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**CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

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*Citation: 2020 CGYSDAB 63*

Case Name: SDAB2020-0063 (Re)

File No: DP2019-6561

Appeal by: Chris Dedeurwaerder

Appeal against: Development Authority of The City of Calgary

Hearing dates: December 10, 2020  
January 14, 2021  
March 4, 2021  
April 29, 2021  
June 17, 2021

Decision date: July 4, 2021

Board members: Jim Palmer, Presiding Officer  
Katherine Camarta  
Robert Merchant  
Andy Orr

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**DECISION**

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**Description of Application:**

1 The appeal before the Subdivision and Development Appeal Board was brought by Chris Dedeurwaerder.

2 On October 22, 2020, the Development Authority approved the application of Gillian Carr for an addition to a Multi-Purpose Sports Complex (South elevation including offices, change rooms, service space, studios); and Changes to Site Plan: Multi-Purpose Sports Complex (parking & landscaping) at 2225 Macleod Trail SE in the community of Erlton. The property is owned by The City of Calgary and has a land use designation of Special Purpose - Recreation, Direct Control District (S-R, DC). The proposed development is a discretionary use development within the district.

**Procedural History:**

3 The hearing commenced on December 10, 2020 with consideration of procedural and jurisdictional issues. The Board adjourned the hearing to January 14, 2021 for a second procedural and jurisdictional hearing. At the January 14, 2021 procedural and jurisdictional session, the Board, after hearing the parties' submissions, ruled that the development must be re-advertised by the Development Authority to correct the application's use description. The matter was then adjourned to March 4, 2021, for a third procedural and jurisdictional hearing and further to April 29, 2021, peremptorily, for a merit hearing. The merit hearing concluded on June 17, 2021.

**Decision:**

4 The appeal is allowed in part and the decision of the Development Authority is varied. A development permit shall be issued for the development as presented in the amended plans filed with and accepted by the Board (which plans must be filed as a condition of approval), with the addition of an additional permanent condition set forth herein related to parking stalls and Transportation Management Strategies.

**Submissions:**

5 The Board received oral and/or written submissions from:

- a) Martin Beck, for the Development Authority;
- b) Hanna Oh, counsel for the Development Authority;
- c) Sandra Davis, River Engineering, for the Development Authority;
- d) Chris Dedeurwaerder, the appellant;

- e) Gillian Carr, GEC Architecture, the applicant;
- f) Andrew Tankard, GEC Architecture, for the applicant;
- g) Alexis Teasdale, counsel for the applicant;
- h) Jennie Buchanan, counsel for the applicant;
- i) Jeff Booke, Chief Executive Officer of Repsol Sports Centre, for the applicant;
- j) Tim Shah, WATT Consultants, for the applicant; and
- k) various affected parties.

### **Preliminary Issue**

#### *i. Red Tape Reduction and Implementation Act, 2020 (No.2)*

#### The appellant

6 At the April 29, 2021 hearing, Mr. Dedeurwaerder raised a preliminary issue regarding the jurisdiction of the Board to hear the matter. He asserted that the Board lacked the jurisdiction to hear the appeal as a result of the *Red Tape Reduction and Implementation Act* which came into effect on December 9, 2020. Section 685 (2.1a, b) of the *Municipal Government Act* (MGA) directs that when a property that is a subject of a development permit is adjacent to a body of water, the jurisdiction lies with the Municipal Government Board (MGB) (now known as the Land and Property Rights Tribunal). He referenced the case of SDAB2021-0021 wherein the Board referred the matter in that case to the MGB because the property was adjacent to a body of water. Mr. Dedeurwaerder submitted that since the subject site is adjacent to the Elbow River, the appeal should be forwarded to the MGB as directed by the MGA. To further support his arguments, he presented a map which showed the location and proximity of the parcel to the Elbow River.

#### The applicant

7 Ms. Teasdale, counsel for the applicant, requested an adjournment to allow for an opportunity to review the case referenced by the appellant and appropriately respond to the issue of jurisdiction as prior notice of this issue being raised had not been provided.

8 She submitted that the appeal should be governed by the legislation in force at the time the appeal was filed. Furthermore, the language of subsection 685(2.1) is permissive and not mandatory. It provides that an appeal referred to in subsection (1) or (2) may be made to the MGB.

The Development Authority

9 Mr. Beck submitted that the Development Authority approved the application in this appeal on October 22, 2020, prior to the date the *Red Tape Reduction and Implementation Act, 2020 (No.2)* came into effect. The appeal was filed on November 17, 2020. Therefore, the Act has no impact on the approval nor the matter before the Board. He further stated that the development permit in the case referenced by the appellant was approved by the Development Authority in March of 2021, after the legislation came into effect, making the reference by the Board to the MGB appropriate.

10 Ms. Oh added that the relevant date to be considered in this case is the date that the decision was made by the Development Authority. Since the date the application was approved and the date the appeal was made both preceded the effective date of the *Red Tape Reduction and Implementation Act, 2020 (No.2)*, the Board has jurisdiction to hear the matter.

ii. Additional submissions

11 Prior to resumption of the hearing on June 17, 2021, Ms. Teasdale provided additional materials, consisting solely of case law, to the Board, to the Development Authority, and to the appellant. At the commencement of the hearing, she requested that the materials be admitted into the record as evidence since they were provided in rebuttal to the *functus officio* argument raised by the appellant during his submissions on April 29, 2021. Ms. Teasdale submitted that acceptance of the additional materials is consistent with the Board's mandate to ensure procedural fairness.

12 Mr. Dedeurwaerder objected to the materials being admitted into the record given their late submission.

13 Mr. Beck, on behalf of the Development Authority, took no position on this matter.

**Decision on preliminary matters:**

14 The Board finds that it has jurisdiction to hear the appeal before it, given the fact that relevant decision and filing dates preceded the effective date of the *Red Tape Reduction and Implementation Act*.

15 Despite the lateness of the applicant's materials for submission, the Board allows the materials to form part of the record, having found no prejudice to the appellant since the materials were circulated in advance of the resumed hearing to all parties.

**Background and Summary of Evidence:**

Submission of the Development Authority

16 The application proposes a 35,000 square foot addition to an existing Multi-Purpose Sports Complex and associated site plan changes. The proposed addition is intended to create a more formalized main entry, to consolidate administrative and building operation spaces, and to accommodate new change rooms with a fitness studio that would align such amenities to international standards.

17 The subject site is located in the north portion of the Erlton community. The facility itself is embedded in and benefits from its setting in Lindsay Park. The site has great access to public transit. There are two LRT stations located within 600 metres of the site. The Elbow River is located approximately 70 metres from the southwest portion of the facility and 50 metres from the north wing of the complex.

18 The existing parking lot consists of 585 stalls in total; however, 97 of those stalls are located within a road right-of-way owned by the City of Calgary. These existing stalls and parking lot layout were approved in 2002 under the rules of Land Use Bylaw 2P80.

19 The site was redesignated by Council in 2017 to increase the footprint of the original Direct Control boundary approved by Council in 2002, to accommodate anticipated expansion. The proposed development permit represents the first phase of the facility expansion.

