

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Thursday, 9:00 A.M.
June 20, 2019**

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

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

I 9:00 A.M. SDAB-D-19-093

To change the Use of a Professional, Financial,
and Office Support Service to a Personal
Service Shop operating as a Body Rub Centre

11315 - 174 Street NW
Project No.: 310645804-001

II 1:30 P.M. SDAB-S-19-004

To create one (1) Single Detached Residential
Lot

3333 - 28 Avenue SW
Project No.: 284946199-002

NOTE: *Unless otherwise stated, all references to “Section numbers” refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-19-093

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER BY AN ADJACENT PROPERTY OWNER

APPELLANT:

APPLICATION NO.: 310645804-001

APPLICATION TO: Change the Use of a Professional, Financial, and Office Support Service to a Personal Service Shop operating as a Body Rub Centre

DECISION OF THE DEVELOPMENT AUTHORITY: Approved with Conditions

DECISION DATE: May 9, 2019

DATE OF APPEAL: May 23, 2019

NOTIFICATION PERIOD: May 16, 2019 through June 6, 2019

RESPONDENT:

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 11315 - 174 Street NW

LEGAL DESCRIPTION: Plan 0828104 Unit 9, Condo Common Area (Plan 0828104)

ZONE: (IB) Industrial Business Zone

OVERLAY: N/A

STATUTORY PLAN: N/A

Grounds for Appeal

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

The noted Body Rub Centre is in violation to the City bylaw that states "body rub centres must be at least 100 meters away from places where groups of children can be found". There is another business, Dogs-with-Wings, that is located within the same complex. This noted business has

frequent visits from vulnerable children with autism and physical disabilities. A Body Rub Centre should NOT BE DEEMED SUITABLE for this location (which has been previously approved under City Development permit #310645804-001).

General Matters

Appeal Information:

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

Grounds for Appeal

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal to the subdivision and development appeal board.

Appeals

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

- (a) in the case of an appeal made by a person referred to in section 685(1)
 - (i) with respect to an application for a development permit,
 - (A) within 21 days after the date on which the written decision is given under section 642, or
 - (B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,

or

- (ii) with respect to an order under section 645, within 21 days after the date on which the order is made, or
- (b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

Hearing and Decision

687(3) In determining an appeal, the subdivision and development appeal board

...

- (a.1) must comply with the land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;
- (a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;
- (a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;

...

- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
 - (i) the proposed development would not
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

- (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

General Provisions from the *Edmonton Zoning Bylaw*:

Under section 400.3(23), **Personal Service Shops** is a **Discretionary Use** in the **(IB) Industrial Business Zone**.

Under section 7.4(43), **Personal Service Shops** means:

development used for the provision of personal services to an individual which are related to the care and appearance of the body, or the cleaning and repair of personal effects. This Use includes barbershops, hairdressers, beauty salons, tailors, dressmakers, shoe repair shops, and dry cleaning establishments and laundromats. This Use does not include Health Services.

Under section 6.1, **Body Rub Centres** means:

a Personal Service Shop development where services are provided that involve the physical external manipulation of the soft tissues of the human body that are performed, offered or solicited for a fee in a manner that appeals to or is designed to appeal to erotic or sexual appetites or inclinations. This includes but is not limited to a body rub advertised by any means as “sensual”, “sexy” or by any other word or any depiction having like meaning or implication.

Section 400.1 states that the **General Purpose** of the **(IB) Industrial Business Zone** is:

to provide for industrial businesses that carry out their operations such that no nuisance is created or apparent outside an enclosed building and such that the Zone is compatible with any adjacent non-industrial Zone, and to accommodate limited, compatible non-industrial businesses. This Zone should normally be located on the periphery of industrial areas and adjacent to arterial or major collector roadways.

<i>Discretionary Use</i>

Development Officer’s Determination

You are receiving this notice because a Discretionary Use Development Permit has been issued, pursuant to Section 12.4 and 20.3 of the Edmonton Zoning Bylaw. [unedited]

Section 97 - Body Rub Centres

Section 97 states:

A Personal Service Shop that is operating as a Body Rub Centre shall comply with the following regulations:

1. At the time a Development Permit application is made for a Body Rub Centre, the proposed location of the Body Rub Centre shall not be closer than 100.0 metres from any Site having a valid development permit for Public Education Services, Private Education Services, Public Park sites, Child Care Services, Temporary Shelter Services, and/or Extended Medical Treatment Services.


