



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: November 7, 2016
Project Number: 163311037-001
File Number: SDAB-D-16-205

Notice of Decision

- [1] The Subdivision and Development Appeal Board (the “Board”) at a hearing on August 12, 2016, made and passed the following motion:

“That the hearing for Project No. 163311037-001 be TABLED to September 1, 2016, at the written request of the Appellants and with the consent of the Respondent and the Development Authority.”

- [2] The Board at a hearing on September 1, 2016, made and passed the following motion:

“That the hearing for SDAB-D-16-205 be postponed to October 6, 2016, at the written request of Legal Counsel for the Appellant and with the consent from Mr. Shelley, the second Appellant; Legal Counsel for the Respondent; and the Development Authority.”

- [3] On October 6, 2016, the Board made and passed the following motion:

“That SDAB-D-16-205 be raised from the table.”

- [4] On October 6, 2016, and October 21, 2016, the Board heard an appeal that was filed on **August 1, 2016**. The appeal concerned the decision of the Development Authority, issued on July 20, 2016, to Approve with conditions the following development:

Continue and intensify the Use of an existing Protective and Emergency Services Use (Fire station 21 with a 24/7 crew) and to allow interior and exterior alterations.

- [5] The subject property is on Plan Q Blk 1 Lots 1-19, located at 9315 - 101 Street NW within the (A) Metropolitan Recreation Zone. The (FPO) Flood Plain Protection Overlay, the North Saskatchewan River Valley and Ravine System Protection Overlay, the Rossdale Area Redevelopment Plan, and the North Saskatchewan River Valley Area Redevelopment Plan apply to the subject property.

- [6] The following documents were received and form part of the record:

- A copy of the Rossdale Area Redevelopment Plan;
- A copy of the North Saskatchewan River Valley Area Redevelopment Plan;
- A copy of Bylaw 17767;
- A copy of the Alberta Court of Appeal Decision for *Rossdale Community League v Edmonton (Subdivision and Development Appeal Board)*, 2009 ABCA 261;
- A copy of SDAB-D-07-317;
- The Development Officer provided the following:
 - A Development Permit Application, including the plans;
 - The Approved Development Permit;
 - Fire Rescue Services memorandum;
 - A Transportation Services memorandum;
 - A Landscaping document;
 - A Waste Management document;
 - A written submission from the Development Officer;
- A document submitted by the City of Edmonton Law Branch;
- E-mails in support of the proposed development from property owners;
- A document submitted by Legal Counsel for the Rossdale Community League (“*TABS 1 to 23*”);
- Documentation from the Rossdale Community League;
- Documentation from property owners in opposition to the proposed development; and
- On-line responses from property owners in support, opposition or neutral in regard for proposed development.

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

- Exhibit A: Documentation submitted by Ms. J. Agrios, Legal Counsel for the Appellant (Rossdale Community League);
- Exhibit B: Documentation submitted by Ms. L. Paetz and Mr. B. James in opposition to the proposed development;
- Exhibit C: Documentation submitted by Ms. N. Bunting in opposition to the proposed development;
- Exhibit D: A revised submission by Mr. R. Ewasiuk in opposition to the proposed development;
- Exhibit E: Documentation submitted by Ms. D-L. Marc in support of the proposed development;
- Exhibit F: Documentation submitted by Mr. J. Rivait in support of the proposed development;
- Exhibit G: Documentation submitted by the Development Officer;
- Exhibit H: Documentation submitted by the Development Officer/ Mr. M. Gunther, Legal Counsel for the Respondent;
- Exhibit I: Documentation submitted by the Mr. M. Gunther, Legal Counsel for the Respondent;
- Exhibits J-M: Documentation submitted by Ms. J. Agrios, Legal Counsel for the Appellant (Rossdale Community League).

Preliminary Matters

- [8] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [9] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [10] The Board determined 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*” or “*MGA*”).

Summary of Hearing***Position of the Appellant, Ms. J. Agrios (Legal Counsel for the Rossdale Community League)***

- [11] Ms. Agrios indicated that the issue in this Appeal is not whether Fire Services are needed for the community, nor which Site is the most cost effective location – it is whether this Site is appropriate for this Protective and Emergency Services development (“fire station”) and whether it is compatible with the surrounding neighbourhood.
- [12] *TAB 1* of her submission was referenced to illustrate there are no conditions on the Development Permit with regard to restrictions on vehicles, equipment, the number of personnel and the number of response calls.
- [13] Ms. Agrios acknowledged it was unrealistic to impose restrictions on the number of response calls; however, the main concern from the community about this Development Permit is that there are no limits on the intensity of the fire station.
- [14] An aerial photograph of Rossdale was referenced to show how North Rossdale and South Rossdale are divided by a 6-lane Freeway (97 Avenue) and stated that each neighbourhood has distinct policy objectives for their future plan and are not really impacted as both sides are separated by a freeway.
- [15] With regard to exiting the subject Site to respond to Downtown calls, *TAB 6* was referenced to demonstrate that Fire Trucks would have to travel north on 101 Street and then west on 96 Avenue along two narrow roadways lined with Single Detached Housing lining the east side of 101 Street. She indicated that fire trucks could also continue north along 101 Street and then east on 97 Avenue across the North Saskatchewan River, but in her opinion, this would be an inconvenient route when responding to Downtown calls.

[16] TABS 7 to 9 were referenced to show photographs taken of the roadways of South Rosedale over a 40-minute period; the subject Site; and pedestrians and cyclists in the neighbourhood. She also referenced photographs of vehicle parking and traffic congestion on 96 Avenue during a baseball game at Telus Field. In her opinion, it would be difficult to imagine fire trucks responding to emergencies during when the roadways were congested due to events being held at Telus Field.

[17] The subject Site is Zoned (A) Metropolitan Recreation Zone. Protective and Emergency Services is a Discretionary Use in the (A) Metropolitan Recreation Zone. When assessing whether or not this Discretionary Use should be allowed on the subject Site, the Board must consider the General Purpose of the Zone, which is described as follows:

The purpose of this Zone is to preserve natural areas and parkland along the river, creeks, ravines and other designated areas for active and passive recreational uses and environment protection in conformance with Plan Edmonton and the North Saskatchewan River Valley Area Redevelopment Plan.

[18] Ms. Agrios referenced TAB 4 containing the North Saskatchewan River Valley Area Redevelopment Plan (“River Valley ARP”) and noted the following:

a. With regard to policy 1.4, she agreed that the proposed development meets the definition of a *Major Facility* and referenced the following:

i. Under *Major Facility Objectives*, policy 2.6.1 states:

To control the expansion and construction of major facilities and minimize the adverse impacts of major facilities on the natural environment and park development.

ii. Under *Major Facility Development Policies*, policy 3.5.1 states:

It is a policy of this Plan that major public facilities shall not be constructed or expanded unless their location within the River Valley is deemed essential and approved by the City Council.

iii. Under *Site Location Study and Environmental Impact Screening Assessment*, policy 3.5.3 states:

It is a policy of this Plan that all proposals for the development of a major facility that is publicly owned or is developed on public lands shall be subject to an environmental impact screening assessment as outlined in Schedule D, and a detailed site location study detailing costs, and social, environmental and institutional constraints which make a River Valley location essential must be prepared for Council approval. These studies shall be undertaken prior to Council committing funds for capital expenditure for the development of this proposal.

Based on the aforementioned policies, it is her view that the existing Fire station Facility requires an Environment Impact Screening Assessment if it is to be expanded.

[19] Ms. Agrios referenced the Rosssdale Area Redevelopment Plan (“Rosssdale ARP”) from TAB 5 and provided the following:

- a. *Map 3* of the Rosssdale ARP was referenced to show how Rosssdale is divided into four distinct Sub Areas with three distinct residential neighbourhoods each based on the existing road configuration – North Rosssdale and South Rosssdale are divided by 97 Avenue; and West Rosssdale and South Rosssdale are divided by the Telus Field and the Water Treatment Plant and the Generating Station. She reiterated that each Sub Area has distinct objectives within the Rosssdale ARP.
- b. With regard to the *Plan Objectives of South Rosssdale*, she referenced policy 2.4.1 which states under *Residential Objectives* “To retain South Rosssdale as a primarily low density residential area.”
- c. *Map 4* of the Rosssdale ARP shows *Future Land Use*. The existing residential housing in south Rosssdale is under Area 15 (*Low Density Residential*) and the proposed development is under Area 18 (*City Wide Parks & Recreation*).
- d. Ms. Agrios referenced section 687(3)(a.1) of the *Municipal Government Act*, and noted that because the River Valley ARP and the Rosssdale ARP are both statutory plans, the Board must comply with them.
- e. The Rosssdale ARP was amended by City Council in 2011 and at that time identified *Major Facility Uses* such as the Rosssdale Water Treatment Plant and EPCOR’s Rosssdale Generating Station but they did not amend *Map 4* to identify Fire Station 21.
- f. Policy 3.3 *South Rosssdale Concept* was referenced. It states:

South Rosssdale has many qualities which give it a village-like atmosphere including the period and style of homes, the quiet tree-lined streets and relatively isolated river valley location.

It is to be rehabilitated by retaining its low density character and promoting this village-like atmosphere. To accomplish rehabilitation, existing housing should be retained where practical, and compatible infill housing encouraged. New housing will be primarily single family with provision for two family, triplex and apartment or row housing containing up to four units. New house styles should be sympathetic to the historic character of existing housing.

This area has been identified as suitable for Social housing. No specific sites have been identified. However, interested groups may pursue such development provided the objectives and policies of the Plan are met.

South Rosedale has a number of City-wide recreational and utility sites which will be retained and/or repurposed: These include the former Donald Ross School, The EPCOR Rosedale Power Plant, the Rosedale Water Treatment Plant, and the Rosedale Fire station No. 21.

Ms. Agrios emphasized South Rosedale's village-like atmosphere under policy 3.3 and indicated that this is the only provision in the *South Rosedale Concept* that references the Rosedale Fire station which states that it will be retained and/or repurposed. She emphasized that there was nothing in the Rosedale ARP that referenced an intensification of the fire station. She reiterated that all of the policies in the *South Rosedale Concept* are directed at Residential components and none of them are directed at the Fire station.

- g. Map 8 was referenced to show the boundary between the Natural Area of the River Valley and the River Valley Trail and to show that it partly goes through the subject Site.
- h. Under Policy 3.8 and Map 10, "Area C" shows that the *Capital City Recreation Park* ("CCRP") covers the subject Site. She reiterated that there was nothing within the Rosedale ARP maps that acknowledge the fire station and the only policy within the Rosedale ARP references "retained and/or repurposed."
- i. In her opinion the proposed development cannot be approved unless the Rosedale ARP is amended and stated that the CCRP provides context about the Zoning and purpose of the Rosedale ARP.

[20] Ms. Agrios referenced Bylaw No. 4485 under *TAB 23*, and provided a historical background on the CCRP with the following:

- a. On February 11, 1975, the City of Edmonton and the Province of Alberta agreed to develop the Capital City Park in the River Valley, which included an area on the subject Site, as shown in Appendix A and B in *TAB 23*.
- b. Under *TAB 22*, Alberta Regulation 9/78, filed January 11, 1978 was referenced with the following sections highlighted from the Capital City Recreation Park Restricted Development Area Regulation (*pg. 10 and pg. 13*):

3. (1) The Minister is hereby authorized to consent to or approve any kind of use, development or occupation of land in the Area, or to exempt any particular kind of Use, development or occupation from the operation of any provision of section 5.
(*pg. 10*).

...

1. ROSSDALE

...
Plan Q – Lots 1 to 19, Block 1 [...].
(pg. 13).

Based on the above, Ms. Agrios explained that subsequent to the 1975 Agreement, the entire subject site at that time was covered by the legislation of the Capital City Recreation Park Restricted Development Area Regulation and needed the consent of the Minister of the Environment to develop the subject Site. The Rossdale ARP references the CCRP and the subject Site was always intended to be a park.

- [21] With regard to the *Edmonton Zoning Bylaw*, the intent of the subject Site was finally implemented when the subject Lots were zoned (A) Metropolitan Recreation Zone.
- [22] She referenced the first document under “*Exhibit A*”, a Planning and Development Department Memorandum from March 16, 2000, that states “the boundary of the Capital City Recreation Park (CCRP) must be amended to exclude the ERD site.” In her view, this document referenced this Use as Discretionary to protect the non-conforming historical aspect but the fire station was to be phased out over time.
- [23] She indicated that the legislation did not specify when the fire station would be decommissioned, but the development of the adjacent residential areas proceeded under the expectation that the fire station would be decommissioned at some point.
- [24] She reiterated that it was never the intent of the statutory plans to allow a new Protective and Emergency Services Use, the building of new facilities, nor the intensification of the existing Use on the subject Site. She stated that the background of the subject Site is relevant for the Board to consider when using their discretion on this application.
- [25] Ms. Agrios provided a history of the Fire Rescue operations on the subject Site:
- a. In the 1950s, the Site was used as a training centre and in the 1980s, a pumper truck and river rescue crew were added.
 - b. In the mid-1980s, the Rossdale neighbourhood was being rejuvenated and the lots were being sold by the City. The information provided by the City to potential property owners was that the existing fire station was going to be closed and the training centre was going to be relocated. In 1998, this promised closure began to be implemented.
 - c. The second document of “*Exhibit A*” was referenced with regard to a City of Edmonton Utilities and Public Works Committee report, dated April 7, 1998. That report concluded that land was required for water treatment improvements and that the fire station and training centre should be relocated to a more suitable location.

