



**SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
OF THE TOWN OF OKOTOKS  
DATED SEPTEMBER 18, 2018**

**DECISION**

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Hearing held at: Town of Okotoks Municipal Centre  
Council Chamber  
5 Elizabeth Street, Okotoks

Date of Hearing: September 13, 2018

Members present: Jasse Chan, Chair  
Councillor Matt Rockley  
Corey Brandt  
Andrew Cutforth  
Todd Martin  
Gerry Melenka  
Kelly Rogers

Staff present: Jamie Dugdale, Planning Services Manager  
Kari Florizone, Development Planner  
Michelle Grenwich, SDAB Clerk

Summary of Appeal: This is an appeal against the decision of the Development Authority to approve Development Permit Application Number 152-18 for a Change of Use to a Retail Cannabis Store at Bay 130-100 Stockton Avenue (Lot 1, Block 4, Plan 801 0201).

Appeal filed by: Cameron Gilbert

Those present at the hearing were asked if there were any objections to the Board members hearing the appeal. There were no objections. Those persons who made representations at the hearing were asked if they felt they had a fair hearing. They indicated they felt they had a fair hearing.

The Board heard verbal submissions from the following:

Kari Florizone, Development Planner ("Administration");  
Cameron Gilbert ("Appellant")  
Shannon James ("Legal Counsel for the Appellant")

Mark Frank, owner of Smiley's Cannabis & Budz ("Applicant")

The Board reviewed the materials contained in its agenda package and considered the verbal submissions made at the hearing.

### **SUMMARY OF SUBMISSIONS:**

The following is a summary of the submissions made to the Board in respect of this appeal.

#### Submissions of Administration

This appeal is against the decision of the Development Officer to approve Development Permit Application 152-18 (DPA 152-18) for a change of use to a retail cannabis store. The appellant is appealing on grounds relating to classification of the use as a retail cannabis store vs. an adult entertainment use.

The subject property is zoned Direct Control (DC) and is located on a corner lot that fronts onto North Railway St. with secondary access from Stockton Avenue. The principal building on the site, in which the retail cannabis store is proposed, is a two storey multi-tenant building. The approved and existing uses in the principal building include a bowling alley on the north end of the building and a theater on the south end of the building. Properties to the north, east, and south are zoned General Industrial (I2), and the property to the west is zoned Business Industrial (I1). The previous use in Bay 130 was a retail pet store.

With respect to development appeals in the DC district, Section 685(4)(b) of the Municipal Government Act (MGA) limits the jurisdiction of the SDAB to whether the development authority followed the directions of council. If the SDAB finds that the development authority did not follow the directions of council it may, in accordance with the directions, substitute its decision for the development authority's decision.

The Development Officer rendered a decision on DPA 152-18 in accordance with Section 16E Direct Control District (DC) of Land Use Bylaw 40-98 (LUB). Specifically, Section 16E.5.22 of the LUB directs that:

(a) the portion of the site that contains the principal building ("Area A") shall continue to operate and be developed with uses listed in the Business Industrial (I1) District;

(c) the permitted and discretionary uses listed in the I1 district are considered listed used for Area A; and

(g) the development and parking guidelines for the I1 district shall be used as a guideline when considering a development permit for Area A.

Administration provided an overview of the definitions of adult entertainment use, cannabis, retail cannabis store, and retail store found in Section 17 of the LUB. Where a specific use is listed independently in the LUB, the use definition that most closely applies to the proposed use is applied. If Council wanted a retail cannabis store to be considered an adult entertainment use, they would have added it to the definition of adult entertainment use instead of giving the use its own definition.

The proposal meets the definition of “retail cannabis store” which is listed as a discretionary use in the I1 district. Retail cannabis stores are regulated under section 9.34.0 [Cannabis Related Uses] of the LUB and the proposed development complies with all regulations under that section. There is no separation distance prescribed in the LUB that would limit a retail cannabis store from locating within a specified distance from a liquor store, theatre, or bowling alley.

The existing liquor store in the principal building was approved under Development Permit 149-09 as a retail store and that permit remains in effect until such time that there is a change of use (or intensity of use) of the land or building. A liquor store is not an adult mini-theatre, erotic dance club, adult video store, body rub centre or a casino, but more closely meets the definition and intent of a retail store, which includes food stores, drug stores, e-cigarette retailers, and drug paraphernalia retailers. Council clearly and intentionally added retail cannabis store as a listed use in the I1 district.

