The plan is to provide 24 hour supervision and house a maximum of 5 people at any given time. It is envisioned that each resident will stay in the home for 12 to 16 months.

A group care facility is a discretionary land use in the R-1 District. The proposed development meets all the regulations of the land use district. The subject property is a large lot located on a corner; parking spaces have been provided for

staff. There should be minimal impact on surrounding properties.

The bylaw does not address the maximum number of residents for a group home. The local service group supporting the project has met with the community association and has provided assurance that the property will kept to the highest standard and that any problem will be dealt with immediately. A goal of the City's Social Plan is to facilitate the integration of groups such as troubled youth into the community and overall providing the members with a second chance. Several community association members have volunteered to assist at the group home.

Development Officer's

Decision: Approval.

Basis of Appeal:

Several neighbouring families have appealed the Development Officer's decision. When they purchased their homes they were under the impressions that the area was a "single family neighbourhood." A home with 10 residents and staff is not a single family home. They are concerned that the *troubled youths* will present security problems, that noise and vandalism will increase, and that the new neighbours may be a negative influence on the young people of the community. The neighbours cited several issues that have been reported in the local paper relating to similar group homes in other Urbana neighbourhoods. The Appellants also raised the complaint that there was insufficient consultation and only minimal information provided by the developer and the City. A group of an additional 75 neighbours have signed a petition against the development.

3. *City of Urbana Land Use Bylaw (Extracts)*

R-1 – LOW DENSITY RESIDENTIAL DISTRICT

The general purpose of this District is to permit development of low-density single-detached dwellings and associated uses, at the same time maintaining the residential character of the area.

PERMITTED USES

- (1) Single detached dwellings
- (2) Accessory buildings and uses

DISCRETIONARY USES

- (1) Small parks and playgrounds which serve specific residential developments
- (2) Places of Worship
- (3) Public and quasi-public buildings required to serve in the immediate area
- (4) Home occupations and professional offices
- (5) Group care facilities

REGULATIONS

- Relating to Single Detached Dwellings serviced by water and sanitary sewer.
 - Minimum site area: 495 m² (5500 ft²)
 - Front yard setback: 7.6 m (25 ft.) minimum
 - Rear yard setback: 7.6 m (25 ft.) minimum
 - Side yard setback: 10% of the lot width
 - Minimum floor area: 90 m² (1000 ft²) for 1
- ➔ Maximum Lot Coverage:
 - Dwellings – 23%
 - Accessory – 12%
 - Others – as required by the Development Officer

Definitions:

“Group Care Facility” means a facility, which provides resident services to individuals who are handicapped, aged, disabled, or undergoing rehabilitation. This category includes supervised uses such as group homes (all ages), halfway houses, resident schools, resident facilities and foster or boarding homes.

4. Questions for Consideration:

- Does the SDAB have jurisdiction to hear the appeal?
- What steps can the SDAB take to manage the hearing process?
- What factors might the SDAB consider in making its decision?
- What, if any, additional information might the SDAB require before making a decision?
- Is the matter of the nature of the consultation that took place prior to the issuance of the development permit of concern to the SDAB?
- What weight should the SDAB give to the petition submitted by neighbouring residents?
- What would be your reasons for approving or refusing the application?
- If approved, what conditions might be imposed?

EXERCISE 3

1. SDAB Agenda

MUNICIPAL DISTRICT OF GLEMORA

Application: Appeal of development officer's decision to refuse a development permit application for a Cannabis Production Facility.

Background: The subject site is districted HI – Heavy Industrial District in the land use bylaw.

2. Development Officer's Report

Proposed Development: Cannabis Production Facility on 8 ha (20 acre) parcel

This land use is considered a “discretionary” use in the HI – Heavy Industrial District of the MD of Glemora's Land Use Bylaw.

The proposed development complies with the development regulations for a Cannabis Production Facility and the development regulations set out in the HI – Heavy Industrial District.

Development Officer's

Decision:

Refusal. The reasons for refusal included the development would have a negative impact on the surrounding area/uses in the vicinity. There is a golf course adjacent to the property – on an old landfill.

Basis of Appeal:

The applicant has submitted a Notice of Appeal which states that the proposed development meets all of the requirement of the Land Use Bylaw and should be approved.

Other Information:

The Land Use Bylaw does not contain any circulation requirements with respect to development permit applications for Cannabis Production Facilities or discretionary uses generally. However, the Land Use Bylaw does provide that notification of the *issuance* of a development permit for a discretionary use shall be provided by mail to the registered owner(s) of every parcel of land within a fifty (50 m) metre radius of the site of the proposed development.

3. *Municipal District of Glemora Land Use Bylaw (Extracts)*

HI – HEAVY INDUSTRIAL

This district is intended to accommodate large scale and major industrial uses that may have large land requirements and/or some nuisance effects, which may extend beyond the boundaries of the site.

PERMITTED USES

- Accessory Building and Use
- Government Services
- Office
- Waste Management Facility, Minor

DISCRETIONARY USES

- Agricultural Processing
- Cannabis Production Facility
- Industrial, Heavy
- Industrial, Manufacturing/Processing
- Recycling Depot
- Service Station
- Waste Management Facility, Major

Definitions:

“Cannabis Production Facility” means a federally licensed facility, comprised of one of more buildings or structures, used for the purpose of growing, processing, packaging, testing destroying, storage or shipping of cannabis. A Cannabis Production Facility may include greenhouses, warehouses, laboratories, processing facilities, administrative offices, a rainwater reservoir and shipping facilities, but does not include the onsite sale of cannabis products.

4. Letter from Friends of Today's Youth

Dear Board Members:

Our organization consists of some 250 members with young families who live in the County of Standhope. We are dedicated to the protection of family values. Although we are based in the County of Standhope, which is 200 km north of the proposed development, we see the problem of cannabis use amongst youth as a province-wide problem. We also see the negative impacts of the use of cannabis as an epidemic that cannot be ignored.

There are already too many cannabis production facilities and too much cannabis use in the province. Allowing another cannabis production facility would be irresponsible and a bad decision.

We therefore ask the SDAB uphold the refusal of the development permit application for a cannabis production facility to protect today's youth.

Yours for a Better Tomorrow,

Buffy Buffington III

For the Friends of Today's Youth

5. Letter from Green Leaf Fairway Golf Course

Dear SDAB Members

The Green Leaf Fairway Golf Course has been operating in this location for 25 years. While we have not opposed most of the industrial development nearby, a cannabis production facility is too much. The smell from the facility will take away from the use and enjoyment of the golf course. The odours from the cannabis production facility will deter people from playing at our course and this will cause us to lose business and will have a negative impact on our property value. This production facility should be located elsewhere – not adjacent to recreational uses like ours.

Our course is home to the youth golf club and we think having a cannabis production facility across the road also sends the wrong message. The Green Leaf Fairway Golf Course depends on revenues from green fees; if the smell from the cannabis facility drives away clients, the golf course will no longer be viable.

Thank you,

Mary-Jane Woods

President Green Leaf Fairway Golf Course

6. Questions for Consideration:

- Does the SDAB have jurisdiction to hear the appeal?
- When the SDAB Hearing begins, it becomes apparent that only the appellant and the DA have been provided with notice of the hearing. What steps should the SDAB take?
- Many of the people who the SDAB determined were affected by the appeal attend at the continuation of the SDAB hearing and oppose the appeal. A number of residents in the vicinity of the proposed development raise concerns regarding the security of the proposed development. The proposed development complies with all of the security requirements set out in the federal legislation and regulations regarding cannabis production facilities. If the SDAB decides to issue a development permit, can it impose additional security requirements?
- A representative from the Friends of Today's Youth also attends the hearing to oppose the appeal. Should the SDAB agree to hear from the organization?
- What would be your reasons for allowing, dismissing, or not hearing the appeal?
- What, if any, additional information is required before making a decision?
- If applicable, what conditions would be imposed on the decision?

EXERCISE 4

1. SDAB Agenda

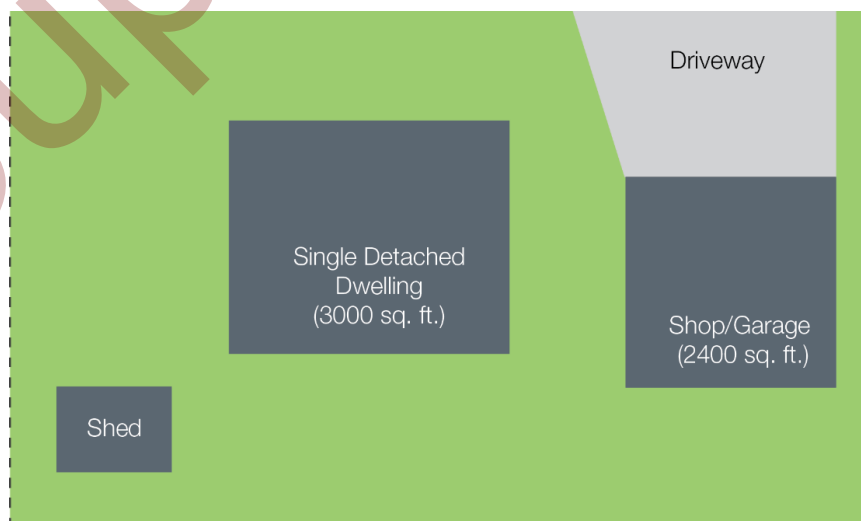
Meeting of the SDAB of Wellington County scheduled for January 24, Current Year.

Appellant: Joe Grogan, (Landowner)

Appeal: The landowner is appealing a Stop Order issued by Wellington County (Alberta) pursuant to section 645 of the *Municipal Government Act*, RSA 2000, c M-26, as amended, claiming an unauthorized use in contravention of the County Land Use Bylaw is being conducted in and around the shop/garage located on the subject property.

Background: The subject site is located in the Hamlet of Lone Pine and is designated R1 – Residential in the County's Land Use Bylaw. There is a home and a 2400 sf shop/garage on the property, both constructed in 2015. The home is a permitted use and the shop/garage is an accessory use in the R-1 District.

Upon receiving complaints that vehicles not belonging to the owner/occupant were being repaired in the garage/shop and stored on the property the Development Officer conducted an inspection and subsequently issued a Stop Work Order directing the owner to cease conducting a vehicle repair business on the property. The owner was advised that a development permit had not been issued allowing the operation of such a business and that automobile repair is neither a permitted nor discretionary use in the R-1 District. The Order was issued on December 15.



NOTICE OF APPEAL

January 4, Current Year

Subdivision and Development Appeal Board
Wellington County Administration Office
Prescott, Alberta T0G 0G0

To Whom It May Concern:

I am requesting that the Stop Order issued by Wellington County dated December 15 be cancelled.

The Stop Order claims that my shop/garage is being used as a commercial enterprise and that noise is disturbing neighbours on my block. I only repair vehicles for friends and only charge them for the required parts. I have also done some vehicles belonging to the food bank. At times I may have worked in the garage late into the evening when the food bank was in a pickle and I got home late from work. I have checked with neighbours and no one told me that they had a problem with any noise or other concerns.

I try to be a good community citizen. I wish someone from the County had spoken with me before taking this action – I had to pay \$175 to file this appeal. I trust that this explains the situation and the stop order can be cancelled.

Yours truly

JOE GROGAN

2. ***Development Officer's Report***

SUBJECT SITE: The site is located in the R-1 Residential District in the Hamlet of Lone Pine. The property is a one acre lot with a single detached dwelling, a small shed (approx. 150 sq. ft.) and a 2400 sq. ft. shop/garage. A development permit was issued for the single detached dwelling and the shop/garage in 2015. No development permit is required for the shed. Large garages/workshops are common on hamlet residential lots. However, these buildings are intended for personal use. Home occupations are a discretionary use in the R-1 District; no home occupation permit has been issued and the home occupation category is not intended to cover vehicle repair.

**EXISTING LAND
USE DISTRICT:** R-1 – Residential

**ADJACENT LAND
USES:** Dwelling Units on one acre lots similar to the subject property. Many properties in the area also have large garages.

DECISION: On Nov. 30 I received a complaint from a nearby resident who was concerned about late night noise coming from the garage and the continued presence of several vehicles on the property. The resident visited the County Office and complained to the Mayor; the Mayor directed the concerned citizen to my office. I followed up with a site visit on Dec. 8 and did observe two vehicles on the property outside of the garage. The owner was not present. A Stop Order was issued on Dec. 15 following my inspection. The Stop Order provides that the landowner either has to apply for and obtain a development permit for any “home occupations” or other non-residential uses taking place on the property or cease repairing and storing vehicles as a commercial undertaking within 30 days of receipt of the Stop Order.

DISCUSSION: The *Municipal Government Act*, RSA 2000, c. M-26, as amended development, land use or use of a building is not in accordance with

“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 subdivision approval, within the time set out in the notice.

(2.1) A notice referred to in subsection (2) must specify the date on which the order was made, must contain any other information required by the regulations and must be given or sent to the person or persons referred to in subsection (2) on the same day the decision is made.

(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.”

3. **Questions for Consideration:**

- Does the SDAB have jurisdiction to hear the appeal?
- If so, what options does the SDAB have?
- Mr. Grogan brought 2 neighbours to the hearing to speak on his behalf as well as supportive letters. Should the SDAB allow the neighbours to speak? Should the SDAB enter the letters into evidence?
- What would you decide and why?
- In this case the Stop Order relates to the use of the subject site. In which other situations might a Stop Order be issued?

EXERCISE 5

1. Background

The Town of Downstream was constructed in the early 1900s as a mining centre in the Rocky Mountains. The Flowing River runs through the centre of Town. Its oldest areas are located adjacent to the Flowing River. The geography of this area is ideal for low cost development because of the expanse of flat land.