20 The subject site has two separate land use designations. A portion of the property is designated Special Purpose – Recreation (S-R) District. The rest of the parcel is designated DC 259D2017. The DC District is based on the rules of Special Purpose – Recreation (S-R) District and intended to accommodate the existing Multi-Purpose Sports Complex (with ancillary uses) and its future expansion. As the DC does not provide direction with respect to all development aspects, the rules of Land Use Bylaw 1P2007 (LUB or the “Bylaw”), general rules for special purpose districts and rules of the base S-R District must be considered in review of developments proposed on these lands. The DC Bylaw provides specific direction with respect to uses, use area and parking.

21 Mr. Beck presented several photographs to describe the history and context of the site. There is an existing main entry into the building on the south side of the facility and an elevation difference between the existing facility and lands located south of 22 Avenue SW.

22 The proposed addition to the south elevation of the existing structure has two levels (concourse and basement levels), and an approximate floor area of 3,300 square metres. The proposed concourse level includes two new principal entry points (east and south facing), service desk, and administrative and building operations areas while the proposed basement level which includes a new fitness studio and change rooms, has a dual function because it partially retains the existing slope and supports the new pathway. The proposed changes in the main swimming pool area include, but are not limited to a new pool, dive tank, and team change rooms.

23 The south facing window wall includes metal screen / slats. The lower portion of the south facing wall consists of concrete, charcoal spandrel paneling and glass. The

associated changes to the outdoors include new seating areas, planters, pathway lighting, bicycle stalls and a realigned pedestrian walkway, which ties into a new plaza and an existing sidewalk.

24 The proposed changes to the parking lot include a new lay-by drop-off area, the removal of approximately 10 stalls and a redesign of several accessible stalls. The existing loading dock area is proposed to remain, and the proposed drop-off area is designed to accommodate drop-offs and pick-ups from team buses. No new dedicated parking for buses is proposed. Parking on the north side of 22 Avenue SW is not allowed except for parking permit holders. The south side of the street is a combination of two hours parking and loading areas.

25 The DC Bylaw defines Multi-Purpose Sports Complex as a use where athletic recreation or leisure activities take place. The existing facility and the proposed addition require a total of 617 stalls per Section 9 of the DC Bylaw. The DC requires 487 stalls for the existing building. Additional 130 of the 617 stalls must be provided by way of Transportation Demand Management (TDM) measures that are either directly incorporated on the approved plans or in development permit conditions to the satisfaction of the Development Authority. Given that the existing facility is within 400 metres to the Erlton LRT station, the overall number of required stalls was reduced by 10% because the Development Authority applied a previous rule under section 1052 of the LUB. That section reduces the number of required stalls by 10% where the building that generates the parking requirement is located within 400.0 metres of an existing LRT platform. The application of this rule lowered the overall Bylaw requirement to 556 stalls as indicated in the Bylaw check.

26 A total of 575 motor vehicle parking stalls were included on the approved drawings, which represents a surplus of 19 stalls. Given the overall number of available and already existing parking stalls in the parking lot, the outstanding TDM stalls were provided as actual parking stalls and incorporated on the approved plans in keeping with the rules of section 9 of the DC Bylaw. This approach aligns with Council direction identified in the DC Bylaw and the Development Authority is satisfied with it.

27 Mr. Beck noted that section 1052 was removed from the LUB approximately two months after the decision on this permit was made which represented a relatively unique circumstance. To ensure the proposed development continues to meet the objectives of the DC and the LUB, the applicant submitted a revised site plan and a TDM analysis for consideration. The plans showed minor changes to the parking lot (which increased the on-site stall count) as well as recommended TDM measures and they align with and meet Council's direction on this matter.

28 Mr. Beck submitted that should the Board choose to accept the revised site plan and the recommended TDM measures and vary the decision of the Development Authority, two additional conditions should be included to ensure that the implementation of the TDM measures occur and is enforceable by the Development Authority, and also to ensure that any loss of the stalls located in the adjacent road right-of-way (that cannot

be offset by the recommended TDM measures) would require a new development permit application.

29 During the application review, concerns were raised by adjacent landowners and the community association regarding the loss of trees, on-site vehicle circulation and flood related concerns and these were addressed by the applicant. To minimize disruptions to the existing slope on the north side of 22 Avenue SW, minimize the impact on the existing floodway and limit the loss of existing trees, the size of the addition itself was reduced and the proposed pathway was relocated to run along and above the proposed addition before reconnecting with the existing sidewalk.

30 In addition to a number of planters, shrubs and other landscaping features, 31 new trees were proposed, five of which are deciduous. Retention of existing trees and inclusion of new trees was also an important aspect of this project, because the trees provide a natural barrier between this site and the residential neighbourhood south of 22 Avenue SW.

31 The applicant proposes to remove and compensate for 28 of the 54 existing trees. The compensation money for the loss of the trees (based on the current trees' value) would go to a fund managed by Urban Forestry and be used for planting trees back in the neighborhood or on the site, provided there is enough room, to further screen the proposed addition from the adjacent residential development and to ensure that the privacy of the existing homes to the south is maintained.

32 A flood analysis summary was prepared by the City's River Engineering team. River Engineering had no objection to the development as proposed because the Repsol Centre (except for a small portion of the north building) is not within the Bylaw designated floodway or flood fringe areas. The proposed addition is outside of the regulatory floodway identified in the flood maps from 1983. The proposed development is also outside the recent 2015 1:100 inundation area. All proposed building openings were above the recommended 1:20 flood elevation.

33 A portion of the proposed pathway supported by a retaining wall is located within the 6-metre Bylaw floodway setback. This grade change is considered minimal and expected to have negligible impacts on the flood levels or flow along 22 Avenue SW, which is a designated flood channel. This pathway encroachment into the required 6 metres setback was not noted and was missed by the Development Authority at the time of decision.

34 Per subsection 59(2) of the LUB, all buildings must be setback 6 metres from the edge of the floodway. Although, the proposed addition meets and exceeds the intent of this rule; the definition of a "building" encompasses all structures and physical objects including pathways, which triggers this technical Bylaw non-compliance. While this relaxation was not formally noted, and the test for relaxation was not formally applied by the Development Authority at the time of decision, significant effort went into the review and consideration of potential impacts associated with the proposed addition on the

floodway. It was determined that the proposal would have negligible impacts on the flood level and adjacent properties.

35 The proposal aligns with applicable legislation including overarching policies referenced in the Municipal Development Plan (MDP) and the Transit Oriented Guidelines and Policy. Map 2 of the applicable Erlton ARP identifies the site as Major Open Space / Recreational Facilities – Lindsay Park Sports Centre.

36 Mr. Beck submitted that the discretion of the Board is limited to determining whether the Development Authority followed the directions of Council in accordance with subsection 685(4) of the MGA. Subject to sections 2 and 6 of DC Bylaw, Parts 1, 2, 3 and 4 of Bylaw 1P2007 also apply. Included is section 35 of the LUB which stipulates that when making a decision on a development permit for a discretionary use, the Development Authority must take into account the compatibility and impact of the proposed development on adjacent development and other aspects identified in section 35 of the LUB. Mr. Beck was of the opinion that the development complies with Council direction set out in the DC and LUB (with one relaxation) and will not unduly interfere with or affect the use, enjoyment or value of neighbouring parcels.

37 In response to the Board's questions, Ms. Oh submitted that the section 7 of the DC Bylaw incorporates by reference the LUB parking rules. Although this rule allowing a parking reduction is no longer applicable, the threshold question the Board ought to address is whether the Development Authority, in approving the development permit, followed directions of Council.