- d. Ms. Agrios referenced the April 7, 1998, report and indicated that renewed residential growth in Rosedale was leading to land use conflicts. Further, she indicated that the City was aware at that time the close proximity between the fire station and residential neighbourhood caused a conflict, and in 2000, the subject Site was transferred to EPCOR and the City did not have a long term plan for the existing Use on the Site.
- e. She re-referenced the first document of "*Exhibit A*" (pg. 2), which indicates the plan amendments that EPCOR would need to implement, if it wished to use the subject Site. The report advised that the Rosedale ARP would need to be amended, because it shows the whole Site as park. Additional amendments would need to be made to the *Edmonton Zoning Bylaw* and the boundary of the CCPR. She opined that all of these amendments would need to be passed by City Council before the subject site could be used as a fire station.
- f. Ms. Agrios made reference to *TAB 10* of her submission, a 2007 e-mail between the Fire Chief at that time and Ms. L. Parish. She noted that the email indicates that Fire Station 21 was not responding to calls downtown -- only river rescue and hazmat services. Ms. Agrios reiterated that this documentation shows the fire station was winding down.
- g. Ms. Agrios made reference to *TAB 11*, the Alberta Court of Appeal decision in *Rosedale Community League v Edmonton (Subdivision and Development Appeal Board)*, 2009 ABCA 261 (issued July 30, 2009). The Court of Appeal stated:

[16] The appeal is allowed. The decision of the SDAB is set aside. The matter is remitted to the Board for reconsideration in accordance with this judgement. In that regard, any by way of assistance to the SDAB, we declare that the legislative framework authorizes use of the parcel for "river rescue", "fire training", and the activities of "park rangers." It does not authorize the City of Edmonton to use the parcel for "trail maintenance.

Ms. Agrios indicated that the Court decision made no reference to an active fire station on the subject Site.

- h. With regard to *TAB 12*, a Community Services Committee Report, dated August 20, 2012, states:

Over time the function of the facility has been reduced and now only serves as a staging site for the launching the river rescue jet boat and as a storage location for the Foam and Fan Truck. (pg. 2, 4th bullet point on the right column).
- i. She concluded that this Site has not been used as an active fire station for at least 15 years. Since 2012, the Site has been used for a boat launch and storage.

- [26] With regard to the scope of application, stating that this Development Permit application is for a “continuation” is not factually correct. The Development Permit contemplates a new Use, which is significantly more intense than the previous Use of this Site.
- [27] Ms. Agrios made reference to *TAB 13*, a Community Services Committee Report, dated June 25, 2013. The report indicated that the proposal for Rosssdale Fire Station 21 is that it would house an active fire rescue crew, provide back-up services to the downtown core, and house specialized apparatus. *Attachment 1, pg. 1* was referenced which provides a more detailed description of the Rosssdale Fire Station 21 proposal. It reports that in 2012, there were 63 river rescue events, as shown in *TAB 15*.
- [28] Within *TAB 13 (pg. 2)*, the Report indicates that Rosssdale Fire Station 21 could potentially respond to approximately 250 to 300 calls in the downtown core with a rescue truck each year and would also deploy specialized equipment such as a Mobile Command Unit, Foam Truck and Fan Unit.
- [29] Ms. Agrios indicated that when the Rosssdale Fire Station 21 went to 2014 Budget Hearings, the estimated number of back-up response calls, to which the fire station would be responding had increased to 700. In her opinion, the expectation is that over time these numbers will increase, especially with an increasing downtown population and increasing development in the core.
- [30] Ms. Agrios referenced *TAB 14* to demonstrate the scope of the proposed fire station and the description shows that this development has the potential to be very large. She indicated that every other fire station in the city has 2 truck bays, with the exception of a few stations with 3 truck bays, and the main fire station which has 4 truck bays. Based on the plans submitted with the Development Permit, the Rosssdale Fire Station would have 4 truck bays.
- [31] She referenced *TAB 14 (pg. 7)* and stated that the development proposal will include 28 parking spaces, kitchen seating and an outdoor patio for 12 personnel, a lounge for 10 personnel, 10 dorms, and a study area that can accommodate 3 more beds. There is a workshop area, a gear room that allows for 10 personnel per shift, and a lecture room that can hold 20 people.
- [32] Ms. Agrios made reference to *TAB 15*, an e-mail dated June 6, 2016, from the Deputy Fire Chief. The Deputy Fire Chief explained that Fire Rescue Services does not place restrictions on crew size or event responses. Ms. Agrios reiterated that she understands a cap cannot be place on response calls.
- [33] Ms. Agrios made reference to *TAB 16 (pgs. 181 and 187)*, the Approved 2016 – 2018 Budget – Program Summary. It indicates the Rosssdale Fire Station will be staffed by 25 individuals by March 2017. Twenty of the 25 staff will be redeployed from existing Fire stations. The Summary also notes the impact of this redeployment may result in a decline in response times in other areas of the city.

[34] Ms. Agrios made reference to *Tab 11*, the Alberta Court of Appeal decision in *Rossdale Community League v Edmonton (Subdivision and Development Appeal Board)*, 2009 ABCA 261. At paragraph 14, the Court of Appeal states:

The object and purpose of a discretionary use is to allow the development authority to assess the particular type of character of the use involved, including its intensity and its compatibility with adjacent uses. The SDAB failed to consider such factors.

Ms. Agrios stated this Court of Appeal Decision provides guidance for the Board today. The Board must adhere to the same test as the 2009 decision. She referred to an aerial photograph of Rossdale from her submission and reiterated that the fire station use is in the middle of a Single Family community and is not compatible with the Rossdale neighbourhood.

[35] She indicated that fire trucks have to display lights and have sirens on by law when responding to calls. The sirens are 120 decibels loud. It is incompatible with the neighbourhood to have fire trucks traveling through residential streets congested with cyclists and pedestrians. This incompatibility will be especially acute during Telus Field events.

[36] She reiterated the estimated number of response calls to be served by Fire Station 21 has already increased from 250 to 700 per year. With no limit on the intensity of the Use at Fire Station 21, this number will likely increase further.

[37] With regard to the City indicating that there are a number of fire stations in residential areas, she indicated they are all peripheral to residential areas, adjacent to main roads, or very close-by. None of the fire stations in the city are on Sites that compare to the Rossdale Fire Station. Ms. Agrios referenced *TAB 17* (a summary of the other Fire stations in Edmonton) to show that none of the Fire stations are zoned (A) Metropolitan Recreation Zone.

[38] With regard to *TAB 17*, Ms. Agrios provided the following:

- a. The McKernan Station is a 2-bay hall located on 76 Avenue and off 114 Street, both major roadways.
- b. The Terwillegar, Meadows, and Summerside Stations are in newer and peripheral areas built in combination with commercial development. The City is no longer locating Fire stations in the middle of neighbourhoods and is now designing them with commercial areas, next to residential ones. In her opinion, the reason for this new planning is because the City recognizes the incompatibility issues that arise when a fire station is located in the middle of a residential neighbourhood.

- c. In her opinion, North Rosssdale will not be impacted at all by the proposed development, as they are 1 kilometre from the subject Site and are separated by a 6-lane freeway. South Rosssdale is the most impacted and its residents are overwhelmingly opposed to the Rosssdale Fire Station proposal.
- [39] *TAB 18*, a Community Consultation was referenced. She noted that there were 44 letters of opposition from residents on 101 Street, and 64 letters of opposition from property owners on 100 Street and 100A Street.
- [40] She acknowledged there are residents in North Rosssdale with concerns. She urged the Board to give their submissions in favour of this development limited weight, because of the limited impacts they will experience if the proposed development is allowed.
- [41] In her opinion, the City is relying heavily on the Council motion that has deemed this location essential for Edmonton. She acknowledged that before a Major Facility can be expanded, Council must deem its location essential.
- [42] Ms. Agrios provided the following reasons with respect to why the Board is not bound by the City's motion deeming this fire station location as essential.
- a. The whole deeming essential process is a completely different exercise that involves different considerations. The deeming essential exercise is not a planning exercise and Council wears many "hats" for different cases. If Council wanted to make this a thought out planning decision, they would have rezoned the subject Site to (PU) or (US) and they would have amended ARPs to show fire station.
 - b. Council did not look at the planning impacts on the neighbourhood, but rather adopted the perspective of a service provider. She submitted that the City was concerned with cost efficiency when it deemed the Site essential. When EPCOR transferred the Site back to the City, it already had buildings on the subject Site and the river rescue already existed. Economically, the decision to locate a fire station on this Site made sense to City Council from a cost-efficiency perspective.
 - c. She reiterated that Council did not look at planning issues, such as compatibility and suitability, when it deemed the Site essential.
 - d. She reiterated that the Board is the decision maker when it comes to planning considerations. In her opinion, if it was not for the river rescue component, the City would not build a fire station at the end of a residential street with poor access to the downtown core.
 - e. She referenced *TAB 13* of the *City of Edmonton Law Branch documentation* which is the Environmental Impact Screening Assessment for the subject Site. Page 20 indicates that the Assessment was based on the fire station responding to 250 to 300 calls. Those numbers no longer reflect expected intensity of the proposed Use. In

- 2014, the estimated number of calls to which Fire Station 21 would respond increased to 700. This number may increase further.
- [43] With regard to flooding, most of the Site is out of the 1 and 100 year floodway, but a portion of the Site is within the flood fringe. Since 2013, the Province is still reviewing policies on what it will and will not allow in the flood zone, under *TAB 20*.
- [44] Ms. Agrios made reference to *TAB 21*, the 2016 Flood Risk Management Guidelines of the Province. Page 2 of this document explains lifeline structures. Provincial guidelines for lifeline structures recommend vital services be located at the 1 : 1000 year flood level. Ms. Agrios explained that this makes sense because in a serious flood, vital services should not be at any risk.
- [45] She reiterated that for over 40 years a park was envisioned for this Site; however, this proposal does not include any mention of a park plan.
- [46] She reiterated that the question is if the Site is an appropriate location for the proposed Use and whether the proposed Use is compatible with surrounding Uses.
- [47] With respect to questions from the Board, both Ms. Agrios and Ms. Parish responded with the following:
- a. With regard to Council amending the Rosssdale ARP in 2011 and adding the Rosssdale Fire Station 21, Ms. Agrios reiterated that the Rosssdale ARP only mentions “retained and/or repurposed” and nowhere does it allow for an expansion. In her opinion, if it was the intent of the Rosssdale ARP to allow an intensification of the existing fire station, it would state it.
 - b. With regard to Council deeming the Site as an essential location, the report referenced concerns about neighbourhood nuisance, noise, traffic and safety concerns. Ms. Agrios agreed that those are planning issues; however, Council is looking at number of factors outside of the planning issues. She reiterated this is why there has not been a rezoning or ARP amendments.
 - c. With regard to Council’s intent when they deemed the location as essential, she indicated that we do not know Council’s intent because they do not provide reasons.
 - d. With regard to sirens being turned on at the discretion of the fire truck operator, Ms. Agrios stated that under the provincial *Traffic Safety Act*, the sirens must remain on.
 - e. With regard to sirens from emergency vehicles being heard in all parts of the city, Ms. Agrios reiterated that other fire stations in the city are next to arterial roads and none of them are located within a residential neighbourhood, like the subject Site.

- f. Ms. Parish confirmed that the Rossdale Community League covers both North Rossdale and South Rossdale, but reiterated that the Rossdale ARP distinguishes between the north and the south.
- g. Ms. Parish indicated that the Rossdale Community League did not send out a notice about the appeal hearing because the Subdivision and Development Appeal Board sent out notices to the Rossdale neighbourhood.
- h. With respect to Council adding Rossdale Fire Station 21 to the Rossdale ARP in 2011, Ms. Parish indicated that it was added at the last minute by Council and it was never discussed during the prior consultation process.
- i. With respect to the potential redevelopment of West Rossdale and an increase in population and demand for Fire Rescue Services, Ms. Parish indicated that there is currently a Heritage Study being reviewed due to the area's history. In her opinion, it will be a long time before West Rossdale's redevelopment plan is completed.
- j. Ms. Agrios reiterated that the purpose of the Rossdale Fire Station is to serve the downtown core, not Rossdale. The development of West Rossdale would not make the Fire Station any more compatible with the adjacent residences in South Rossdale.
- k. With regard to consulting North Rossdale neighbours, Ms. Parish indicated that the Community League focused on neighbours that they had heard from previously and those residents who will be most impacted by the development. Ms. Agrios confirmed that there were a few instances of multiple people from one property submitting letters in opposition to the fire station.
- l. Ms. Parish confirmed the neighbourhood has sidewalks, but due to its quiet location along the river valley, people naturally walk and cycle on the roads.
- m. When asked to identify a more suitable location in Rossdale for a fire station, Ms. Parish indicated a Site in West Rossdale would be more appropriate due to its open space and easier access to the downtown core.
- n. With respect to "*Exhibit A*" Ms. Agrios indicated that the Memorandum was submitted to show that on March 16, 2000, the City was aware that a portion of the ERD Site was covered under the CCRP.
- o. With regard to restricting the number of people working on the subject Site, Ms. Agrios indicated that legally the Board could cap the number of personnel, but it would not make any practical sense. If the fire station is the back-up for downtown, new applications would be needed when the frequency of response calls requires a larger crew.

- p. Ms. Parish indicated that there is a City project to create a park and promenade that will run along river side of the subject Site. It will be started when the new traffic bridge is completed. There is supposed to be a linear park on the north side of the subject Site and has been under discussion since at least 2000. The development of the linear park was not initially tied to the development of the fire station. In 2008, the City applied for provincial funding to develop this park; however, when the Rosedale Community League opposed the fire station, the City did not go forward with the park development and they were uncertain whether or not provincial funding was still available.
- q. With respect to whether a linear park can be tied to a Development Permit like the one proposed, Ms. Agrios stated that legally it could be a condition if it was specific and plans were provided, even if its funding was based on a third party because you either meet the condition or you do not.
- r. Ms. Parish stated that a condition requiring the City to develop the linear park would be difficult to verbalize and document. Moreover, it would put the responsibility back on the community to enforce the condition.
- s. With respect to the landscaping plan submitted with the application, the Chair asked if the landscaping plan with the vegetation buffer mitigates any visual concerns. Ms. Agrios indicated that landscaping can usually mitigate visual impacts.
- t. Ms. Parish reiterated that there needs to be some reliance on the plans that are provided by the City and she stated in addition to noise and safety factors, there is an unknown factor because this application is for a wide open permit and if implemented, there will be no recourse for the community to challenge intensification of the Use beyond what is currently contemplated. The impact and future is very uncertain because the permit is a “blank cheque.”

Position of Appellant, Mr. G. Shelley

- [48] Mr. Shelley indicated that he is a resident of South Rosedale and lives a block away from the Fire station.
- [49] Mr. Shelley referred to his documentation and played an audio recording from a Council meeting in December 2014, under *slide 10*. The clip indicates that the fire station will be expected to respond to over 600 response calls. The neighbourhood was never consulted with respect to this intensity of use.
- [50] He indicated the number of response calls continues to increase and the neighbourhood really has no idea what to expect from this proposed fire station.

