

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Thursday, 10:00 A.M.
May 10, 2018**

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

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

I	10:00 A.M.	SDAB-D-18-071	Operate a Major Home Based Business (Law Office) 10905 - 73 Avenue NW Project No.: 134196563-004
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II	1:00 P.M.	SDAB-S-18-006	Create one (1) additional Single Detached Residential Lot 19304 - 9 Street NE Project No.: 272140696-001
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NOTE: *Unless otherwise stated, all references to "Section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 10:00 A.M.

FILE: SDAB-D-18-071

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 134196563-004

APPLICATION TO: Operate a Major Home Based Business (Law Office)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: April 3, 2018

DATE OF APPEAL: April 16, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 10905 - 73 Avenue NW

LEGAL DESCRIPTION: Plan 5718AE Blk 29 Lot 27

ZONE: RA7 Low Rise Apartment Zone

OVERLAY: Medium Scale Residential Infill Overlay

STATUTORY PLAN: 109 Street Corridor Area Redevelopment Plan

Grounds for Appeal

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

Secondary Suite will be maintained as a secondary to Principal dwelling;
Site is adjacent to 109 Street, numerous houses in the area contain commercial businesses which would not make the use uncharacteristic of the area;

Site is situated in a RA7 Low rise Apartment zone, and allowing the suite to remain as is is characteristic of the existing zoning;

Site has 4 parking stalls at the back;

Proposed office client meeting are mostly off-site, hence traffic to the proposed site will not interfere with the neighborhood or residents of the area;

The existing tenant who has signed a long term tenancy only has 1 vehicle;

Proposed development has been operating for the last 5 years without being detrimental to the residents or the area;

Proposed development has not and will not interfere with the amenities of the area;

Proposed development has not and will not affect the peaceful enjoyment or use of the neighboring lands;

None of the neighboring lands or members of the community have raised any complaints or concerns with the proposed development;

Secondary Suite was a City basement development project, therefore removing the same would be against the flavour of the intent of the City at the time of granting of the secondary suite;

Any other grounds that may be raised at the time of the hearing.

<i>General Matters</i>

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.

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 decision is made under section 642, [...]

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 clause (d), must comply with any land use bylaw in effect;

...

- (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*:

Section 210.1 states that the **General Purpose** of the **(RA7) Low Rise Apartment Zone** is to provide a Zone for Low Rise Apartments.

Section 823.1 that the **General Purpose** of the **Medium Scale Residential Infill Overlay** is to accommodate the development of medium-scale infill housing in Edmonton's mature residential neighbourhoods in a manner that ensures compatibility with adjacent properties while maintaining or enhancing a pedestrian-friendly streetscape.

Discretionary Use

Under section 210.3(8), a **Major Home Based Business** is a **Discretionary Use** in the (RA7) Low Rise Apartment Zone.

Under section 7.3(7), **Major Home Based Business** means:

development consisting of the Use of an approved Dwelling or Accessory building by a resident of that Dwelling for one or more businesses that may generate more than one business associated visit per day. The business Use must be secondary to the Residential Use of the building and shall not change the residential character of the Dwelling or Accessory building. The Dwelling may be used as a workplace by a non-resident. This Use includes Bed and Breakfast Operations but does not include General Retail Sales.

Development Officer's Determination

1. Major Home Based Business is a Discretionary Use (Section 210.3(8))

Secondary Suite

Section 75(10) states a Major Home Based Business shall not be allowed within the same principal Dwelling containing a Secondary Suite or within the same Site containing a Garden Suite and an associated principal Dwelling, unless the Home Based Business is a Bed and Breakfast Operation and the Secondary Suite or the Garden Suite is an integral part of the Bed and Breakfast Operation.

Development Officer's Determination

2. A Major Home Based Business shall not be allowed within the same principal Dwelling containing a Secondary Suite (Section 75.10).
3. The application is determined as a Major Home Based Business based on the information provided on the application form.
4. There is a Secondary Suite developed in this Single Detached House.