The centre of Town is characterized by mixed use commercial and residential buildings, transitioning to exclusively residential uses. Many of the residential areas near the centre of Town have a single detached dwelling as a permitted use.

The Town's LUB prohibits development in the floodway, but only requires appropriate mitigation for development in the flood fringe. The regulation of development in the flood risk area is contained in an overlay district that applies to all lands that have been "identified in a flood hazard area." The LUB includes the following definitions:

Flood hazard area is the area of land that will be flooded during the 1:100 design flood. The flood hazard area is typically divided into two zones, the floodway and flood fringe.

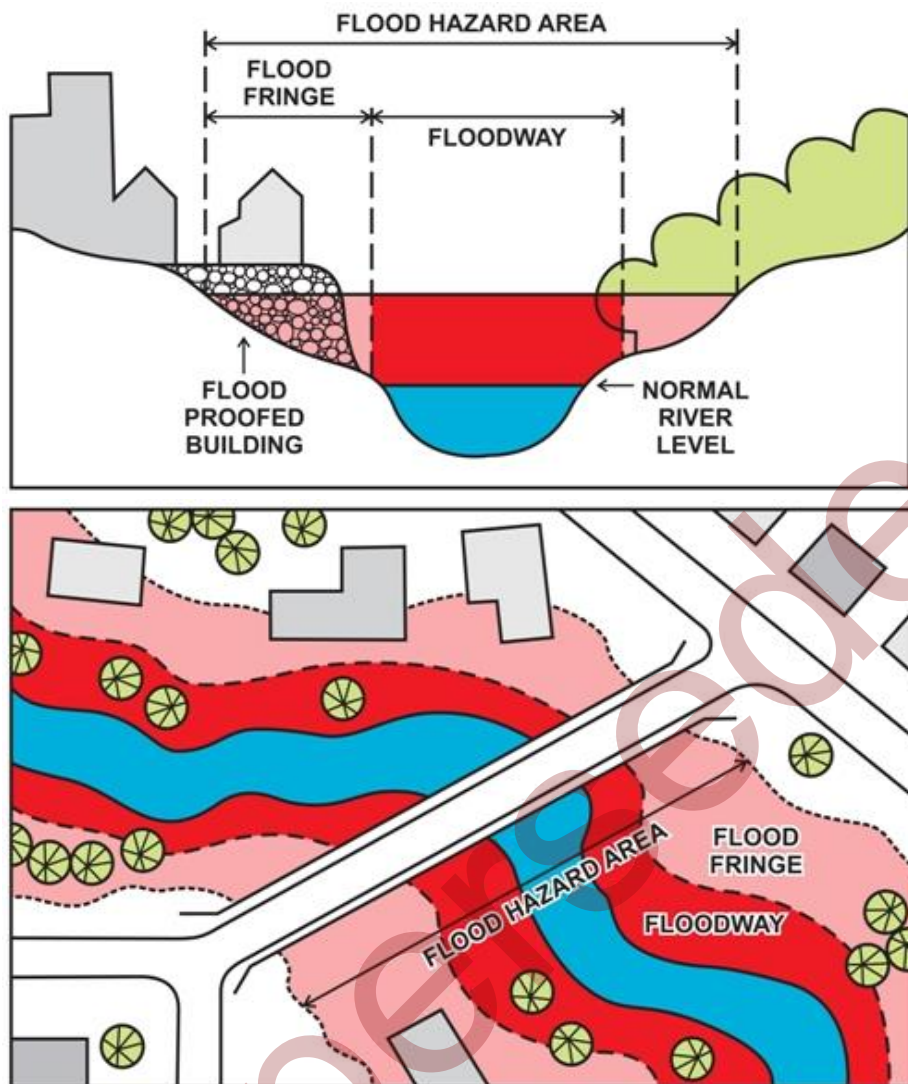
Floodway The portion of the flood hazard area where flows are deepest, fastest and most destructive. The floodway typically includes the main channel of a stream and a portion of the adjacent overbank area. New development is typically discouraged in the floodway.

Flood fringe The portion of the flood hazard area outside of the floodway. Water in the flood fringe is generally shallower and flows more slowly than in the floodway. New development in the flood fringe may be permitted in some communities and should be flood-proofed.

Design Flood – The minimum design standard in Alberta is the 1:100 flood, which is defined as a flood whose magnitude has a 1% chance of being equalled or exceeded in any year. The design flood can also reflect 1:100 ice jam flood levels or be based on a historical flood event.

2. Appeal

The Town's Planning Authority recently approved a development permit for a single detached dwelling adjacent to the Flowing River. At that time, the Town was in the process of obtaining new flood risk maps. The older flood risks maps, created in the 1980s, did not show the subject property within the flood risk area. However, the Town had draft maps by the water resource engineers retained to update the flood hazard maps. These draft flood hazard maps indicated that this area was in fact located within the floodway and would likely be part of the updated flood risk area management plan.



3. Questions for Consideration

- Is the subject property within the flood risk area?
- Which maps should be considered, the current or the draft?
- If the subject property is within the flood risk area, do the standard land use regulations apply or the regulations in the overlay district?
- Can the Planning Authority issue a development permit for a single detached dwelling in the floodway?
- Can the SDAB issue a development permit for a single detached dwelling in the floodway?
- What, if any, additional information is required before making a decision?
- If applicable, what conditions would be imposed on the decision?

EXERCISE 6

1. SDAB Agenda

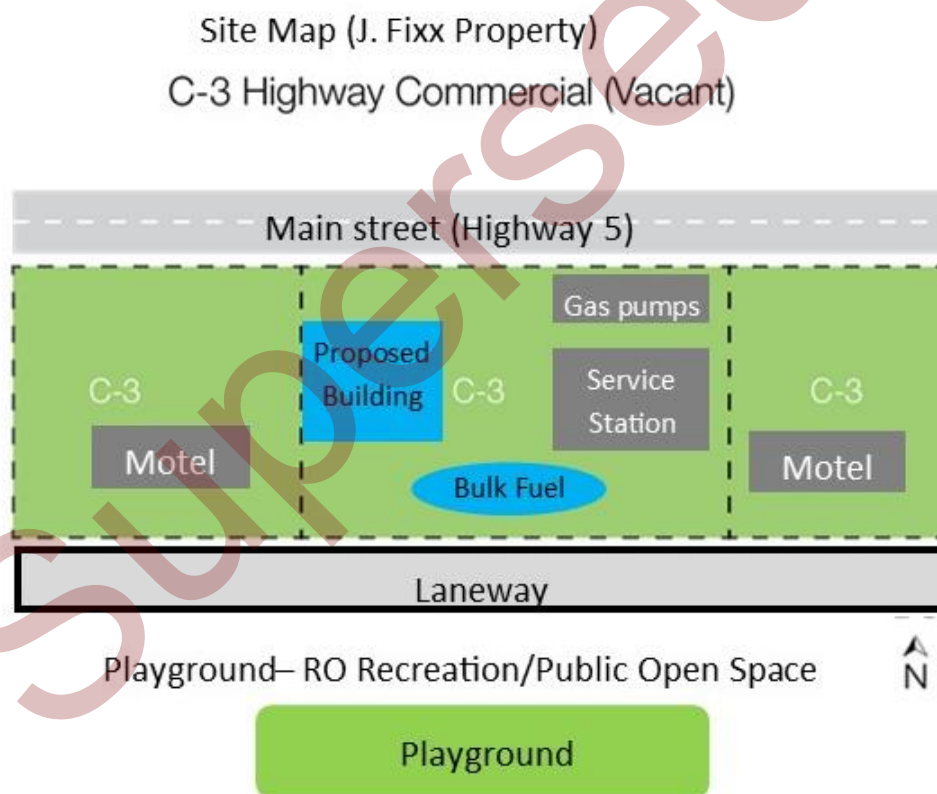
TOWN OF WESTWOOD

Appellant: J. Fixx

Application: To construct an addition to service station & restaurant for a new farm machinery & equipment business

Background: John Fixx has launched this appeal because the development officer refused his development permit application. The application proposes to construct a new building for a wholesale farm machinery/equipment business and bulk fuel storage & sales. This new building will be added to an existing service station with a restaurant, operated by Mr. Fixx.

The subject site is designated C-3 Highway Commercial in the Town of Westwood's Land Use Bylaw.



Town of Westwood Site Plan and Land Use Bylaw Districting

2. *Development Officer's Report*

Subject Site: Subject site is located on Main Street, which runs through town as a continuation of Highway No. 5. Alberta Transportation has an agreement with the Town which places Main Street under the control and direction of the Town within the Town's boundaries. The site is already developed with a service station and restaurant, which have been in operation since 1995.

Existing Land

Use Classification: C-3 Highway Commercial

Existing Structure: One 450 m² (5000 ft²) full service gas station with 3 repair bays, with attached restaurant.

Existing Land Use: Service Station and roadside restaurant.

Adjacent Land Use & Land Use Districts:

North: Highway No. 5 (Main Street) and vacant and designated C-3 Highway Commercial

South: Playground designated RO-recreation/public open space

East: Motor hotel designated C-3 Highway Commercial

West: Motor hotel and roadside café designated C-3 Highway Commercial

Proposed Development: Additional 450 m² (5000 ft²) building for wholesale farm machinery sales & service & bulk fuel storage & sales. The proposed addition will be attached to the service station on the opposite side of the restaurant.

Decision: This application was refused because the proposed use is not a permitted or a discretionary use in the land use district (C-3 Highway Commercial). In the DO's opinion the proposed development would better fit in the C-2 district of the land use bylaw.

3. *Applicant's Statement*

Town of Westwood
Subdivision and Development Appeal Board
Town Hall
Westwood, Alberta

Dear Sir/Madam:

I wish to appeal the decision to refuse my development permit application needed to expand my existing service station and restaurant business.

I have recently acquired a franchise to sell and repair farm machinery, which is compatible with my auto service centre. Also, as part of my retail gasoline operation, I am expanding my business to include wholesale bulk fuel. I have spent a lot of time and money on acquiring the franchise. The expansion would not be any different than what is already occurring on the property. It is an accessory building to the existing development, which is a permitted use under the Land Use Bylaw.

Therefore, I am requesting the SDAB approve the development of a 450 m² (5000 ft²) building for farm machinery sales and servicing. I believe my expanded operation will contribute to the economic health of our town through the purchase of materials needed for construction and the creation of 5-8 permanent jobs.

Yours sincerely,

John Fixx

4. *Town of Westwood Land Use Bylaw (Extracts)*

C-3 HIGHWAY COMMERCIAL DISTRICT

GENERAL PURPOSE

The general purpose of this district is to permit commercial uses which will serve the traveling public and would benefit from large volumes of vehicular traffic.

PERMITTED USES:

- (1) Hotels
- (2) Motels
- (3) Roadside restaurants and cafes
- (4) Service stations
- (5) Automotive sales
- (6) Accessory buildings

DISCRETIONARY USES:

- (7) Governmental
- (8) Institutional
- (9) Residential accommodation in conjunction with an approved commercial use
- (10) Theatres
- (11) Light industry (non-polluting)
- (12) Auction services
- (13) Oversized vehicle wash
- (14) Truck and RV repair
- (15) Mobile home manufacturing and sales
- (16) Other uses which, in the opinion of the Development Authority, are similar to the above mentioned permitted and discretionary uses

COMMERCIAL DISTRICT C-2

GENERAL PURPOSE

The general purpose of this district is to permit commercial development of a secondary nature, involving workshop type uses, and at the discretion of the Development Officer, more land extensive uses.

PERMITTED USES:

A workshop used by the following:

- | | |
|-------------------|--------------------|
| (1) Cabinet Maker | (8) Painter |
| (2) Carpenter | (9) Plumber |
| (3) Decorator | (10) Printing Shop |
| (4) Electrician | (11) Pipe Fitter |
| (5) Gas Fitter | (12) Tinsmith |
| (6) Laundry | (13) Upholsterer |
| (7) Metal Worker | |

DISCRETIONARY USES:

- | | |
|-------------------------|---------------------------------|
| (1) Motel | (7) The storage and/or sale of: |
| (2) Funeral Parlour | • Automobiles |
| (3) Service/Gas Station | • Building Supplies |
| (4) Automobile Garage | • Farm Machinery |
| (5) Auction Mart | • Lumber |
| (6) Veterinary Clinic | • Fertilizer |

5. Questions for Consideration

- Does the SDAB have jurisdiction to hear the appeal?
- How should the SDAB characterize the proposed development?
- Is any of the information provided in the applicant's statement irrelevant? If so, what should the SDAB do?
- What would be your reasons for allowing, dismissing, or not hearing the appeal?
- What, if any, additional information is required before making a decision?
- If applicable, what conditions would be imposed on the decision?

EXERCISE 7

1. SDAB Agenda - Steampunk County

Appellant: Bill Needhelp

Application: Development of an approximate 450 sq. ft. tiny home on a concrete slab to replace a trailer that has been on site for 25 years and that was destroyed by a fire after a lightening strike. The tiny home would be the second dwelling on the parcel.

Background: Mr. Needhelp has appealed the refusal of his development permit application. The Development Officer determined the proposal would be a new dwelling on the property and refused his Development Permit application because the LUB Industrial District prohibits new dwellings. The owner disagreed with this determination, arguing the new tiny home should be considered a replacement of an existing dwelling, which complied with the bylaw in force when it was brought onsite.

2. Development Officer's Report

Subject Site: The approximate 20 acre property is developed with an existing occupied residence (House #1 on the site plan), a burned modular home to the south of the existing residence, several farm buildings and grazing land.

Proposed Development: The owner proposes to locate an additional dwelling, a new 450 sq. ft. home, to the west of the trailer to be used as a dwelling for a personal care giver. The parcel has traditionally been used for residential purposes.