For the purpose of this subsection only:

- a. the 100.0 metre separation distance shall be measured from the closest point of the Body Rub Centre Site boundary to the closest point of another Site boundary, and shall not be measured from Zone boundaries or from the edges of structures;
 - b. Public Education Services and Private Education Services are limited to primary and secondary schools inclusive that have a valid Development Permit; and
 - c. the term “Public Park sites” is limited to park Sites zoned as AP Zone, and areas in the river valley that are zoned as the A Zone.
2. Personal Service Shop Use operating as a Body Rub Centre shall not be located on a Site having a valid Development Permit for Residential Use Classes, Residential Related Use Classes, or Bars and Neighbourhood Pubs at the time of the application for the Development Permit.
 3. The Development Officer shall consider Crime Prevention Through Environmental Design Criteria (CPTED) when reviewing applications for Personal Service Shop Use Class operating as a Body Rub Centre.
 - a. The Development Officer shall determine whether a CPTED Audit of the business premises is required, and may confer with the Edmonton Police Service for their recommendation;
 - b. If the Development Officer deems that a CPTED Audit is necessary, the Development Officer may include recommendations of the CPTED Audit that, in the Development Officer’s opinion, have implications for land use impacts including, but not limited to, exterior illumination, landscaping, screening, signs, and access, as condition(s) of the Development Permit;

- c. Where a Body Rub Centre is proposed to be located on the First Storey, all glazed surfaces within the Façade shall be transparent, non-reflective and maintain unobstructed visibility into and out of the Public Space of the business.
4. Signs placed on or within a Personal Service Shop Use operating as a Body Rub Centre shall comply with the applicable Sign Regulations contained in Section 59 of this Bylaw and the applicable Sign Schedule for the Land Use Zone governing the Site on which the Body Rub Centre is located, except that Fascia Signs shall not:
 - a. obstruct clear glazing required in subsection 97(3)(c) of this Bylaw; and
 - b. obstruct clear glazing as required by the Land Use Zone governing the Site on which the Body Rub Centre is located.

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.

	<p>Project Number: 310645804-001 Application Date: APR 09, 2019 Printed: May 23, 2019 at 1:06 PM Page: 1 of 3</p>		
<h2 style="margin: 0;">Major Development Permit</h2>			
<p>This document is a record of a Development Permit application, and a record of the decision for the undertaking described below, subject to the limitations and conditions of this permit, of the Edmonton Zoning Bylaw 12800 as amended.</p>			
<p>Applicant</p>	<p>Property Address(es) and Legal Description(s) 11315 - 174 STREET NW Condo Common Area (Plan 0828104) 11315 - 174 STREET NW Plan 0828104 Unit 9</p> <p>Specific Address(es) Entryway: 11315 - 174 STREET NW Building: 11351 - 174 STREET NW</p>		
<p>Scope of Permit To change the Use of a Professional, Financial, and Office Support Service to a Personal Service Shop operating as a Body Rub Centre.</p>			
<p>Permit Details</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> Class of Permit: Class B Gross Floor Area (sq.m.): 122.3 New Sewer Service Required: N Site Area (sq. m.): 8100.98 </td> <td style="width: 50%; border: none;"> Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none) </td> </tr> </table>		Class of Permit: Class B Gross Floor Area (sq.m.): 122.3 New Sewer Service Required: N Site Area (sq. m.): 8100.98	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none)
Class of Permit: Class B Gross Floor Area (sq.m.): 122.3 New Sewer Service Required: N Site Area (sq. m.): 8100.98	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none)		
<p>I/We certify that the above noted details are correct.</p> <p>Applicant signature: _____</p>			
<p>Development Permit Decision Approved Issue Date: May 09, 2019 Development Authority: Chow, Stephen</p>			



Project Number: **310645804-001**
 Application Date: APR 09, 2019
 Printed: May 23, 2019 at 1:06 PM
 Page: 2 of 3

Major Development Permit

Subject to the Following Conditions

1. There shall be no parking, loading, storage, trash collection, outdoor service or display area permitted within the required 4.5m (14.76 ft.) setback. (Reference Section 340.4(3) & (5).)

2. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. (Reference Section 54.1.1.c)

3. The applicant, operator, and landowner shall observe all relevant CPTED recommendations stated in the report dated 21 April 2019 and prepared by Janae Rogers for the subject property

ADVISEMENTS:

a. This Development Permit is NOT a Business Licence. A separate application must be made for a Business Licence. Please contact the 311 Call Centre (780-442-5311) for further information.

b. Signs require separate Development Applications.

c. A building permit is required for any construction or change in Use of a building. For a building permit, and prior to the plans examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre (780-442-5311) for further information.

d. The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this 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.

e. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the Municipal Government Act, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site. (Reference Section 5.2)

f. Unless otherwise stated, all above references to section numbers refer to the authority under the Edmonton Zoning Bylaw 12800 as amended.

g. With future changes of use for this site, Subdivision Planning will require the applicant to provide parking justification and conduct observations on site to establish if parking continues to be sufficient for the site.

Variations

You are receiving this notice because a Discretionary Use Development Permit has been issued, pursuant to Section 12.4 and 20.3 of the Edmonton Zoning Bylaw.

Rights of Appeal

This approval is subject to the right of appeal as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.

Notice Period Begins: May 16, 2019 **Ends:** Jun 06, 2019

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$518.00	\$518.00	05770788	Apr 09, 2019