The Development Officer made a decision based on the regulations set forth by Council in the LUB, which directs the Development Authority to refer to the uses and regulations in the I1 district as a guideline for evaluating development proposals for the subject property. Retail cannabis store is listed as a discretionary use in the I1 district and no variances were required for the proposal. The Development Officer took into account the following material planning considerations, and found that there would be no substantial:

- Loss of sunlight/overshadowing and/or privacy/overlooking;
- Traffic and/or parking generation;
- Noise or nuisance odours;
  - Patrons are prohibited from using cannabis on the site under provincial regulation
- Impacts on infrastructure (water, sewer, electricity, gas, telecom, etc)
- Landscaping; and
- Pedestrian safety and/or connectivity.

#### Submissions of the Appellant

The decision on this application should take into account the proximity between the bay occupied by the liquor store, and the bay occupied by the retail cannabis store, and the fact that the complex contains a theater and bowling alley. This will mean that the liquor

store and the cannabis store will be located in close proximity to each other, and the theater and bowling alley, where children frequent.

Section 9.27.1(f) of the LUB provides that when considering an application for rezoning of a parcel for an adult entertainment use, Council shall take into account the proximity between the bay occupied by the adult entertainment use and the property line of any property used or zoned for another adult entertainment use. There is to be a minimum 200m separation distance between the two bays that are both adult entertainment uses as measured between the nearest wall of each. The distance between Bay 130-100 Stockton Avenue, where the applicant is proposing to develop a retail cannabis store, and Western Liquor Bazar at 160-100 Stockton Avenue is considerably less than 200m. As such, the applicant's development permit does not meet the requirements of Section 9.27.1(f).

The definition of adult entertainment use in the LUB states the term means a use which provides goods.... "of an adult nature....". The fact that a retail cannabis store means a retail store licensed by the Province of Alberta to sell cannabis, by its very nature, means the operation of a retail cannabis store is an adult entertainment use. A retail store, where liquor is sold, should also meet the condition to be included as an adult entertainment use as it also sells goods for adult use.

The definition of adult entertainment use does not explicitly exclude retail cannabis stores and therefore the rules for adult entertainment uses apply to a retail cannabis store. Further, the same observation can be made for liquor stores, as they are not specifically excluded from the adult entertainment use definition.

The existing liquor store and proposed cannabis store are both considered adult entertainment uses and cannot be located within 200m of each other. Children frequent the building, and the number of businesses that sells goods for adult use should be limited to the existing liquor store.

At the hearing, the appellant and his legal counsel suggested that the LUB has some degree of ambiguity with regard to the definition of an adult entertainment use, and questioned if it would apply to a liquor store and retail cannabis store. As the definition of adult entertainment use includes reference to the sale of goods for adult use, it could be interpreted to include a liquor store and a retail cannabis store, which would then be subject to a 200m setback from each other.

#### Submissions of the Applicant

The appellant is a principal of Micro Gold Cannabis Corporation who intends to open a retail cannabis store at Unit 2A – 220 North Railway Street, immediately adjacent to Smiley's Cannabis & Budz.

The subject property falls within the DC district, which in accordance with sections 16E.5.22(a) and (c) of the LUB is to be developed in accordance with the permitted and discretionary uses of the I1 district. A retail cannabis store is listed as a discretionary use in the I1 district.

The appellant argues that the proposed development falls within the definition of an adult entertainment use; therefore, the restrictions applicable to adult entertainment uses should apply. The fact that a retail cannabis store sells products only to adults does not mean that the proposed development falls within the definition of an adult entertainment use. Adult entertainment uses and retail cannabis stores are each defined terms in the LUB, and are specifically excluded from other definitions, which confirms that each term has its own meaning. If an adult entertainment use and a retail cannabis store meant the same thing, it would not be necessary to list them separately, so clearly a retail cannabis store is not an adult entertainment use. Also, retail cannabis store is not mentioned in the definition of adult entertainment use, which is aimed at entertainment of a sexual nature, and gambling, but does not include all products or services that are sold exclusively to adults.

The proposed development, a retail cannabis store, does not fall within the definition of adult entertainment use, so any restrictions with respect to adult entertainment uses are irrelevant and do not apply to DPA 152-18.