Analysis: The County adopted a new land use bylaw in 2018 and the parcel was redesignated from Agricultural (A) District to Industrial (I) District at that time. Both House #1 and the burned trailer were in place at the time the LUB was adopted. The purpose of the Industrial District is to provide for heavy industrial activities and it does not list a secondary dwelling as either a permitted or discretionary use.

More specifically, the Industrial District of the 2018 LUB allows for maintenance of existing dwellings and limits opportunities for replacement. Section 7.1 states:

Dwellings and accessory agriculture buildings can be maintained, repaired, and upgraded. No new dwellings shall be allowed.

Dwellings are defined in the LUB as

Dwellings mean any building or structure designed for human habitation, including manufactured homes or modular homes.

Similarly, section 4.2.4 of the Heavy Industrial Policy Area in the Area Structure Plan (ASP) states:

Existing residences and accessory agriculture buildings within the Heavy Industrial Policy Area will be allowed to be maintained, repaired, and upgraded. In accordance with the Land Use Bylaw, first parcel out subdivision will be permitted. Quarter sections will be allowed to be subdivided into 80-acre parcels for agricultural purposes, but no new dwellings will be permitted. This minimization of residential development will limit conflict between industrial and residential activities.

Further, section 6.9 of the LUB, addresses the number of dwelling units on a lot and states

A second dwelling unit shall not be allowed on any parcel of land unless expressly contemplated in the relevant District.

1. The number of dwellings or dwelling units allowed on any parcel of land shall not exceed one (1) except that a second dwelling may be allowed on a parcel of land if the second dwelling or dwelling unit would not:
 - (a) materially interfere with the amenities or change the character of the area;
 - (b) materially interfere with or affect the use and enjoyment of adjacent properties;
 - (c) adversely impact on the environment; and
 - (d) result in excessive demand on municipal services, utilities, and road access; and further, if the second dwelling is a temporary dwelling, or on a temporary foundation.
2. Notwithstanding any other provision of this Bylaw to the contrary, the second dwelling may be located on a permanent foundation if the parcel is 23.6 ha (65 ac.) or more in size (excepting Section 6.9.1 above)

By minimizing residential development, the LUB and Statutory Plan limit conflict between industrial and residential activities. While the Industrial District lists “One family dwellings existing as of the date of approval of this Bylaw” as a permitted use, this wording does not mean multiple new dwellings will continue to be allowed on single parcels.

There is no justification for allowing additional residential development in the Industrial District. The LUB and statutory plans restrict residential uses to reduce the potential for conflict in land uses and complaints with respect to nuisance and off-site impacts.

Decision: The Application was refused because the Industrial District of the LUB does not allow new dwellings, nor does it stipulate a second dwelling as a permitted or discretionary use. The application does not comply with the Purpose of the Industrial District, which intends to minimize conflict between residential and industrial uses.

Superseded

3. Applicant's Statement

Steampunk County
Subdivision and Development Appeal Board

Dear Sir/Madam:

I wish to appeal the Subdivision Authority's decision to refuse my development application permit to locate a new tiny home on my property.

When I purchased the property in 2003, it was zoned Agricultural and it contained two dwellings. The two dwellings had separate addresses until 2018. The current residence dates from the 1970's while the second trailer that burned down has been on site for over 25 years. Based on a recommendation from the County administration, I applied for a permit and I was of the understanding that I could apply for a development permit to rebuild/replace.

I am a recent widower and my son, Matthew, age 18, was in a skiing accident early this last year. His injuries have left him with little mobility and with some brain injuries. He needs constant care that I am not in a position to provide, as I have to work to make the payments on this property. My most attractive and affordable option is to hire someone to be with him "around the clock", requiring that I provide a residence for this caregiver on my property. That is the reason I am applying to be able to locate a tiny home on this property.

I understand that the LUB limits construction of new residences but it also contemplates repair and upgrading of residences. I consider the replacement of the trailer to fall under this category.

Further, I disagree with the Development Officer's interpretation of the permitted use "One family dwellings existing as the date of approval of this Bylaw". I believe that this wording refers to a particular type of dwelling – a dwelling that accommodates a single family. It is not meant to limit the number of dwellings that could be replaced if destroyed to only one house. I believe that I should be allowed to replace the trailer with the tiny home just as I would have been allowed to repair trailer.

Yours truly,

Bill Needhelp

4. Steampunk County Land Use Bylaw (Extracts)

7.6 INDUSTRIAL (I) DISTRICT

1. Purpose

The purpose of the district is to provide for industrial activities that may have large land requirements and may result in nuisance impacts off-site.

2. Permitted Uses

- (1) Extensive agriculture
- (2) Minor home occupations
- (3) One family dwellings existing as of the date of the approval of this Bylaw
- (4) Buildings and uses accessory to permitted uses

3. Discretionary Uses

- (1) General commercial uses
- (2) Heavy industrial uses
- (3) Heavy petrochemical industrial uses
- (4) Highway commercial uses
- (5) Institutional, public and quasi-public buildings and uses
- (6) Light industrial uses
- (7) Major home occupations
- (8) Natural resource extraction
- (9) Rural industrial uses
- (10) Secondary commercial uses
- (11) Warehousing and storage
- (12) Work camps
- (13) Other uses which, in the opinion of the Development Authority, are similar to the above mentioned Permitted and Discretionary Uses
- (14) Buildings and uses accessory to discretionary uses

5. Questions for Consideration:

- Does the SDAB have jurisdiction to hear the appeal?
- Is any of the information provided in the applicant's statement irrelevant? If so, what should the SDAB do?
- What would your decision be and why?
- What, if any, additional information is required before making a decision?

If the appeal is allowed, what conditions should be imposed?

Superseded

3 MOCK HEARING

MOCK HEARING 1

Roles

Role 1: SDAB Panel

Role 2: Clerk

Role 3: Planning Staff/ Development Officer (Respondent)

Role 4: Appellant (Adjacent Landowners)

Role 5: Developer/Applicant (Respondent)

The information in this section will be the subject matter of a mock hearing. After the agenda, there are roles for different participants in the hearing. Review your task and practice the skills each participant requires to perform their function in the process.

Note: There is no single right decision; the objective of the Mock Hearing is to go through the hearing and decision-making process to reach a decision that is appropriate.

Exhibit List:

1 – Agenda Package (1 pp)

2 – DO's Report (1 pp)

3 – LUB Excerpts (1 pp)

4 – D. Manding Letter (1 pp)

5 – E. Feisty Letter (1 pp)

6 – A. Ant Letter (1 pp)

Subdivision and Development Appeal Board (SDAB) AGENDA

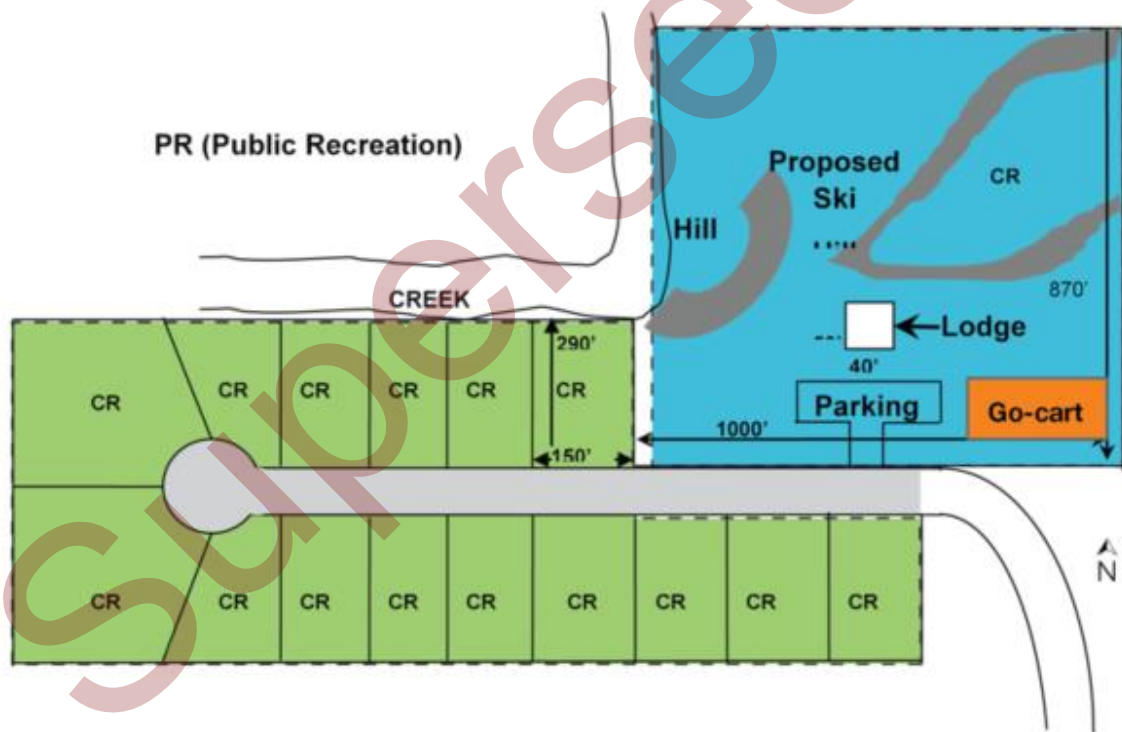
Municipal District of Agriville

AGENDA ITEM 1 – File: DP15/(Current Year)

ADDRESS: 10 Pretty Creek Lane

APPLICATION: Appeal of a Development Officer's decision to approve a development application to allow (with conditions) recreational uses in a residential area.

BACKGROUND: The subject site is districted CR – Country Residential District in the Land Use Bylaw (LUB). Neighbouring residents have launched an appeal.



DEVELOPMENT OFFICER'S REPORT

PROPOSED DEVELOPMENT: Year round recreation camp for sick children and their families on 8 hectare (20 acre) parcel.

- 180m² (2000 ft²) Lodge and Overnight Accommodations;
- Two Ski Lifts – one T-Bar; one rope tow;
- Parking Lot; and
- Go-Cart Track proposed for summer use.

This recreational land use is considered a “discretionary use” in the CR – Country Residential District of the MD of Agriville’s LUB. The LUB defines Recreational Development as “the use of land, buildings or structures for active or passive recreational purposes and may include indoor recreation facilities, sports fields, sports courts, playgrounds, multi-use trails, picnic areas, scenic view points and similar uses to the foregoing, together with the necessary accessory buildings and structures.”

The Development conforms to the LUB’s “Special Provisions”, which states the following respecting Recreational Development:

- Recreational Development may only be allowed on lower capability agricultural land.
- The Developer shall identify, to the Development Officer’s satisfaction, all servicing costs associated with the development.

The proposed development must comply with these provisions.

DEVELOPMENT OFFICER’S DECISION: Approval, subject to the following conditions:

1. Parking areas to be screened and landscaped to minimize visual intrusion on neighbouring properties; and
2. Operation of the summer go-cart track is restricted to day light hours to minimize noise impact on neighbouring properties.

BASIS OF APPEAL: Every Country Residential household (15) in the Pretty Creek subdivision has submitted letters of appeal on this development.

The residents argue that the ‘quality’ of their subdivision will be destroyed in the winter by traffic generated by the ski hill, and in the summer from noise generated by the go-cart track.

OTHER INFORMATION: The Development Officer has attempted to minimize the impact of the development by attaching conditions. Also, the Development Officer held meetings between the developer and the residents, without resolving their differences.

LAND USE BYLAW

Municipal District of Agriville

CR – COUNTRY RESIDENTIAL

This district is intended to protect more intensively developed country residential areas from problems of incompatible development.

PERMITTED USES

- (1) Dwelling
- (2) Accessory buildings and uses
- (3) Park

DISCRETIONARY USES

- | | |
|------------------------------|---|
| (4) Greenhouse | (9) Dugouts |
| (5) Mobile Home | (10) Home Occupations |
| (6) Stable | (11) Other uses of a similar nature as approved by the Municipal Planning Commission. |
| (7) Public Buildings | |
| (8) Recreational Development | |

MINIMUM DEVELOPMENT STANDARDS

- ➔ Lot Area:
For parcels not served by a sewage collection or water distribution system, 0.4 hectares (1 acre) with a minimum width of 30.5 metres (100 feet).
- ➔ Setback from Roads:
 - 40 metres (131.2 feet) from the centre line of any local or secondary road. Any waiver of the 40-metre regulation shall be a recommendation from the MPC to Council for final approval.
 - 7.5 metres (24.6 feet) from the property line to any service road or subdivision street.
 - As required by Alberta Transportation for primary highways.
- ➔ Setback from Other Property Boundaries:
 - Cornered side yard: as required for the setback from roads
 - Internal side yard: 3 metres (9.8 feet)
 - Rear yard: 15 metres (49.2 feet)

ROLE 1: SUBDIVISION AND DEVELOPMENT APPEAL BOARD

In this exercise, you will be conducting a development appeal. Your group will act as the SDAB panel. The background information on the case is included in the materials.

Your Task:

- Review the case.
- Nominate a Chair to conduct the hearing.
- Conduct the hearing according to proper procedure – including addressing any preliminary issues, hearing from all parties present at the hearing and posing appropriate questions to the parties.
- Make a decision on the appeal based only on relevant considerations.
- Present your decision to the class, outlining how you made your decision.

Note: There is no single right decision; the objective of the Mock Hearing is to go through the hearing and decision-making process to reach a decision that is appropriate.

ROLE 2: CLERK

In this exercise, you will be attending a development appeal. Your group will act as the Clerk.

Your Task:

- Review the case.
 - ➔ Nominate a Clerk to speak on behalf of the group.
 - ➔ The Clerk will introduce the matter before the SDAB at the outset of the Mock Hearing, and perform the functions and duties of the Clerk throughout the Mock Hearing.