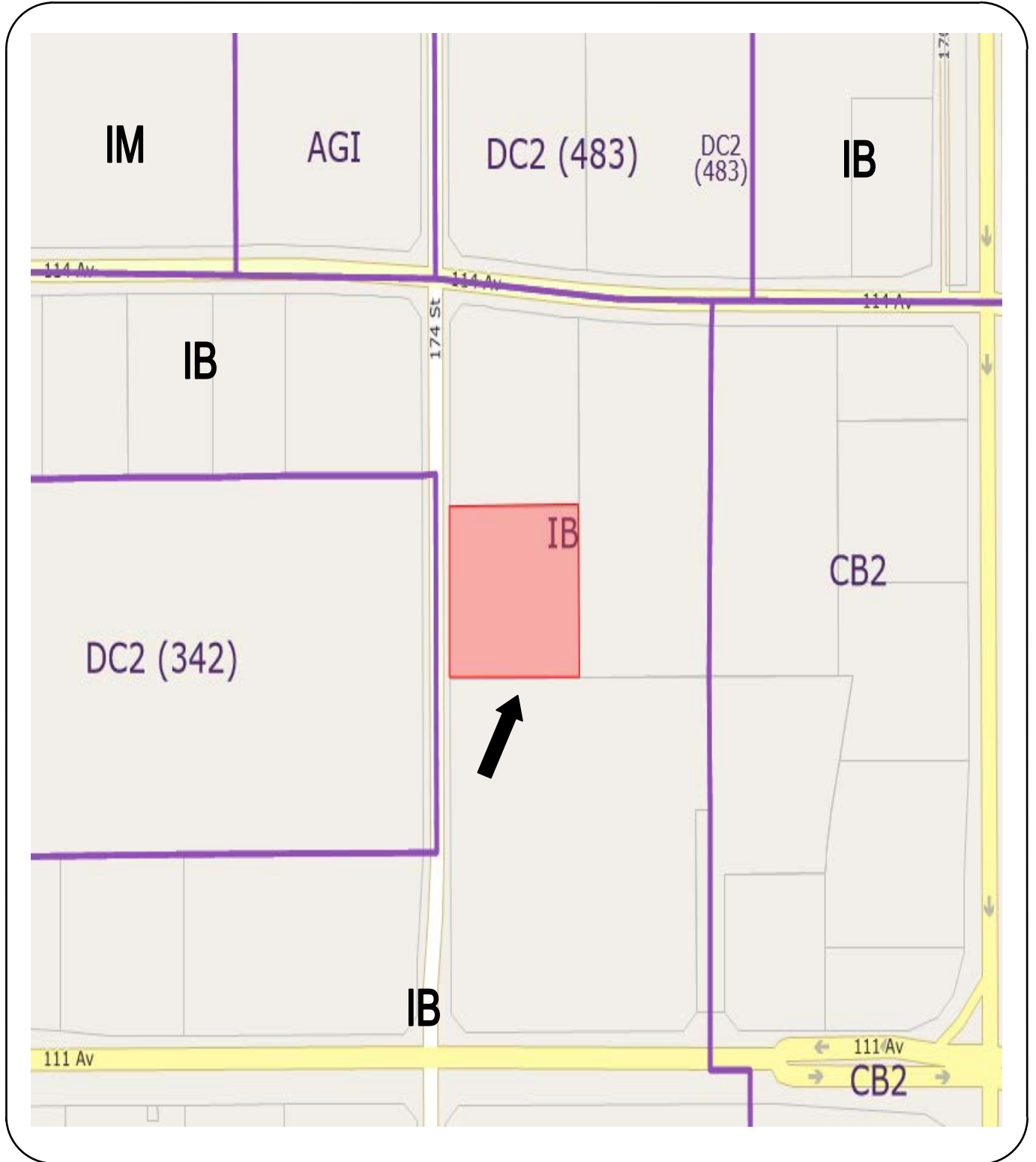


Project Number: **310645804-001**
Application Date: APR 09, 2019
Printed: May 23, 2019 at 1:06 PM
Page: 3 of 3

Major Development Permit

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Total GST Amount:	\$0.00			
Totals for Permit:	<u>\$518.00</u>	<u>\$518.00</u>		



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-19-093



ITEM II: 1:30 P.M.

FILE: SDAB-S-19-004

AN APPEAL FROM THE DECISION OF THE SUBDIVISION AUTHORITY

APPELLANT:

APPLICATION NO.: 284946199-002

APPLICATION TO: Create one (1) Single Detached Residential Lot

DECISION OF THE SUBDIVISION AUTHORITY: Refused

DECISION DATE: March 21, 2019

DATE OF APPEAL: April 2, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 3333 - 28 Avenue SW

LEGAL DESCRIPTION: Plan 9320215 Lot 1A

ZONE: (RR) Rural Residential Zone

OVERLAY: N/A

STATUTORY PLAN: Decoteau Area Structure Plan

Grounds for Appeal

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

I, Alfred Dohmann of 3333 - 28 Avenue SW, Edmonton, AB T6X 1A5 wish to file an appeal regarding the Subdivision Authority's decision to refuse the proposed subdivision of my acreage lot. I find the reasons stated to be unreasonable and inaccurate in accordance with other development in the area. Please note I will be submitting formal documentation to the Edmonton Tribunals, SDAB Appeal which will rebut the specific reasons provided by the City of Edmonton Subdivision Authority. An appropriate timeline is needed to submit a response and the timeline given does not provide adequate time. I will be in touch with the Edmonton Tribunals. Please note I am out of the country until the end of April 2019.

General Matters

The Appellant requested that the matter be heard on June 20, 2019.

Appeal Information:

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

Appeals

678(1) The decision of a subdivision authority on an application for subdivision approval may be appealed

- (a) by the applicant for the approval,
- (b) by a Government department if the application is required by the subdivision and development regulations to be referred to that department,
- (c) by the council of the municipality in which the land to be subdivided is located if the council, a designated officer of the municipality or the municipal planning commission of the municipality is not the subdivision authority, or
- (d) by a school board with respect to
 - (i) the allocation of municipal reserve and school reserve or money in place of the reserve,
 - (ii) the location of school reserve allocated to it, or
 - (iii) the amount of school reserve or money in place of the reserve.

(2) An appeal under subsection (1) may be commenced by filing a notice of appeal within 14 days after receipt of the written decision of the subdivision authority or deemed refusal by the subdivision authority in accordance with section 681

- (a) with the Municipal Government Board
 - (i) if the land that is the subject of the application is within the Green Area as classified by the Minister responsible for the Public Lands Act,
 - (ii) if the land that is the subject of the application contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site, or
 - (iii) in any other circumstances described in the regulations under section 694(1)(h.2),

or

- (b) in all other cases, with the subdivision and development appeal board.

(2.1) Despite subsection (2)(a), if the land that is the subject-matter of the appeal would have been in an area described in subsection (2)(a) except that the affected Government department agreed, in writing, to vary the distance under the subdivision and development regulations, the notice of appeal must be filed with the subdivision and development appeal board.

(3) For the purpose of subsection (2), the date of receipt of the decision is deemed to be 7 days from the date the decision is mailed.

(4) A notice of appeal under this section must contain

- (a) the legal description and municipal location, if applicable, of the land proposed to be subdivided, and
- (b) the reasons for appeal, including the issues in the decision or the conditions imposed in the approval that are the subject of the appeal.

(5) If the applicant files a notice of appeal within 14 days after receipt of the written decision or the deemed refusal with the wrong board, that board must refer the appeal to the appropriate board and the appropriate board must hear the appeal as if the notice of appeal had been filed with it and it is deemed to have received the notice of appeal from the applicant on the date it receives the notice of appeal from the first board.