The applicant has lived in Okotoks since 2013 and used to be the owner of The George Traditional House in Okotoks. The applicant has applied for two retail cannabis stores: one in Okotoks, and one in High River. Both applications have received approval from the Alberta Liquor and Gaming Commission.

Half of the proposed retail cannabis store will be dedicated to education on cannabis consumption. At the public hearing for Bylaw 30-18, to amend the LUB to incorporate definitions and regulations for cannabis related uses, the applicant did not ask Council to make any changes to the proposed bylaw.

DPA 152-18 was to become effective on August 22, 2018, but was appealed by the appellant on August 21, 2018, thereby stalling the development. In the letter of appeal, the appellant did not state how they would be affected by the proposed development. The applicant, however, is affected by the appeal as the project has been delayed by five weeks and the business will not be opened as originally planned, by October 17, 2018.

Based on the appellant's argument that a retail cannabis store and a liquor store should be considered adult entertainment uses, their own business would also be refused. The purpose of this appeal is to delay Smiley's Cannabis & Budz from opening. At the hearing, the applicant requested that the Board not take the full 15 days to render its decision.

**DECISION:**

The Board denies the appeal and upholds the decision of the Development Authority to approve Development Application Number 152-18 for a Change of Use to a Retail Cannabis Store at 130-100 Stockton Avenue subject to the following conditions:

Conditions

1. The Developer shall undertake the use in accordance with:
  - a) all conditions of this approval; and
  - b) the floor plans accepted and fascia sign plans approved by the Development Officer on July 31, 2018;  
to the satisfaction of the Development Officer;
2. This approval is for a change of use internal to the bay and, excepting approved fascia signage, does not include any exterior changes to the elevations or site plan; and
3. The issuance of a development permit by the Town of Okotoks does not relieve the permit holder of the responsibility of complying with all other relevant municipal bylaws and requirements, nor excuse violation of any regulation or act, which may affect this project.

**REASONS:***The Board's Jurisdiction*

The development subject to this appeal is located in a DC District. In accordance with Section 685(4) of the MGA, decisions with respect to development permit applications in direct control districts are not appealable to the SDAB if council made the decision. If the Development Authority made the decision, then the appeal is limited to whether the development authority followed the directions of council. If the SDAB 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.

The Development Officer was delegated the authority to render a decision on the application in accordance with Section 16E.4.0 of the LUB and did so accordingly. As such, the Board finds that it has the jurisdiction to render a decision on the appeal.

*Did the Development Officer Follow the Directions of Council?*

The Board's decision with respect to this appeal is limited to the question of whether or not the Development Officer followed the directions of Council in rendering a decision on the application. The Board must determine if the Development Officer correctly interpreted the provisions in the LUB in making a decision on this application.

Section 16E.5.22(a)(c) and (g) of the LUB stipulates that the portion of the site that contains the principal building (Area A) is subject to the uses and standards of the I1

district. The Board finds that the Development Officer was correct in applying the uses and standards in the I1 district to the development permit application.

The Board reviewed the definitions for a retail cannabis store, retail store, liquor store and adult entertainment use. The fact that the LUB includes a specific definition for a retail cannabis store and specifically lists it as a standalone use in the I1 district implies that Council intended for this use to be separate from any other use. The definition of adult entertainment use is focused on adult activities of a sexual nature and gambling, not the sale of products consumed by adults. Furthermore, Section 9.34.0 of the LUB includes specific regulations for cannabis related uses, including a retail cannabis store. The Board finds that the Development Officer correctly interpreted the definitions in the LUB in determining that the proposed development falls within the definition of a retail cannabis store. As such, the Board notes that the standards for adult entertainment uses are not applicable to this application as a retail cannabis store is not an adult entertainment use in accordance with the definitions set out in the LUB.

Retail cannabis stores are a discretionary use within the I1 district, which means the Development Authority has the discretion to determine the suitability of the proposal on the subject property in rendering a decision on the application. The Board notes that the proposal involves a change of use from a retail store to a retail cannabis store with no change in the intensity of the use, parking requirements or the alterations to the exterior of the building. In that regard, the Board is satisfied that the Development Officer followed the directions of Council by considering the local context and taking into account several material planning considerations in making a decision on the application.

**SUMMARY:**

For the reasons set out above, the appeal is denied and the decision of the Development Officer is upheld.



Michelle Grenwich  
SDAB Clerk