Major Home Based Business regulations – Section 75

A Major Home Based Business shall comply with the following regulations:


1. there shall be no exterior display or advertisement other than an identification plaque or Sign a maximum of 20 cm x 30.5 cm in size located on the Dwelling;
2. there shall be no mechanical or electrical equipment used that creates external noise, or visible and audible interference with home electronics equipment in adjacent Dwellings;
3. the Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located;
4. the number of non-resident employees or business partners working on-site shall not exceed two at any one time;
5. there shall be no outdoor business activity, or outdoor storage of material or equipment associated with the business. Indoor storage related to the business activity shall be allowed in either the Dwelling or Accessory buildings;
6. the Major Home Based Business shall not change the principal character or external appearance of the Dwelling or Accessory buildings;
7. a Bed and Breakfast Operation, operating as a Major Home Based Business shall have a maximum of two Sleeping Units. Cooking facilities shall not be located within the Sleeping Units. In addition to any other parking requirements of this Bylaw, one additional parking space shall be provided for each Sleeping Unit;
8. in addition to the information requirements of subsection 13.1 of this Bylaw, each application for a Development Permit for the Use Major Home Based Business shall include a description of the business to be undertaken at the premises, an indication of the number of business visits per week, provision for parking, and where any materials or equipment associated with the business use are to be stored; and
9. the Major Home Based Business shall not be allowed if, in the opinion of the Development Officer, such Use would be more appropriately located in a Commercial or Industrial Zone having regard for the overall compatibility of the Use with the residential character of the area.
10. a Major Home Based Business shall not be allowed within the same principal Dwelling containing a Secondary Suite or within the same Site containing a Garden Suite and an associated principal Dwelling, unless the Home Based Business is a Bed and Breakfast Operation and the Secondary Suite or the Garden Suite is an integral part of the Bed and Breakfast Operation.

Previous Subdivision and Development Appeal Board Decisions

Application Number	Description	Decision
SDAB-D-13-044	To Operate a Major Home Based Business (Law Office)	March 22, 2013; Approved with conditions
SDAB-D-15-074	To install (1) Freestanding On-Premises Sign and (1) Fascia On-Premises Sign (Kandath Law Office).	May 8, 2015; “That the appeal be denied and the decision of refusal of the Development Authority Confirmed.”

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. Bylaw No. 11136 requires that a verbal announcement of the Board’s decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.

	Project Number: 134196563-004 Application Date: MAR 01, 2018 Printed: April 16, 2018 at 10:42 AM Page: 1 of 2								
<h2 style="margin: 0;">Application for Home Occupation</h2>									
This document is a Development Permit Decision for the development application described below.									
Applicant <div style="border: 1px solid black; height: 40px; width: 100%; margin-top: 5px;"></div>	Property Address(es) and Legal Description(s) 10905 - 73 AVENUE NW Plan 5718AE Blk 29 Lot 27 <hr/> Specific Address(es) Suite: 10905 - 73 AVENUE NW Entryway: 10905 - 73 AVENUE NW Building: 10905 - 73 AVENUE NW								
Scope of Application To operate a Major Home Based Business (Law Office)									
Permit Details <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; vertical-align: top;"> # of business related visits/day: 5 Administration Office Only?: Y Class of Permit: Class B Do you live at the property?: Y Outdoor storage on site?: N </td> <td style="width: 50%; border: none; vertical-align: top;"> # of vehicles at one time: 3 Business has Trailers or Equipment?: N Description of Business: Mostly admin tasks and meeting some clients. Expiry Date: </td> </tr> </table>		# of business related visits/day: 5 Administration Office Only?: Y Class of Permit: Class B Do you live at the property?: Y Outdoor storage on site?: N	# of vehicles at one time: 3 Business has Trailers or Equipment?: N Description of Business: Mostly admin tasks and meeting some clients. Expiry Date:						
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I/We certify that the above noted details are correct. Applicant signature: _____									
Development Application Decision Refused Reason for Refusal <ol style="list-style-type: none"> 1. Major Home Based Business is a Discretionary Use (Section 210.3(8)) 2. A Major Home Based Business shall not be allowed within the same principal Dwelling containing a Secondary Suite (Section 75.10). 3. The application is determined as a Major Home Based Business based on the information provided on the application form. 4. There is a Secondary Suite developed in this Single Detached House. Advisements: Unless otherwise stated, all above references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw 12800.									
Rights of Appeal The Applicant has the right of appeal within 14 days of receiving notice of the Development Application Decision, as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.									
Issue Date: Apr 03, 2018 Development Authority: XU, HAILEE Signature: _____									
Fees <table style="width: 100%; border: none;"> <thead> <tr> <th style="text-align: left;">Fee Amount</th> <th style="text-align: left;">Amount Paid</th> <th style="text-align: left;">Receipt #</th> <th style="text-align: left;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Dev. Application Fee</td> <td>\$316.00</td> <td>\$316.00</td> <td>04827623 Mar 01, 2018</td> </tr> </tbody> </table>		Fee Amount	Amount Paid	Receipt #	Date Paid	Dev. Application Fee	\$316.00	\$316.00	04827623 Mar 01, 2018
Fee Amount	Amount Paid	Receipt #	Date Paid						
Dev. Application Fee	\$316.00	\$316.00	04827623 Mar 01, 2018						
THIS IS NOT A PERMIT									