Superseded

ROLE 3: PLANNING STAFF/DEVELOPMENT OFFICERS

In this exercise, you will be attending a development appeal hearing. Your group will act as the Municipal Staff and will present the details of the Development to the SDAB.

Your Task:

- Review the case.
- Nominate a speaker to act as the Development Officer on behalf of the group.
- The Development Officer should present the details of the development contained in the Development Officer's Report. This includes explaining the details of the approval and the conditions imposed by the Development Officer.
- The DO will present the details of the development related to planning, including any noise or traffic studies that have been completed respecting the development.
- Remember that the DO's role is neutral – they are there to provide evidence and explain the why the decision was made and how it affects the public interest.

Note: The SDAB or other parties may request more details – so be prepared for questions.

ROLE 4: APPELLANT LANDOWNERS (Adjacent Landowners)

In this exercise, you will be attending a development appeal as though you are presenting at a public hearing. Your group will act as the Appellant Landowners, arguing against the Development Officer's decision to approve the development. The letters you have filed with the SDAB follow these instructions.

Your Task:

- Review the case and the letters provided.
- Brainstorm as a group some relevant considerations to present to the SDAB (examples: concerns related to traffic, parking, noise, devaluation of property).
- Brainstorm as a group some irrelevant considerations to present to the SDAB (examples: bad character of the developer, business competition, amount of time put into the appeal).
- Nominate a few members to speak to the SDAB on behalf of the group about the issues identified in the letters provided and any additional matters identified by the group.

Notes:

- *Consider appointing one member of the group to be "difficult" for the purpose of requiring the SDAB's Chairperson to keep the hearing on track.*

Dee Manding
7788 – 88th Street
Agriville, AB
(123-444-3123)

November 1, Current Year

Attention: Municipal District of Agriville SDAB

To Whom It May Concern:

Re: Recreation Camp

I am writing to oppose the year round recreation camp for sick children and their families. It's not that I don't appreciate that sick kids need a place to play, I just don't know why they have to put the camp right outside my front door.

I have three children of my own and there are many children who live on the street. My husband and I bought our house because it was on a quiet street where we knew our children could play without worrying about traffic. If you approve this camp, my husband and I worry that there will be significant increases in the traffic on our peaceful street - our kids won't be able to play ball hockey and other sports outside because of the increases in traffic at all times of the day.

This is a quiet, rural, residential area and while "recreation development" is a discretionary use, a development of this magnitude is inappropriate. Moreover, the development does not seem to the definition of the use in the LUB since that definition does not include motorized vehicles or overnight accommodations. The proposal is more of a resort than a picnic area.

I really hope that you will consider my perspective and the pitfalls of approving this development during the appeal hearing. Thank you.

Yours truly,

DEE MANDING

Eugene Feisty

9785 – 46th Street

Agriville, AB

(123-489-9966)

November 1, Current Year

Subdivision and Development

Appeal Board of Agriville

1245 67th Avenue

Agriville, Alberta

Attention: Municipal District of Agriville SDAB

To Whom It May Concern:

Re: Recreation Camp

I am writing about the recreation camp that has been approved next to the Pretty Creek subdivision. It's not that I mind having the kids next door, I'm just worried about the kind of activities they are having on site. It's my understanding that the developer has plans to put in a Go-Cart track. I am concerned about the noise that this track will create in the neighbourhood. As you know, it can get quite hot here in the summer and I can't afford air conditioning, so I keep my windows open most of the time. I am worried that the placement of the Go-Cart track will make it very noisy and make it impossible to keep my windows open during the summer.

As well, my brother-in-law owns "Bart's Carts" and as far as I know, it's the only Go-Cart track around for miles. His business is good, but there are a limited amount of people who go Go-Carting on a regular basis. I'm worried that allowing another track in town will have an impact on his business.

Thanks for your consideration of these matters.

Yours truly,

EUGENE FEISTY

Adam Ant

6452 – 99th Street

Agriville, AB

(123-472-1346)

October 31, Current Year

Subdivision and Development Appeal Board of Agriville

1245 67th Avenue

Agriville, Alberta

Attention: Municipal District of Agriville SDAB

To Whom It May Concern:

Re: Recreation Camp

It just came to my attention that the development permit for a Recreation Camp beside my house has been approved by the Municipality. I just want to make sure that the Board considers the issues of parking and value of the properties in the subdivision before it makes its decision.

I have reviewed the proposal submitted by the Developer and I'm worried that there won't be enough parking. I am concerned that we'll get the overflow of vehicles onto our street from the Camp.

I used to live in a different community and they put in a movie theatre across the street from my house. It was just awful. People would park in my driveway and I couldn't get into my garage. I don't want a situation like that to happen again.

I am also concerned that the value of my property, and the value of my neighbours' properties, will be significantly reduced as a result of this development. I'm no real estate appraiser, but I'm pretty sure a busy camp full of kids and their families is going to dissuade prospective purchasers who would have otherwise been interested in our peaceful cul-de-sac.

Thank you.

Yours truly,

ADAM ANT

Role 5: DEVELOPER/APPLICANT (Respondent)

In this exercise, you will be attending a development appeal hearing. Your group will act as the Developer, arguing that the Development Officer's decision to approve the development be upheld.

Your Task:

- Review the case.
- Brainstorm, as a group, some relevant considerations to present to the SDAB (examples: adequate parking, minimal impact of noise, increased valuation of property, etc.).
- Brainstorm, as a group, some irrelevant considerations to present to the SDAB (examples: amount of money spent on the development plans, welfare of the sick children, bad character of the Appellant Landowners, etc.).
- Nominate one member of the group to act as the Developer and to present your considerations to the SDAB.

Note: Consider raising the preliminary issue of bias on the part of one of the SDAB Members (examples: closed mind, pecuniary interest, personal bias).

MOCK HEARING 2

Roles

Role 1: SDAB Panel

Role 2: Clerk

Role 3: Planning Staff/ Development Officer (Respondent)

Role 4: Applicant (Landowner)

Role 5: Appellants (Affected Persons)

Role 6: Affected Persons

The information in this section will be the subject matter of a mock hearing. There are roles for the different participants in the hearing. Review your task, the agenda package, and applicable legislation. Following the roles is the SDAB Agenda Package.

Note: There is no right decision; the objective of the Mock Hearing is to go through the hearing and decision-making process to reach a decision that is appropriate.

Questions for Consideration:

- Does the SDAB have jurisdiction to hear the appeal?
- What legislation must be considered when dealing with a development permit?
Is there a hierarchy of legislation?
- If the SDAB decides to issue a development permit, what conditions should be imposed?
- What would be your reasons for allowing, dismissing, or not hearing the appeal?
- What, if any, additional information is required before making a decision?
- What are the issues?

ROLE 1: SUBDIVISION AND DEVELOPMENT APPEAL BOARD

In this exercise, you will be conducting a development appeal. Your group will act as the SDAB panel. The background information on the case is included in the materials.

Your Task:

- Review the case and legislation.
- Nominate a Chair to conduct the hearing.
- Conduct the hearing according to proper procedure – including addressing any preliminary issues, hearing from all parties present at the hearing and posing appropriate questions to the parties.
- What questions should the panel ask the parties?
- Make a decision on the appeal based only on relevant considerations.
- What are the legislative tests to be applied?
- In the reasons, explain why the losing party lost – and why the winning party's evidence was more convincing.
- Explain how the set back requirement from residential properties applies. If a variance is required explain how the panel considered the test in s. 687(3)(d).

Note: There is no right decision; the objective of the Mock Hearing is to go through the hearing and decision-making process to reach a decision that is appropriate.

ROLE 2: CLERK

In this exercise, you will be attending a development appeal. Your group will act as the Clerk.

Your Task:

- Review the case.
- Check the appeal package to ensure the appeal is properly before the SDAB, the party who appealed has standing and check if there are any preliminary issues to flag for the panel/parties.
- Nominate a Clerk to speak on behalf of the group.
- The Clerk will introduce the matter before the SDAB at the outset of the Mock Hearing, and perform the functions and duties of the Clerk throughout the Mock Hearing.

ROLE 3: PLANNING STAFF/DEVELOPMENT OFFICERS

In this exercise, you will be attending a development appeal hearing. Your group will act as the Municipal Staff and will present the details of the Development to the SDAB.

Your Task:

- Review the case.
- Nominate a speaker to act as the Development Officer on behalf of the group.
- The Development Officer should present the details of the development contained in the Development Officer's Report. This includes explaining the details of the application and the recommendation of the Development Officer.
- Remember that the DO's role is neutral – they are there to provide evidence and explain the why the decision was made and how it affects the public interest.

Note: The SDAB or other parties may request more details – so be prepared for questions.

ROLE 4: APPLICANT (Developer)

In this exercise, you will be attending a development appeal hearing. Your group will act as the Applicant/Developer, arguing that the Development Officer's decision to approve the development be upheld.

Your Task:

- Review the case.
- Brainstorm, as a group, some relevant considerations to present to the SDAB (examples: adequate parking, minimal impact of noise, no decreased valuation of property, etc.).
- Brainstorm, as a group, some potentially irrelevant considerations to present to the SDAB (examples: amount of money spent on the development plans, increase in tax base, supporting local businesses and ranchers, bad character of the Adjacent Landowners, etc.).
- Nominate one member of the group to act as the Applicant/Developer and to present your considerations to the SDAB.

ROLE 5: APPELLANTS (Affected Persons)

In this exercise, you will be attending a development appeal as though you are presenting at a public hearing. Your group will act as the Appellants, arguing against the development and that the DA's decision should be overturned. The letters you have filed with the SDAB are in the agenda package.

Your Task:

- Review the case and the letters provided.
- Brainstorm as a group some relevant considerations to present to the SDAB (examples: concerns related to traffic, smell, noise, devaluation of property).
- Brainstorm as a group some potentially irrelevant considerations to present to the SDAB (examples: bad character of the developer, business competition, amount of time put into the appeal).
- Nominate a few members to speak to the SDAB on behalf of the group about the issues identified in the letters provided and any additional matters identified by the group.
- Explain how the development will unduly interfere with the amenities of the neighbourhood or materially interfere with the use, enjoyment, and value of neighbouring parcels.

Notes:

- *Consider appointing one member of the group to be "difficult" for the purpose of requiring the SDAB's Chairperson to keep the hearing on track.*

ROLE 6: Affected Persons

In this exercise, you will be attending a development appeal as though you are presenting at a public hearing. Your group will act as other affected persons, arguing against the development. The letters you have filed with the SDAB are in the agenda package.

Your Task:

- Review the case and the letters provided.
- Brainstorm as a group some relevant considerations to present to the SDAB (examples: water availability, wastewater)
- Brainstorm as a group identify some potentially irrelevant considerations to present to the SDAB (examples: bad character of the developer, amount of time and money put into the appeal).
- Nominate a few members to speak to the SDAB on behalf of the group about the issues identified in the letters provided and any additional matters identified by the group.

Questions for Consideration

- Does the SDAB have jurisdiction to hear the appeal?
- Does the SDAB have the authority to approve the development?
- What would your decision be? Why?
- Would you want additional information to make a decision?
- If applicable, what conditions would be imposed on the decision?

Superseded

1. **SDAB Agenda**

MOUNTAIN SLOPES COUNTY

Item: **DP25/Current Year**

Application: This is an appeal of the Development Authority decision approving a development permit on a commercial agricultural recreation parcel for a riding arena and stables.

Background: Anne and Mark Phillips own an 80 acre agricultural parcel containing a barn and pasture. They want to build an equestrian facility so Anne can pursue and expand her love of riding. They applied for and obtained approval to redistrict their land from Agriculture to Agriculture Commercial Recreation. They want to build a riding arena including spectator seating, and a horse boarding and training facility.

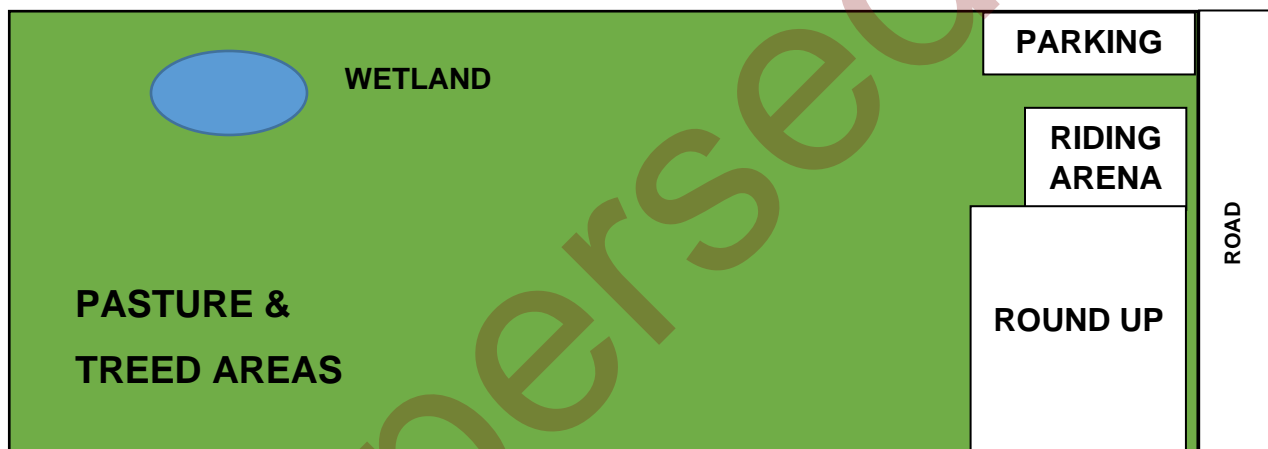


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C. Mendoza
7. Land Use Bylaw Excerpts

1. NOTICE OF APPEAL - Parker

To the SDAB,

I am writing to appeal the approval of the development permit application for a riding arena near River View.