38 Mr. Beck added that while the relaxation required for the pathway may appear to be significant, the impact associated with the proposed development is negligible, if any.

39 Sandra Davis further submitted that when the application was reviewed by the River Engineering team, the development was found protruding into the floodway and a hydraulic analysis was carried out. Since that time, the development, with the exception of the pathway, has been pulled out of the floodway and outside of the updated 2015 1:100 flood area. As a result, River Engineering is satisfied that there will be no impact to the floodway, the levels and flows along 22 Avenue SW, nor the adjacent lands. The building itself is out of the 1:100 flood area and sits high. Therefore, water will not reach the building in the event of a flood.

#### Submission of the appellant

40 Mr. Dedeurwaerder contended that the use description utilized for the application was incorrect. He submitted that the Repsol Sport Centre is not a Community Recreation Facility as was identified on the application. A Multi-Purpose Sports Complex as identified in the DC Bylaw more appropriately fits the use.

41 He submitted that once an appeal is filed, the Development Authority becomes *functus officio* and can no longer alter its decision. He further submitted that the ruling of the Board to have the description changed from Community Recreation Facility to Multi-



Purpose Sports Complex and to have the permit re-advertised was inappropriate because the error was not merely clerical, but substantive.

42 Mr. Dedeurwaerder stated that parking is an ongoing unresolved issue for north Erlton residents. Because the Repsol parking lot is always full, visitors attending the building park along 22 Avenue SW and in the north Erlton area, even though the streets are not zoned for public parking. School buses also park in these areas on a regular basis, with kids getting dropped off and picked up, causing disruption and parking issues. He submitted that this has negatively affected the use and enjoyment of the residential homes and properties in the area.

43 Mr. Dedeurwaerder submitted that even though the applicant has removed the initial proposed pathway modifications and the south entrance after feedback provided by residents, the proposed expansion will exacerbate the existing problem of traffic on 22 Avenue SW.

44 Mr. Dedeurwaerder submitted that the DC Bylaw specifically outlined the minimum required parking stalls for Repsol Centre. He argued that the applicant cannot consider the offsite parking stalls in the area. There are 84 parking spots to the east that are not within the DC area. Therefore, the stalls located outside of the DC area are legally considered off-site parking stalls and cannot be counted as part of the minimum parking stalls required. Also, the east side of the parking lot is legally a separate parcel under the LUB and is not zoned for parking.

45 Mr. Dedeurwaerder submitted that a Transportation Impact Assessment should be conducted for the development. He submitted that the proposal contravenes the DC Bylaw, in that it requires 617 parking stalls as part of the expansion, but only 585 parking stalls were provided by the applicant. Also, there is another leaseholder (Life Mark Health Facility) located on the north side of the building with designated parking. Mr. Dedeurwaerder submitted that the applicant incorrectly counted those as part of their own parking spots when in reality there are close to 50 parking spots regularly used by Life Mark patients.

46 Mr. Dedeurwaerder submitted that the proposed development will significantly change the flooding characteristics of 22 Avenue SW and will impact the houses to the south of Repsol Centre by increasing flood waters to the residential area of Erlton. He submitted that the Repsol Centre was closed for up to six months during the 2015 flood incident because water got into the basement.

47 Furthermore, from the July 2015 Hydraulic Model and Flooding Inundation Mapping Update submitted to the City and Alberta Environment, 22 Avenue SW was constructed specifically to convey flood flows and is a designated floodway area. The west extension of 22 Avenue SW to the Elbow River is constructed as a hidden weir to convey a portion of the Elbow River flood flows.

48 He submitted that the application did not take into account the 2020 Alberta Environment floodway maps. The implications of allowing a relaxation to the flood water

setback would set a dangerous precedent for developments in the area. Therefore, a water hydraulic and floodway mapping update should be completed, due to the changes in floodwater characteristics that this development would cause to the residential structures in north Erlton.

49 Mr. Dedeurwaerder submitted that the building does not align with the existing streetscape in the Erlton neighborhood and the local park. The building is tall and takes up an excessive amount of space. The second level is made of glass, and would invade the privacy of residents in the neighborhood especially since the grade will be lowered on the berm. Mr. Dedeurwaerder submitted that the building should be re-designed so that it is less intrusive, and the height lowered, while the glass in the lower level should be removed.

50 There are various Bylaw discrepancies with respect to setbacks, height of trees, and use of coniferous trees. While the applicant has made efforts to keep a number of trees, it is unclear that all the trees would be kept or if trees that are cut down would be replaced by trees of similar sizes. He submitted that a smaller tree size would be inappropriate because the existing trees provide a natural year-round privacy barrier between Repsol Centre and the community. The removal of the trees would destroy the ambiance of the community, and safety and privacy will be lost.

51 Furthermore, the vegetation and trees along the hillside are there for more than esthetic purposes. They are also a necessary contribution to assist in maintaining the structure of the hillside, prevent erosion during normal rainfall, and act as a wind-break for the area. The removal of any trees on the hillside would further jeopardize the homes in the area in the event of future flooding or excessive rainfall.

52 Also, the addition of the structure will negatively affect the flight path for migratory birds on 22 Avenue SW and the glass windows of the proposed addition could cause bird strikes on the flight path.

53 Mr. Dedeurwaerder submitted that adequate engagement and consultation of residents was not carried out by the applicant. Only one open house was undertaken by the applicant and the open house was carried out through the Erlton Community Association. Mr. Dedeurwaerder submitted that other than himself and a neighbour that were present at that meeting, there has been no engagement of the local residents that are directly affected by the application. There were no signs posted of the application, no open houses, and no transparency from the applicant.

54 Furthermore, the lighting plan proposed by Repsol has significantly more lights than what currently exists. Mr. Dedeurwaerder submitted that this lighting will result in unwanted light pollution into the Erlton residential community to the south and will impact the local wildlife and birds that are an integral part of the park, especially since many of the mature trees will be removed.

55 In closing, Mr. Dedeurwaerder submitted that there is no room for further expansion in the Centre. The proposed expansion would be detrimental to the community

and not enhance it. He recommended that the applicant considers building their expansion in the existing parking lot they already have on the east side, and consider building a proper multi-level parkade. This would address the privacy, community intrusion, park destruction, flooding, loss of trees and residential parking issues.

56 In response to the Board's questions, Mr. Dedeurwaerder submitted that a Community Recreation Facility is considered to be a smaller facility meant for community recreation purposes whereas a Multi-use Sport Complex is considered a much larger facility that is capable of hosting large sports events. He submitted that the application is inconsistent with a Community Recreation Facility and should not be allowed.

Submissions of the applicant's team

Andrew Tankard

57 Mr. Tankard addressed the intent of the building design and the history of the development permit application. The Repsol Centre was built in 1983 as a premium aquatic competition facility in western Canada. Since that time, the competition rules have changed, and the building was found to no longer be compliant to the "Federation Internationale De Natation" (FINA) standards. He submitted that the main purpose of the expansion is to increase the floor area available for new FINA compliant pools, new change rooms, front public entrance and new administrative space.

58 The current configuration of the two front entrances which run on the north and south sides of the building are invisible from the parking lot. The intent of the addition is to address the visibility of the entrances. He submitted that the new entrance would face eastwards so that it would be more visible from the parking lot. He further presented photographs to describe the context of the site and the proposed expansion.

59 The existing trees on the site to the south of the current lay-by would be preserved which means, with the new plantings, that there would be more trees in front of the building.