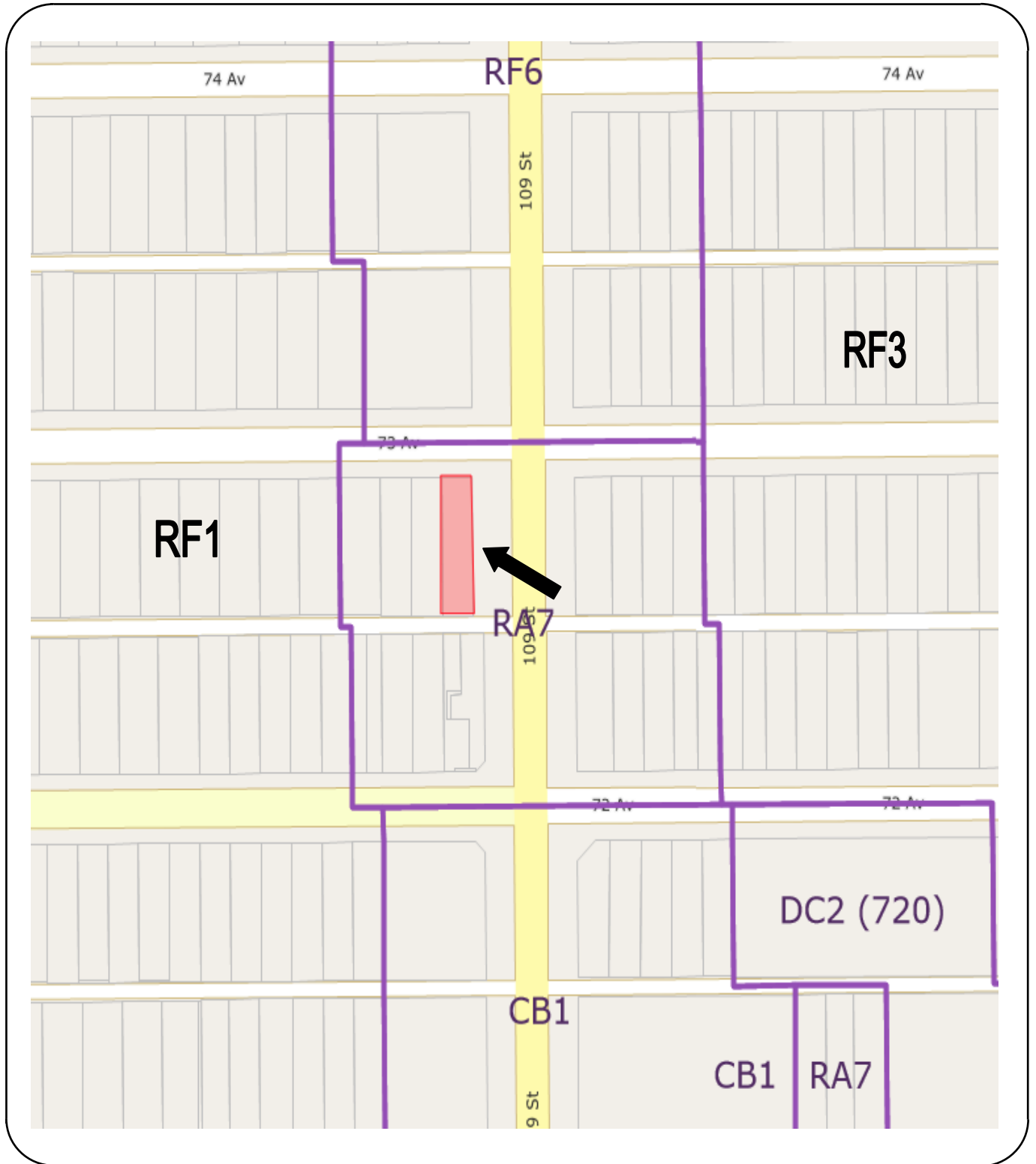
Application for Home Occupation

Project Number: **134196563-004**
Application Date: MAR 01, 2018
Printed: April 16, 2018 at 10:42 AM
Page: 2 of 2

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Total GST Amount:	\$0.00			
Totals for Permit:	<u>\$316.00</u>	<u>\$316.00</u>		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-18-071



ITEM II: 1:00 P.M.

FILE: SDAB-S-18-006

AN APPEAL FROM THE DECISION OF THE SUBDIVISION AUTHORITY

APPELLANT:

APPLICATION NO.: 272140696-001

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

DECISION OF THE SUBDIVISION AUTHORITY: Refused

DECISION DATE: March 29, 2018

DATE OF APPEAL: April 16, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 19304 - 9 Street NE

LEGAL DESCRIPTION: Plan 9020626 Lot D

ZONE: (RR) Rural Residential Zone

OVERLAY: N/A

STATUTORY PLAN: Horse Hill Area Structure Plan
Marquis Neighbourhood Structure Plan

Grounds for Appeal

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

The Appellant respectfully appeals the refusal of the Subdivision Authority on the following grounds:

- (a) The Subdivision Authority's refusal was issued in error as a result of an incorrect interpretation and application of the Marquis Neighbourhood Structure Plan (NSP) (Bylaw 17396), Edmonton Zoning Bylaw, and other related planning documents.
- (b) Such further and other reasons as may be presented at the hearing of this matter.

<i>General Matters</i>

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) A decision of a subdivision authority must state

- (a) whether an appeal lies to a subdivision and development appeal board or to the Municipal Government Board, and
