



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca

Date: July 5, 2019
Project Number: 284946199-002
File Number: SDAB-S-19-004

Notice of Decision

- [1] On June 20, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on April 2, 2019. The appeal concerned the decision of the Subdivision Authority, issued on March 21, 2019 to refuse the following subdivision:

To create one (1) Single Detached Residential lot

- [2] The subject property is on Plan 9320215 Lot 1A, located at 3333 - 28 Avenue SW, within the (RR) Rural Residential Zone. The Decoteau Area Structure Plan applies to the subject property.

- [3] The following documents were received prior to the hearing and form part of the record:

- a) From the Subdivision Authority, copies of:
- The Subdivision Refusal Decision;
 - PowerPoint Presentation and proposed conditions should the Board grant the subdivision;
 - 2016 decision of this Board, SDAB-S-16-003;
 - Edmonton Metropolitan Region Growth Plan; and
 - Supporting Documents and Supplemental Supporting Documents from Counsel for the Subdivision Authority.
- b) From the Appellant:
- Email requesting that the hearing be postponed to July 3, 2019.
- c) From Administration for the Board
- Email chain from the parties to administration for the Board, consenting to a postponed hearing date of July 3, 2019; and
 - Copies of Municipal Development Plan Bylaw 15100 and Decoteau Area Structure Plan.

- [4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Letter from R. Colistro to M. Gunther regarding Postponement Request dated June 26, 2019

Preliminary Matters

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

Summary of Hearing

i) Position of the Appellant, A. Dohmann

- [8] The Appellant attended and was represented by legal counsel, Mr. R. Colistro.
- [9] The Appellant requests a further adjournment of this matter to May, 2020. Granting this adjournment would not result in any prejudice to the City because the matter involves a refused subdivision application. The Appellant would not be able to take any further action regarding this subdivision until the Board renders a decision – the subdivision remains refused.
- [10] This adjournment request is not a surprise to the City, as Mr. Colistro discussed it with Mr. Gunther of the City of Edmonton Law Branch on June 20, 2019, and followed up with a letter dated June 26, 2019. (Letter submitted as Exhibit “A”).
- [11] The reason for the request is that the City recently refused an application for a different subdivision in the (RR) Rural Residential Zone. That subdivision decision raised similar issues to the decision before this Board. In that decision, the Board overturned the Subdivision Authority’s decision and approved the subdivision. The City of Edmonton subsequently received permission to appeal to the Court of Appeal, and the matter will come before a full panel of the Court of Appeal in January 2020.
- [12] It is anticipated that the Court’s decision will help the Appellant assess the strength of his case, and determine whether to proceed. The Appellant is hopeful that the Court of Appeal will have issued a decision by May 2020, which is why he requests a further postponement to that time.
- [13] From a practical standpoint, the Appellant is concerned that without a decision from the Court to provide guidance on the issues raised in this appeal, even if he is successful before the Board on the merits and is granted the subdivision by this Board, the City

would appeal further to the Court of Appeal, which would have a significant financial implication.

- [14] Withdrawing this appeal and reapplying for subdivision at a later date would also result in further costs to the Appellant, and the matter would once again be before the Board at some time in the future. It is reasonable to postpone the hearing of this appeal.

ii) Position of the Subdivision Authority

- [15] The Subdivision Authority was represented by legal counsel, Mr. M. Gunther. He confirmed that he was aware of the Postponement Request. While the City took no position with respect to this request, the City is concerned about having this matter held over for almost a year, and wished to bring several points to the panel's attention.
- [16] The matter that is before the Court of Appeal is scheduled to be heard on January 29, 2020, and deals with a subdivision in the northeast portion of the City. While there are several similarities to today's case, there are also some important differences.
- [17] In the case currently before the Court, the Edmonton Metropolitan Growth Plan was not at issue; however, that document has significant importance to the case before the Board today. Also, there are no transportation concerns regarding the northeast subdivision appeal.
- [18] Two issues will be addressed when the Court hears the appeal of the Board's decision regarding the northeast subdivision:
- a. Did the Board misinterpret Section 240 of the Edmonton Zoning Bylaw that deals with the RR Rural Residential Zone?
 - b. Did the Board misinterpret the applicable Statutory Plans (the Marquis Neighbourhood Structure Plan and the Horse Hills Area Structure Plan)? The arguments regarding these Statutory Plans have no bearing on today's appeal because the subject property is governed by a different Statutory Plan (the Decoteau Area Structure Plan). The City will be raising an issue in relation to a direct contradiction between the northeast subdivision decision and a previous decision within the Windermere area. These two decisions cannot stand together.

iii) Rebuttal of the Appellant

- [19] Mr. Colistro agreed that there are both similarities and differences between the two appeals. He is requesting the adjournment for the benefit of obtaining some guidance from the Court of Appeal on those matters that do overlap.

Decision

[20] The appeal hearing of SDAB-S-19-004 will be postponed to June 2020.

Reasons for Decision

[21] The Appellant has applied to adjourn this matter to May 2020. The Subdivision Authority did not consent to this adjournment request but did not oppose it either.

[22] The reason for the adjournment request is that the Court of Appeal has recently granted permission to the City of Edmonton to appeal a decision of this Board in *Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)*, 2018 ABCA 316 [Edmonton]. This appeal deals with this Board's previous interpretation in a subdivision context of the RR Rural Residential Zone. The outcome of that appeal could be impactful on any decision this Board may make in the case before it.

[23] In order to prevent a multiplicity of proceedings, the Board agrees that this matter should be adjourned until such time as the Court of Appeal has rendered its decision in *Edmonton*, or that appeal is abandoned by the Appellant.

[24] In order to maximize the chances that the Court of Appeal decision will be rendered in time for that decision to be considered in this case by the Board, this Board orders the matter adjourned until June of 2020.

Mr. I. Wachowicz, Chair
Subdivision and Development Appeal Board

Board members in attendance:

Mr. R. Handa, Ms. L. Delfs, Ms. M. McCallum, Mr. J. Wall

c.c. City of Edmonton, Subdivision Authority, Attn: Mr. M. Beraldo/Mr. B. McDowell
M. Gunther, Law Branch

Important Information for the Applicant/Appellant

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

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