Gillian Carr

60 Ms. Carr added that the south facing elevation of the building and all mechanical rooms are placed on the upper level. Also, more lights were proposed and some existing pool lighting would be replaced with softer lighting. The site servicing room will also be relocated.

61 The path from the corner of 22 Avenue SW and Erlton Place has been removed and majority of the trees would be retained. In addition, the loading dock to the east of the new addition would be maintained. The basement below the levels that are to be expanded would not be modified, with the exception of the pool tanks.

62 She submitted that the wrong use description was an honest clerical error.

Jeff Booke

63 The Repsol Centre is owned by the City of Calgary; however, since its inception it has been operated by a volunteer society (the Lindsay Park Support Society). The centre is unique and different from a lot of facilities because it supports two groups equally – athletes in the long-term athlete development module and the citizens of Calgary, all in pursuit of wellness, health, and physical activity. This facility acts as a community hub in addition to being a sports and physical fitness gathering space.

64 Extensive engagement with stakeholders and members of the community was carried out throughout the application process. The Erlton Community Association is an important partner and stakeholder of Repsol Centre; as such, when the proposed expansion was first envisioned, the applicant met with the community on multiple occasions to present the idea prior to establishing a vision. It was important that a collaborative approach be taken, rather than a design and defend stance. This process led to many collaborative results. Concerns with a stronger connection between the building and Lindsay Park, the setback of the south expansion into 22 Avenue SW, and park safety were a priority. There were varying opinions about the interface between the north end of the community and the south edge of the building. Parking concerns were raised as were drop-off issues. These opportunities and concerns were addressed and incorporated into the development's design.

65 The proposed development creates a better connection to the park through intentional design elements. The south expansion was scaled back by more than one third in response to community requests and other matters. Park safety was addressed through lighting and windows (eyes on the park). Parking and drop off concerns were mitigated through design, agreements with St. Mary's High School, and the Elbow River Casino to provide overflow parking alternatives. These efforts resulted in letters of support from the Erlton Community Association, Lindsay Park Community Association, Rideau Roxboro Community Association and the Cliff Bungalow-Mission Community Association.

66 Mr. Booke submitted that the goal of the proposal was not only to better the facility but to ensure the future of the facility looks a lot like the past, that is, 40 years of success measured on purpose and business driven goals.

67 He submitted that even though the development would lead to an increase in capacity which may increase traffic; the traffic would be controlled. Currently, the dive tank is 20 x 20 metres which makes it available exclusively for diving. One of the goals of the project is to turn the dive tank into a 25 x 25 metre dive tank. He submitted that although this pool space is larger, such an increase in space does not mean there will be an increase in participation or use. In this context, it means an increase in efficiencies and opportunities, flexibility and programing, and better delivery of service.

68 The parking lot provides ample opportunities for the user groups and is sufficient to handle the day-to-day traffic as illustrated in the parking studies conducted, except during peak hours. To mitigate this, alternative parking arrangements were developed.

Tim Shah

69 Mr. Shah submitted that the site is well positioned for sustainable transportation and can support the TDM measures proposed by the applicant. The site has close access to the Erlton / Stampede C-Train station (part of the Redline in the City's Light-Rail Transit system) at street level through a controlled crossing, or by way of a pathway underpass through the park. Using the Elbow River pathway system, it is located within 650 metres (approximately 10-minute walk) of the Erlton / Stampede C-Train Station. The Redline connects with other LRT lines in the City and has and will continue to allow both employees / patrons of the Repsol Centre to access the site from different parts of Calgary.

70 TDM initiatives typically aim to reduce single occupant vehicle trips and encourage sustainable travel options such as walking, cycling, public transit, and shared rides. Successful TDM initiatives can result in the reduction of parking demand, fewer vehicle trips, and associated benefits of decreased greenhouse gas (GHG) emissions, improved personal health and well-being, reduced traffic congestion, and lower infrastructure costs.

71 Several TDM options were recommended to help manage the parking demands for the site. These include staggered and alterations to programming and events; webpage for sustainable transportation options; dedicated carpool stalls; passenger loading zone; electric bicycle parking; share and go parking zones (e-scooters); subsidized transit pass / parking cash out; and priced parking. By committing to the TDM options using the first five strategies above, total parking reduction would be 65 parking stalls. By committing to the TDM options using all eight recommendation strategy, the total parking reduction would be 162 parking stalls. This means that the TDM measures are equivalent to the provision of 65 off-street parking stalls and 162 off-street parking stalls, respectively, that would otherwise be required in absence of TDM.

Jennie Buchanan

72 Appeals from decisions respecting development permit applications in DC districts are governed by section 685(4)(b) of the MGA. The section states that when a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of Council, and if the subdivision and development appeal board finds that the development authority did not follow the directions, it may, in accordance with the directions, substitute its decision for the development authority's decision. If it is found that the Development Authority followed the direction of Council, there will be no right of appeal. See the cases of *Garneau Community League v Edmonton (City)*, 2017 ABCA 374 at paras 20, 26, and *CFPM Management Services Ltd v Edmonton (City)*.

73 Ms. Buchanan submitted that in this instance, there is no evidence that the direction of Council was not followed. The Development Authority applied the provisions of section 35 and 36 of the LUB with respect to the impact of the development with the surrounding neighborhood and the pathway relaxations and determined the development

would not affect the use and enjoyment of neighbouring properties. Therefore, the approval was reasonable.

Alexis Teasdale

74 Ms. Teasdale submitted that the principles of *functus officio* do not prohibit a decision maker from correcting a clerical error. She argued that if the appellant was not satisfied with the Board's decision to have the development re-advertised, he should have appealed the Board's decision to allow the re-advertising. The approval shows in substance that the Development Authority approved a Multi-Purpose Sports Complex. All the applicable rules and policies were applied and the approval meets the rules that govern the use.

75 She submitted that the appellant's submissions do not identify any section of the DC Bylaw, the LUB, the Erlton ARP, or the MDP that the Development Authority failed to follow with respect to traffic or visitor parking in the Erlton community or show any impact the development would have on surrounding properties. Issues regarding the size and shape of the building, the appropriateness of the location, privacy issues, lighting, height, noncompliance with the Elton ARP, tree removal, community engagement, construction noise and impact on wildlife are unfounded and without evidence.

76 Ms. Teasdale submitted that there is no evidence that the proposed development would increase traffic in the area. Council's directions on motor vehicle parking stalls for the proposed development are set out in section 9(2) of the DC Bylaw, requiring a minimum of 617 stalls to accommodate an additional 6,940 square metres, with the equivalent of 130 stalls to be provided through TDM measures to the satisfaction of the Development Authority. Ms. Teasdale submitted that the proposed development complies with Council's directions on this issue and the Bylaw requirement is met.

77 A TIA was not required for this land use; however, a parking study was required to determine the parking requirements of the proposed expansion. A TIA does not relate directly to parking. It considers if the development has the potential of generating significant amounts of new transit users, pedestrians, bicycle and vehicular traffic, or if the development could potentially change the mobility patterns (transit, pedestrian, bicycle and/or vehicular) in the area where it is proposed. Furthermore, parking studies were done at the time of land use amendment to determine the parking requirements of the proposed expansion, which led to the minimum parking requirements included in the DC Bylaw.