- (b) if an application for subdivision approval is refused, the reasons for the refusal.

(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*:

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. Bylaw No. 11136 requires that a verbal announcement of the Board's decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.



Subdivision Authority

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

March 29, 2018

File No. LDA18-0080

RE: Tentative plan of subdivision to create one (1) additional single detached residential lot from Lot D, Plan 902 0626, located south of 195 Avenue NE and east of Fort Road NE; **MARQUIS**

The Subdivision by Plan is REFUSED on March 29, 2018 for the following reason(s):

1. the subject lot is designated as "Existing Residential" as per section 5.0 - Development Concept of the Marquis Neighbourhood Structure Plan (NSP) (Bylaw 17396). The intent of this designation is to allow for the existing country residential development to remain, while allowing for compatible transitional uses (i.e. single detached housing) around the existing rural residences in a sensitive manner. Creating a new country residential lot would be contrary to the intent of the Marquis NSP because it would further fragment land ownership, creating a barrier to future redevelopment of the area;
2. the subdivision does not comply with Section 6.2 Residential of the Marquis Neighbourhood Structure Plan, which states that "Any future redevelopment of existing residential uses would be required to meet the City of Edmonton and *Capital Regional Growth Plan* residential density targets." The Marquis NSP has a projected neighbourhood density of 38.2 units per net residential hectare (upnrha); and
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".