There are several residents who oppose this development who have asked me to speak on their behalf.

The reasons for appeal are that this development is inappropriate for the area and will interfere with the quiet rural lifestyle we enjoy. The development will cause problems with traffic, dust and noise. It should be refused.

N. Parker

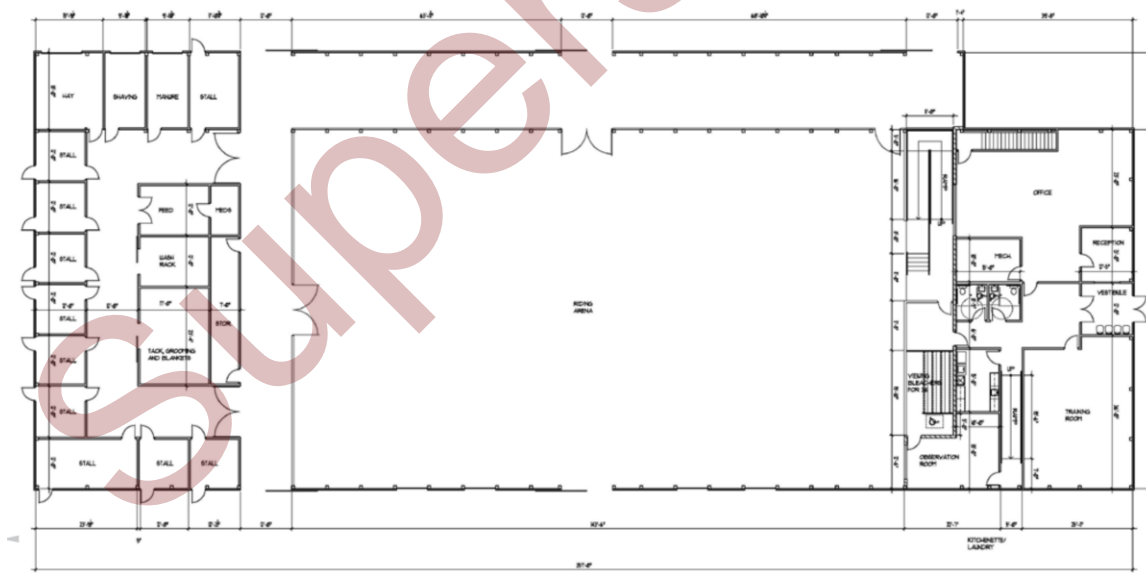
2. ***Applicant's Statement***

Dear Sir or Madam:

We wish to explain what our operation will be. The purpose of our development application is to allow us to operate an equestrian business all year round. We will teach classes in the indoor climate controlled arena. We will offer a unique farm experience program with hands-on experiences with farm chores, agricultural and environmental activities and caring for horses. The Arena size will allow us to board enough horses to make the development economically viable. While larger than normal, it is required to achieve our vision.

The facility will have:

- 10-15 adjustable stalls
- 100'x200' Arena
- Training Room
- Viewing Room and Bleachers
- Restrooms and showers
- Tack, Feed and Medicine Rooms
- Indoor Hay and Shaving Storage
- Office Space (with kitchen)



Yours Truly,

Anne Phillips

3. Development Authority Report

Subject Site: The site is located in an agricultural area, 3.2 km east of the Town of River View.

Existing Land Use: A-CR – Agriculture Commercial Recreation District

Adjacent Land Uses: North: Livestock operation - pasture (A – Agriculture)
South: Grain production (A – Agriculture)
West: Grain production (A – Agriculture)
East: Residential subdivision (CR – Country Residential)
and Grain production (A – Agriculture)

Proposed Development: To build and operate a riding arena and equestrian centre.

Additional Information:

- The original application for redistricting was approved because the proposed development is near a highway (2.4 km away), so will not require extensive use of county roads, and will not affect the predominantly agricultural uses in the area.
- The Mountain Slopes Municipal Development Plan puts high priority for preserving agricultural land and discourages uses that would negatively impact agricultural uses.
- 10 parking stalls required
- Overnight camping for up to 10 RVs
- Maximum arena size varied from 1500 m² (16,146 sq. ft) to allow the proposed arena to be 100' by 175' (reducing what the applicant proposed). The LUB bylaw allows the Development Officer to vary the standard by 10%

4. DA DECISION

Date: DD/MM/YYYY

Dear Applicant:

RE: Approved Development – Riding Arena

Property Description – Legal description, Mountain Slopes County

This will acknowledge that your Development Permit Application submitted to our office for the development noted above ***which is considered a Discretionary Use within the AG Agricultural District in accordance with the Mountain Slopes County Land Use Bylaw*** on the parcel described above, has been approved by the Development Authority subject to the following conditions:

- Approval is granted for the approved development only and no other development, based on the information provided by the applicant.
- The Arena shall not exceed 100' x 175'.
- The approved development shall be located as shown on the approved site plan. Any new approaches must be approved by the County's Engineering and Transportation Department Manager.
- The site shall be maintained in a neat and orderly manner both during and after construction - including the containment of all construction materials, refuse, and other matter to the satisfaction of the Development authority.
- The days and hours of the operation shall not extend beyond 7am to 9pm.
- Minimum of 10 parking stalls to be provided on site
- Maximum of 10 overnight RV parking
- The applicant shall obtain a Manure Management Plan to the satisfaction of the County prior to operation.

Any appeal must be made within 21 days of the date of this decision. Appeals can be directed to:

Mountain Slopes County SDAB

sdab@mountainslopescounty.ca

5. Appellant's Submission – N Parker

Dear Members of the SDAB,

I am writing on behalf of residents in the Windy Bend Country Residential development directly across the road to the east of the proposed riding arena and equine centre. We ask the SDAB to refuse the permit.

The size and scope of this development is too big for this area. The amount of traffic it will generate will create a safety hazard on the local roads, create too much dust as well as cause expensive wear and tear that the rest of the tax payers like us will be footing the bill for.

There is insufficient parking for how many people will be there. 10 stalls will not cover staff and visitors and will cause people to park on the side of the road or in the ditch (or worse on neighbouring land like mine!) which can be dangerous and unsightly.

Having 10 RVs each weekend for events will be a nightmare. We live in a quiet agricultural area, we don't want a campground near by generating traffic, litter and people wandering around. The amount of noise they will create will interfere with how we use and enjoy our properties.

Lastly, we are also concerned the smell from operation will interfere with the use and enjoyment of our properties and will lower our property values. A giant building, the parking lot and RV parking in an otherwise scenic and agricultural area will be an eyesore that does not belong here.

We hope the SDAB will see that this is not the right area for this development and revoke the permit and refuse the development. I have spoken individually to all the owners of the 12 CR lots in our community, and we are in universal opposition.

Thank you,

N. Parker and neighbours

6. C. Mendoza – Affected Person

To the SDAB,

I live on and farm the quarter section to the west of the proposed arena. I consider myself to be a good steward of the land – as do most other landowners in the area.

I am particularly concerned about the potential impact of the proposal on water quality in the area. The water that I depend on to live and operate my farm comes from a high-quality aquifer that also underlies the land subject to the proposal. This development will generate a lot of animal and human waste that could impact the local surface and groundwater if not managed appropriately. If contamination gets into the aquifer where my well is (and many others in the area access the same aquifer) the consequences would be very serious.

When I raised similar concerns about the cattle operation to the north, the County did absolutely nothing, and directed all my enquiries to the Alberta government, which they said set the regulations. In the end, I contacted a hydrogeologist and worked with her and the operator to the north to ensure appropriate measures were put into place.

I don't want to have to do this again and I have no confidence in the County's judgment on this issue. They will not test for water quality. If things go wrong, I am sure they will not pay to drill another well or secure an alternate source of water. How does the County propose to ensure our aquifer is protected and our drinking water is safe?

The SDAB should know the wetland on the subject property is an important groundwater recharge area that serves to feed the aquifer. Animals and animal waste must be kept away from this environmentally sensitive and important area. The wetland area should be preserved and development should not be allowed to encroach on the wetland area. Quite apart from its role in groundwater recharge, it is also an important area for wildlife and migratory bird species.

I am not necessarily opposed to the development - I just want to make sure it does not negatively impact the surface or groundwater quality.

Thank you,

C. Mendoza

7. Mountain Slopes County Planning Documents

Land Use Bylaw (Extracts)

A-CR AGRICULTURE COMMERCIAL RECREATION DISTRICT

PURPOSE AND INTENT

To allow for development of commercial recreational uses compatible with agricultural uses

PERMITTED USES

Accessory Buildings

Agriculture, General

DISCRETIONARY USES

Dwellings, Single Family

Arena, Commercial

Arena, Private

Boarding Services

Intensive Livestock Operation

Standards:

Minimum parcel size – 8.01 hectares (20.0 acres)

Density – Maximum four titles per quarter section

Maximum Arena size – 1500m² (16146 ft²)

Parking Requirements – at the DA's discretion

Definitions

ARENA, COMMERCIAL means a building or structure within which equestrian, athletic or recreational activities or contests are carried on and intended to be used by persons other than occupants of the residence, if any, located on the lot upon which the arena is located, which will result in the generation of more than fifteen (15) additional vehicle trips on any single day to or from the site of the arena; or use of the arena for any purpose on any single day by more than fifteen (15) persons other than occupants of the residence.

ARENA, PRIVATE means a building or structure in which equestrian, athletic or recreational activities are carried on and intended to be used solely by the occupants of

the residence and/or by no more than four (4) non-resident users per day other than the occupants of the residence located on the lot upon which the arena is located.

Municipal Development Plan (Extracts)

Goal:

Support and provide opportunities for recreation facilities for all residents that will promote a healthy lifestyle while protecting and conserving the maximum amount of land for agricultural use.

Objectives:

Support recreation development on lands where there is a minimal impact on the environment and agriculture.

Minimize conflicts between recreational developments and existing land uses

4 Other Resources

SAMPLE CLERK CHECKLIST

Prior to Appeal being filed				
Appeal	Yes	No	N/A	Comments
1. Advise any development permit appeal must be within 21 days of decision (or if subdivision appeal, then within 21 days of mailing)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	MGA ss. 678 & 686
2. Let them know where they can find the appeal form and advise them of the filing fee if there is one.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Filling out the form is not mandatory under the MGA <i>but</i> helps ensure all the required information is submitted.
Notice of Appeal - Review				
3. Was the appeal filed in accordance with MGA ➤ is it complete (including reasons), ➤ was the fee paid, ➤ was it filed on time, ➤ does the appellant have standing to appeal?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Clerks may assist appellants if some of the information required is missing but must not influence the content of an appeal. MGA ss. 678 & 686
4. Is a hearing on preliminary matters required? Are there procedural or administrative matters that need to be dealt with? ➤ Is the SDAB the correct board? ➤ Was the appeal late? ➤ Does the person appealing have standing? ➤ Is it an appeal the SDAB can hear? ➤ Has a party requested a postponement?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Clerks cannot make decisions with respect to the validity of appeals. They can flag issues for the board's consideration. All decisions must be made by the panel. If two hearings are required, you may schedule the preliminary hearing with at least 5 days' notice (+7 days for mailing so 12 days) MGA ss. 679(1) & 686(3). The merit hearing can be cancelled if it is not required.
Preparing for the Hearing				
5. Set hearing date: ➤ Are board members available? ➤ Quorum? ➤ Are board members certified? ➤ Schedule hearing within 30 days of appeal being filed.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Count all dates to see if holidays or office closures affect hearing or exchange dates – IA s. 22. Certification requirements MGA ss. 627(5) and 627.1(3) & <i>Matters Related to Sub Dev Reg</i>

6. Prepare and Send Notice of Hearing: <ul style="list-style-type: none"> ➤ Are there additional parties that require notice? ➤ Send notice at least 12 days prior to hearing (5 days +7 days for mailing) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Ensure notice of hearing is sent to all affected parties to an appeal as required under <i>MGA</i> and LUB <i>MGA</i> ss. 679 & 687(1)
7. Disclosure of Evidence - Schedule <ul style="list-style-type: none"> ➤ dates for disclosure of evidence should be included in the notice of hearing. 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Each municipality may have its own procedures regarding disclosure. The goal is to ensure all the parties know the case to be met and no delays or surprises at the hearing.
8. Prepare Agenda/documents. Documents may include <ul style="list-style-type: none"> ➤ Copy of Appeal Form ➤ Disclosure of Evidence Submitted 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
9. Redact personal/commercial/financial/etc. information from exhibits/material in accordance with FOIPPA.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Personal information (such as email address, mailing address, phone numbers) is commonly included and should be redacted from the material that is distributed to parties and/or public. An original copy should be kept for the SDAB records.
10. Distribute and have agenda package available for inspection.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Send package to parties Send package to panel Make available to public on request <i>MGA</i> s. 686(4)
11. If a party is not attending in person/video and wishes to file a written presentation, make copies for the panel/distribute to other parties.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
12. If a postponement of the hearing is requested, decide if there is enough time before the hearing to convene a panel (preliminary).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Often done with written submissions as a "written" or "paper" hearing If a postponement is granted, notify all parties and assigned board members as soon as possible.
At the Hearing				
13. If a party does not appear at the hearing, then the hearing may proceed based on the information submitted prior to the hearing.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Check to ensure proper notice was given and/or contact the party.