78 Section 18(1)(b) of Bylaw 2P80 allows required parking stalls on a site other than the proposed development site provided that the alternate site is within 120 metres of the approved use, is used exclusively as a parking area and can be secured for a time period equal to that of the approved use. Ms. Teasdale submitted that Repsol Centre is contractually entitled to use the parking stalls in the right of way in perpetuity subject to the right of termination.

79 Subsection 9(1) of the DC Bylaw provides that the minimum required motor vehicle parking stalls for a Multi-Purpose Sports Complex is 487 stalls where the use is located in a building existing at the date of passage of this DC District. Currently the use is located in the existing building consisting of 487 stalls.

80 Furthermore subsection 9(2) states that the minimum required motor vehicle parking stalls for a Multi-Purpose Sports Complex is 617 stalls where the use is located in a proposed building or proposed additions to an existing building, where the equivalent of 130 stalls must be provided for by transportation demand management measures to the satisfaction of the Development Authority. Equivalents of stalls can be created through TDM measures to reduce parking demand. She submitted that the right-of-way stalls are a measure that help manage parking demand on site. Also, the right-of-way stalls are better than TDM stalls because they are not notional stalls and are legitimately counted towards the 130 stalls required by section 9(2). Although one parking stall was deficient during the review, the updated plans show the site can now accommodate 557 parking spaces and the Development Authority is satisfied with the stalls.

81 The updated site plan shows the proposed development will include 488 stalls within the DC District, plus 162 stalls provided through measures to manage parking demand, for a total of 650 stalls. These 162 stalls are comprised of 97 stalls in the City right-of-way and 65 stall equivalents through TDM measures that Repsol Centre is prepared to implement as a condition of the development. This exceeds the minimum required parking under the DC Bylaw for the proposed development and the potential future expansion that was contemplated at the time of land use amendment.

82 Additionally, section 7 of the DC Bylaw provides that unless otherwise specified, the General Rules for Special Purpose – Recreation (S-R) Land Use Districts of Bylaw 1P2007 apply in this DC District. Ms. Teasdale submitted that the relevant portions of the S-R district provisions of the Bylaw is section 1052. Because the LUB was amended, this provision has now been deleted. The section was deleted effective November 3, 2020 and the Development Authority complied with the directions that were in force at the time it approved the permit in late October 2020. Therefore, the provision for the LRT reduction did apply to the permit at the time it was considered by the Development Authority.

83 The DC Bylaw does not specify that section 1052 of the LUB does not apply, and legally, it did apply to the DC Bylaw at the time that the Development Authority approved the permit. Because there is no conflict between the minimum required parking provisions in the DC Bylaw and the LRT reduction in the Special Recreation District general rules, the principle that the specific overrides the general does not apply. The Development Authority had the authority under section 7 of the DC Bylaw and section 1052 of the LUB to apply the LRT reduction in finding that the plans submitted by the applicant met the required parking. The Development Authority followed the directions of Council and the Board has no jurisdiction to vary the Development Authority's decision to approve the development in so far as it relates to parking.

84 There are no directions of Council regarding the bus traffic. Section 35 of the LUB requires that when making a decision on a development permit for a discretionary use,

the Development Authority must take into account the compatibility and impact of the proposed development with respect to adjacent development and the neighbourhood. Ms. Teasdale submitted that this section was appropriately considered by the Development Authority and as such, the Board does not have jurisdiction to replace the Development Authority's decision. In addition, the appellant did not provide any evidence to show that the proposed development would create a negative impact on the neighbourhood.

85 There is no connection between the proposed development and increased traffic in the community. No parking study, photographs, or parking counts reports have been provided by the appellant. The speculation that the development would increase traffic and loitering in the community is unfounded and without evidence.

86 There is no direction of Council requiring a TIA. The City of Calgary's TIA Guidelines provide that the Development Authority may require a TIA at either the pre-application stage or the DTR stage. However, these are guidelines and not directions of Council. Therefore, the Development Authority's decision not to require a TIA does not constitute a failure to follow the directions of Council. Accordingly, there is no basis to conclude that the Development Authority failed to follow the directions of Council on this issue.

87 The Floodway / Flood Fringe Map approved by Council on June 9, 2014, is incorporated into the LUB under section 3(c). The Repsol Centre is not in the flood fringe or floodway. Not referring to the updated flood maps does not amount to a failure to follow the direction of Council. Further, the structure itself is situated outside the floodway and outside the 6-metre setback from the edge of the floodway, and well outside the 2015 floodway and 2015 floodway setback. Although a small portion of pathway comprising part of the proposed development is within the setback required under the LUB, the relaxation granted meets the test for a relaxation under section 36 of the LUB.

88 The size and height of the development complies with the height rules. While the LUB prescribes rules limiting the height of buildings in some districts, those rules do not apply to the DC District. The height of the south expansion is significantly lower than the existing building, and intentionally matches the height of the existing aquatic addition to the west. The expansion will have no greater impact on the neighbourhood to the south than the existing building, in terms of its height. Also, the design was revised to reduce the footprint of the south expansion.

89 Ms. Teasdale submitted that the proposed development complies with the applicable landscaping rules and requirements set out in the LUB. The applicant revised the design of the development to retain significantly more trees. The applicant proposes to remove 28 existing trees, retain 26 existing trees, and will plant 31 new trees, 14 of which will be planted along the south side of the parcel, in front of the proposed development.

90 The proposed development complies with the outdoor lighting rules and requirements. Council's directions do not require a Lighting Impact Assessment.



Accordingly, there is no basis to conclude that the Development Authority failed to follow the directions of Council on this issue. There is no evidence to support the conclusion that the proposed development will, in fact, result in greater light pollution or otherwise negatively impact the neighbouring community. This concern is speculative and without basis.

91 There is no right of privacy in an urban setting. The evidence shows that the grade differential and distance between the proposed development and existing residential properties, design (including wooden slats and glazing), the way in which the south expansion is offset from the appellant's residence, and retention of existing trees all effectively mitigate any privacy concerns.

92 The Erlton ARP does not provide that the site on which Repsol Centre sits must remain a natural park space. The proposed land use amendment complies with, and is supported by the ARP, which identifies the area as Lindsay Park and is in keeping with the Lindsay Park Master Plan contained within the Erlton ARP

93 The applicant understands that the Development Authority assessed the development permit as though the use was a Multi-Purpose Sports Complex, notwithstanding the mis-description of the use on the application and the approved permit; however, the Development Authority amended the development permit use description to "Multi-Purpose Sports Complex" and re-advertised the development permit. Multi-Purpose Sports Complex is a discretionary use within the DC District, and the evidence shows the proposed development complies with Council's directions about development for this use.

94 Issues relating to noise impact and construction on the surrounding properties and the community are not a relevant planning consideration and thus should not be taken into account. In the SDAB cases of *2011 CGYSDAB 96* and *2011 CGYSDAB 164*, the Board found that owners have the right to develop their property and construction noise and other impacts are temporary consequence of this right.

95 The Board directed the correction of the re-advertising at the procedural and jurisdictional hearing in January. The fact that the use description was incorrect does not mean the development permit should fail. The error is not a substantive but a use description error. Therefore, the direction to re-advertise the use was appropriate.

96 In closing, Ms. Teasdale requested that the Board accepts the updated site plan on page 833 of the Board Report and proposed some suggested conditions regarding TDM Measures for the Board's consideration.

