

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Thursday, 1:00 P.M.
May 25, 2017**

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

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

I 1:00 P.M. SDAB-S-17-003

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

4200D - 144 Avenue NW, 3501A - 153 Avenue NW, 15120 - 34 Street NW, 14504 - Fort Road NW

Project No.: 231112423-001

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

ITEM I: 1:00 P.M.

FILE: SDAB-S-17-003

AN APPEAL FROM THE DECISION OF THE SUBDIVISION AUTHORITY

APPELLANT:

APPLICATION NO.: 231112423-001/LDA-16-0448

APPLICATION 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

DECISION OF THE SUBDIVISION AUTHORITY: Approved With Conditions

DECISION DATE: April 20, 2017

DATE OF APPEAL: April 28, 2017

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 4200D - 144 Avenue NW,
3501A - 153 Avenue NW,
15120 - 34 Street NW,
14504 - Fort Road NW

LEGAL DESCRIPTION: Plan 1523797 Blk D,
Plan 1523797 Blk A,
NE-25-53-24-4,
NE-25-53-24-4

ZONE: - DC2.941 Site Specific
Development Control Provision (Bylaw 17811),
- RF6 Medium Density Multiple Family Zone,
- AP Public Parks Zone
- PU Public Utility Zone.

OVERLAY: N/A

STATUTORY PLAN: Ebbers Neighbourhood Area Structure Plan

Grounds for Appeal

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

We would like to appeal Conditions I.4 and II.9 in relation to the requirement to register an easement and construct a 3 m hard surface shared use path, along 144 Avenue.

The current right of way for 144 Avenue cannot accommodate a 3 m shared use path. There is insufficient right of way for a 3 m shared use path to be constructed. The lands to the south are also under separate land ownership. An easement has been requested however after consultation with the landowner we were unable to obtain an easement. The 3 m Shared Use Path will also require a rail crossing. Permission from CP would be required to cross, based on current and past experience it has been very difficult to get approvals from CP. Therefore at this time, we cannot meet these conditions as set out in the subdivision approval letter for LDA16-0448.

General Matters

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 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*, or is within the distance of a highway, a body of water or a sewage treatment or waste management facility set out in the subdivision and development regulations, or
- (b) in all other cases, with the subdivision and development appeal board.

(2.1) ...

(3) For the purpose of subsection (2), the date of receipt of the decision is deemed to be 5 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(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.

Subdivision of Land

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 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 the regulations under this Part, 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.

(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.

Conditions of subdivision approval

655(1) A subdivision authority may impose the following conditions or any other conditions permitted to be imposed by the subdivision and development regulations on a subdivision approval issued by it:

- (a) any conditions to ensure that this Part and the statutory plans and land use bylaws and the regulations under this Part, and any applicable ALSA regional plan, affecting the land proposed to be subdivided are complied with;
- (b) a condition that the applicant enter into an agreement with the municipality to do any or all of the following:
 - (i) to construct or pay for the construction of a road required to give access to the subdivision;
 - (ii) to construct or pay for the construction of
 - (A) a pedestrian walkway system to serve the subdivision, or
 - (B) pedestrian walkways to connect the pedestrian walkway system serving the subdivision with a pedestrian walkway system that serves or is proposed to serve an adjacent subdivision,or both;
 - (iii) to install or pay for the installation of a public utility described in section 616(v)(i) to (ix) that is necessary to serve the subdivision, whether or not the public utility is, or will be, located on the land that is the subject of the subdivision approval;
 - (iv) to construct or pay for the construction of
 - (A) off-street or other parking facilities, and
 - (B) loading and unloading facilities;
 - (v) to pay an off-site levy or redevelopment levy imposed by bylaw;
 - (vi) to give security to ensure that the terms of the agreement under this section are carried out.

(2) A municipality may register a caveat under the *Land Titles Act* in respect of an agreement under subsection (1)(b) against the certificate of title for the parcel of land that is the subject of the subdivision.

(3) If a municipality registers a caveat under subsection (2), the municipality must discharge the caveat when the agreement has been complied with.