14. Attend the Hearing (depending on board's practice). <ul style="list-style-type: none"> ➤ maintain sign-in sheet ➤ record hearing if required ➤ introduce appeal/house keeping items (cell phones, technical issues, OHS, etc.) ➤ label and track exhibits as needed 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>If the hearing is being recorded the clerk may need to set up and test the recording equipment.</p> <p>All hearings are open to the public.</p>
15. The board can seek legal advice at any time from their own independent lawyer; however, they <u>cannot</u> use the Municipality's lawyer.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>Legal advice is privileged and need not be disclosed to the parties; however, if a new issue arises as a result of the advice, the issue should be raised with the parties for comment.</p>
After the Hearing				
16. Support the decision-making process. <ul style="list-style-type: none"> ➤ Ensure the record from the hearing is available for review by the members ➤ facilitate the decision meeting (depending on the practice in the municipality) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>The decision meeting will ensure the panel</p> <ul style="list-style-type: none"> ➤ identifies all the issues ➤ considers all the relevant evidence and legislative provisions in relation to each issue ➤ makes findings in relation to each issue ➤ gives reasons to support the findings ➤ makes a final decision
17. Draft the decision in accordance with Panel instructions (depending on the practice in the municipality). <ul style="list-style-type: none"> ➤ Edit and format the draft in accordance with municipal practice. ➤ Circulate the draft for approval by the panel before it is signed and sent to the parties. 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>The clerk must ensure the final decision is the panel's and not inject any personal opinion or invent reasons.</p> <p>Read the decision to see if it is understandable and has a flow, grammar and spelling are correct, and if the decision is clear.</p>
18. Distribute decision to Appellant, Respondent and any other parties to the appeal. <ul style="list-style-type: none"> ➤ The decision must be made within 15 days from the date of the hearing. 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>MGA ss. 680(3), 687(2)</p>
19. Ensure the record is complete with exhibits and all material is organized.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>Record should include the notice of appeal, the exhibits filed, any transcripts or official recording, and the decision.</p>

SAMPLE MEMBER CHECKLIST

Prior to Appeal		
		Comments
1. Review the notice of appeal.	<input type="checkbox"/>	Was the appeal filed on time? Does the Appellant have standing to appeal? What is the appeal about? Is the appeal at the correct Board or should it go to the LPRT? Is this a matter the SDAB has authority to deal with?
2. Review exhibits to familiarize yourself with the appeal and identify potential issues/questions and preliminary matters.	<input type="checkbox"/>	For example: look at the districting/uses, type of appeal, potential conditions, variance request, circulation comments, review legislation This is a review only – do not make any decisions or judgements
3. Do you have any conflicts?	<input type="checkbox"/>	Reasonable bystander test Inform the clerk if there is a conflict as soon as possible
At the Hearing		
4. Attend prehearing meeting	<input type="checkbox"/>	Usually 30-45 min prior to hearing - Test video and audio connections if virtual. Review anticipated preliminary matters, questions, and issues with panel members. Identify panel roles – who is chairing the hearing and who will be drafting the decision? (Clerk or Member)
5. PO asks clerk to start hearing	<input type="checkbox"/>	Clerk starts recording, introduces appeal, advises parties to turn off cell phones, mute microphones and video when not speaking, and how to deal with technical difficulties/other housekeeping issues.
6. Panel introductions starting with PO (each member introduces themselves)	<input type="checkbox"/>	If virtual, video must stay on for panel members during the hearing (for virtual hearings).
7. Ask the parties if there are any objections to the panel.	<input type="checkbox"/>	If an objection is raised, hear from the parties and use the reasonable bystander test. The challenged member is the one who makes the decision, but they can discuss with the panel during a break away from the parties.

8. Have parties introduce themselves, starting with DA/SA, then Appellant, Applicant, Affected Persons, and other parties. (Order may vary, depending on practice in municipality)	<input type="checkbox"/>	Hearings are open to the public – anyone can attend but the panel does not have to hear from people who are not “affected persons”.
9. Administer the Oath, if necessary.	<input type="checkbox"/>	<p>Most SDABs do not affirm or swear witnesses as a normal procedure. However, if witnesses are to be affirmed or sworn the following can be used to affirm (or swear) witnesses.</p> <p><i>Do you solemnly affirm (swear) that the evidence you give about the matters before this Board shall be the truth, the whole truth and nothing but the truth?(so help you God?)</i></p> <p>To swear (or affirm) a witness, you must be a Commissioner of Oaths. Lawyers do not need to swear in since they do not provide evidence.</p>
10. List/identify the exhibits and have them entered into the record	<input type="checkbox"/>	The PO can ask the clerk to identify the material by reading the name of the exhibit, who filed it and number of pages. This list is recorded and used as the basis for the list of exhibits entered into the record.
11. Outline the hearing process	<input type="checkbox"/>	<p>Process may vary by municipality, but is often as follows</p> <p><i>DA, questions from parties and Board</i></p> <p><i>Appellant(s), questions from parties and Board</i></p> <p><i>Parties in support of appeal, questions from parties and Board</i></p> <p><i>Applicant, questions from parties and Board</i></p> <p><i>Parties in support of the application, questions from parties and Board</i></p> <p><i>Break</i></p> <p><i>Summaries</i></p> <p><i>DA, Applicant, Appellant</i></p>
12. Identify preliminary issues.	<input type="checkbox"/>	<p>Ask the parties if there are any preliminary issues. If the parties miss any preliminary issues that the Board is aware of (e.g. timing) the PO should ask the parties to address them.</p> <p><i>Use the “rule of three” to allow the parties to respond to the preliminary issues</i></p>
13. Start with the DA’s presentation <i>Allow parties to ask questions, then panel questions</i>	<input type="checkbox"/>	Take breaks as needed.

14. Appellant(s) presentation(s) <i>Allow parties to ask questions, then panel questions</i>	<input type="checkbox"/>	
15. Affected Parties in support of appeal <i>Allow parties to ask questions, then panel questions</i>	<input type="checkbox"/>	
16. Applicant <i>Allow parties to ask questions, then panel questions</i>	<input type="checkbox"/>	
17. Affected Parties opposed to the appeal <i>Allow parties to ask questions, then panel questions</i>	<input type="checkbox"/>	
18. Any other parties in attendance presentations <i>Allow parties to ask questions, then panel questions</i>	<input type="checkbox"/>	
19. Prior to summaries take a break. This break lets the parties collect their thoughts and gives the panel time to review and discuss whether there are any additional questions it has to clarify the evidence or address issues required to make a decision. Remind parties there will be no new evidence in summaries.	<input type="checkbox"/>	<p>Do you need to ask questions to cover:</p> <p><u>Site Suitability</u></p> <ul style="list-style-type: none"> ➤ Access/flooding/erosion/sewage/water/uses in area <p><u>Conditions</u></p> <ul style="list-style-type: none"> ➤ Legislative authority for conditions <p><u>LUB Compliance</u></p> <ul style="list-style-type: none"> ➤ Uses are binding ➤ Standards may be varied if appropriate - Impact on use, enjoyment and value of neighbouring parcels? (MGA 687(3)(d) for development appeals) <p><u>Addressed Stat Plans</u></p> <ul style="list-style-type: none"> ➤ Have the reasons for appeal been discussed/reasons for refusal? ➤ What remedy are the Appellants looking for? <p><u>Higher level policies</u></p> <ul style="list-style-type: none"> ➤ Growth Plans/LUP/ALSA etc.
Ask parties to give their summaries – Appellant should have the last word	<input type="checkbox"/>	<i>Appellant normally has the last word – the usual practice is for the Appellant to give their summary last; however, some SDABs let the Appellant do their summary first, and come back again at the end for a short rebuttal.</i>
20. Confirm the parties have no more to say	<input type="checkbox"/>	<i>“Have all the parties had the opportunity to present all the evidence you wish the Board to consider?”</i>
21. Close the hearing	<input type="checkbox"/>	Remind the parties the Board will not accept additional material once the hearing is closed.

After the Hearing		
22. Attend the decision meeting	<input type="checkbox"/>	Follow the decision-making model process. Clerk or member can facilitate.
23. Author drafts decision based on panel decision from decision meeting	<input type="checkbox"/>	Clerk may draft the decision on panel instruction and/or review the decision and format if drafted by member.
24. Draft is circulated to panel as per municipality's procedure	<input type="checkbox"/>	The final draft of a decision should be approved by the entire panel before it is signed and sent to the parties.
25. Decision is signed	<input type="checkbox"/>	Presiding Officer usually signs the decision. After signature, clerk will send decision to appropriate parties.

SAMPLE CHAIR'S REMARKS

<p style="text-align: center;">SAMPLE</p> <p style="text-align: center;">SUBDIVISION & DEVELOPMENT APPEAL BOARD (SDAB)</p> <p style="text-align: center;">CHAIR'S ADDRESS</p> <p style="text-align: center;"><i>(This example is for a hearing where the Appellant is not the Applicant)</i></p>	
CALL THE HEARING TO ORDER	<i>I call this hearing of the Subdivision and Development Appeal Board to Order.</i>
CHAIR INTRODUCTION	<i>My name is _____ and I will be acting as chair. Please direct all questions and comments through me.</i>
BOARD INTRODUCTIONS	<i>I will now ask the other members of the panel to introduce themselves: _____</i>
OBJECTIONS TO PANEL	<i>Does anyone here object to any of the members on the panel for this appeal?</i>
SDAB CLERK INTRODUCTION	<p><i>Will the clerk please introduce themselves and identify this appeal?</i></p> <p><i>(The Clerk would then cite the agenda number, the appeal number and identify the appellant and property subject to appeal.</i></p> <p><i>The Clerk should also point out the sign-in sheet and ask anyone attending the appeal to provide their name and mailing address.)</i></p>
CALL FOR PARTIES TO INTRODUCE THEMSELVES	<p><i>Would the parties present please identify themselves and their role in this appeal?</i></p> <p><i>(The DA/SA, Appellant, and Applicant/Developer should be there. In addition, there may be other interested parties. All parties should identify their role – i.e., Appellant, Respondent, Applicant/Developer, affected adjacent/area landowner, etc.)</i></p>
OTHER PRELIMINARY ISSUES	<i>Before we begin, are there any preliminary matters that need to be addressed?</i>
EXPLANATORY COMMENTS	<p><i>The purpose of this hearing is for the Appellant, the Development Authority, Applicant/Developer, and others affected by the matter under appeal to give the Board their perspective and to provide evidence to support their submissions. The Board must base its decision on the planning merits of the application, the evidence presented, and the legislated land planning documents.</i></p> <p><i>Our usual practice is to begin with submissions from the main parties – that is, from the Development Authority, the Appellant, and</i></p>

	<p><i>Applicant/Developer. After that, we hear from affected landowners and members of the public.</i></p> <p><i>After each party has presented its evidence, the other parties have an opportunity to ask questions. Lastly, the Board may have questions of its own. If anything new arises, each party has have an opportunity to respond.</i></p> <p><i>We then conclude the hearing by giving the main parties and any other party who has made substantial submissions an opportunity to summarize their evidence and explain why they think it supports the decision they want, with the Appellant having the last word.</i></p> <p><i>Does anyone have any questions about this procedure or how it will apply today? _____</i></p> <p><i>When making your presentations, please ensure all comments are directed through the chair – that is, through me. Also, please try to keep your comments succinct and respectful; if another person has already made a point you agree with, and you have nothing substantial to add, please simply state that you agree with it.</i></p> <p><i>If you are reading from a written statement, please leave a copy with the Board as this will assist the clerk in preparing the minutes and the Board in making its decision. Also, if you want to refer to a document you have brought along with you, like a map, photograph, or report, please leave a copy with the Board.</i></p>
CONFIRM THE HEARING PROCESS	<i>Does anyone present have any questions or concerns with the process I have outlined?</i>
DEVELOPMENT OFFICER OR PLANNER PRESENTATION	<p><i>....., please proceed with your presentation.</i></p> <p><i>To Appellant: Does the Appellant have any questions?</i></p> <p><i>To Applicant/Developer: Does the Applicant have any questions?</i></p> <p><i>To other parties: Does anyone else have any questions?</i></p> <p><i>To Board: Does the Board have any questions?</i></p>
APPELLANT PRESENTATION	<p><i>The Appellant may now make his/her presentation.</i></p> <p><i>To DA: Does the DA have any questions?</i></p> <p><i>To Applicant/Developer: Does the Applicant have any questions?</i></p> <p><i>To other parties: Does anyone else have any questions?</i></p> <p><i>To Board: Does the Board have any questions?</i></p>

POTENTIAL CONDITIONS OF APPROVAL (WHEN APPLICABLE)	<p>Ask the Appellant:</p> <p><i>Have you reviewed the potential conditions of approval provided to you? Do you have any concerns or comments?</i></p>
APPLICANT/ DEVELOPER PRESENTATION	<p><i>The Applicant/Developer may make their presentation now.</i></p> <p>To DA: <i>Does the DA have any questions?</i></p> <p>To Appellant: <i>Does the Appellant have any questions?</i></p> <p>To other parties: <i>Does anyone else have any questions?</i></p> <p>To Board: <i>Does the Board have any questions?</i></p>
<p>CALL FOR OTHERS TO SPEAK ON APPEAL</p> <p>NOTE: NORMALLY, ALLOW PERSONS SUPPORTING THE APPEAL TO BE HEARD FIRST, FOLLOWED BY PERSONS OPPOSING THE APPEAL.</p>	<p>FOR</p> <p><i>Is there anyone in the audience who wishes to speak in support of the appeal?</i></p> <p>If there are: <i>Would you please come forward to introduce yourself and explain how you are affected?</i></p> <p>AGAINST</p> <p><i>Is there anyone in the audience who wishes to speak against the appeal?</i></p> <p>If there are: <i>Would you please come forward to introduce yourself and explain how you are affected?</i></p>
READ INTO RECORD ADDITIONAL INFORMATION (WHEN APPLICABLE)	<p><i>The Board has received additional submissions not contained in the appeal package.</i></p> <p><i>I will call on the clerk to read in for the record the additional submissions.</i></p>
CLERK	<p><i>A letter from.....was received in support / in opposition of the appeal and will be labeled as exhibit ____.</i></p> <p>(The clerk will record the exhibit number and explain what the exhibit is. This may include reading the letter word for word, summarizing its contents, or listing the documents).</p>
BRIEF RECESS (WHEN APPLICABLE)	<p><i>The hearing will recess for a few minutes.</i></p> <p>(Direct the parties and the audience to the appropriate waiting area, or the Board can retire to another room.)</p>