- [51] Based on the Floor Plans, the fire station can accommodate 4 bays for 4 fire trucks, which could make this a major fire station. In his opinion, a true and honest consultation was not conducted and there has been a lack of communication to what is being proposed.
- [52] Mr. Shelley believed there are far better locations for this type of fire station.
- [53] He reiterated that this is a much larger development than what the community was advised.
- [54] He questioned whether the proposal is sincere to the extent it indicates that only 5 personnel will be working on each shift. He notes the floor plan shows that the fire station will have 47 lockers and 10 beds. He opined that these facilities seem unnecessary if only 5 personnel will be working each shift.

Position of Mr. James and Ms. Paetz, property owners in opposition to the proposed development

- [55] They indicated that they received a notice from the City in May 2016 regarding the fire station.
- [56] They submitted “*Exhibit B*” a list of fire stations in Edmonton to show that none of the existing fire stations are located on Sites comparable to the Rossdale location.
- [57] They referenced the current trail detour through South Rossdale due to the bridge construction and the expected promenade construction. This trail closure has increased the number of pedestrian and cycling traffic in South Rossdale. This will result in safety issues with fire trucks responding to calls.
- [58] They referenced a bulletin from the City on Telus Field events. There are 46 events on the 2016 calendar, with the possibility of additional events like baseball playoffs. During these events the area is congested with vehicle and pedestrian traffic.
- [59] They indicated that the roadways are narrow and there are parking restrictions on both 101 Street (parking on one side only) and 96 Avenue (no parking on either side). They are concerned with noise, disruption and safety risks that could result if the new development is allowed.
- [60] They concluded that the photographs submitted do not do justice to their concerns and the neighbourhood needs to be viewed first-hand to fully see the concerns of the South Rossdale residents.

Position of Ms. N. Bunting, a property owner in opposition to the proposed development

- [61] Ms. Bunting submitted “*Exhibit C.*” She has been a property owner on her lot for 25 years.
- [62] Before she purchased her property in the 1990s, the City provided her with a brochure with drawings that talked about a park development and the Rossdale Area Redevelopment Plan.
- [63] She indicated that Fire Station 21 was there when she moved in. She was initially fine with its use; however, later a pumper truck was brought in and caused some issues.
- [64] The fire station was not used very much when she moved in. In the last 15 years, the Site has been very quiet with just river rescue operations.
- [65] Ms. Bunting is concerned with the lack of a sidewalk on 94 Avenue, because it means that pedestrians are walking on the street, increasing the risk of a collision between a fire truck and a pedestrian. Additionally, she is concerned about the consultation process. When she was first consulted by the City, Fire Rescue Services was proposing 250 to 300 response calls. Today, the number of response calls has more than doubled, which will cause noise and safety issues. This Permit Application is for an intensity of Use that was never the subject of a consultation with the Rossdale neighbourhood.
- [66] She reiterated the concerns that were previously voiced about fire truck access and egress.
- [67] She referenced photographs from her submission that shows firefighters standing on their fire trucks along the street while observing training exercises. She has privacy concerns with personnel looking into her windows.
- [68] In her opinion, the City should redo a community consultation to show exactly what they are proposing today, not what they were proposing in 2013.

Position of Mr. R. Ewasiuk, a property owner in opposition to the proposed development

- [66] Mr. Ewasiuk submitted a slightly revised version of his original document “*Exhibit D.*”
- [67] He referenced (*pg. 15*) of the Rossdale ARP and Map 4 (*pg. 14*) and indicated that the subject Site was never intended to be intensified or expanded and the subject lands are eventually supposed to be a park.

- [68] He referred to the City's document on the list of existing fire stations and their zoning. In his opinion the subject Site cannot be compared to (PU) Public Utility Zones, where Protective and Emergency Services is a Permitted Use. He indicated that the University Station on 76 Avenue is a non-conforming Use given its CNC/RF3 Zoning.
- [69] He referenced photographs of the other fire stations within or nearby Residential neighbourhoods. He showed that none of those fire stations are deeply embedded in the middle of a residential neighbourhood like in Rosssdale.
- [70] He referenced photographs of fire trucks driving within Rosssdale to show the disproportionate scale of a fire truck on the narrow roadways.
- [71] He referenced the submitted floor plans of the fire station. He highlighted how the plans contemplate housing a ladder truck in one of the bays. In his opinion, the plans reveal that this fire station is being developed in contemplation of increases to the intensity of the Use.
- [72] In his opinion, this fire station has the potential to be the largest fire station in Edmonton and could potentially respond to 2000 to 5000 calls per year and accommodate approximately 50 fire service personnel.
- [73] He reiterated that the only reason for the fire station to expand on this Site is because it is cheaper to use what already exists than to build a brand new facility on a different site. It was not viable for the City to only provide a river rescue crew on the Site.
- [74] He reiterated that the North Saskatchewan River Valley ARP was created to protect the river valley and in his view a development this large should not be built in the Floodplain Protection Overlay.
- [75] In his opinion, the proposed fire station was not formally brought to City Council. City Council only deemed the river rescue component as essential.
- [76] Mr. Ewasiuk referred to the Capital City Recreation Park Restricted Development Area Regulation that was referenced by Ms. Agrios and the Ministerial consent required under section 3.(1) of that 1978 Regulation to approve a development on the subject land. The Chair indicated that he understood that this 1978 Alberta Regulation was referenced by Ms. Agrios to provide a historical background of the subject Site and was not aware that this currently has a legislative force upon this application. Mr. Gunther indicated that this legislation was repealed April 5, 1995. Mr. Ewasiuk conceded that the Regulation indeed has been repealed. Ms. Agrios confirmed that *Tab 22* was referenced to provide the historical context of this current Appeal.
- [77] In his opinion, North Rosssdale neighbours are not as impacted by the fire station. With the exception of a few South Rosssdale neighbours in support of the fire station, the overwhelming majority of South Rosssdale residents are opposed to this development.

- [78] With regard to whether there are any regulations that a fire station must be next to a major or arterial roadway, he did not know of any; however, he reiterated that it is good planning to do so.

Further position from Ms. Agrios

- [79] *TAB 4, (pg. 19)* section 4 (Future Land Use Proposals) of the River Valley ARP was referenced. Under section 4.1, *Metropolitan Recreational Use and Environmental Protection* states:

Lands in this area are primarily owned by the City of Edmonton, irrespective of whether such lands have been defined as formal public parks or are in a vacant, developed or natural state. All such lands have been acquired in the past by the City for municipal purposes for the development of public parks or for environmental protection. Lands that are privately owned may continue to be used for those uses listed under A - Metropolitan Recreation District (Section 540) of the Edmonton Land Use Bylaw.

Ms. Agrios indicated that under the (A) Zone if land is owned by the City, development can only be for a park or environmental protection. Therefore, under the North Saskatchewan River Valley ARP, for a Site to be deemed essential, it must be privately owned. On public land, any new development must be a park.

- [80] With respect to questions from the Board, Ms. Agrios provided the following:
- a. With regard to Ms. Agrios deeming the fire station application as a “new development” even though the footprint of the subject building is not changing, Ms. Agrios indicated that this is a new Use. Development does not mean just the building, it means the Use. She reiterated this application is an intensification of what was originally allowed and that is why the City is requesting a new Development Permit.
 - b. With regard to section 4 of the River Valley ARP referencing the *Land Use Bylaw* and not the *Edmonton Zoning Bylaw*, Ms. Agrios indicated that there may have been some tweaks within the (A) Zone, but the (A) Zone has stayed the same.

Position of Mr. K. Block, Fire Chief for Edmonton Fire Rescue Services

- [81] Mr. Block indicated that he has worked for Edmonton Fire Rescue Services for 36 years and has been the Fire Chief since 2009. He stated he has been past president for the Metropolitan Fire Chiefs Association and is currently the president of the Canadian Association of Fire Chiefs.

[82] He stated that the Fire Rescue Services mission is to protect life, property and environment; its core values consist of services to the public, safety, relationships with the community, and teamwork.

[83] Mr. Block provided a history of the subject Site:

- a. Since the 1950s the location has been used as a training academy and for river rescue.
- b. In the 1960s, fleet services were added for vehicle and equipment repair and the Site became very busy.
- c. He indicated that he spent 13 weeks at this training academy with 90 personnel and a graduating class of 30 personnel.
- d. He was a firefighter at the Rossdale Fire station location between 1988 and 1992 on a pumper truck crew of four with two additional staff.
- e. In 1988, a hazmat team was established and the intensity of use increased. Between 1988 and 1992, there were 500 to 900 calls per year. Additionally, the Site was used as a training centre, for fleet services, and river rescue. At one point, the Site could be used for booming the river, in case of a chemical spill. Mr. Block indicated that the fire station was repurposed every decade to meet the needs of the community.
- f. In the mid-1990s, due to economic factors and budget restraints, operating services were reduced and the pumper truck and crew were removed from the fire station. Mr. Block indicated that Fire Rescue Services have never abandoned the subject fire station and it has always been a staging point for river rescue response calls. In his opinion, the Rossdale location is the best site for launching a boat in the city.
- g. He indicated that currently environmental work is being done to make sure the Site is ready for use once the winter season arrives. This upgraded fire station has been a priority for Fire Rescue Services since 2009.

[84] With respect to concerns from adjacent neighbours, Mr. Block provided the following:

- a. Currently the Mill Creek Fire station responds to 3000 calls per year as well as river rescue calls. When they travel to the Rossdale boat launch, they use a pump or ladder truck which requires lights and sirens. This travel time results in 10 to 15 minute delays.
- b. The Mill Creek Fire station responds to Old Strathcona and the U of A and when the crew is taken out of service to respond to river rescues, it leaves those neighbourhoods vulnerable.

- c. With the population increasing and the number of river accidents increasing, the city needed a proper river rescue service.
- d. They have a number of fire stations around the city with water rescue equipment and rapid deployment rafts that can be sent to nearby river sites. These fire stations provide backup for the main river rescue service in Rossdale.
- e. Currently when the downtown fire stations are busy, back-up is called in from Westmount and McKernan. This practice leaves those neighbourhoods vulnerable and it is not a good way to operate response calls. He reiterated that this creates a “knock down” effect where every fire station has to cover for the next.
- f. With respect to adding “Rossdale Fire Station 21” at the “eleventh hour” in the Rossdale ARP in 2011, he indicated that before the report went to City Council, it was circulated to a number of City Departments and when it came to him, there was no mention of the fire station even though river rescue services were operating there as a fire station. He stated his concerns about the fire station being left off the Rossdale ARP and consequently a last minute amendment was made to the plan
- g. With regard to the financial costs, he disagreed that the location was chosen for strictly cost efficiency. They conducted a site location assessment to be certain they were choosing the best location. The Rossdale Site stood out as the most appropriate location.
- h. He agreed that in 2012, they estimated the Rossdale Fire Station would be needed to respond to approximately 250 to 300 calls. He agreed that today this figure is currently around 600 to 650 response calls.
- i. He stated that the longer this fire station proposal is delayed, the more it impedes their ability to respond to calls.

[85] With respect to questions from the Board, Mr. Block provided the following:

- a. He indicated that 101 Street is an effective means for access and egress. He reiterated that between 1988 and 1992, Fire Station 21 responded to approximately 600 calls per year. He stated that the drivers are professionals and they never compromise safety and do not speed if there is no need.
- b. He confirmed that when he served at Fire Station 21, the area north of the subject Site was covered with residential housing; however, the housing stock was mostly small bungalows at that time.
- c. With regard to problems with Telus Field events, he indicated that when he worked at the station the stadium hosted Triple ‘A’ Baseball which drew crowds of 6,000 to 9,000 people per game. He compared the issues to Commonwealth Stadium and

- Rogers Place and stated that fire crews deal with it. He indicated that if a Telus Field event blocks traffic, there are two other streets to access the downtown, and they can use 97 Avenue if they needed to go east.
- d. He indicated that there are 6 rescue trucks and crews in the entire city. When a Downtown rescue truck is unavailable, the Rossdale Fire Station will provide back-up with their rescue truck.
 - e. He clarified that 5 firefighters will be put on the proposed river rescue crew at one time with a total of 25 firefighters stationed at the Site. Each firefighter will have specialized water rescue training.
 - f. With respect to sirens, he stated that there is some discretion for the driver under the *Traffic Safety Act*. Sirens must be turned on when they break the speed limit and run intersection lights. The times they can respond to calls calmly through a neighbourhood, where there is no traffic or pedestrians, sirens do not need to be on.
 - g. He stated there are no rules to where a fire station must be located.
 - h. With regard to restricting the number of personnel allowed to be at the Site, he indicated that this would prevent the level of service provided which can harm the community. The whole purpose of this development is to provide a high level of service with a functional river rescue crew without delays and to provide back up to the Downtown.
 - i. Mr. Gunther, representing City of Edmonton Law Branch, stated that if a few more personnel were added it would not constitute an intensification of the Use but if something major were to occur, such as a doubling the crew or adding fire trucks, a new Development Permit would be needed.
 - j. With respect to the Scope of the Permit, the Chair indicated that a 24/7 description is quite vague. Mr. Gunther indicated that he will address the matter in his presentation.

Position of Mr. M. Gunther, City of Edmonton Law Branch

- [86] With respect to the scope of Application, Mr. Gunther indicated that it is important to remember that under every Development Permit application is a record of the application process. He stated that, for example, a development approval for a Single Detached House does not mean the applicant can then add another Storey or a new Suite without a new Development Permit.
- [87] In this application, what Fire Rescue Services is applying for is accompanied with plans and an application record. If things were to change from the record behind the Development Permit, the applicant would be obligated to apply for a new Development

Permit. He reiterated that the background application process is tied into the Development Permit, and this is not a wide open permit.

[88] He reiterated that it is inaccurate to say that the scope of Application is unlimited because the description of the scope is brief.

[89] With regard to the statutory plans, he stated that they are binding; however, the plans must be read in their entirety and each provision should be read in the context of the whole plan.

[90] He stated that the 2011 amendments to the Rossdale ARP provided specific designation to the subject Site.