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 Stephanie Mah at stephanie.mah@edmonton.ca or 780-442-5387.

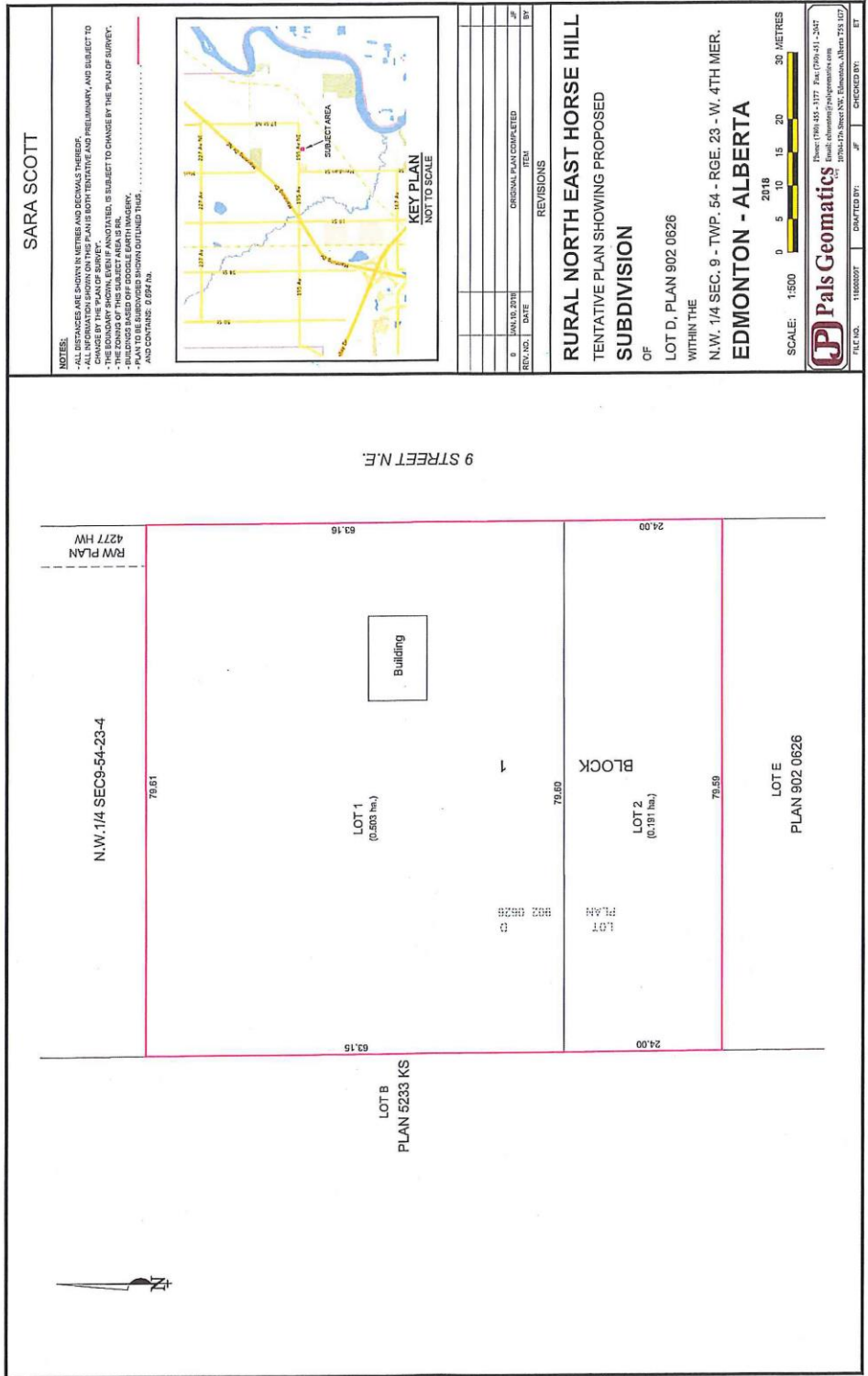
Regards,