(4) Where a condition on a subdivision approval has, prior to the coming into force of this subsection, required the applicant to install a public utility or pay an amount for a public utility referred to in subsection (1)(b)(iii), that condition is deemed to have been validly imposed, whether or not the public utility was located on the land that was the subject of the subdivision approval.

Rezoning History

Bylaw	Area of Application	Rezoning
Bylaw 14911 (September 29, 2009)	A portion of NE 25-53-24-4 and a portion of the road to be closed by Bylaw 14910, located south of 151 Avenue NW and east of Manning Drive NW	<u>From:</u> (AGU) Urban Reserve Zone <u>To:</u> (RPL) Planned Lot Residential Zone, (RF6) Medium Density Multiple Family Zone, (RA7) Low Rise Apartment Zone, (CSC) Shopping Centre Zone and (AP) Public Parks Zone.
Bylaw 14913 (September 29, 2009)	A portion of NW 25-53-24-4, located north of 144 Avenue NW and southeast of Manning Drive NW	<u>From:</u> (AGU) Urban Reserve Zone <u>To:</u> (RA7) Low Rise Apartment Zone, (CNC) Neighbourhood Convenience Commercial Zone and (PU) Public Utility Zone.
Bylaw 14912 (April 26, 2010)	A portion of NE 25-53-24-4 and a portion of the road to be closed by Bylaw 14910, located north of 144 Avenue NW and east of Fort Road NW	<u>From:</u> (AGU) Urban Reserve Zone <u>To:</u> (DC2) Site Specific Development Control Provision and (AP) Public Parks Zone
Bylaw 17811 (November 7, 2016)	<ul style="list-style-type: none"> • Lot 1PUL, Block 2, Plan 1524521; • Lot 1, Block 1, Plan 1524521; • Portions of NE-25-53-24-4; • Lot A, Plan 4073NY; • SE-36-53-24-4; and • Block A & D, Plan 1523797; <p>Located south of 153 Avenue NW and east of Manning Drive NW</p>	<u>From:</u> (AG) Agricultural Zone, (AGU) Urban Reserve Zone, (AP) Public Parks Zone, (RPL) Planned Lot Residential Zone, (RF6) Medium Density Multiple Family Zone, (RA7) Low Rise Apartment Zone, (CNC) Neighbourhood Convenience Commercial Zone and (DC2) Site Specific Development Provision <u>To:</u> (AP) Public Parks Zone, (RF6) Medium Density Multiple Family Zone and (DC2) Site Specific Development Provision.

Current Subdivision Application

Subdivision File Number	Area of Application	Proposed Subdivision
LDA16-0448	<ul style="list-style-type: none"> • Blocks A and D, Plan 1523797; • NE-25-53-24-W4M (152337516027); • NE-25-53-24-W4M (152313031094) <p>Located north of 144 Avenue NW and east of Ebbers Boulevard NW</p>	Tentative plan of 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

Impugned Conditions

The subdivision approval was subject to a number of conditions, two of which the Appellant objects to:

Condition I.4: “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;” and

Condition II.9: “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”.

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 0J5

April 20, 2017

File No. LDA16-0448

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RE: Tentative plan of 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 from Blocks A and D, Plan 152 3797, the NE 25-53-24-W4M (152 337 516 027) and the NE 25-53-24-W4M (152 313 031 094), located north of 144 Avenue NW and east of Ebbers Boulevard NW; **EBBERS**

I The Subdivision by Plan is APPROVED on April 20, 2017, subject to the following conditions:

1. that the owner dedicate Municipal Reserve (MR) as a 3.685 ha lot pursuant to Section 666 of the Municipal Government Act as shown on the "Conditions of Approval" map, Enclosure I;
2. that the owner enter into a Servicing Agreement with the City of Edmonton pursuant to Section 655 of the Municipal Government Act;
3. that the owner prepare the necessary plans and documentation to grant new or carry forward existing easements and restrictive covenants in favour of the City of Edmonton, EPCOR Distribution & Transmission Inc., and EPCOR Water Services Inc., as required by the aforementioned agencies or shown on the engineering drawings that are deemed to be part of the Servicing Agreement;
4. that the owner register 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;
5. that the owner register a berm and fence restrictive covenant and easement in favour of the City of Edmonton against the lots backing onto the berm, as shown on the "Conditions of Approval" map, Enclosure I;
6. that Lot 200, Block 9, Plan 1524577 be consolidated with the two "other" lots prior to or concurrent with the registration of this subdivision, as shown on the "Conditions of Approval" map, Enclosure I; and
7. that the owner pay all outstanding property taxes prior to the endorsement of the plan of survey.