[91] Mr. Gunther referenced *policy 3.9 City-Wide Facilities Policies (pg. 43)* of the Rossdale ARP that states:

a) Policy 1: Future of Existing Facilities

The existing *EPCOR Water, Infrastructure Services and Community Services* facilities will remain as long-term uses within the designated utilities area.

Discussion

- a review of these facilities has determined that their location in Rossdale is necessary.
- if any facility is considered surplus or is relocated, the City will initiate a study to identify alternate uses for the site.
- see Map 4 - Future Land Use and Map 11 - Districting Proposed.
- *EPCOR's Rossdale Generating Station is being decommissioned.*

Mr. Gunther indicated the Community Services facilities include the Rossdale Fire Station that the policy states it will remain as a long-term use.

[92] With respect to the neighbours concerns with chemicals and smoke, he referenced the following policy of the Rossdale ARP:

b) Policy 2: Noxious Materials and Procedures

The City will avoid the use of materials and/or procedures in the utilities area which are either hazardous or offensive to residents in the adjacent residential neighbourhood.

Discussion

- residents in the area have raised concerns about the use of chemicals and smoke during fire training procedures.

- *Community Services* has indicated that training with hazardous and/or noxious materials will not be carried out at this location.
- residents have noted occasional odours from the water treatment facility.

He indicated that hazardous and noxious materials are not permitted at the subject Site.

- [93] With respect to the maps of the Rosssdale ARP being outdated, he stated that the Rosssdale ARP has been in effect for decades and unfortunately when amendments are passed not everything in the ARP is updated. The fire station was included in the Rosssdale ARP amendment and he indicated that you have to read the legislation as a whole in its broader context.
- [94] Mr. Gunther referenced British Columbia Court of Appeal Decision for *Society of Fort Langley Residents for Sustainable Development v. Langley (Township)*, 2014 BCCA 271 (issued July 3, 2014) from his submission. He indicated that in that Decision, the legislation needs to be reviewed with regard to the intent of City Council. In his view City Council provided direction that this Site is important and ought to be retained and used as a fire station.
- [95] The Chair indicated that an interpretation of the 2011 Rosssdale ARP amendment could be that the Use at that time was to protect the existing river rescue component but not add a rescue truck. The Chair noted that policy 3.3 of the Rosssdale ARP contemplated that the fire station would be "...retained and/or repurposed..." In Mr. Gunther's view, that interpretation is speculative. There is nothing in the legislation that prohibits the current Use and requires the retention of the status quo, or prevents an increase to the footprint of the development. In his view adding a rescue truck and modernizing a purpose built fire station is allowed under the ARPs.
- [96] With regard to the North Saskatchewan River Valley ARP, its purpose is to protect the river valley but there are exceptions.
- [97] City Council indicated its intention for the Site when it deemed the fire station to be an essential service, pursuant to the North Saskatchewan River Valley ARP. The Rosssdale neighbourhood was able to speak at City Hall before City Council passed a resolution to deem the Rosssdale Fire Station as an essential service.
- [98] With respect to Ms. Agrios' reference to *section 4.1* of the River Valley ARP, he indicated that the (A) Zone does not say lands within that Zone cannot be developed. He stated that *section 4 and 4.1* is explanatory and not compulsory and explains the purpose of the (A) Zone but it does not restrict the Uses within the (A) Zone.
- [99] Mr. Gunther stated that the Board must interpret the provisions of the ARPs having regard for the entire context of the plans. If the intention was to remove the Fire station, the ARPs would have made this intention explicit. He reiterated that the Board can weigh *policy 4.1* of the Rosssdale ARP but it is not binding for the Board to only consider that one policy.

- [100] He referenced *section 3.5* of the North Saskatchewan River Valley ARP and reiterated that City Council followed the *deeming essential* process and determined that the Rossdale Fire Station is an essential service.
- [101] He indicated that several fire stations in the city are on Sites zoned (US) Urban Services. Protective and Emergency Services Use is a Discretionary Use in the (US) Zone as well as the (A) Zone. Even if the (A) Zone was rezoned to (US), we would be at this hearing either way. Protective and Emergency Services is a Permitted Use in the (PU) Public Utility Zone. However, the City may have been reluctant to rezone the subject Site (PU), in case they ended up transferring the Site back to EPCOR; on a Site zoned (PU), EPCOR would have had the right to build a smoke stack as a Permitted Use.
- [102] In his opinion, the (A) Zone provides City Council with more restrictive control on the subject Site.
- [103] Mr. Gunther responded to the view that all of the other fire stations in Edmonton are not deep within residential neighbourhoods and cannot be compared to the Rossdale Fire station. In his view, Rossdale is in the middle of the core, bi-sected by two major roadways, next to an Industrial and Stadium site. To say the neighbourhood is quiet does not reflect the development around it.
- [104] He indicated that Transportation Services has not raised any concerns about the proposed development on this Site.
- [105] In his view, there will be a couple trips by the rescue truck each day. There will not be a constant stream of fire trucks with blaring sirens driving through the neighbourhood.
- [106] He agreed that 101 Street is not a major roadway. When the Fire station was approved a few decades ago, it was considered a desirable location. To now allow a purpose built facility to be empty is inappropriate.
- [107] With respect to a question from the Chair as to the date of the original permit for the existing river rescue and storage, he was unsure. The Chair clarified that he would like to have a copy of the original permit. Mr. Gunther explained that he would find it after the hearing.
- [108] Mr. Gunther referenced photographs of the existing building, both inside and outside to demonstrate that the building is in very good condition.
- [109] With regard to the Flood Plain issue and not developing any fire stations within a 1:100 year flood mark, he indicated that any river rescue site in the city would not be allowed. In his opinion, the flood risk will not materially impact the Site's ability to use its Fire Rescue services.

- [110] With respect to the neighbourhood opposition to the fire station, he referenced *TAB 16* of his submission, a Leger Marketing Survey that was conducted in 2012 about the reopening of the Rossdale Fire station. Based on their assessment, 45 percent of South Rossdale neighbours were opposed and 41 percent of South Rossdale neighbours were in support, 13 percent of North Rossdale neighbours were opposed and 80 percent of North Rossdale neighbours were in support.
- [111] Based on those numbers, there is not unanimous opposition from the South Rossdale neighbourhood. In his opinion, the Rossdale Community League is not necessarily representing the community as a whole, but a group of residents at the far south portion of Rossdale. He agreed that they are the most affected.
- [112] In his opinion, the Rossdale residents in opposition to this development had many opportunities to display their concerns and make submissions to City Council.
- [113] He stated that he will not comment on the CCRP as that Regulation is no longer in force.
- [114] Mr. Gunther indicated that it is inaccurate to suggest that City Council's decision to deem the site essential was made without regard to planning considerations. The delivery of services is a planning issue and these services are within *Part 17* of the *Municipal Government Act*.
- [115] He referenced *Part 1, section 3* of the *Municipal Government Act* that states:

Municipal purposes

3 The purposes of a municipality are

- (a) to provide good government,
- (b) to provide services, facilities or other things that, in the opinion of council, are necessary or desirable for all or a part of the municipality, and
- (c) to develop and maintain safe and viable communities.

In his view, this development goes to the very core of the City purpose.

- [116] With respect to questions from the Board, Mr. Gunther provided the following:
- a. With regard to [para 12] of the *Rossdale Community League v Edmonton (Subdivision and Development Appeal Board)*, the Board asked if the current Development Permit Scope of Application has sufficient qualifications or conditions to comply with the Court of Appeal's directions.

Mr. Gunther indicated that it was important to understand the substance of the application before the Court of Appeal in 2009. There were no major renovations proposed at that time. The proposal was to accommodate park ranger activities and a separate Use of trail maintenance, which did not qualify as Protective and Emergency Services. Mr. Gunther's interpretation of the Court of Appeal decision is that there needs to be some specificity to the type of Protective and Emergency Services that will be permitted on the Site. This new Development Permit meets this criteria because it specifies that the Use will be "Fire Station 21 with a 24/7 crew."

In his opinion, the application documents approved by the Development Officer have sufficient information for a person to know what exactly is being proposed.

- b. With regard to [para 15] of the *Rossdale Community League v Edmonton (Subdivision and Development Appeal Board)*, the Board asked what is meant by "local distribution of services" within the Protective and Emergency Services Use.

Mr. Gunther indicated that although the term "local" is not defined within the *Edmonton Zoning Bylaw*, if it is within legislation you need to look at the broader context and give it its ordinary meaning. In his view, in this context local means operating within the jurisdiction it is in. The proposed Use is local because it services the city.

- c. The Chair reiterated that the Development Permit Scope of Application could possibly be better articulated and provided an example such as the number of fire trucks or type of fire truck.

Mr. Gunther stated that he will discuss with the Development Officer on how better to articulate the scope of application.

Position of Ms. D-L. Marc, a property owner in support of the proposed development

The Chairman of the Board indicated to Ms. D-L. Marc that her property address was outside of the Board's notification area, and therefore she needed to explain how she is affected by the decision, as per section 687(1)(d) of the *Municipal Government Act*.

- [117] Ms. Marc indicated that she lived in the Rossdale neighbourhood between 1990 and 2015 and currently resides in the core. It is her assertion that her condo property is in close proximity to Rossdale and will be served by the Rossdale Fire Station.

- [118] Ms. Agrios had no objection to the Board hearing Ms. Marc, however it was her opinion she was not an affected person.

- [119] The Board determined that the subject Fire station could impact the downtown area. The Board notes that although the direct impact from the fire station is minimal to Ms. Marc, she is still an affected person and the Chairman allowed her to speak.
- [120] In her opinion, the accreditation, experience and honours of the Fire Chief and the Fire Department should be considered and feels City Council has done their due diligence to determine this is the best Site for this fire station.
- [121] She indicated that when she lived in Rossdale she often heard sirens due to her proximity to downtown. Back in the 1990s fire trucks already traveled the Rossdale streets to respond to calls in the core. In her experience, the disruption caused by a fire truck would only last a matter of seconds.
- [122] In her opinion, there is already a lot of traffic in Rossdale and adding a fire truck would not disrupt the neighbourhood.
- [123] In her opinion, property values will remain the same. She allowed that some people might not want to live close to a fire station, but others might see the proximity of the Fire Station in a positive light.
- [124] She referenced “*Exhibit E*” and showed a photograph of the subject Site. In her opinion, the existing trees and gate to the site buffer the fire station.

Position of Ms. S. Mason, a property owner in support of the proposed development

- [125] Ms. Mason indicated that the executive committee of the Rossdale Community League is comprised of residents of South Rossdale.
- [126] She indicated that when she moved into the neighbourhood the fire station was already established. In her opinion, 101 Street is not that narrow and there is only parking on one side of the street.
- [127] She opined that the Fire station personnel have always been good neighbours.
- [128] In her opinion, City Council decisions should not be influenced by self-interests and this decision is for the greater good of the community.
- [129] She stated that after the Fire Department’s Community Consultation, open house, update letters, the Fire Chief’s assurances to work with the community and City Council’s approval, this appeal is just another attempt to delay the Fire station. The residents opposed to the fire station have already been given the opportunity to voice their concerns to City Council.
- [130] In her opinion, downtown living comes with infill development, redevelopment, new development, rezoning and many services. She currently hears noise and sirens from

downtown. In her opinion, Community Leagues should build relationships with the greater community and reiterated to make decisions for the greater good.

Position of Mr. B. Elton, a property owner in support of the proposed development

[131] Mr. Elton disagrees with the South Rosedale neighbours that he is not an affected person since he lives in North Rosedale. He stated that he has lived in North Rosedale for 25 years and has not had any issues with the fire station.

[132] He indicated that there is already a lot of noise off the freeway and it is not an issue.

[133] He indicated that he has only heard from the City about this issue. No one from South Rosedale or the Rosedale Community League has approached him to hear his views.

[134] In his opinion, the Fire Department would not mislead the community and the fire station would be compatible with the neighbourhood and good for Rosedale and the city.

Position of Mr. J. Rivait, a property owner in support of the proposed development

[135] Mr. Rivait stated that he lives in North Rosedale, and although he is not on the executive committee of the Rosedale Community League he is a member of the Rosedale Community League. He indicated he understands that South Rosedale residents living adjacent to the Fire station are more affected.

[136] He submitted "*Exhibit F*" a petition of Rosedale residents expressing their concern that, in appealing the Fire Station development permit, "Rosedale Community League is acting without consideration of interests of all Rosedale residents." He indicated that the Rosedale Community League did not consult the North Rosedale neighbours.

[137] He indicated the Rosedale Community League did not mention the fire station on their website, the meeting minutes, newsletter or Facebook. Therefore, the lack of knowledge and consultation from the Rosedale Community League Board is not representing the entire neighbourhood.

[138] In his opinion, the intensity of this fire station is not onerous.

Mr. B. Parry, a property owner in support of the proposed development

The Chairman of the Board indicated to Mr. B. Parry that his property address is outside of the Board's notification area, and reiterated that therefore he needed to explain how he is affected by the decision, as per section 687(1)(d) of the *Municipal Government Act*.

[139] Mr. Parry indicated he lives adjacent to Rosedale and overlooks the Rosedale neighbourhood.

- [140] The Board reiterated that the subject fire station could impact the downtown area and therefore determined Mr. Parry is an affected person and the Chairman allowed him to speak.
- [141] Mr. Parry indicated that almost every day some kind of emergency vehicle responds next to his residence.
- [142] The Fire station will benefit his residence and the cluster of buildings in the surrounding area and deserves some exceptional consideration and respect.