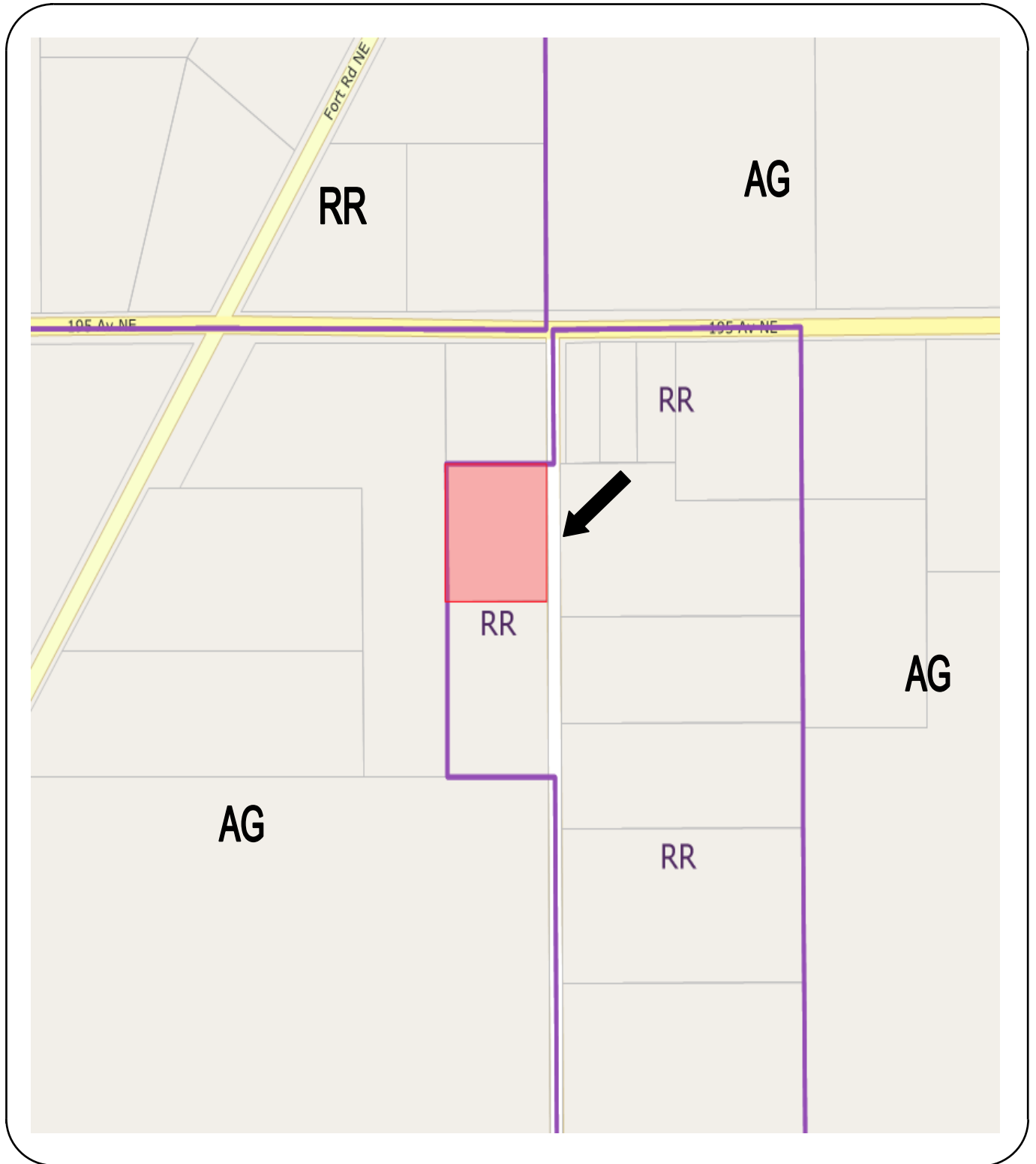


Blair McDowell
Subdivision Authority

BM/sm/Posse #272140696-001

Enclosure(s)





SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-S-18-006