Hearing and decision

680(1) The board hearing an appeal under section 678 is not required to hear from any person or entity other than

- (a) a person or entity that was notified pursuant to section 679(1), and
- (b) each owner of adjacent land to the land that is the subject of the appeal,

or a person acting on any of those persons' behalf.

(1.1) For the purposes of subsection (1), “adjacent land” and “owner” have the same meanings as in section 653.

(2) In determining an appeal, the board hearing the appeal

- (a) must act in accordance with any applicable ALSA regional plan;

- (a.1) must have regard to any statutory plan;
- (b) must conform with the uses of land referred to in a land use bylaw;
- (c) must be consistent with the land use policies;
- (d) must have regard to but is not bound by the subdivision and development regulations;
- (e) may confirm, revoke or vary the approval or decision or any condition imposed by the subdivision authority or make or substitute an approval, decision or condition of its own;
- (f) may, in addition to the other powers it has, exercise the same power as a subdivision authority is permitted to exercise pursuant to this Part or the regulations or bylaws under this Part.

Approval of application

654(1) A subdivision authority must not approve an application for subdivision approval unless

- (a) the land that is proposed to be subdivided is, in the opinion of the subdivision authority, suitable for the purpose for which the subdivision is intended,
- (b) the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan and, subject to subsection (2), any land use bylaw that affects the land proposed to be subdivided,
- (c) the proposed subdivision complies with this Part and Part 17.1 and the regulations under those Parts, and
- (d) all outstanding property taxes on the land proposed to be subdivided have been paid to the municipality where the land is located or arrangements satisfactory to the municipality have been made for their payment pursuant to Part 10.

(1.1) Repealed 2018 c11 s13.

(1.2) If the subdivision authority is of the opinion that there may be a conflict or inconsistency between statutory plans, section 638 applies in respect of the conflict or inconsistency.

(2) A subdivision authority may approve an application for subdivision approval even though the proposed subdivision does not comply with the land use bylaw if, in its opinion,

- (a) the proposed subdivision would not
 - (i) unduly interfere with the amenities of the neighbourhood, or
 - (ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

- (b) the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.

(3) A subdivision authority may approve or refuse an application for subdivision approval.

General Provisions from the *Edmonton Zoning Bylaw*:

Under section 240.2(5), **Single Detached Housing** is a **Permitted Use** in the **(RR) Rural Residential Zone**.

Section 240.1 states that the **General Purpose** of the **(RR) Rural Residential Zone** is:

to provide for Single Detached Residential development of a permanent nature in a rural setting, generally without the provision of the full range of urban utility services. The RR Zone is intended to regulate rural residential development within existing rural residential subdivisions that existed prior to the passage of this Bylaw, and is not intended to facilitate future rural residential development and subdivision, which is contrary to the Municipal Development Plan.

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.



Subdivision Authority

7th Floor, Edmonton Tower
10111 – 104 Avenue NW
Edmonton, Alberta T5J 0J4

March 21, 2019

File No. LDA19-0039

RE: Tentative plan of subdivision to create one (1) single detached residential lot, from Lot 1A, Plan 932 0215, located south of 28 Avenue SW and east of 34 Street SW; **DECOTEAU**

I The Subdivision by Plan is REFUSED on March 21, 2019, for the following reasons:

1. The subdivision does not comply with section 3.4.2 of the Decoteau Area Structure Plan which states, “land use concept for Decoteau maintains the existing country residential development in the central portion of the plan area. The existing Country Residential land uses may remain in perpetuity unless it is the desire of the landowners to redevelop. Should any existing residential area be redeveloped in the future, an amendment to the Decoteau ASP will be required and will need to meet the Capital Region Board’s density targets.”
2. The subdivision contravenes policy 4.4.4 d. iii. of the Edmonton Metropolitan Growth Plan which states, “New country residential development in the Region shall only be considered if a member municipality’s proposal meets all of the following criteria: the proposed country residential lots are: not less than 4.8 km (3.0 mi) from the boundary of an existing urban community in the metropolitan area.” The proposed subdivision is within 4.8 km of the City of Edmonton boundary;
3. The subject lot is zoned as (RR) Rural Residential Zone and is therefore subject to the regulations of Section 240 of the Edmonton Zoning Bylaw 12800. The subdivision does not comply with section 240.1 of the Edmonton Zoning Bylaw 12800 which states, “The RR Zone is intended to regulate rural residential development within existing rural residential subdivisions that existed prior to the passage of this Bylaw, and is not intended to facilitate future rural residential development and subdivision, which is contrary to the Municipal Development Plan.”
4. The proposed lot will contribute to the fragmentation of land in the Decoteau area, posing a barrier to economic redevelopment and wide-scale servicing of this area;
5. Access is not permitted from 34 Street because it is Transportation Standard Practice that single family residential developments can only access collectors or local roadways. New access to the arterial will not be approved, as it will ultimately have to be closed with the redevelopment of the area and the upgrade of the arterial roadway; and
6. Public fire protection is not provided in this location due to the 2.4 km distance from the nearest water source. Further densification in areas that do not meet City Standards for water infrastructure is not supported because there would be significant delays establishing firefighting operations at this location.