II That the Servicing Agreement required in Clause I (2) contain, among other things, the following:

1. that the owner pay all servicing costs, assessments, roadway modification costs (including but not limited to sidewalk, shared use path and/or transit infrastructure), construction costs and inspection costs required by this subdivision;
2. that the owner pay all costs specified in the Servicing Agreement prior to endorsement of the plan of survey;
3. that the owner pay the Drainage Assessments applicable to this subdivision;
4. that the owner pay the Arterial Roadway Assessments applicable to this subdivision;
5. that the owner submits an Erosion and Sediment Control (ESC) Plan specific for this development and for implementation during and after construction in accordance with the City of Edmonton ESC Guidelines and Field Manual;
6. that the owner submits detailed engineering drawings and technical studies in accordance with the City of Edmonton Design and Construction Standards and to the satisfaction of the City Departments and affected utility agencies;
7. that the owner submits a Swept Path Analysis with the engineering drawings that demonstrate that waste vehicles turning from the alley to Ebbers Boulevard NW can be entirely accommodated within the east driving lanes, to the satisfaction of Transportation Planning and Engineering;
8. that the owner constructs the northern end of Ebbers Way NW to a local roadway standard, except that no sidewalk is required on the western edge, to the satisfaction of Transportation Planning and Engineering, as shown on the "Conditions of Approval" map, Enclosure I;
9. 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;
10. that the owner construct a 2 m berm centered on property line and 1.8 m noise attenuation fence contained wholly within private property and/or the Reserve lot, for all lots backing onto the railway right-of-way, to the satisfaction of Transportation Planning and Engineering and Parkland Developer Services, as shown on the "Conditions of Approval" map, Enclosure I;
11. that the engineering drawings include a 1 m berm centered on property line and 1.8 m uniform screen fence contained wholly within private property, to the satisfaction of Transportation Planning and Engineering, as shown on the "Conditions of Approval" map, Enclosure I;
12. that the owner construct all fences wholly on privately-owned lands, and/or the MR lot, to the satisfaction of Transportation Planning and Engineering and Parkland Developer Services, as shown on the "Conditions of Approval" map, Enclosure I;
13. that the engineering drawings include a fence on Lot 1, Block 9, Plan 1524577, as shown on the "Conditions of Approval" map, Enclosure I;

14. that the owner submits grading plans for the MR lot, including the required berm and fence, to the satisfaction of Parkland Developer Services; and
15. that the owner is responsible for the landscape design and construction within the Public Utility lot, the Reserve lot, and to the satisfaction of City Departments and affected utility agencies.

Enclosure I is a map of the subdivision identifying major conditions of this approval.

MR for Blocks A and D, Plan 152 3797 and the NE 25-53-24-W4M (152 313 031 094) in the amount of 0.827 ha is being provided by dedication with this subdivision. In addition, MR for the closed roadways, Blocks B and C, Plan 152 3797, in the amount of 0.043 ha is being provided by dedication with this subdivision. Subsequent to MR dedication the existing DRC for 2.690 ha for NE 25-53-24-W4M (152 337 516 027) will be discharged in full. Total MR dedication being provided from the parcel, closed roadways, and DRC is 3.56 ha. The remaining balance of MR to be purchased will be confirmed with the engineering drawings (approximately 0.125 ha or less). Any encroachment from the berm slope into the MR parcel will be deducted from the amount to purchase.

CNR approval is required for the 3 m hard surface shared use path within the railway right of way and the application for CNR approval is the responsibility of the owner.

Please be advised that the approval is valid for one (1) year from the date on which the subdivision approval is given to the application. An extension beyond that time may be granted by the City of Edmonton.

