



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: June 9, 2017  
Project Number: 231112423-001  
File Number: SDAB-S-17-003

**Notice of Decision**

- [1] On May 25, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on April 28, 2017. The appeal concerned the decision of the Subdivision Authority, issued on April 20, 2017, to approve the following subdivision:

To create 14 Row Housing lots, two (2) Semi-detached residential lots, one (1) Municipal Reserve lot, one (1) Public Utility Lot and two (2) other lots

- [2] The subject property is on Plan 1523797 Blk D, located at 4200D - 144 Avenue NW and Plan 1523797 Blk A, located at 3501A - 153 Avenue NW and NE-25-53-24-4, located at 15120 - 34 Street NW and NE-25-53-24-4, located at 14504 - Fort Road NW, within the DC2 Site Specific Development Control Provision, RF6 Medium Density Multiple Family Zone, PU Public Utility Zone and AP Public Parks Zone. The Ebbers Neighbourhood Area Structure Plan applies to the subject property.

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

- Copy of the approved Subdivision application with attachments; and
- The Appellant's reasons for appeal.

**Preliminary Matters**

- [4] 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.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with section 678 of the *Municipal Government Act*, RSA 2000, c M-26.

**Summary of Hearing***i) Joint Submissions of the Parties*

- [7] The Appellant, Albari Holdings Ltd., was represented by Mr. W. Zwicker and Ms. L. Scott of Cameron Communities. They were accompanied by Ms. Y. Lew of Stantec. The Subdivision authority was represented by legal counsel, Mr. M. Gunther, who was accompanied by Mr. B. McDowall from the Subdivision Authority, and Ms. K. Sizer from Transportation Planning and Engineering.
- [8] The Appellant objects to two conditions of the subdivision approval. These conditions relate to a sidewalk utility right of way, and the construction of a multi-use trail that will serve the subdivision. The trail proceeds along 144 Avenue in the south end of the Ebbers neighbourhood, across a railway crossing, and connects to the multi-use trail system that progresses down to the Clareview LRT Station.
- [9] After discussions between the City and the Appellant, the parties have agreed to what, in effect, is a deferral of the appealed conditions. The City's position is that at this point in time, for this particular subdivision, the two conditions are not necessary. There are other mechanisms to address the concerns of Transportation Planning and Engineering that led to the initial imposition of the appealed conditions.
- [10] Upon questioning by the Board as to whether removal of the two conditions remains consistent with the Ebbers Neighbourhood Area Structure Plan (the "NASP"), the City acknowledged that the NASP does address specifically the multi-use trail. However, the Ebbers neighbourhood is a multi-stage development, and this subdivision application is only one of many that will come into effect to bring the neighbourhood to fruition. The intention is that this segment of the trail will be constructed, but through a different mechanism.
- [11] Removal of the conditions at this juncture also would not run afoul of sections 654 and 655 of the *Municipal Government Act*, which require that subdivision approvals conform with applicable statutory plans. The City reiterated that removal of the appealed conditions is intended to be a deferral to another subdivision application at a future date, and not a removal of the Appellant's obligation entirely.
- [12] The Appellant's agents confirmed they were in agreement.

**Decision**

- [13] The appeal is **ALLOWED IN PART** and the decision of the Subdivision Authority is **VARIED**. The subdivision is **GRANTED** as approved by the Subdivision Authority with the following changes:

- 1) Condition I.4, which states “that the owner registers a sidewalk utility right of way for the 3 m hard surface shared use path, as shown on the ‘Conditions of Approval’ map, Enclosure I”, is REMOVED;
- 2) Condition II.9, which states “that the owner constructs a curb ramp and 3 m hard surface shared use path, along 144 Avenue NW, to the satisfaction of Transportation Planning and Engineering, as shown on the ‘Conditions of Approval’ map, Enclosure I”, is REMOVED.

### Reasons for Decision

- [14] The proposed subdivision falls within the Ebbers Neighbourhood Area Structure Plan (the “NASP”). Under subsection 680(2)(a.1) of the *Municipal Government Act*, “In determining an appeal, the board hearing the appeal must have regard to any statutory plan”.
- [15] The City has consented to the removal of the appealed conditions at this juncture of the Ebbers neighbourhood’s development. The Board heard that this change does not remove the Appellant’s obligation to eventually comply with said conditions through other mechanisms. In effect, the removal of the appealed conditions amounts to their deferral to another subdivision application at a future date. The Appellant did not object to the City’s position on this point.
- [16] The Board also heard that the removal of the two conditions remains consistent with the NASP, as the conditions can be met through other mechanisms at a future date. The Board therefore finds that the Subdivision Authority’s approval of this subdivision is consistent with section 654 of the *Municipal Government Act*, particularly subsection (b) which requires that “the proposed subdivision conforms to the provisions of any statutory plan”. This subdivision also complies with section 655 with respect to conditions of subdivision approval.
- [17] Having regard to the joint submissions of the parties and the applicable NASP, the Board finds that this subdivision, with removal of the appealed conditions, is consistent with the applicable provisions of the *Municipal Government Act*.



Ms. K. Cherniawsky, Presiding Officer  
Subdivision and Development Appeal Board

Board members in attendance: Ms. G. Harris, Ms. E. Solez, Mr. A. Peterson, Mr. N. Somerville.

**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. 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.

*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.*