Please be advised that an appeal may be lodged in accordance to Section 678 of the Municipal Government Act with the Subdivision and Development Appeal Board, 10019 – 103 Avenue NW, Edmonton Alberta, T5J 0G9, within 14 days from the date of the receipt of this decision. The date of receipt of the decision is deemed to be seven (7) days from the date the decision is mailed.

If you have further questions, please contact Marco Beraldo at marco.beraldo@edmonton.ca or 780-496-6092.

Regards,



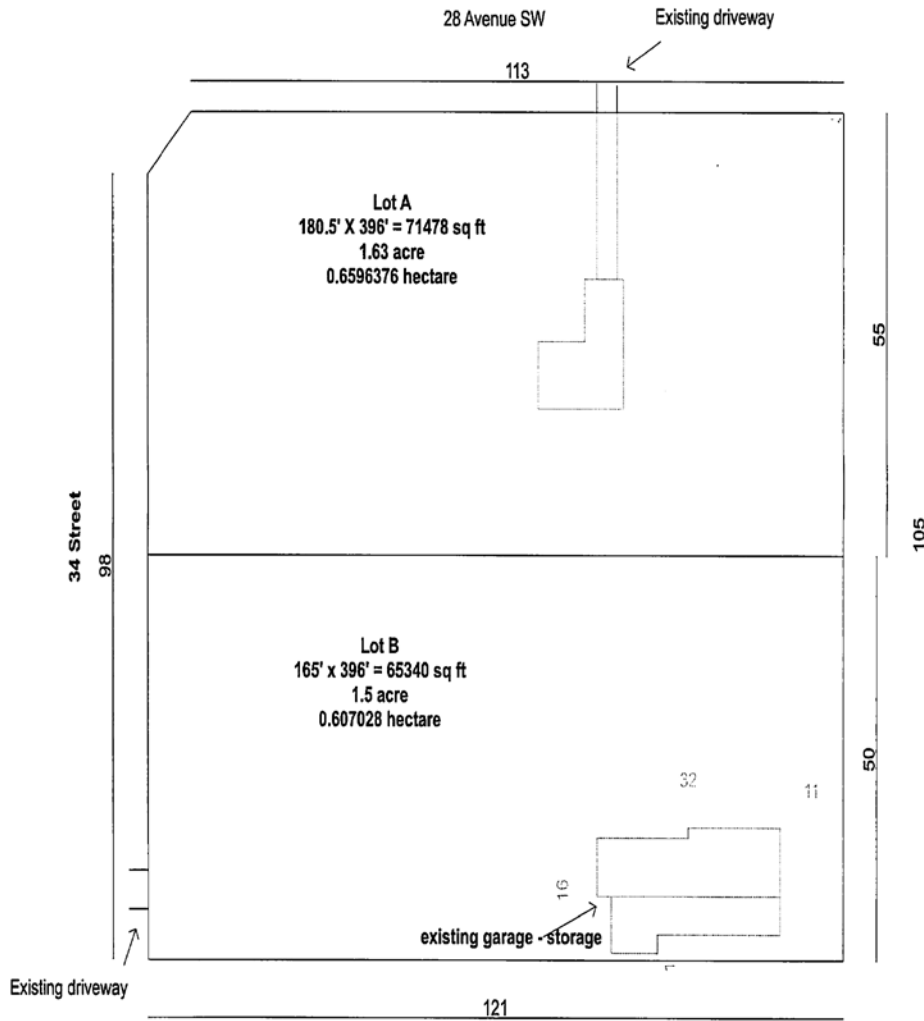
Blair McDowell
Subdivision Authority

BM/mb/Posse #284946199-002

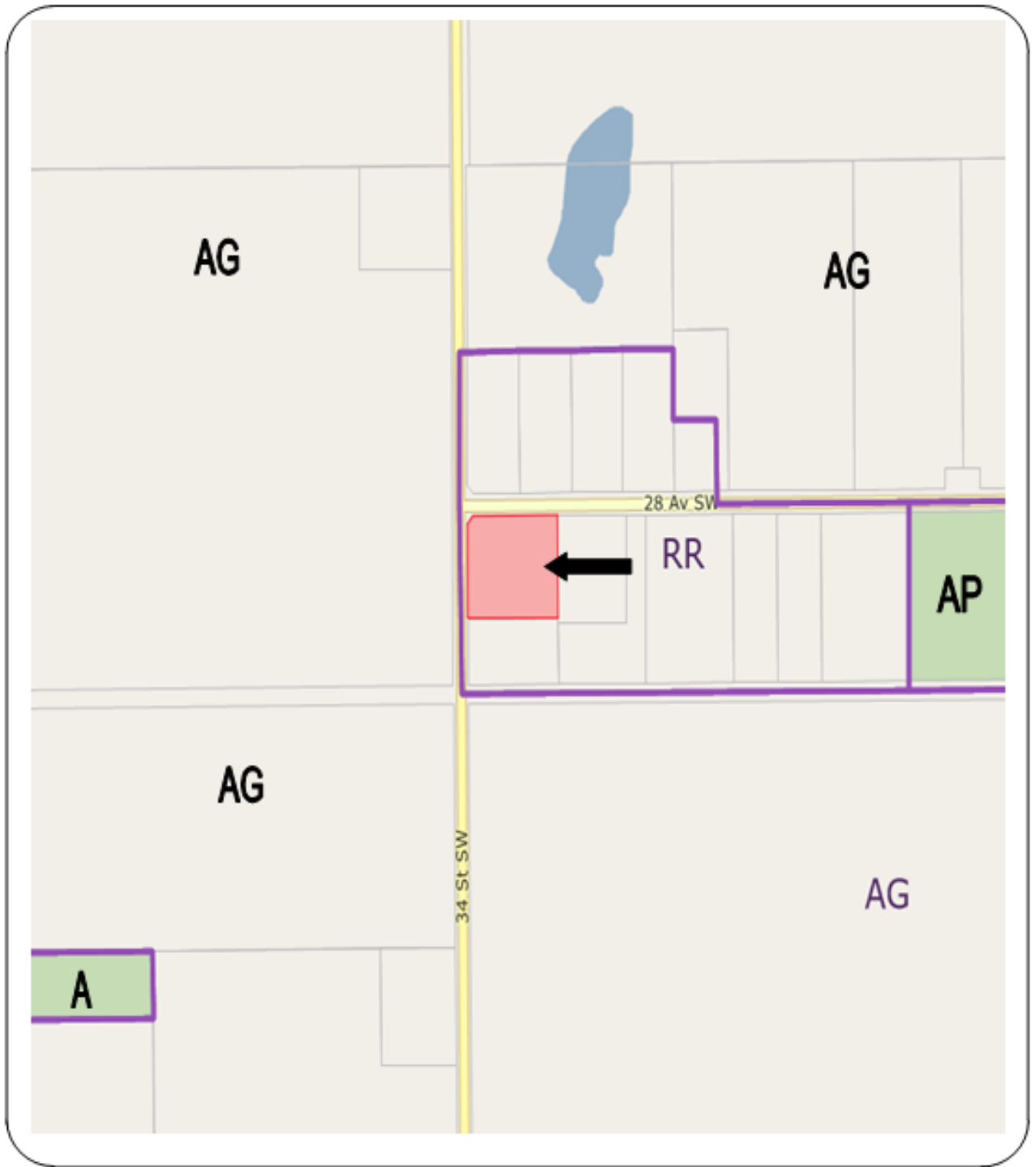
Lot 1A, Plan 932 0215
N.W. 1/4 Sec.18-Twp.51-Rge.23-W4M

APP18-0453 LDA file #

Dimensions in meters unless marked otherwise



3333-28 Avenue SW
Alfred Dohmann 780-436-3131 alfred@alkim.ca



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-S-19-004