### Rebuttal

#### The Development Authority

97 Ms. Oh submitted that the application was reviewed as a Multi-Purpose Sports Complex. The only change made was the use description which was re-advertised. The

Development Authority did not re-assert jurisdiction over the file. The Board's practice of directing that the Development Authority correct a notice posting is consistent with past practices of the Board. After re-advertising, no additional appeals were filed. Ms. Oh submitted that it is within the mandate of the Board to facilitate the curing of the administrative error to ensure procedural fairness to all parties.

98 Ms. Davis added that flood maps are periodically updated and the most up to date information is used to inform River Engineering analysis of the risks and impacts. She submitted that when the application was being reviewed and designed, both the regulatory bylaw flood map and the most up to date flood map at the time of the application, which was the 2015 flood maps were used by both the applicant and the City. There have since been updated maps published by Alberta Environment and Parks in draft form in December 2020. The new map is similar to the 2015 map. She emphasized that a relaxation is only considered by River Engineering if analysis shows that there will be no adverse impacts. In this case, the grade and changes within the setback area and the construction of the pathway is very minimal and will not increase risks associated with flooding.

99 Furthermore, the purpose of requiring buildings to be setback from the floodway includes creating buffer zones to prevent risks to infrastructure from erosion along the riverbank that can occur during a large flood, to protect against bank instabilities, to increase public safety near the fast-flowing river, to provide an environmental setback that can contribute to wildlife movement, habitat and water quality improvements near the river. In this case, the flood way in question is along 22 Avenue SW on an overland flood way path, not along the river. As such, the risks of erosions and public safety are significantly reduced because the flow along 22 Avenue SW will not be as deep or as fast as in the river channel. Also, the area under consideration is a park and the floodway is an urban street. Therefore, the impacts of the pathway within that floodway setback to wildlife and water quality are negligible.

100 Additionally, during a 1:100 flood, the Repsol Centre will be evacuated prior to the area being flooded and access cut off. As such, the risk to public safety during a flood of having the pathway in its proposed location is considered to be very low.

101 Following the analysis of the application, River Engineering took the position that there would be no potential for hydraulic obstruction and neither the development nor the pathway within the 1983 Bylaw floodway setback will increase the present-day flood risks in the area.

102 Mr. Beck added that the parking solution that was approved by the Development Authority appropriately blends with Council's directions expressed in the DC, the available rules in the base district of the DC, and the existing site conditions and the previous development approvals on the site.

103 He submitted that the Development Authority had the opportunity to review the revised site plans and TDM recommendation provided by the applicant. Should the Board decide to accept and implement these materials and revised conditions, the Development

Authority would have no concerns with the revised site plans, and parking layout and the TDM recommendations included will be acceptable.

104 Mr. Beck submitted that the proposed improvement to the pathway would not only be beneficial and important to the facility but would offer a great benefit to the park overall. Since the proposed design will not negatively impact the flood waters in this area, there would be no net benefit of making the alternative changes to the pathway design described by the applicant. The Development Authority believed that the suggested design solution would be appropriate.

105 The Development Authority would prefer to keep the current pathway design included in the approved drawings as the benefits outweigh the technical relaxation to section 59 (2) of the LUB.

106 The Development Authority worked with the applicant on the landscaping to address concerns associated with the removal of the existing trees and to ensure the protection of the existing natural buffer between the facility and the residential uses to the south. The privacy of surrounding residences would not be impacted because there is considerable separation between the proposed development and the residences to the south.

#### The appellant

107 Mr. Dedeurwaerder submitted that a clerical error does not change the substance or outcome of the review decision. In this case, changing the use definition from a Community Recreation Facility to a Multi-Purpose Sports Complex does not change the substance of the review improperly conducted for the Community Recreation Facility.

108 The application was made on December 23, 2019 by the applicant for a Community Recreation Facility. On May 17, 2020, it was discovered that the incorrect application was made. The application was advertised as a Community Recreation Facility for months on the City's website without changing; as such, it is not a clerical error.

109 He submitted that the Repsol Centre is not a recreation facility that is primarily used by the community but is a Multi-Purpose Sports Complex. Regardless of what the intent is, the Development Authority's decision cannot be changed after the decision was made.

110 There is ample evidence in the Board record to show insufficient parking for the proposed expansion. Parking in the Erlton neighbourhood is restricted to permit holders only and it is not allowed for non-permit holders. The parking lot is full on weekends.

111 The fact that the applicant proposed two different options for TDM is indicative of the parking issue in the area. The proposed development would exacerbate this issue.

112 Only 12 consultations were made with the community. Of the 12, 10 were made directly with the Elton Community Association. He submitted that the association does not adequately represent the north Elton neighbourhood and there are fewer than 10 members who live in north Elton.

113 Letters of opposition were received from affected neighbours. The majority of the residents in the neighbourhood were unaware of the application.

#### The applicant

114 Ms. Teasdale submitted that the LRT reduction issue is only relevant to the question of whether Council's directions were followed. The direction of Council as it exists today is 617 stalls, 487 on site and 130 through TDM measures. The LRT reduction is not needed to achieve the required number of stalls.

115 The use description did not change the substance of the decision.

#### **Reasons:**

116 Having found that it has jurisdiction, in determining this appeal, the Board considered the relevant provincial legislation and land use policies, applicable statutory plans, the MDP, the Bylaw, the DC Bylaw, the Elton Area Redevelopment Plan (ARP), the Calgary River Valleys Plan, the Transit Oriented Development Policy Guidelines and considered all the relevant planning evidence presented in writing and at the hearing, the arguments made and the circumstances and merits of the application.

117 The Board considered and rejected the appellant's submission that the appeal must prevail as a result of the error made by the Development Authority in mis-describing the development as a Community Recreation Facility rather than a Multi-Purpose Sports Complex both in the first advertisement of the appeal and allegedly, in the approval process. The Board finds that the Development Authority at all relevant times properly assessed the proposed development as a Multi-Purpose Sports Complex and further finds that the Development Authority was not inappropriately revisiting the approval following the filing of the appeal, as was suggested, but was acting on the order of this Board when it corrected the error in description in the development permit and in the re-advertisement of the appeal.

118 The appellant submitted that the Development Authority, in approving the applicant's development permit application, failed to follow the directions of Council as stipulated in the DC Bylaw, insofar as the Development Authority failed to account properly for parking stalls as required in the DC Bylaw, failed to apply section 35 of the Bylaw appropriately in the exercise of its discretion in numerous matters, including, but not limited to, matters related to flood control measures, noise, building design, privacy, vegetation, birds, and lighting and failed to take into account all relevant policies of the MDP and ARP.

119 The Board has particular regard to section 685(4) of the *Municipal Government Act*, which provides:

- (4) Despite subsections (1), (2), and (3), if a decision with respect to a development permit application in respect of a direct control district
  - (a) is made by a Council, there is no appeal to the subdivision and development appeal board, or
  - (b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of Council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions substitute its decision for the development authority's decision.

120 The Board has particular regard to Direct Control Bylaw 259D2017 (DC Bylaw), and the Bylaw and notes that the Direct Control District is intended to allow a Multi-Purpose Sports Complex in which the principal use is a sports facility where supportive activities are allowed and unless otherwise specified the rules and provision of Parts 1, 2, 3 and 4 of the Bylaw apply. Further, the Board notes that a reference to a section of the Bylaw is deemed to be a reference to the section as amended from time to time. The permitted uses of the Special Purpose-Recreation (S-R) District of the Bylaw are the permitted uses in the Direct Control District and the discretionary uses of the Special Purpose-Recreation District of the Bylaw are the permitted discretionary uses with the addition of noted specific uses including Multi-Purpose Sports Complex. Unless otherwise specified, the General Rules for Special Purpose-Recreation (S-R) land use district of the Bylaw are to apply.