Position of the Development Officer, Ms. C. Yeung

- [143] The Development Officer reviewed her written submission.
- [144] The application proposes “to continue and intensify the Use of an existing Protective and Emergency Services Use (Fire Station 21 with a 24/7 crew) and to allow interior and exterior alterations”.
- [145] The property is located within the (A) Metropolitan Recreation Zone and subject to the Flood Plain Protection Overlay and the North Saskatchewan River Valley and Ravine System Protection Overlay. Within this land use Zone, a Protective and Emergency Services use is considered a Discretionary Use.
- [146] The property is located within the Rossdale Area Redevelopment Plan and the North Saskatchewan River Valley Area Redevelopment Plan.
- [147] It is a land use policy, Major Facility and Natural Resource Development Policies 3.5.1, of the North Saskatchewan River Valley Area Redevelopment Plan that “major public facilities shall not be constructed or expanded unless their location within the River Valley is deemed essential and approved by City Council.” The North Saskatchewan River Valley Area Redevelopment Plan, Major Facility and Natural Resource Development Policies 3.5.3, also requires that “all proposals for the development of a major facility that is publicly owned or is developed on public lands shall be subject to an Environmental Impact Screening Assessment and a detailed site location study detailing costs, and social, environmental and institutional constraints which makes a River Valley location essential must be prepared for Council approval.”
- [148] The existing building, known as Fire Station 21, was built in 1980 and the fire component was deactivated in the 1990s. The one storey building was later utilized as a Fire Rescue training facility and is currently vacant. The proposed alterations, along with two other projects under separate Development Permits (a boat ramp replacement and the construction of a community park) will allow the building to continue its function as a river rescue facility and add a ground fire rescue facility servicing the city core.

- [149] On July 3, 2013, City Council voted in favour to approve Fire Station 21 as a major facility within the River Valley, pursuant to section 3.5.1 of the North Saskatchewan River Valley Area Redevelopment Plan Bylaw. At that same time, City Council voted to approve the Environmental Impact Screening Assessment and Site Location Study, which had been prepared for the development proposal to repurpose the existing Fire Station 21 building.
- [150] The Protective and Emergency Services Uses proposed under this Development Permit are essential to the City. They will significantly improve river rescue response times (by approximately 10 to 15 minutes), will improve safety on the river and will provide additional fire rescue services to keep up with the demand of the fast-growing Edmonton city core.
- [151] Large setback and additional landscaping are proposed to provide screening and proper separation along the north property line of the subject site, between the fire station and the existing residential development to minimize the potential noise and visual impacts.
- [152] This application does not require any variance.
- [153] As the Development Permit will allow the continuation and intensification of a Discretionary Use, Protective and Emergency Services, notices were sent to the Rossdale Community League and property owners within the Rossdale Neighbourhood to inform them of the Development Officer's decision. Because of Fire Rescue's prior engagements with the Rossdale community, the notification area was extended to include all property owners within the Rossdale Neighbourhood. The Development Officer's decision was appealed.
- [154] The Development Officer submitted a document setting out the development history of the Site, marked *Exhibit G*. She believes the 1979 Development Permit to construct an addition to a Public Service Building (Fire Training School) (Fire station Addition) and the 1980 Building Permit to construction a Fire Hall Addition are still valid.
- [155] A package of copies of the permits pertaining to the subject Site was marked "*Exhibit H*."
- [156] Upon questioning from the Board, the Development Officer confirmed that "urban park" is not defined in the *Edmonton Zoning Bylaw*. She determined that under the (A) Metropolitan Recreation Zone, the proposed Protective and Emergency Services Use is Discretionary. Thus, it is the intent of City Council to allow this type of Use.
- [157] There are two other Development Permits that are outstanding, a boat ramp replacement and the construction of a community park. These Development Permits have not been applied for yet. They are working on the subdivision of the subject Site to carve out the site. After the subdivision, the site can be designated as Municipal Reserve and a Development Permit can be applied for. The Development Permit approval was not

conditioned on the approval of the proposed park. Also the two permits are not tied together just in case one Development Permit gets appealed.

- [158] The park is not outside this site. It within the titled area of the northeast corner of the subject site.

Further position from Mr. Gunther

- [159] At the conclusion of the last hearing, the Board asked if copies of previous permits were available. The earliest permit was from 1952. The most relevant permit was from 1979, which allowed the construction and use of the site of the Fire Hall. The 1980 building permit is not a drafted according to contemporary standards. It looks like an application form with an approval stamp.
- [160] Reviewing the 1979 permit, the Board can see that there was (A) Zoning in place at the time the permit was granted.
- [161] After the City acquired the Site in the 1950s, it was initially used as a training school. This Use continued for 20 years and then was rendered dormant. This dormant period does not mean that the Use is cancelled or terminated. Section 22.2 of the *Edmonton Zoning Bylaw* sets out the grounds when a Development Permit has expired or has been cancelled in accordance with section 17. These sections do not have application here. These sections were marked "*Exhibit I*".
- [162] In this case, the current application is for the same use, the same user, and the same building footprint as the 1979 permit. The "dormant" Use only needs to be reactivated and it is questionable whether there is even a need to apply for a new Development Permit; however, the City understands the neighbours' concerns and wanted to give them an opportunity to speak. Also, there are interior renovations proposed.
- [163] When considering a Discretionary Use, the Board should consider whether it is really intensification or a re-activation of use. When there is an exercise of discretion, the Board should consider the site renovations and compare intensification versus what they are proposing to do and what they are already able to do.
- [164] This Board has more information than the Board from 2007. There was no consideration in 2007 whether the Use was already allowed under a pre-existing permit.
- [165] In 1980, this was an active Fire Hall. They had a pump crew, 4 firefighters, service and a salvage truck. It stayed that way until 1987. Then a hazardous materials response team was instituted, with a crew of 4 stationed there, a response trunk, a decontamination vehicle, trailer and tractor. In 1992, the hazardous response team left. The pump crew remained there until the station closed for budgetary reasons. During the whole time, the river rescue team remained there.

- [166] If you look at the wording of the 2016 Development Permit, the scope states to “continue and intensify the use...”.
- [167] The Court in 2009 was not concerned about the intensity of Use, but the scope of the permit. They considered what that Use encompassed. It was not carte blanche approval. The City was also attempting to get approval for trail maintenance services, which included truck traffic and environmental work in the River Valley.
- [168] On the other hand, this Development Permit today answers all the “W” questions. The “what” is the Fire Hall. The “who” is the 24/7 crew. The “where” is the subject address at 9315-101 Street NW. The “when” is when renovations are done that use will commence. The “how” is the Development Permit application before the Development Officer and Board setting out the scope. It is clear what the Use is.
- [169] In terms of what the intensity of Use is, it is pragmatically difficult to limit the scope, in light of the existing Use and the use being proposed. If this Board denies the appeal, the terms on the face of the Development Permit is satisfactory. The Board should not have to define intensification, because the Development Permit does so on its face.
- [170] The Board asked Mr. Gunther to comment on the difference between the specific list provided to City Council in 2013 in the report for repurposing compared to the open ended scope of the permit. It is rare to see a Development Permit with paragraphs. It is generally broad. It is apparent what the use is for. The Development Permit needs to be broad when dealing with this type of Use; it is difficult to define the day-to-day operation of the fire station. The Use is regulated, not the user.
- [171] The residents are concerned that the Development Permit will lead to much more intense use than what is being proposed. To place limits on calls or areas to be served is inappropriate given the nature of the use. The neighbours are looking for some comfort that this permit will not open the door to additional crews. The Development Permit indicates it is “a” 24/7 crew. There are not multiple crews. If additional crews are required, a new Development Permit would be required.
- [172] The meaning of “a crew” is defined by the fire department through practice. There would be a requirement for 25 people. This would allow the Fire Station to be staffed by 5 people, 24/7, 365 days a year. Those 5 people would be trained in each specialty. Each specialty requires different apparel. One firefighter may require 3-4 lockers. They want to improve the level of service for water rescue and support the downtown area.
- [173] If the City wants to add one or two more people (*di minimis*), it probably will not require a new Development Permit. If it was going to propose multiple crews and more intensification, it would need to look at the scope of this permit, the 1980 permit and reexamine the need to reapply for another Development Permit.

- [174] At the last hearing, a city-wide facilities policy was discussed. In the Rossdale Area Redevelopment Plan, at section 3.9, there is a reference made to the community service activities being necessary in the River Valley. In 2011, when amendments were made to the Area Redevelopment Plan, the words ‘Fire Department Facilities’ were replaced with ‘Infrastructure Services and Community Services Facilities’. Ms. Agrios is suggesting that this is referring to the Parks branch based on another reference found in the Area Redevelopment Plan. In 1998, the Fire Department was placed under the authority of Community Services, which is now Citizen Services. When the 2011 amendments were made to update the 1986 Area Redevelopment Plan, the reference from Fire Department being a stand-alone City department to Community Service department, which is now the umbrella department, was also altered. Section 4 of this Area Redevelopment Plan, which is what is purported by the Appellant to be the authority that refers to the parks branch, deals with the west Rossdale area redevelopment. The argument that it refers to the Parks and River Valley is redundant because that would be saying that it is necessary to have only parks in the river valley and that simply cannot be that interpretation of the Area Redevelopment Plan.
- [175] The Board asked about the reference to the designated utility area in the Area Redevelopment Plan. Mr. Gunther stated there is no other reference so the words should be given their ordinary meaning. This area not to be used for parks residents or any other use.
- [176] Previous to the 2011 amendments, section 3.3 of the Rossdale Area Redevelopment Plan indicated that various uses, including the Fire Maintenance and Training Facility, should be “retained”. In 2011 this provision was amended to specify that the Rossdale Fire Station 21 (along with other uses) should be “retained and/or repurposed.” It is important to note the context of this amendment. In 2011, discussions were centered around the feasibility of the generating plant in Rossdale, whether that be historical designation, a farmers’ market, or for the Commonwealth Games. So that reference to repurpose would make sense with regards to the generating plant issue.
- [177] Based upon the plain language of the Area Redevelopment Plan and reading it harmoniously with other sections, Mr. Gunther asked the Board to infer that City Council does not want to phase out this Use. Statutory plans are high-level documents that set out City Council’s vision. If Council had an intention to phase out the fire station, this would be explicitly and expressly stated. If Council had the intention for things to remain status quo, they would not say anything at all. If they had the intention to provide support for the Use, it would be addressed in the document. That support for the Fire Station is evidenced in the Rossdale ARP. Section 3.9 of the Rossdale Area Redevelopment Plan provides that a review of these facilities has determined that their location in Rossdale is necessary and without any doubt this is referring to this site. The intention of Council is evident: to support this Use. It identifies the Use as “necessary.” The intention is not to expand or take over new areas.

[178] The 2013 resolution from Council is both a planning decision and a cost decision. The role of Council when making decision is to consider all relevant factors in making a decision. Even though a statutory public hearing was not held, many of the same people at this hearing were voicing the same concerns as have been voiced in this appeal. It is not true that planning is not a factor in the decision. Council is the best arbitrator in weighing competing interests. It was a unanimous decision to support this project. Council performed a balancing act and proceeded to pass that resolution. When Council passes any plan, they have to consider many policy considerations. The Development Officer's role and the Board's role is to look at one aspect. This Board must interpret the will of Council. Council can consider planning considerations. Council is the best arbitrator of this complex balancing act of the neighbourhood versus the entire city.

[179] The Appeal should be denied.

Rebuttal of Mr. Shelley

[180] Mr. Shelley contested the Fire Chief's evidence was that he entered the process with an open mind. Mr. Shelley referenced a 2001 email, in which the Fire Chief stated that he believed the process of community consultation would lead to support for "our" conclusion. As further evidence that the selection of the subject site was predetermined, Mr. Shelley noted that the City commissioned a firm to evaluate. It is Mr. Shelley's contention that this study was terminated when it became evident it would not support the selection of the subject site. Mr. Shelley reiterated his concern about how the number of calls, to which the rescue crew at the Fire Station would be expected to respond, has increased substantially from 200 to 700 calls. There has been no limit proposed. The consultation is incomplete and he believes the City should carry out further consultations in a more open fashion.

[181] He does not believe that there will need to be as many river rescues now that there are new safety barriers on the bridge. Further, he notes that other cities deal with river rescues differently, launching rescues from multiple sites along the river.

Rebuttal of Ms. Parish

[182] Ms. Parish indicated that Rossdale is a quiet neighbourhood. Outside of rush hour, it is quiet unlike many downtown areas.

[183] She does not agree that previous activities on the site were harmonious with the rest of the neighbourhood. This was recognized in the 1998 report, which set out that there was a land use conflict between the outdoor fire training facility and the residential area.

[184] In terms of the access and egress issue, it has been suggested that two other roads could be used and traffic from this site could go east on 97th Avenue. 101A Street is even narrower, than 101st Street, and therefore even less amenable to regular fire truck traffic. 100 Street is by the river, where several recreational activities take place. If this Fire Hall

is to service downtown, it is not necessary to go east on 97th Avenue. 101A Street cannot be enlarged. The west side contains EPCOR's reservoirs.

- [185] Many of the figures submitted by the Fire Chief are anecdotal. The total number of river rescue is around 60. Other places along the river that are used for river rescue, as evidenced by the fact that river rescue has been operating since August, when the Rosedale site was closed for the boat ramp renewal.
- [186] It will take more time to reach downtown from the Rosedale location, than if a facility was located on a major road.
- [187] There is supposed to be a park developed outside the fire station. The City has held up provincial funding for the last 10 years. The City does not even know if the funding is still available.
- [188] Ms. Parish does not agree with the City's characterization of the level of opposition to the Fire Station. It was indicated that 45 percent of people support the development. This is not accurate. She indicated that only 21 people expressed any degree of support. They have provided 110 letters from people who are against the development. With regard to the 21 people who supported the proposal in 2013, the neighbourhood was responding to a different development that was a fire station to support river rescue and not an unlimited permit that could grow to thousands of calls. Further, this survey was completed in 2013, which is 3 years ago. Some of those respondents may not live in Rosedale anymore. The numbers the City provided in the Leger report should be given less weight than the numbers provided by the Appellants.
- [189] No evidence has been received that the development is appropriate. The proponents of this project do not know the area because they do not live there. They are speculating from an uninformed perspective. Rosedale has unusually high levels of pedestrian traffic. The best people to assess the impact of the proposed development are the people living in South Rosedale. 110 residents of South Rosedale submitted letters opposing the development and supporting this appeal. The level of neighbourhood opposition is one key factor the Board should consider. On 101 Street, there was 100 percent of people certain this was not an appropriate development, other than the 6 rental or vacant lots percent.
- [190] The ball park and water treatment plant are not intrusive. All activity operations occur on Rosedale Road and 96 Avenue.
- [191] The notice that Mr. Rivait provided does not state that the signatories support the Development Permit application, it only states some individuals are taking issue with the Community League. This will be addressed. The Community League had previously conducted community consultation, but at this stage, the Community League executive relied on the fact the people knew about the hearing, because the Subdivision and Development Appeal Board sent out notices.