CALL THE HEARING BACK TO ORDER (WHEN APPLICABLE)	<i>I call this meeting of the Subdivision and Development Appeal Board back to Order.</i>
BOARD QUESTIONS	<p>To Board:</p> <p><i>Does the Board have any questions for clarification for the DA?</i></p> <p><i>Does the Board have any questions for clarification for the Appellant?</i></p> <p><i>Does the Board have any questions for clarification for the Applicant/Developer?</i></p>
OTHER QUESTIONS	<i>Does any other person who has presented have any questions arising or clarification of any of the presenters?</i>
SUMMARIES – following all submissions	
DEVELOPMENT OFFICER OR PLANNER'S FINAL COMMENTS	<i>Would the Development Authority representative please make your summary of evidence and argument?</i>
APPLICANT/ DEVELOPER	<i>Would the Applicant/Developer please make your summary of evidence and argument?</i>
OTHER PERSON'S FINAL COMMENTS	<p>Ask the other persons:</p> <p><i>Would any other person who has made representations please make any brief, final comments?</i></p>
APPELLANT'S FINAL COMMENTS	<i>Would the Appellant please make your summary of evidence and argument?</i>
FAIR HEARING?	<p>Ask the persons who have made representations:</p> <p><i>Does everyone feel the board has all the material we need to make a decision?</i></p>
CONCLUDE AND GIVE CLOSING ADVICE TO APPELLANT AND OTHER PRESENTERS	<p><i>This hearing is now concluded.</i></p> <p><i>The decision will be issued in writing within 15 days.</i></p>
ASK THE CLERK TO READ NEXT APPEAL (IF ANY)	<i>Will the clerk please introduce the next appeal?</i>

5 APPENDIX

APPENDIX 1 – SAMPLE CITY OF EDMONTON SDAB DECISION

EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: F. Li v Development Authority of the City of Edmonton, 2020 ABESDAB 10011

Date: February 5, 2020
Project Number: 345176335-002
File Number: SDAB-D-20-011

Between:

F. Li

and

The City of Edmonton, Development Authority

Board Members

Winston Tuttle, Presiding Officer

Brian Gibson

Art Peterson

Elaine Solez

James Wall

DECISION

- [1] On January 22, 2020, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on December 24, 2019 for an application by Span Architecture Inc. The appeal concerned the decision of the Development Authority, issued on December 18, 2019, to refuse the following development:

Change the Use from a Single Detached House to a Childcare Service (44 Children) and Commercial School (Heritage Education Centre).

- [2] The subject property is on Plan 3073NY Blk 45 Lot 20, located at 3904 - 117 Street NW, within the RF1 - Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer's written submissions;
 - The Appellant's written submissions;
 - Online responses; and
 - A highlighted excerpt submitted prior to the hearing starting by Legal Counsel for the Appellant

Preliminary Matters

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

Summary of Hearing

- i) Position of K. Haldane, Legal Counsel for the Appellant, F. Li
- [7] The Board can issue a Development Permit of their own as outlined in Section 687(3)(c) of the *Municipal Government Act*. In determining an appeal, the Subdivision and Development Appeal Board may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or substitute an order, decision or permit of its own.
- [8] The subject site is a residence and currently operates as a Major Home Based Business for private education for 10 tutored students.
- [9] The proposed development is to abandon the residential Use and the Major Home Based Business and to convert the space to a child care facility for 44 children. That number was based on the Provincial regulation Floor Area ratio to number of children.

- [10] There will be no Commercial School in operation, but some education programming that takes place, as with most child care facilities.
- [11] He referred to the Development Permit dated October 30, 2019 that was refused on December 18, 2019. He addressed the reasons for refusal. (TAB 1).
1. The proposed development is a Discretionary Use and the Development Officer did not believe the Use was suitable for the site and does not meet the General Purpose of the RF1 Single Detached Residential Zone. The scale of the proposed Child Care Service will generate a negative impact, specifically noise, and increased vehicular traffic for pick-up and drop-off children, uncharacteristic of the surrounding existing low density single detached residential district.
 2. The requirement for a parking variance in respect to employee parking spaces and passenger pick-up and drop-off spaces to be provided. The calculations are one parking space for every 100 square metres of floor space. This would have 219 square metres so there would be three employee parking spaces. The pick-up and drop-off spaces is based on the number of children that the child care service accommodates, The requirement is two parking spaces for the first ten children and one parking space for every additional 10 children after. The variance from 6 to 5 arises as there are 44 children rather than 40.
- [12] In his opinion, the first two reasons of refusal are not of any importance. Today, he received administration's report to City Council for proposed changes to the *Edmonton Zoning Bylaw* that would eliminate minimum off street parking requirements.
- [13] He does not believe the impact of the variances in this case is significant.
- [14] The development permit was refused on the basis of the third reason for refusal:
3. It was determined that a Commercial School (secondary use) would be operating with the proposed Child Care Service. A Commercial School is neither a Permitted Use nor Discretionary Use in the RF1 Single Detached Residential Zone.
- [15] He referred to the list of Uses in his submission and stated that the definition of Commercial Schools means:
- development used for training and instruction in a specific trade skill, service or artistic endeavour. This Use does not include schools defined as Public Education Services or Private Education Services. Typical Uses include secretarial, business, hairdressing, beauty culture, dancing or music schools.

- [16] In his opinion, this is considered a vocational school which is more than what is presently taking place on the subject site. He would classify it as a Private Education Service.
- [17] In his opinion, the notice to property owners should not have read that the proposed development is for a Commercial School with 44 children.
- [18] The development permit is for a Child Care Service which is defined as:
- 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.
- [19] The definition applies to this development and what the permit is for. Anything that goes on beyond the permit is subject to a Stop Order.
- [20] The hours of operation will be Monday to Friday, 3:30 p.m. to 6:30 p.m. and 8:30 a.m. to 6:30 p.m. in the summer.
- [21] In his opinion, the Development Officer classified the development as a Commercial School (Heritage Education Centre), because of the letter in the Development Officer's submission dated December 10, 2019 asking for details of the proposed development.
- [22] The classes provided are educational activities that children should be learning at a Child Care Service.
- [23] He referred to the Floor Plan showing that the residential character will be removed and divided into four rooms that will be used for the children. (TAB 2).
- [24] Children will be required to bring their own food so there is no need for kitchen facilities.
- [25] The Site Plan shows that there are drop off spaces in front of the garage with access from 117 Street and rear lane access. (TAB 2).
- [26] Parking is available in the garage for employees.
- [27] He referred to TAB 3, the General Purpose of the RF1 Single Detached Residential Zone that states:

The purpose of this Zone is to provide for Single Detached Housing while allowing other forms of small scale housing in the form of Secondary Suites, Garden Suites, Semi-detached Housing and Duplex Housing.

- [28] In a zone with this purpose, the amenities required for that housing should also be accommodated. The Discretionary Uses listed includes Child Care Services, Group Homes, Lodging Houses, Major Home Based Businesses, etc.
- [29] Even if not listed in the purpose of the zone, these Discretionary Uses make that zone better for the residents of the housing that the zone is designed to accommodate. Single Detached Housing is the preferred choice for families that have the yards for their children.
- [30] The Development Officer's submission talks about Discretionary Use being one which may only be issued if the Development Officer chooses to do so. The difference is between a Permitted Use which is one that the land owner is entitled to as of right if it meets all of the regulations, and a Discretionary Use is one that might meet all of the regulations but might not be appropriate in that zone.
- [31] He referred to excerpts from *Planning Law and Practice in Alberta* by Frederick A. Laux and Gwendolyn Stewart-Palmer that talks about what a Discretionary Use is. He referred to the text that states:

The listed discretionary uses, while generally appropriate for the district, are those that are of such a nature that they may or may not be reasonably compatible with neighbouring uses, depending upon the circumstances. To illustrate, the use of part of one's home for the purpose of earning income from a trade or calling (usually called a "home occupation" use) in a district in which single family homes are the sole permitted use, is generally acknowledged to be appropriate, provided the use will not unreasonably detract from the amenities of the neighbourhood or otherwise unnecessarily interfere with the use, enjoyment and value of neighbouring properties.

A given home occupation may be appropriate on one site in the district but not on another. Accordingly, it is appropriate that the development authority be in a position, in its discretion, to permit or refuse the use, depending upon whether it meets the test of reasonable compatibility, given the circumstances.

- [32] The proposed Child Care Services Use is compatible with the neighbouring Uses.

[33] The Subdivision and Development Appeal Board can turn down a Discretionary Use for any reason provided it is a sound planning reason.

[34] He referred to TAB 4, Section 80 of the *Edmonton Zoning Bylaw*, regulations for a Child Care Service. The proposed development complies with the regulations. It is located on a corner lot as outlined in Section 80.4(b)(i) that states:

4. Development in Residential Zones

b. 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

[35] The reason for that is to avoid putting this type of development in the middle of the block to alleviate the impact on neighbouring property owners and to allow for two frontages adjacent to the property, where children being dropped off or picked up, so the children do not need to cross the road.

[36] He referred to the aerial photograph showing the subject site and four elementary schools that are in the surrounding area. (TAB 5).

[37] He referred to the 2018 and 2019 student school enrollments and weekday traffic in the area (TAB 5).

[38] The neighbours commented that they are concerned with the traffic in the area. The worst case of traffic for a 44 child care facility would be 88 additional trips. Each parent picking up or dropping off one child. In his opinion, there may be more than one child being dropped off at a time.

[39] With the proposed weekday operation, there may be a group drop off after school and individual pick up of children. The intent would be to focus on families in the area. Even with the maximum traffic impact, it is less than 10 percent increase.

[40] He referred to the notification map outlining the location of the responses received from neighbouring property owners. There are two responses in support, one from a neighbour across 117 Street and one from a neighbour across 39 Avenue. The other responses are in opposition to the proposed development. (TAB 6).

[41] He referred to the online responses and indicated that the area will stay as a residential neighbourhood. In his opinion, the neighbours may not be fully aware of what is proposed due to the wording on the notice that was sent out.

- [42] Some of the concerns were related to the number of kids adding more vehicles in the area. In his opinion, the extra vehicles will not be noticeable to what they are experiencing every day.
- [43] He referred to the email received from a neighbouring property owner indicating their support.
- [44] He referred to the photographs submitted showing the subject site and the street view of the area. A traffic study was not done; however, the photographs show that there is not an excess of traffic or street parking in the area. (TAB 7).
- [45] He referred to the other relevant materials in the Development Officer's written submission. The Development Officer indicated that a Development Permit was approved on July 16, 2018 for a Major Home Based Business to provide private education (maximum 10 children) and that a violation notice was issued on September 19, 2019 for not being in compliance by 20 plus children on site. A follow up inspection on November 5, 2019 found only 5 children receiving care and the job was closed.
- [46] Another Development Compliance Job dated May 9, 2019 for a Lodging House was referenced. No violation was issued and the file was closed. The Development Compliance Officer noted that during the inspection they found two classrooms set up with a minimum of 10 desks each.
- [47] That may be the basis for the second Development Compliance issue arising. These are relevant documents, to show that Development Compliance will be monitoring the property. However, previous inspections were done with no issues.
- [48] K. Haldane provided the following information in response to questions by the Board:
- a. His client is willing to accept any number of children for the proposed development. He reiterated that the Board can issue a new Development Permit with up to 44 children. Reducing the number of children will eliminate the number of pick-up and drop-off spaces.
 - b. He was unable to comment on what use was listed on the development permit application when submitted to the City, but believes that the additional information provided to the Development Officer after the application was submitted, led the Development Officer to find that the application was for a school.
 - c. In his opinion, the seasonal parking ban on 117 Street will not affect the drop-off and pick-up of children for the proposed development.

- d. He confirmed that the play area cannot accommodate 44 children so they will use the play area in groups.
- e. There are two large rooms on the main floor, one downstairs, and a smaller room on the second floor that will accommodate the children when weather does not permit them to go outside.
- f. He confirmed that some of the desks will be removed when the renovations take place.

[49] S. Pan, the Architect, provided the following information in response to questions by the Board.

- a. The development permit application is for Out of School Care. In his opinion, the scope of the Development Permit is not correct. He did not make an application for a Commercial School as it is neither a Permitted nor Discretionary Use.
- b. The Appellant does not intend to operate on the weekends.
- c. He confirmed that the Major Home Based Business will be discontinued if the proposed development is approved.

ii) Position of the Appellant, F. Li

[50] She is willing to lower the number of children for the proposed development.

[51] The outdoor and indoor play area was considered with the application which meets the Provincial Child Care regulations.

[52] F. Li provided the following information in response to questions by the Board:

- a. The number of children will depend on the provincial regulations for a Child Care Service following an assessment of the subject site.
- b. She understands that she will not be able have more children than what the Board approves.
- c. Once the permit is approved, she will submit the approved permit to the Province who will provide her with the number of children she is allowed for the Child Care Service.
- d. She applied for a higher number of children in case the province lowers the number.

iii) Position of the Development Officer, K. Lamont

- [53] The original Development Permit Application was for a Child Care Service. However, when the application was reviewed, the scope of application was updated from the information that was submitted.
- [54] K. Lamont provided the following information in response to questions by the Board:
- a. When the application was received, she reviewed the floor plan, with that on top of the Major Home Based Business, which made it more than just a Child Care Service.
 - b. She confirmed that the Applicant is willing to cancel the Major Home Based Business.
 - c. It is normal for the Development Authority to adjust the stated purpose of the development on the application form based on information received from the applicant.

iv) Rebuttal of the Appellant

- [55] Mr. Haldane had nothing to add in rebuttal.