121 The DC Bylaw provides, in section 9, specifics regarding the minimum required motor vehicle parking stalls for a Multi-Purpose Sports Complex and also provides for relaxation thereof in certain circumstances. Section 9 further provides that any approved transportation demand management measure must be sustainable throughout the term of the development permit and include requirements that must be incorporated into an approved plan or condition on a development permit. The Board heard considerable evidence relating to the provisions of section 9 from all parties.

122 Section 36 of the Bylaw directs the Development Authority as to how the proposed development is to be properly assessed and directs that Section 35 of the Bylaw must be considered. The administrative provisions of the Bylaw apply to the jurisdiction and authority of the Development Authority, and accordingly, to this Board, in its assessment of the proposed development.

123 The application for the proposed development requires a relaxation of the provisions of section 59(2) of the Bylaw as a portion of the proposed east to west pathway extends into the 6-metre floodway setback area. Additionally, the Board considered if relaxation of the requirement for the total number of parking stalls was required, given the deletion of Section 1052 from the Bylaw, which provided for a 10% reduction given proximity of the proposed development to Light Rail Transit, after approval of the development permit by the Development Authority, insofar as the DC Bylaw makes clear

that reference to a section of the Bylaw is deemed to be a reference to the section as amended from time to time.

124 The Board acknowledges the written and oral submissions of all parties, including but not limited to the appellant, Development Authority, applicant and applicant witnesses and interested / affected parties, as well as letters and correspondence received regarding the application and appeal.

125 In terms of the jurisdiction of the Board respecting section 685(4)(b) of the MGA, the Board takes into account the express wording of the DC Bylaw, and the Bylaw itself. Pursuant to section 10(1)(c) of the Bylaw the words must be given their plain and ordinary meaning as the context requires.

126 The DC Bylaw intended to allow a Multi-Purpose Sports Complex but otherwise provided little direction over development on the specific site. To the extent that Council did not provide directions to the Development Authority in the DC Bylaw, the provisions of the Bylaw apply. The permitted and discretionary uses allowed in the Direct Control District are not limited to the proposed specific use of the development proposed.

127 The Board finds that where the DC Bylaw and the Bylaw have given discretion to the Development Authority, the Board, upon appeal, re-exercises the same discretion.

128 The Board reviewed the intent of Council when it enacted the DC Bylaw by reviewing the wording of the DC Bylaw. Having regard to the DC Bylaw, it intends to allow a Multi-Purpose Sports Complex in which the principal use is a sports facility where supportive activities are allowed.

129 Having regard to the purpose statement of the subject Direct Control District, the DC Bylaw primarily is focused on the allowable land uses in the District. The purpose of the DC Bylaw redesignation was to provide for a Multi-Purpose Sports Complex as a discretionary use along with the permitted and other discretionary uses of the Special Purpose-Recreation (S-R) Districts of the Bylaw. The DC Bylaw also provided specific motor vehicle parking requirements for the Multi-Purpose Sports Complex with the incorporation of transportation demand management measures to the satisfaction of the Development Authority.

130 The Board concludes, from the wording of the DC Bylaw, that Council only exercised complete control over the subject parcel respecting use areas and motor vehicle parking stall requirements and required bicycle parking stalls. Even within the applicable sections that give directions with respect to the aforementioned things, the Board finds that the Development Authority, to a certain extent, has been given discretion. This is in accordance with the discretionary powers provided to it under the Bylaw. The words "minimum" and "maximum" used in the applicable sections of the DC Bylaw, in the Board's opinion, indicate that the Development Authority may require either a higher or lower development standard, as the case may be, having regard to sound planning considerations. This is in accordance with the scheme of the Bylaw and the discretionary powers of the Development Authority as are referenced in section 35 of the Bylaw. The

Board concludes, from the wording of the DC Bylaw, that Council intended that the Development Authority be given discretion to assess the merits of the proposed development. This is in accordance with the scheme of the Bylaw and the discretionary powers of the Development Authority as are referenced in section 35 of the Bylaw.

131 The Board, upon appeal, steps in the footsteps of the Development Authority. The Board, exactly like the Development Authority, must exercise its discretion, in accordance with the directions of Council. The Board does not have a wider discretionary role to play than that afforded by the DC Bylaw to the Development Authority. Each DC Bylaw must be read on its own to determine the directions of Council.

132 The Board notes that the development permit application is for a development that is a discretionary use pursuant to the DC Bylaw. Therefore, the development permit application can either be granted or be refused on the basis of sound planning considerations. Section 35 of the Bylaw describes the relevant considerations.

133 The Board finds that it has jurisdiction to deal with all matters raised in the appeal to the extent they are relevant planning considerations. This includes matters relating to the MDP, the ARP and the impact of the proposed development and any relaxations on neighbouring properties.

134 In assessing the proposed development, the Board considered the existing realm, patterns of development in the area and the context of the site. The Board finds support in both the MDP and ARP for the proposed development in the current context. The MDP, ARP and applicable policies must be read in a comprehensive manner and in a broad context and any inconsistencies therein are reflective of their aspirational nature.

135 The Board, in considering the requested relaxation relating to the floodway setback area, agrees with the applicant and the Development Authority that the relaxation requested is minor and can be supported as being of no significant impact. The Board notes that the proposed addition is outside the regulatory floodway and agrees that the grade change is minimal and would be expected to have negligible impact on the flood levels or flow along 22 Avenue SW. The Board heard insufficient compelling evidence to be convinced that the relaxation failed to meet the tests for relaxation. Accordingly, the Board finds that the required Bylaw relaxation relating to the floodway setback area is, from a planning perspective, appropriate and will have no undue impact on the adjacent properties or the neighbourhood. In the Board's opinion, the relaxation meets the criteria of section 687(3)(d) of the MGA and is approved by this Board.

136 Regarding parking issues raised by the appellant and others in written submissions, the Board concurs that provision for parking is a significant planning concern. The Development Authority, in approving this development, applied a parking reduction previously available in section 1042 of the Bylaw, which provision has since been removed. That parking reduction reduced the required number of parking stalls by 10%, allowing for the proposed development to indicate a 19-stall surplus in its proposed parking plan. The applicant argued that the proposed development maintains sufficient parking stalls, both actual and notional, to comply with the requirements of the DC Bylaw

regardless of whether or not the parking reduction is taken into account. The Board finds that the proposed parking plan provides for actual physical stalls on the parcel (488) and in the City's right of way (97) totaling 585 stalls.

137 However, the DC Bylaw requires a minimum of 617 stalls where the use is located in a proposed building or proposed addition, where the equivalent of 130 stalls must be provided for by transportation demand management measures to the satisfaction of the Development Authority. The applicant, at the hearing, provided the Board with a suggested development permit condition to address the transportation demand management measures required by the DC Bylaw.