- [192] There was an argument that the development is stationed on the edge of the community. This location is embedded in the community. It is located 25 metres from the community versus the 60 metres standard found with other stations. That 35 metres difference is an unacceptable precedent and this is a planning consideration.
- [193] The correct interpretation of the Area Redevelopment Plans is very important to the community. They have interpreted the Rossdale Area Redevelopment Plan, and relied upon it. They understood that it prohibited activity on the scale proposed in this development permit in Rossdale. They do not believe that the amendments in 2011 changed the overall purpose of the Rossdale Area Redevelopment Plan. Ms. Parish characterized the purpose of the Rossdale ARP as being to provide for a residential community in South Rossdale.
- [194] If this permit is granted as it is before the Board today, and more crews come down to the station, that would be an intensification of Use. Ms. Parish is concerned that it would not trigger another Development Permit application because the Development Permit being applied for does not contain sufficient limitations on the scope of Use.
- [195] She is surprised that today a Development Permit from 1979 was only produced at this stage.
- [196] If the broad purpose of the Rossdale Area Redevelopment was to be changed, that would have to be done through consultation and public hearings, which has not happened. The 2011 amendments were done on a last minute basis and without consultation. Even so, the amendments are insufficient to make the proposed development consistent with the proposed development.
- [197] In 2008, the Court of Appeal confirmed that material change in usage authorized by an overly broad Development Permit cannot be sustained.
- [198] The Environmental Impact Assessment was done on the basis of the rescue crew responding to 300 calls. A new Environmental Impact Assessment is needed to consider the impact of the proposed, intensified use.
- [199] What City Council approved in 2013 is not reflected in this Development Permit. Those concerns raised on the appeal to the Board were not addressed at City Council in 2013. City Council determined that what was essential was 1 crew, 3 support vehicles, the building as designed on the submitted plans and responding to approximately 300 calls a year.
- [200] Upon questioning from the Board, Ms. Parish indicated that she does not believe that the inclusion in the Development Permit of the word "a" is enough to limit it to 1 crew. The word "a" should be changed to the word "one". That is what Council made their decision on.

[201] She indicated that the number one main concern from the neighbours was the unlimited nature of the permit.

Rebuttal of Ms. Agrios

[202] Ms. Agrios asked to admit documents identified as Exhibits J thru M. Mr. Gunther had no objections to entry of these Exhibits.

[203] The Development Officer reviewed the *Edmonton Zoning Bylaw*, but ignored Section 4.1 of the North Saskatchewan River Valley ARP. Ms. Agrios interprets section 4.1 as stipulating that uses other than parks allowed in the (A) Zone, but are only allowed on private property. The (A) Zone allows the Protective and Emergency Services Use, but that Zone is contained in the *Edmonton Zoning Bylaw*, which applies city wide. The Area Redevelopment Plan is more area specific, and the Board should prefer its specific directions over the general directions contained in the *Edmonton Zoning Bylaw*.

[204] The proposed park has been in the works for 10 years. If the Board denies the appeal, that park should be made a condition of the permit.

[205] The historical Development Permits were provided to the Board. The 1979 permits were approved under the "A" zoning; however, neither of the Area Redevelopment Plans were in place during that time. Both ARPs were approved in the mid-1980s.

[206] The existing Development Permits refer to construction and not Use. The language is more precise today. There are no plans for those permits, no descriptions of the size of the building approved, nor a description of the addition. It cannot be determined what the scope of the 1979 permit is. The plans and descriptions limit what is allowed. The dimensions in the 1979 permit are illegible. The Fire Chief stated that, when he was stationed in Rossdale in the late 1980's, he worked on a crew of 4. Ms. Agrios asked the Board to infer that the 1979 Development Permit approved, at most, a station with 4 personnel.

[207] Ms. Agrios stated the City is applying for a new permit, and not relying on the previous permit. Even if the old permit is still valid, the proposed development would involve a change in the intensity of the Use, and so a new Development Permit is needed. The application specifically contemplates intensification. The Development Officer considered it as an intensification of the pre-existing use.

[208] The *Rossdale* decision, at paragraph 16, defines what the scope of the Use for this site is. The Legislative framework authorizes the use of the parcel for river rescue, fire training and activities of park rangers. That is it. Anything else is a new use or an intensification. It needs a new Development Permit. Because it is a new Development Permit today, it must comply with the Area Redevelopment Plan.

- [209] It is not clear from the Fire Department what limits are being placed on further intensification. The City has not offered to cap the number of personnel at the Fire Station to a crew of 5. Reviewing the report to City Council (tab 13 page 9), there was a size restriction. The plans on file seem designed to accommodate staffing levels that exceeds a crew of five, by a significant margin. The proponents of this project indicated that Council approved a crew of 5 for budgetary reasons. In the future, if the budget was available Council could approve and the facility could accommodate a much bigger staff.
- [210] The Fire Chief indicated that the description of the Use in the Development Permit already limits the intensity of the Use sufficiently. Ms. Agrios contends that it is not clear what limits on intensity of Use are contained in the Development Permit. If the Board is inclined to approve the Development Permit, Ms. Agrios urges the Board to articulate the scope of the services being allowed. For example, the Development Permit could include a condition limiting the number of firefighters on site to 5, at any one time, limiting what equipment can be stored on site and making the Development Permit conditional on the City developing the promised park on the north border of the subject site.
- [211] “Local”, as that term is used in the definition of Protective and Emergency Services is broad enough to include anything within the boundaries of the city of Edmonton. In the *Rossdale* decision, at para 15, The Court of Appeal seems to be indicating that “local” refers to something less than the entire city.
- [212] Ms. Agrios reviewed Mr. Block’s submission. He provided reasons as to why he thinks this site is a good location. His reasons are not relevant. The *Rossdale* decision speaks to intensity of Use, compatibility with the area and statutory plans. She characterized some of the Board’s questions as being irrelevant, and reiterated that it is not for this Board to determine how to improve delivery of fire services. The Board’s decision must be based on the nature of proposed development and whether or not it is compatible with adjacent uses.
- [213] Ms. Agrios asked the Board to imagine that it was faced with an application for a Development Permit for a nightclub. If the Applicant wanted to locate its nightclub in an existing building because the rent was low, the site used to be a nightclub and has the potential for lots of traffic, these would be irrelevant considerations for the Board. The Board needs to look at compatibility, impacts and how will it fit with the neighborhood.
- [214] In terms of impacts, the number of expected number of calls increased from approximately 200 in 2013 to 700. There is no current number but probably higher with the opening of Rogers Place. That is 2 or 3 trucks per day, which is significant. Under Section 3.5.3, there is a requirement for professional assessment. The reports before them are based on 250-300 calls; at a minimum, the city needs a new assessment.
- [215] In Exhibit L, an email was provided from Mr. Block to Ms. Parish. He stated that the *Alberta Traffic Safety Act (Use of Highway and Rules of the Road Regulation AR*

304/2002, Section 63) is “very prescriptive as to requiring the use of lights and sirens when responding to an emergency.”

[216] Mr. Block has not provided evidence as to what is done to manage trucks when events take place in Telus Field.

[217] Mr. Block’s evidence is anecdotal. Conflict has been present as shown in Exhibit A.

[218] It is incorrect to suggest that this site has always been integral to fire service and was always intended to be used as fire station. The City sold the site to EPCOR in 2000. The plan was to wind down the Use and Site and eliminate it.

[219] Section 3.5.3 of the North Saskatchewan River Valley ARP states that:

“it is a policy of this Plan that all proposals for the development of a major facility that is publicly owned or is developed on public lands shall be subject to an environmental impact screening assessment as outlined in Schedule D, and a detailed site location study detailing costs, and social, environmental and institutional constraints which make a River Valley location essential must be prepared for Council approval. These studies shall be undertaken prior to Council committing funds for capital expenditure for the development of this proposal.”

[220] Ms. Agrios opined that this section does not require City Council to consider the impact of a major facility on a neighbourhood or its compatibility with the neighbourhood.”

[221] Area Redevelopment Plans are usually aspirational. Section 4.1 of the North Saskatchewan River Valley ARP stands out. It provides direction as to how a Development Officer or the Board should exercise discretion. Under the (A) Zone, privately owned land can continue to be used for the listed uses. Ms. Agrios interprets section 4.1 as requiring the City to use publicly owned “A” lands for either parks or environmental protection.

[222] The Board’s role is to interpret the Area Redevelopment Plans. Ms. Agrios submits that a major facility could only be “deemed essential” on lands zoned (PU.) Deeming a major facility as essential on lands zoned (A) would be offside section 4.1. In other words, the process for deeming a major facility essential, does not apply to City owned land if it is zoned “A.”

[223] Section 3.3 and Section 3.9 of the Rosedale ARP were both amended in 2011. The amendments are significant. The presumption is that a change in wording is intended to mean something.

[224] Reviewing a previous Board’s Agenda, it lists the wording at the time for Section 3.3: “South Rosedale has a number of City-wide recreational and utility sites which will be retained: These include Telus Field, The River Valley Interpretation Programs Centre (in

the old Donald Ross School), the Rosssdale Power Plant, Water Treatment Plant and the Fire Maintenance and Training Facility.” There is no reference to fire station.

[225] In 2011, reference to the fire station was added. The wording says ‘retained and/or repurposed’. The words in italics stated:

“South Rosssdale has a number of City-wide recreational and utility sites which will be retained and/or repurposed: These include the former Donald Ross School, The EPCOR Rosssdale Power Plant, the Rosssdale Water Treatment Plant, and the Rosssdale Fire Station No. 21.” (underlining added)

[226] Ms. Agrios urged the Board to interpret these amendments as signifying that the station was not to be retained, but rather to be repurposed.

[227] Previously Section 3.9 of the Rosssdale ARP stated: Section 3.9(a) of the Rosssdale ARP, makes reference to the 'existing Fire Department Facilities remaining as long-term uses within the designated utilities area.' The same Section includes a note that, 'a review of these facilities has determined that their location in Rosssdale is necessary.'

[228] Section 3.9 now reads “the existing EPCOR Water, Infrastructure Services and Community Services facilities will remain as long-term uses within the designated utilities area.”

[229] Mr. Gunther suggested that “Community Services Facilities” was intended to refer to the Fire Station, but the amendments removed the explicit reference to the Fire Station and replaced it with “Infrastructure Services and Community Services Facilities”. The Chair clarified the old section said Fire Department, not Fire Station. Mr. Gunther stated it was referring to a specific department and those departments no longer existed.

[230] The only reference to Infrastructure Services and Community Services is under section 4.

[231] The change to section 3.9 was just an update to the department, as this terminology is found nowhere else in the ARP. She opined that Council deliberately removed the reference to fire department facilities because the plan was to decommission the Fire Station. In support of this interpretation, she further noted that all the ARP maps were updated in 2011, and yet none of them were updated to show the Fire Station.

[232] Section 687 of the *Municipal Government Act* sets out the importance of Area Redevelopment Plans. Statutory plans set out the vision, are binding on the Board and cannot be by City Council varied without following the proper process (consultation, notices, public hearings). With any other developer, the City would say it needs to amend the Area Redevelopment Plan. The City should not get special treatment when it is the Applicant. But rather the City, in particular, should follow its own statutory plan.

[233] The Board asked Ms. Agrios to comment on Section 2, Neighbourhood Development, of the Rosssdale Area Redevelopment Plan. Section 2.1.3 sets out the Land Use and

specifically speaks to a “Fire Supply, Training and Maintenance Facility.” Ms. Agrios responded that this part is setting out the history and background. Conversely, the future land use map talks about other utilities, but does not mention the Fire Station.

- [234] The Board asked Ms. Agrios to comment on her submission that the change to Section 3.3 in 2011, to include the language of repurposing was intended to specify that the Fire Station should be repurposed. Conversely, Mr. Gunther had suggested that this language was intended to allow for the decommissioning and repurposing of the EPCOR Generating Station. Furthermore, Section 3.9 specifically contemplates decommissioning the EPCOR Generating station. In response, Ms. Agrios argued that Map 4 refers to the EPCOR Generating Station and therefore contemplates that this Use may continue, whereas there is no reference to the Fire Station in Map 4.
- [235] The Board asked Ms. Agrios to comment on the fact that, prior to 2011, section 4.1 of the Rossdale ARP contemplated “retaining” “the fire maintenance and training facility”, whereas after the 2011 amendments, the ARP contemplated “retaining or repurposing... Rossdale Fire Station 21.” The Board wanted to know if one interpretation was that the Fire Station, along with a number of other facilities contemplated in section 4.1, had merely been renamed in the 2011 amendments. Ms. Agrios did not dispute that the Board’s question reflected an accurate description of the changes made to the Rossdale ARP in 2011. Ms. Agrios agreed that there is no statutory requirement to carry out consultation prior to the issuance of the Development Permit. But, she stated, the level of neighbourhood opposition is relevant to the Board’s decision and neighbourhood consultation is also a good practice.
- [236] She agreed that it is impossible to place a condition on the permit limiting to what areas of the city of Edmonton the fire crews can respond.
- [237] She asked the Board to add a condition making the approval of the Fire Station contingent on the construction of the linear park. The condition could require the City to proceed with the park as depicted on the 2015 plans within a certain time period.
- [238] Mr. Gunther interjected, stipulating that the City will agree to maintain an area which will eventually be developed into the linear park, “as is.” However, the Community League wants the park developed and built.
- [239] The Board asked Ms. Agrios to comment on whether the *Sihota* decision had any application to this issue. Ms. Agrios stated that the circumstances were different in that case. In *Sihota*, there had been no change in the circumstances. The City had incorrectly approved a post office under the wrong class. It operated for many years under this Use Class. Then an application was made for an internal expansion. The Board took the view that since the permit had been issued in error, no further expansion was allowed. The Court of Appeal overturned the Board’s decision and determined the Use issue had already been decided and what was estopped was the classification of Use. Once a decision is made to a Use, the Board could not decide a different Use. In this case, it

involves interior alterations which expand the Use. They are not arguing jurisdiction here. There is not a Use problem here. It is difficult to say what the 1979 permit encompassed because the City has not provided plans, etc. Plus, there have been intervening statutory plans.