Decision

- [56] The appeal is **ALLOWED IN PART** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED**, subject to the following **CONDITIONS**:
1. This Development Permit authorizes the development of a Child Care Service **for a maximum of 24 children**. The development shall be constructed in accordance with the stamped and approved drawings.
 2. **The hours of operation for the Child Care Service shall be 3:30pm to 6:30pm Monday through Friday, with the exception of School Closure days where the hours of operation shall be 8:30am to 6:30pm Monday through Friday. The Child Care Service must not be in operation on weekends.**
 3. **Where** outdoor play space is provided at ground level it shall be Fenced on all sides and all gates shall be self-latching. (Reference subsection 80(3)(a))
 4. A converted Dwelling shall not change the principal character or external appearance of the Dwelling in which it is located. (Reference subsection 80(4)(c))
 5. Passenger pick-up/drop-off spaces shall be designed with signs to reserve the parking spaces for Child Care Services pick-up/drop-off. (Reference section 54.2, Schedule 1(A), subsection 29(a)(i))

6. Passenger pick-up/drop-off space 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 m from the main entrance used by the Child Care Service. (Reference section 54.2, Schedule 1(A), subsection 29(a)(ii))

ADVISEMENTS:

1. This Development Permit is NOT a Business Licence. A separate application must be made for a Business Licence. Please contact the 311 Call Centre (780-442-5311) for further information.
2. Signs require separate Development Permit applications. More information about Signs can be found on the City of Edmonton's website:

https://www.edmonton.ca/business_economy/signs.aspx
3. Unless otherwise stated, all above references to section numbers refer to the authority under the *Edmonton Zoning Bylaw 12800* as amended.

Reasons for Decision

- [57] The proposed development, Child Care Service, is a Discretionary Use in the RF1 Single Detached Residential Zone.
- [58] The Board accepts the submission from the Architect that he applied for a Child Care Service in a residential neighbourhood.
- [59] The Board also accepts the submission from the Appellant's Legal Counsel that the Commercial School Use is being redacted from the scope of Application.
- [60] There are four schools in close proximity to the proposed development which will be easily accessible for the children at the Child Care Service.
- [61] The Board notes that there was some support, but mainly opposition from surrounding properties/affected parties to the proposed development and the number of children.
- [62] The Appellant was willing to accept a reduced number of children for the Child Care Service, but would need to determine if the business was feasible if the number of children was reduced. The Board notes that the Appellant was asked to suggest a figure for the Boards' consideration regarding the number of children for the Child Care Service, but she declined to do so.

- [63] The Board in making its determination weighed the concerns expressed by the neighbouring properties with respect to the proposed number of children, along with the willingness of the Appellant to reduce the number of children and reduce the operating hours of the Child Care Service.
- [64] The Board is in agreement that the addition of a Child Care Service in a Single Detached Residential Zone, provides a service to the residents of the housing within that area.
- [65] The Board used the following excerpt from the *Planning Law and Practice in Alberta* by Frederick A. Laux and Gwendolyn Stewart-Palmer that was submitted by the Appellant's Legal Counsel as a basis for its decision:
- ...the listed discretionary uses, while generally appropriate for the district, are those that are such a nature that they may or may not be reasonably compatible with neighbouring uses, depending upon the circumstances....provided the use will not unreasonably detract from the amenities of the neighbourhood or otherwise unnecessarily interfere with the use, enjoyment and value of neighbouring properties.
- [66] With a reduction in the number of children, a parking variance is no longer required. Onsite parking will be sufficient for the proposed development.
- [67] The Board accepts the evidence submitted that should this facility become licensed for the Child Care Services, the Major Home Based Business currently at the subject Site is cancelled.
- [68] The Board finds that adjustments to the hours of operation and the number of children, along with the proximity of schools, the proposed development is reasonably compatible with the residential character of the neighbourhood.

Winston Tuttle, Presiding Officer

Subdivision and Development Appeal Board

CC: SPAN Architecture Inc., Attn: S. Pan

City of Edmonton, Development & Zoning Services, Attn: K. Lamont

Ogilvie Law, Attn: K. Haldane

Important Information for the Applicant/Appellant

This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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

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

APPENDIX 2 – SAMPLE CITY OF CALGARY SDAB DECISION

Calgary Subdivision and Development Appeal Board

PO Box 2100, Station M, #8110

Calgary, AB T2P 2M5

Email: info@calgarysdab.ca

CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: 2019 CGYSDAB 70

Case Name: SDAB2019-0070 (Re)

File No: DP2019-3581

Appeal by: Sukhdev Singh Jaswal

Appeal against: Development Authority of The City of Calgary

Hearing dates: November 21, 2019
December 12, 2019

Decision date: January 15, 2020

Board members: Michelle Pink – Presiding Officer
Bill Chomik
Michael Meredith
Jacob Weber

DECISION

Description of Application:

1 The appeal before the Subdivision and Development Appeal Board was brought by Sukhdev Singh Jaiswal, represented by Rakesh Jaswal.

2 On October 15, 2019, the Development Authority refused the application of Amrit Design Drafting Services c/o Sukhdev Jaswal for a change of use to a liquor store at 1837 20 Avenue NW in the community of Capitol Hill. The property is owned by 35BB Holdings Limited and has a land use designation of C-N1. The proposed development is a discretionary use within the district.

Procedural History:

3 The hearing commenced on November 21, 2019 with consideration of procedural issues. The Board adjourned the hearing to December 12, 2019. The hearing concluded on December 12, 2019.

Decision:

4 The appeal is denied, and the decision of the Development Authority is upheld. A development permit shall not be issued.

Appearances:

5 The Board received submissions from:

- a) Written submissions for the Development Authority;
- b) Rakesh Jaswal for the appellant;
- c) Balder Sturgill, the appellant and
- d) Bruce Druery, resident in opposition to the appeal.

Background and Summary of Evidence:

Submission of the Development Authority

6 In its written response to the Notice of Appeal, the Development Authority notes that Land Use Bylaw 1P2007 (the “Bylaw”) states a liquor store must not be located within 150 metres of a school, when measured from the closest point of the liquor store to the closest point of the parcel containing the school. The proposed liquor store is 127.4 metres from the Capitol Hill Elementary School, located at 2210 18 Street NW. This represents a relaxation of greater than 10%, which the Development Authority does not support.

7 The initial relaxations, noted by the Development Authority also indicated that the proposed use would result in a 5-parking stall deficiency.

Submission of the applicant/appellant

8 Mr. Suergill indicated that the site was previously a grocery store that has closed for financial reasons. Mr. Jaswal is seeking permission to change the use to a liquor store. This was refused because of the proximity to the nearby Elementary School.

9 Mr. Suergill indicated that the proposed liquor store is 22 metres outside of the Bylaw rule and 7 metres outside of the 10% tolerance afforded by the Development Authority. He also indicated that the appellants were prepared to move the entrance to a location that was within that 10% relaxation tolerance. As a consequence, Mr. Suergill is seeking the relaxation for the separation distance. Mr. Chomik noted the distance is the closest point of the building to the property line of the school was the correct measure and not the entrance door of the subject property.

10 Mr. Suergill also noted the proximity of a cannabis store and coffee shop that is licensed directly opposite the subject site.

11 Mr. Suergill indicated that there is no shortage in parking for the liquor store (despite the Development Authority stating there is a 5-stall deficiency). Mr. Chomik noted that page 33 of the Board Report indicates 7.35 stalls are required, which is rounded up to 8 required stalls. Mr. Weber noted that the City’s analysis requires 12 stalls but reduced that by 2 stalls because of an office use on the site. This means that the City requires 10 stalls. The City goes on to state that there are only 5 parking stalls on the site. The site is 19.7 metres wide and therefore only able to accommodate 7 parking stalls. This would, at best result in a parking relaxation of 3 parking stalls. Mr. Suergill also noted the availability of on-street parking.

Opposed to the appeal

12 Mr. Druery stated that he lives at 1830 19 Ave NW, backing on to the lane. At approximately 37.5 feet from the proposed liquor store, he is directly affected by the proposed change of use. He noted that Capitol Hill is a largely residential area with commercial uses condensed around 18 Street NW. Business hours of operation tend to be between 8:00 a.m. and 5:00 p.m.

13 Mr. Druery indicated that there were numerous letters of opposition to the proposals. He also stated that Community Association comments had not been made because of time constraints and its understanding that the application would be refused.

14 Mr. Druery presented photographs of 20 Avenue NW and 18 Street NW. He noted that there is a parking permit zone in the area. There is also a bus stop immediately to the north of the parcel. Other uses indicate that there is limited on-street parking availability.

15 Mr. Druery noted the parking deficiency on the site in relation to the Bylaw. He also stated that parking is challenging on the street.

16 Mr. Druery expressed concerns over the location for deliveries to the proposed liquor store. The identified area is adjacent to the bus stop on 20 Avenue NW. In addition, the proposal to locate deliveries to this location includes removal of a window. Mr. Druery states that this is contrary to C.P.T.E.D. best practice and was noted in comments from the Ward Councillor.

17 Mr. Druery indicates that this discretionary application does not meet the requirements of the Bylaw and there is wider opposition to the proposals.

Rebuttal

Applicant/appellant

18 Mr. Suergill stated that there are a number of current commercial uses that are open past 5:00 p.m., including the cannabis store, drug store, barber shops and beauty shops. He also notes that the zoning is for commercial development.

Reasons:

19 The Board reviewed all evidence and arguments, written and oral, submitted by the parties and will focus on key evidence and arguments in outlining its reasons.

20 In the Board's opinion, the appellant did not provide compelling evidence that the surrounding context or proposed location in relation to the School warranted a 15 percent relaxation of the separation distance. Based on the appellant's submissions, the proposed liquor store is not uniquely different from other liquor stores in the surrounding area. Therefore, with respect to the merits of the proposed development pursuant to section 35(e) of Land Use Bylaw 1P2007, the Board finds there are no relevant factors that distinguish this proposed development from what would be expected elsewhere to justify approving this development, notwithstanding the 15 percent relaxation of the separation rule.

21 The Board notes that the separation distance between the School and the proposed development can be relaxed. The Board accepts the written evidence of the Development Authority, which provides a measured distance of 127.4 metres from the proposed development to the parcel containing the School – Capital Hill Elementary School. The Board notes that this represents a 15 percent relaxation of Bylaw section 225(e). Furthermore, the Board understands that the Development Authority was obliged to refuse the proposed development, because the Development Authority's discretion was limited to no greater than a 10% relaxation of the separation distance of 150 metres pursuant to section 40(h).

22 In the Board's view, having regard to the wording of the separation rules in the Bylaw, even though they can be relaxed or varied, sound planning considerations should prevail in this case. Capital Hill Elementary School is a neighbourhood elementary school. Evidence was submitted that many children walk by the proposed liquor store location daily on their way to school. In this case the Board considers that the appellant-applicant provided insufficient compelling planning rationale in support of the relaxation within 127.4m from the school, which is one block north of the proposed liquor store.

23 The Board therefore finds that there are no sufficient sound planning considerations to relax or vary section 225 (e) of the Bylaw in these circumstances. In the Board's opinion, the proposed development and required relaxations do not meet the criteria of section 687(3)(d) of the Municipal Government Act.

24 With respect to the parking relaxation, the Board agreed with the Development Authority's calculation that there was a parking deficiency of five stalls on the property. With the configuration of the property, there would be no way to satisfy the parking requirements for the proposed use.

25 Weight was given to Mr. Druery's photographic evidence that depicted that parking was often at a premium at this location. The Board finds that there are no sufficient sound planning considerations to relax section 225(f) of the Bylaw requiring 5.0 motor vehicle stalls per 100.0 square metres of gross usable floor area.

26 Based on the balance of all the evidence and aforementioned factors and in the absence of any other relevant evidence, the Board finds that the appellant-applicant has not discharged the burden of demonstrating that the proposed liquor store would not: (a) unduly interfere with the amenities of the neighbourhood or (b) materially interfere with or affect the use and enjoyment of neighbouring properties.

27 The Board therefore finds that the rule of the Bylaw should prevail in this instance. In keeping with section 35 of the Bylaw, the Board finds that the development as proposed is not compatible with the adjacent developments and neighbourhood and is not appropriate for the subject parcel.

28 As a result the Board has determined that the application from a planning perspective does not warrant approval.

Conclusion:

29 For the reasons set out above, the appeal is denied, and the decision of the Development Authority is upheld. A development permit shall not be issued.

Michelle Pink, Presiding Officer and Decision Writer
Subdivision and Development Appeal Board

Issued on this 15th day of January, 2020

APPENDIX 3 – DECISION MAKING MODEL

Decision Model		<i>Date and Time of Hearing:</i>
<i>Presiding Officer</i>	<i>Appellant</i>	<i>SA or DA representative</i>
<i>Member</i>	<i>Interested party</i>	<i>Property Description</i>
<i>Member</i>	<i>Interested party</i>	<i>Other Comments</i>
<i>Clerk</i>	<i>Order to be Drafted By</i>	

Issues	Legislation	Arguments/Evidence			Findings	Reasons
1.		Appellant	SA / DA	Other party		
2.		Appellant	SA / DA	Other party		

Issues	Legislation	Arguments/Evidence			Findings	Reasons
3.		Appellant	SA / DA	Other party		
4.		Appellant	SA/ DA	Other party		