138 Despite the requirement of the DC Bylaw that transportation demand management measures are to be to the satisfaction of the Development Authority and despite the fact that section 5 of the DC Bylaw provides that such measures must be sustainable throughout the term of the development permit and include requirements that must be incorporated into an approved plan or condition on a development permit, the Development Authority did not require any transportation demand measures or strategies as a condition of approval of the proposed development. The Board was advised by the Development Authority that the measures and strategies proposed by the applicant were acceptable to it. The Board finds therefore that the Development Authority failed to follow the directions of Council.

139 The Board agrees with the appellant that the proposed parking plan for the development is insufficient in the context and circumstances of this development and insufficient to be sustained throughout the term of the development permit.

140 The Board notes the Watt Consulting Group report was undertaken to support the development application before the Board, an expansion of approximately 3390 metres squared of floor area. The report undertook a transportation demand management (TDM) analysis and included proposed TDM strategies to address the need for additional TDM measures to address their calculated 33 stall deficiency in the parking requirement of the DC Bylaw. Recommended options in the report are accompanied by a parking demand reduction to illustrate the equivalent number of off-street parking stalls associated with each option.

141 After hearing from all parties, the Board has concluded, based on the plain wording of the DC Bylaw, that the DC Bylaw prescribes a minimum number of required motor vehicle parking stalls where the use is located in a proposed building or proposed additions to an existing building, leaving the Development Authority with the discretion to address the appropriate number of stalls. The DC Bylaw further provides that the minimum number is applicable where the equivalent of 130 stalls must be provided for by transportation demand management measures. The Board finds therefore that meaningful and enforceable TDM strategies are required by the DC Bylaw to provide for the equivalent of 130 stalls, regardless of the number of physical stalls dedicated to the total minimum requirement of the DC Bylaw as specified. In the context at hand, the requirement for 130 TDM stalls has, when combined with the current physical stall



situation available and proposed, the effect of increasing the numeric number of motor vehicle parking stalls required.

142 The Board finds that the Development Authority, under the DC Bylaw, had the discretion to increase the minimum number of required stalls to address the legitimate parking concerns raised by the appellant and others yet failed to exercise its discretion to do so, thereby failing to act in accordance with sound planning principles as required by section 35 of the Bylaw. The Development Authority failed to condition the development permit with any required transportation demand management measures that would be sustainable throughout the term of the development permit, leaving the matter solely to the operator of the facility, and by doing so, failed to act in accordance with sound planning principles and contrary to the express provisions of the DC Bylaw.

143 Furthermore, the Development Authority failed to follow the specific directions of Council by failing to provide for the 130 TDM stalls required by the DC Bylaw. The Board finds that the specific requirement of the DC Bylaw that the “equivalent of 130 stalls must be provided for by Transportation Demand Management measures to the satisfaction of the Development Authority” is clear and unambiguous. It is however, at odds with the Development Authority’s interpretation which reduced the 130 TDM stalls based on other available physical parking options. The Board finds that the Development Authority further failed to follow the directions of Council in respect of the provision of 130 TDM stalls.

144 Having made this determination in respect of the failure to follow the directions of Council relating to the transportation demand management measures, the Board sees no need to address either the applicability or appropriateness of the 10% reduction in the number of stalls that was utilized by the parties before it in their assessment of the minimum number of stalls required. Regardless of whether or not the reduction was or remains appropriately applied, the Board finds that the Development Authority failed to follow the directions of Council.

145 The Board agrees with the finding in the Watt Consulting Report that the continued availability of parking stalls in the City’s right-of-way is critical to the site’s overall parking management strategy. The Board finds that use of the stalls located outside the boundaries of the proposed development site is permissible under the Parking and Loading Regulations.

146 The Board placed little weight on the applicant’s evidence that the proposed development will not necessarily increase parking demand. The applicant provided evidence to suggest that the redevelopment will enhance and improve amenities and enhancements will allow for more international competitions to be held at the facility, likely increasing demand. The Board placed considerable weight on the verbal and written and photographic evidence of the appellant and others who outlined parking concerns, particularly with buses, and frustration with enforcement of parking restrictions in the vicinity. The Board noted that the arrangements currently in place with the Elbow River Casino and St. Mary’s High School to provide additional overflow parking demonstrate the need for additional capacity to support the current demand.

147 Accordingly, the Board finds that a permanent condition shall attach to the Development Permit as follows:

### **Permanent Condition**

If any of the existing physical parking stalls located within the road right-of-way located adjacent to the parcel governed by Bylaw DC259D2017, and legally described as Road Plan 8211113 are no longer available for use by Lindsay Park Sports Society as parking stalls, a new development permit is required.

Transportation Demand Management (TDM) measures for the equivalent of 130 stalls (without reduction for physical stalls) shall be provided for the life of the development to the ongoing satisfaction of the Development Authority provided however that TDM measures shall include, at a minimum, throughout the life of the development, the following measures:

1. Targeted implementation of staggered scheduling and alterations to programming
2. Development of a dedicated webpage with suitable transportation options
3. Designation of dedicated carpool stalls
4. Designation of passenger loading stalls
5. Creation of designated e-bike parking including cargo bike parking, access to charging and a secure parking area
6. Share and go parking zones for e-scooters
7. Subsidized transit pass and / or parking cash out for employees
8. Priced parking for employees and patrons
9. The operator of the facility and any assignee(s) shall provide to the Development Authority an annual report identifying the effectiveness of the TDM measures.
10. The Development Authority shall have a positive annual obligation to review the operator-generated report and shall annually, following its review of the report and following its own inquiry, determine the effectiveness of the TDM measures and shall affect such modifications and /or supplements as it determines appropriate, subject always to the minimum requirements outlined herein.

148 In the Board's opinion, the appellant did not sufficiently demonstrate that the proposed development would have a detrimental impact on the neighbourhood and / or his property. The Board had insufficient persuasive evidence before it to support any arguments of the appellant regarding insufficiency of consultation, loss of privacy, concerns regarding lighting, harm to migratory birds or loss of trees and real property value attributable to the proposed development. The Board is satisfied, based on the evidence provided, that appropriate landscaping is included in the proposed development.

149 Having regard to the merits of the application and sound planning considerations, the Board, based on the evidence, in keeping with section 36 of the Bylaw, finds that the proposed development (as modified to address parking stall deficiencies) is generally compatible with the adjacent developments and the neighbourhood and would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties. The proposed development is, from a planning perspective, appropriate for the site with the revised conditions of approval as noted herein.

150 Having regard to Council's direction as set forth in the DC Bylaw and based on all of the evidence, the Board in accordance with section 685 of the *Municipal Government Act* finds that in approving the subject application, the Development Authority failed to follow the directions of Council in respect of required parking stall requirements and transportation demand management measures and further failed to exercise its discretion appropriately and in accordance with sound planning principles, thereby failing to follow the direction of Council. Accordingly, the Board allows the appeal in part and the Board varies the Development Authority's decision by imposing the permanent condition as previously set forth, in accordance with the directions of Council.

**Conclusion:**

151 In reviewing and weighing all of the evidence, the Board finds that the proposed Development as presented in the amended and accepted plans warrants approval subject to the stated conditions of approval revised as set forth herein.

152 The development permit shall be issued subject to the addition of the above-mentioned conditions of approval.



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Katherine Camarta, Second Vice-Chair and Decision Writer  
Subdivision and Development Appeal Board



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Jim Palmer, First Vice-Chair and Presiding Officer  
Subdivision and Development Appeal Board

Issued on this 4th day of July 2021