Position of Mr. Gunther

[240] Mr. Gunther said a possible condition to include in the decision, would be that the highlighted area on the submitted plans be maintained for use as a public park. For any other conditions proposed, Mr. Gunther submits that the Development Permit is drafted to be limited in scope. With regards to the *Sihota* decision, there is no issue with Use classification here. The spirit of *Sihota* is to reinforce consistency.

Position of Ms. Agrios

[241] If the Board denies the Appeal, the Community League would also like a condition imposed regarding yard lights and not allowing diesel trucks to be allowed to idle. In terms of the suggested park condition by the City, this is what the plan is already offering. The Community League wants a condition that fire station cannot be used until the park is completed. The Board asked whether there were too many contingencies associated with the Community League's requested park condition. Ms. Agrios responded that if the City wants this permit to proceed, then it has to force other City departments to proceed. The delay will be in the City's control. The fire department should not be afforded special treatment.

Position of Mr. Gunther

[242] With regard to the yard lights on the north side, their only current location is the boat ramp and right at the station. Section 51 of the *Edmonton Zoning Building* prohibits the shining of light into residential premises. The Board can recite this section in any conditions imposed.

[243] With regard to the idling of diesel trucks, the City would be amenable to a condition that it would only be allowed on the station ramp and boat launch staging area. Sometimes idling is necessary, but would occur on the southeast portion of the station.

Position of Ms. Agrios

[244] Ms. Agrios had no further rebuttal to add.

Decision

[244] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority and subject to all conditions imposed by the Development Authority. The Board imposes the following additional **CONDITIONS**:

1. Only one 24/7 fire crew shall be permanently stationed at the subject site. A new Development Permit will be required in order to permanently station any additional 24/7 fire crews at the subject site.
2. The area designated as “future community park” on the Revised Site Plan submitted shall not be used for Protective and Emergency Services Uses, but shall be maintained for future use as a community park.
3. No idling of diesel trucks shall be permitted, except on the station ramp, the boat launch and the boat launch staging area.

Reasons for Decision**A. Introduction**

[245] This appeal deals with the Rossdale Fire Station 21 (the “fire station”). The City of Edmonton, as represented by Edmonton Fire Rescue Services (“E.F.R.S.”) applied to the Development Authority of the City of Edmonton for a development permit to “continue and intensify the use of an existing Protective and Emergency Services use (fire station 21 with a 24/7 crew) and to allow interior and exterior alteration.”

[246] This permit was granted by the development authority on July 20, 2016.

[247] That permit was appealed to this Board by the Rossdale Community League and by Mr. G. Shelley, a local resident.

B. Background of the Rossdale Fire station

[248] The fire station’s history begins in the early 1950s. The subject site is located at 9315 – 101 Street in the Rossdale neighbourhood. In 1951 what was then known as the Edmonton Fire Department constructed a fire training school on the property. The training school included a smoke house, a training tower and a drafting pit.

[249] No Development Permit for the creation of the initial training school in 1951 was presented to the Board. The first Development Permit for the site that was presented to the Board dates from September 8, 1953, when a Development Permit was granted to the City of Edmonton by the office of the interim development officer to erect a proposed garage building on the subject site.

- [250] In 1979, the City of Edmonton decided to substantially expand the training school into a full service fire station that became the fire station. In July of 1979 the City of Edmonton applied to the municipal planning commission of the City of Edmonton for a Development Permit to “construct an addition to a (fire training school) public service bldg. (fire station addn).”
- [251] That permit was granted on August 9, 1979, by the municipal planning commission subject to the notification of adjacent property owners of their right of appeal to the development appeal board. There is no record of any appeal made to the development appeal board in 1979.
- [252] The City of Edmonton then constructed the fire station. In addition to the fire training school that continued to operate out of the fire station, a pump truck and a full fire rescue crew was stationed at the fire station. In 1988, a hazardous materials team was also deployed from the fire station causing an increase in the intensity of the Use. From 1988 to 1992, between 500 and 900 calls a year were responded to from the fire station. This was in addition to the training facilities, fleet maintenance services and a water rescue service that all operated out of the fire station. In the mid-1990s, the station saw a reduction in its operations. The pump truck and the permanent crew that were stationed at the fire station were removed. From 2000–2004, use of the fire station was transferred to EPCOR although ownership of the site always remained with the City of Edmonton. The fire station was no longer operated as a traditional fire station but the site was still home to various protective and emergency services including emergency river rescue operations, specialized equipment storage, offices for fire rescue personnel and park ranger operations.

C. The 2007 Development Permit Application

- [253] In the fall of 2007, the City of Edmonton applied for a permit with respect to the fire station to “construct interior alterations and continue to operate protective and emergency services.” That permit was granted by the Development Authority and was appealed to the Subdivision and Development Appeal Board in 2007 by the Rossdale Community League.
- [254] The Board heard the appeal of that matter on February 6, 2008. The summary of that hearing was submitted as evidence before the panel in the current appeal. From page 4 of the summary, it is clear that four uses were being proposed by the City of Edmonton in 2007: river rescue, fire training, park rangers and river valley trail maintenance.
- [255] This Board denied the appeal and confirmed the decision of the Development Authority allowing all four of those uses to operate out of the fire station.
- [256] The Rossdale Community League sought and was granted leave to appeal that decision to the Court of Appeal and the Court of Appeal, in *Rossdale Community League (1974) v.*

Edmonton (Subdivision and Development Appeal Board) 2009 ABCA 261, overturned the 2008 decision of this Board. Amongst other things, the Court of Appeal found that the use “Protective and Emergency Services” did not include the use of trail maintenance. In particular, at paragraph 16 of the decision, the Court of Appeal held:

16. The appeal is allowed. The decision of the SDAB is set aside. The matter is remitted to the Board for reconsideration in accordance with this judgment. In that regard, and by way of assistance to the SDAB, we declare that the legislative framework authorizes use of the parcel for “river rescue”, “fire training”, and the activities of “park rangers”. It does not authorize the City of Edmonton to use the parcel for “trail maintenance”.

Although the matter was remitted back to the Board, the City of Edmonton did not pursue obtaining that permit and no permit was granted at that time.

D. Genesis of the Current Application

- [257] In recent years, the City of Edmonton has decided that it wants to commence substantial interior renovations with some exterior renovations to the Fire Station in order to return it to a fully operational fire station, housing one complete 24/7 crew. By way of explanation, a “24/7 crew”, as that term is used by E.F.R.S., means a group of 25 individuals, only five of whom would be on duty at the fire station at any given time. That number of people allows a station to operate a rescue truck 24 hours a day, seven days a week.
- [258] The fire station is within the North Saskatchewan River Valley Area Redevelopment Plan. More will be said about this later in this decision. Section 3.5 of the North Saskatchewan River Valley ARP stipulates that no major facilities can be built within the river valley unless they have been “deemed essential and approved by City Council”.
- [259] Accordingly, prior to applying for a development permit, E.F.R.S. initiated the process to have City Council decide whether or not the returning of the Fire station to a fully operational fire hall would be “essential”.
- [260] In accordance with the North Saskatchewan River Valley ARP, E.F.R.S. prepared an Environmental Impact Screening Assessment, as well as a detailed Site Location Study detailing the costs, social, environmental and institutional constraints which would make a river valley location essential. In July 2013, Edmonton City Council was presented with the Site Location Study and the Environmental Impact Screening Assessment. After a non-statutory public hearing where City Council heard from members of the Rossdale Community League as well as others residing in the Rossdale community, it passed the following motion:

That the existing fire station 21 be repurposed to:

- house an active river rescue crew;

- provide a backup service to the downtown core;
- house specialized apparatus;
- that the fire station be approved as a major facility within the river valley and that the location of the facility within the river valley be deemed essential and approved pursuant to section 3.5.1 of the North Saskatchewan River Valley Area Redevelopment Plan.

[261] By 2016, the City had completed the plans for the renovation of the fire station and made this application for a Development Permit to the Development Authority.

E. The Zoning of the Subject Site and the Relevant Statutory Framework

[262] The subject site is currently zoned (A) Metropolitan Recreation Zone. The subject site has been zoned “A” for as far back as the Board was presented evidence. Section 540.1 of the *Edmonton Zoning Bylaw* states that the General Purpose of Zone A is:

to preserve natural areas and parkland along the river, creeks, ravines and other designated areas for active and passive recreational uses and environment protection in conformance with Plan Edmonton and the North Saskatchewan River Valley Area Redevelopment Plan.

[263] The only Permitted Uses in Zone “A” are Minor Home Based Businesses, Public Parks, Urban Gardens, Urban Outdoor Farms and then three different classes of signs.

[264] Protective and Emergency Services are listed in section 540.3 as Discretionary Uses within the Metropolitan Recreation Zone.

[265] Protective and Emergency Services is defined in section 7.7(8) of the Zoning Bylaw as follows:

Protective and Emergency Services means development which is required for the public protection of persons and property from injury, harm or damage together with the incidental storage of equipment and vehicles, which is necessary for the local distribution of utility services. Typical uses include police stations, fire stations and ancillary training facilities.

[266] The subject site is within two different area redevelopment plans. These are the Rosedale Area Redevelopment Plan, being Bylaw 8139 of the City of Edmonton, as amended, and the North Saskatchewan River Valley Area Redevelopment Plan, being Bylaw 7188, as amended.

[267] The Board is cognizant of section 687(3) of the *Municipal Government Act* which states that:

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

(a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect.

[268] Statutory plans are a defined term in the *Municipal Government Act*. They are defined in section 616(dd) as follows:

616 (dd) “Statutory Plan” means an intermunicipal development plan, a municipal development plan, an area structure plan and an area redevelopment plan adopted by a municipality under division 4.

[269] Accordingly, this Board in reaching its decision must comply with the North Saskatchewan River Valley ARP, as well as the Rossdale ARP.

F. Analysis

1. What is the use that is being applied for by the City?

[270] The Board finds that the Use that is being applied for by the City of Edmonton, namely to operate the fire station as a fully operating fire station serving as back-up to the downtown area, the continued use of fire training facilities, the continued use of river rescue facilities, and the storage of ancillary and specialized emergency equipment vehicles, fits entirely within the definition of Protective and Emergency Services. That definition, which is set out above, specifically states that “fire stations and ancillary training facilities” are typical uses within the Protective and Emergency Services use class. Note that it also includes “the incidental storage of equipment and vehicles.” There is no doubt that operating a fire station, a river rescue operation, fire training facilities and the storage of ancillary vehicles and specialized equipment is fully encompassed within the definition of Protective and Emergency Services.

[271] At this point it is necessary for the Board to address a submission made by the Appellants. The appellants referred to paragraph 16 of the decision of the Court of Appeal in *Rossdale v. Edmonton*, which is set out above. The submission made was that the Court of Appeal found in paragraph 16 that the only Uses which are encompassed within the use class Protective and Emergency Services are “river rescue, fire training and park ranger activities.”

[272] The Board rejects this interpretation of the Court of Appeal’s decision. In the decision of the Board before the Court of Appeal, four uses were allowed by the Board: river rescue, fire training, park ranger activities and trail maintenance. In paragraph 16, the Court of Appeal was clarifying that trail maintenance was not included within the rubric of Protective and Emergency Services. It concluded that river rescue, fire training and park ranger activities were within the rubric of Protective and Emergency Services. The Court of Appeal was not setting out an exclusive list of the types of uses that fall within the Protective and Emergency Services use class. It is clear that operating a fire station is a Protective and Emergency Service, as it is specifically mentioned within the definition.

[273] Accordingly, the Board finds that the applied for uses fall entirely within the Protective and Emergency Services use class, and as such are discretionary uses within the (A) Zone.

2. *The Discretionary Use*

[274] It is important to note that the City of Edmonton is not seeking any variances of any development regulation in the *Edmonton Zoning Bylaw*. The proposed development meets all of the development standards set out in the *Edmonton Zoning Bylaw*. The only issue before the Board as it pertains to the *Edmonton Zoning Bylaw*, is whether or not this Discretionary Use should be allowed.

[275] The test the Board must use to establish whether or not a Discretionary Use is to be allowed, is helpfully set out for the Board in the Court of Appeal's decision in *Rosssdale*, as cited above. Paragraph 14 of that decision is as follows:

14. The object and purpose of a discretionary use is to allow the development authority to assess the particular type and character of the use involved, including its intensity and its compatibility with adjacent uses. The SDAB failed to consider such factors.

[276] The Board, in this current appeal, will consider those factors. The Board finds that this discretionary use should be allowed as it is compatible with adjacent uses. The reasons the Board has made this finding are set out below.

3. *The Adjacent Uses*

[277] The first part of this analysis must involve an investigation into the nature and character of the adjacent uses. The Board considered the Rosssdale community and the portions of that community that surround the subject site.

[278] The subject site is located at 9315 – 101 Street. To the east of the subject site there is first a small treed area and then the North Saskatchewan River. To the south of the subject site is also the North Saskatchewan River. This location is not an accident, given that the fire station is the centre of the City of Edmonton's river rescue operations. To the west of the subject site is a very large and extensive public utility installation, a water treatment plant operated by EPCOR. The Board observed aerial photographic evidence which clearly shows that this is an extensive utility installation. To the north of the subject site lies a single family residential area.

[279] The main transportation access to the site is 101 Street. 101 Street has parking only on its east side. No parking is allowed on the west side of 101 Street, which allows the road to have relatively unobstructed access to the subject site. Also, to the west of 101 Street north of the subject site there are no houses, as the land is part of the EPCOR water treatment facility. At the corner of 96 Avenue and 101 Street, there is a structure, but it is

the only building on the west side of 101 Street between the subject site and 96 Avenue. We note that immediately to the north of the EPCOR water treatment facility is Telus Field.

[280] The Appellants repeatedly submitted that the fire station was “embedded” within a residential area. That is not the case. The residential area, which consists of approximately 5½ blocks, is immediately to the north of the subject site. As described above, there are no residential properties to the east of the subject site, to the south of the subject site or to the west of the subject site.

[281] Rosedale is a community of mixed uses. It does have single family residential housing to the east of 101 Street and north of 94 Avenue. But it also contains significant utility facilities and a significant public structure, namely Telus Field.