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 five (5) days from the date the decision is mailed.

If you have further questions, please contact Sarah Ramey at 780-496-6214 or sarah.ramey@edmonton.ca.

Regards,

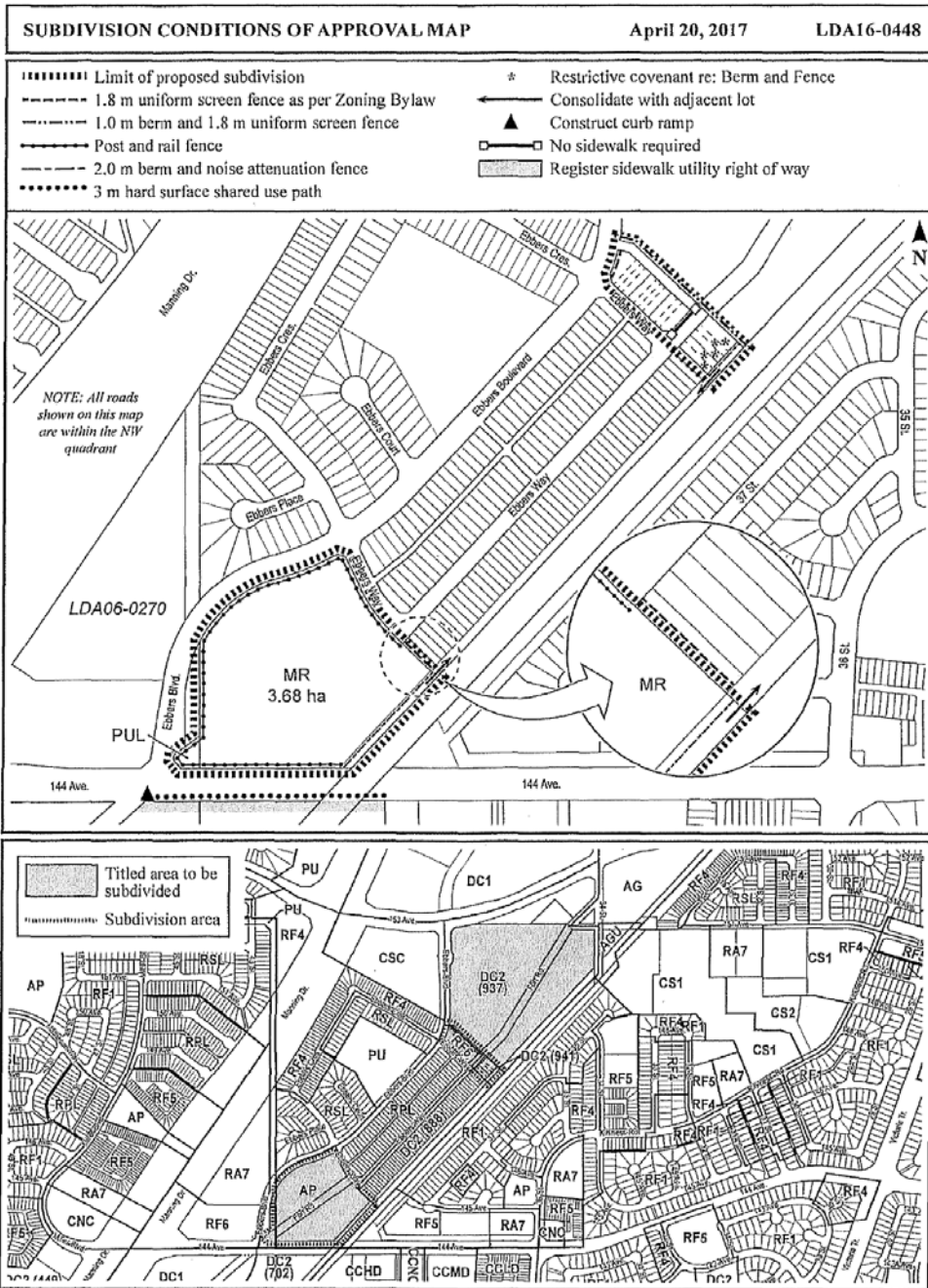


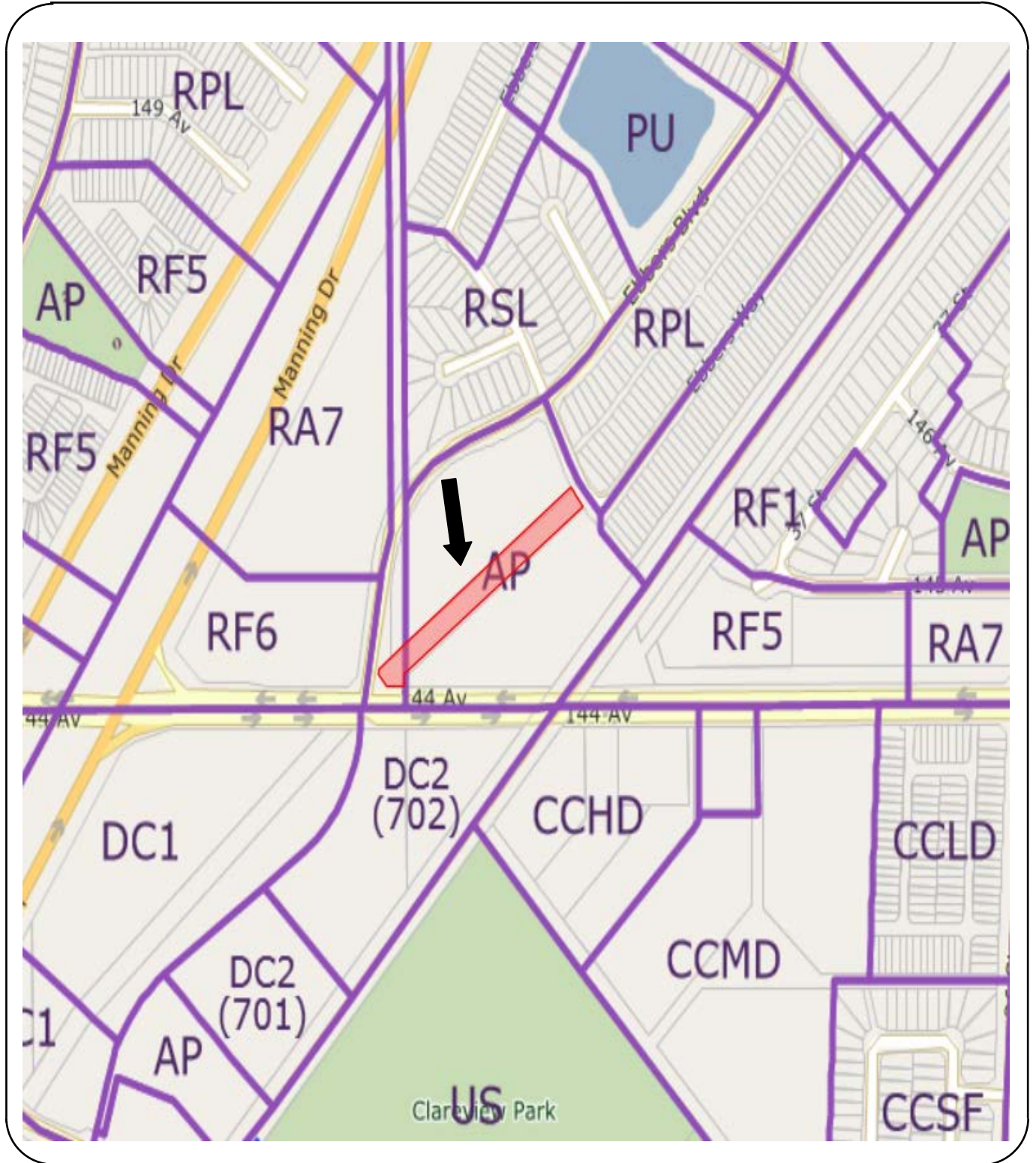
Blair McDowell
Subdivision Authority

BM/sr/Posse #231112423-001

Enclosure(s)

ENCLOSURE I





SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-S-17-003