4. *Is the Fire station compatible with the adjacent uses?*

[282] We now come to the heart of the matter. The Fire station is clearly compatible with the North Saskatchewan River, which is to the east and south of the proposed location. Indeed, being on the river makes the location of the river rescue operation at the fire station possible.

[283] There are no incompatibility issues between the water treatment plant immediately to the west of the subject site and the proposed fire station.

[284] But what about the residential area to the north? Many residents of that residential area are very much of the opinion that operating a fire station adjacent to their residential area does constitute an incompatibility of adjacent uses.

[285] The complaints of the Appellants and the residents that appeared to support the appeal all revolve around three main issues. They are upset about the potential of noise from sirens, the flashing of lights from the fire trucks, and the safety concern of having emergency vehicles proceed along primarily 101 Street and 96 Avenue, neither of which are Arterial Roads. While there were some other concerns mentioned, most of the factual submissions from the Appellants revolved around those concerns.

[286] The Board disagrees with the Appellants’ submission that the fire station is an incompatible use with the adjacent residential uses.

[287] First, fire stations in the city of Edmonton are usually located in close proximity to residential properties. There are 29 fire stations currently operated by E.F.R.S. Of those 29 fire stations 23 of them are located within 60 meters of residential properties. Nineteen out of those 23 stations are directly adjacent to or across a street from single family dwellings. Additionally, 3 out of the 29 current fire stations are located on local roads in residential areas as opposed to arterial roads and they include Station Number 10 at Lauderdale, Station Number 28 at Heritage Valley and Station Number 29 at Lewis

Farms. No convincing evidence was lead to show that the operation of a fire station on a non-arterial road or the operation of a fire station directly across the street or even adjacent to residential properties, was problematic, where they already exist in the city of Edmonton.

- [288] The residents also expressed the concern that this permit was “unlimited” and could result in further intensification of the site, together with an increase in emergency vehicle traffic. To help address their concern, the Board has placed a condition on this permit limiting the traditional fire station operations to one 24/7 crew. This means that, for the most part, only one rescue truck will be operated out of the Fire station. This significantly mitigates the traffic impact on 101 Street, as it is only, for the most part, one rescue truck that will be making regular trips along that road. It is to be remembered that this is not a bus station or a bus depot that would have numerous vehicles coming back at all times of the day. It is a fire station with only one crew.
- [289] The permit also allows for the storage of specialized equipment. But this specialized equipment is just that, is it specialized and would not be in daily use. The infrequent use of this specialized equipment will not be significantly impactful.
- [290] There is no parking allowed on the west side of 101 Street. This parking restriction allows ample room for the rescue truck to travel up and down 101 Street in a safe and efficient manner. In reaching this conclusion, the Board relied on photographic evidence of 101 Street and also the testimony of Chief Block. Chief Block testified that he was on a crew that operated a rescue truck out of the Fire Station in the 1980s when it was a fully operating fire station. He gave direct evidence on this point, stating that in his years operating a rescue truck out of the Fire Station, the crew did not have difficulty navigating its way out of the Rossdale neighborhood. The Board accepts this evidence.
- [291] The Appellants complained of the noise disturbance occasioned by sirens. It is acknowledged that this will have some impact on the neighborhood; however, the impact is minimal. It is a very short trip for the rescue truck to leave the fire station and get out of the Rossdale neighborhood. If the rescue truck was to go downtown, it is a two block trip north on 101 Street, one block west on 96 Avenue and then one block north on Rossdale Road, which is an arterial road. In short, the sirens would be heard for only a brief period of time as the rescue truck exits the neighborhood. On the return trip from the emergency back to the Fire Station, there would be no need for lights or sirens to be engaged. The Board therefore concludes that the existence of the sirens would be occasional, of short duration, and, while impactful, not nearly impactful enough to render the use of the subject site as a fire station incompatible with the nearby residential uses.
- [292] The Board was unable to ignore the significant steps that have been taken to limit the visual impact of the Fire Station on the residential area to the north. The Fire Station itself is set back very deep onto the subject site, with a significant buffer zone between the nearest adjacent private residence and the fire station. Furthermore, this Board has placed a condition on this permit requiring a large area between the Fire Station building

and 94 Avenue to be reserved for a future community park and not be used for Protective and Emergency Services. Also, the Development Authority placed a condition on this permit requiring the adherence to a landscaping plan. The Board upholds this landscaping condition. The landscaping plan submitted to the Board is extensive and shows that trees and shrubs are to be placed south of 94 Avenue. This will significantly shield the fire station visually from the nearby residences.

- [293] The Appellants were concerned with potential noise created by the idling of the diesel engines of the rescue vehicles and the potential impact that may have upon the surrounding residences. To address this concern, the Board placed a condition on the permit that restricts the idling of diesel engines to certain areas on the subject site, areas which are significantly to the south of the adjacent residences.
- [294] Finally, the Board finds that in exercising its discretion to allow this permit, the Board is doing so in conjunction with the directions set by City Council in the two statutory plans that are in effect, namely the Rosssdale ARP and the North Saskatchewan River Valley ARP. Because both parties relied heavily upon the wording of these area redevelopment plans, the Board will deal with each one separately.

Rosssdale Area Redevelopment Plan

- [295] The Rosssdale Area Redevelopment Plan is Bylaw 8139 of the City of Edmonton and was approved on June 10, 1986. It has been amended several times, most significantly on August 29, 2011. The Rosssdale Area Redevelopment Plan divides the Rosssdale area into four different sub areas. The subject site exists in the sub area of South Rosssdale. Section 2.4 of the Rosssdale ARP sets out the plan's objectives. The first objective of note is under the heading "*Local Utilities and Other Municipal Services Objectives*".

32. To provide an acceptable level of service for utilities, water, fire and police protection, public transit and other municipal services.

- [296] By allowing the development permit for the Fire Station, the Board will assist in achieving that objective.
- [297] Section 3.3 of the Rosssdale ARP is also relevant. This is the section entitled "South Rosssdale Concept". The paragraph at issue is as follows:

South Rosssdale has a number of city-wide recreational and utility sites which will be retained and/or repurposed: These include the former Donald Ross School, The EPCOR Rosssdale Power Plant, the Rosssdale Water Treatment Plant, and the Rosssdale Fire Station No 21.

- [298] That provision was added to the Rosssdale ARP by Bylaw 15788 on August 29, 2011. It is a specific reference to the fire station as being either retained and/or repurposed, and it is described as a "city wide" utility site. This statement from City Council in the ARP allows for the retention of the fire station and should be contrasted with the term

“decommission” used in Section 3.9 to describe the future plans for the Rosssdale Generating Station.

- [299] Section 3.6 of the Rosssdale ARP sets out the transportation policies for the Rosssdale area. These transportation policies were written specifically to maintain access to the Fire station. Section 3.6.1(f) states:

The City will undertake detailed design in the construction of Rosssdale Road to a two-way road in order to reduce the traffic between 105 Street and Rosssdale Road improving pedestrian safety and circulation in the blocks in between. Access to Rosssdale Fire station 21 will be maintained. (emphasis added)

- [300] Section 3.9 of the ARP deals with city-wide facilities, and is also relevant.

Section 3.9 – City-Wide Facilities Policies

a) Policy 1: Future of Existing Facilities

The existing *EPCOR Water, Infrastructure Services and Community Services* facilities will remain as long-term uses within the designated utilities area.

Discussion

- a review of these facilities has determined that their location in Rosssdale is necessary.
- if any facility is considered surplus or is relocated, the City will initiate a study to identify alternate uses for the site.
- see Map 4 - Future Land Use and Map 11 - Districting Proposed.
- *EPCOR’s Rosssdale Generating Station is being decommissioned.*

b) Policy 2: Noxious Materials and Procedures

The City will avoid the use of materials and/or procedures in the utilities area which are either hazardous or offensive to residents in the adjacent residential neighbourhood.

Discussion

- residents in the area have raised concerns about the use of chemicals and smoke during fire training procedures.
- Community Services has indicated that training with hazardous and/or noxious materials will not be carried out at this location.
- residents have noted occasional odours from the water treatment facility.

- [301] These policies require some analysis. It is important to note that Policy 1 is talking about the future of existing facilities. It is clear to the Board that one of the existing facilities

that is being spoken about is the fire station. It is listed as being an existing *Community Services* facility. This language was amended in 2011. Prior to 2011, the ARP referred to “Fire Department” facilities; however, the evidence before the Board was that the Fire Department is no longer a stand-alone department of the City of Edmonton and that E.F.R.S. is now part of *Community Services*. Therefore, the best interpretation of this Policy is that the *Community Services* facilities referred to is the fire station. This interpretation is reinforced by Policy 2 in section 3.9. Policy 2 specifically contemplates fire training procedures, such as those which have historically been carried out at the fire station. It states that the City will avoid the use of materials and/or procedures in the utilities area which are either hazardous or offensive to residents in the adjacent residential neighbourhood. The discussion portion of that policy states that *Community Services* has indicated that training with hazardous and/or obnoxious materials will not be carried out at this location. This can only be a reference to the fire training facilities at the subject site where a hazardous materials team once operated

- [302] Therefore we find the reference to *Community Services* facilities in section 3.9 is a reference to the fire station. We note that Policy 1 states that these facilities “will remain as long-term uses within the designated utilities area”.
- [303] Those last words “designated utilities area” brings us to a point of discussion during the hearing, namely the impact of Map 4 – future land use. That map shows a legend of future land use in the Rosssdale area. The Board notes that the blue area “14” is described in the legend as being “utilities” and encompasses the area for the Rosssdale water treatment plant that is immediately adjacent to the west to the subject site. The Board notes that the subject site is green, inside area “18” which is listed as “city-wide parks and recreation”.
- [304] The Appellants made much of the fact that the subject site falls within the green area no. “18”, as being indicative of City Council’s wish that the subject site be developed in the future as a park. Were it not for the specific references to “Rosssdale Fire Station no. 21” in the Rosssdale ARP, the map would have given the Board pause; however, “Map 4: Future Land Use”, with respect to the subject site is inconsistent with the clear indications in the text of the ARP that the Fire Station is to be retained.
- [305] Section 687(3)(a.1) of the *Municipal Government Act* requires this Board to comply with the Rosssdale ARP. The Rosssdale ARP specifically contemplates that the fire station can be retained. It does not state that it shall never be used again as a fire station. As a result, the Board does not find that this application is prohibited by the Rosssdale ARP. On the contrary, the Board finds that the Rosssdale ARP allows for s the retention of the subject site as a fire station.

The North Saskatchewan River Valley Area Redevelopment Plan

- [306] Both the City of Edmonton and the Appellants submitted to the Board that this statutory plan was determinative. Each argued that it was determinative in their favour.

[307] The Appellant relies on section 4, and in particular section 4.1. Section 4 deals with future land use proposals and how they should be dealt with within the North Saskatchewan River Valley ARP. The overall purpose is as follows:

This section outlines the proposed land uses in the North Saskatchewan River Valley Area Redevelopment Plan. It is provided for the convenience of the public and for the guidance of the Development Officer in considering proposed developments and in exercising discretion pursuant to the Land Use Bylaw.

[308] Section 4.1 was cited by the appellant as being determinative of this appeal:

4.1 Metropolitan Recreational Use and Environmental Protection

Lands in this area are primarily owned by the City of Edmonton, irrespective of whether such lands have been defined as formal public parks or in a vacant, developed or natural state. All such lands have been acquired in the past by the City for municipal purposes for the development of public parks or for environmental protection. Lands that are privately owned may continue to be used for those uses listed under “A” Metropolitan Recreation District (section 540) of the Edmonton Land Use Bylaw.

[309] We note that the *Edmonton Land Use Bylaw* is the predecessor of the current *Edmonton Zoning Bylaw*, but that the description of Zone (A)Metropolitan Recreation District has remained unchanged, other than it is now called Metropolitan Recreation Zone instead of Metropolitan Recreation District.

[310] The Appellant relies on the sentence: “All such lands have been acquired in the past by the City for municipal purposes for the development of public parks or for environmental protection.” The Appellant argues that that sentence is a prohibition of all publicly owned lands in Zone “A” for any use other than public parks or environmental protection.

[311] With respect, the Board disagreed with the interpretation that was urged upon us by the Appellants. That sentence is descriptive, not prohibitive. It is describing what has happened in the past, namely that the land in the North Saskatchewan River Valley ARP that is zoned “A” and is owned publicly has been acquired “in the past” for the development of public parks or environmental protection. That is clearly a general statement that involves a large area of land that encompasses all lands zoned “A” in the entire river valley. This broad, descriptive statement does not reflect the specific history of the subject site. The City of Edmonton acquired the subject site some time prior to 1951, and has used it ever since for Emergency and Protective Services. Even when it was going to be transferred to EPCOR in the 2000–2004 timeframe, the evidence of Chief Block, which this Board accepts, is that it was still used for river rescue. The Board does not view this sentence from section 4.1 as being directive, but rather as being merely

descriptive of what has happened, in general, to public lands in the metropolitan recreation zone.

- [312] The North Saskatchewan River Valley ARP has to be read as a whole. The City conceded that this project constitutes a major facility as defined in the North Saskatchewan River Valley ARP. Section 3.5 of the North Saskatchewan River Valley ARP sets out a series of policies that are to be followed when developing a major facility in the river valley. In general, the plan discourages major facilities from being developed in the river valley. The plan prohibits the development of major facilities in the river valley unless they would be “essential”. The elected representatives of City Council reserved to themselves the ability to determine whether or not a major facility was “essential” as per the requirements of the North Saskatchewan River Valley ARP. The process is set out in section 3.5 and in particular 3.5.3. Section 3.5.3 requires that any proposal for the development of a publicly owned, major facility shall be subject to an Environmental Impact Screening Assessment and a detailed Site Location Study. The Site Location Study must detail the costs and social, environmental and institutional constraints which make the river valley location essential. These reports were submitted to City Council in 2013. After an informal public hearing and a review of those reports, City Council deemed the development of the fire station to be essential. The City complied with the major facility approval process that was established by this ARP.
- [313] The City of Edmonton submitted that because City Council deemed this development to be essential, the Board was bound by that decision and was therefore obliged to deny the appeal. The Board does not accept that submission. The issue of whether or not the fire station is essential, as per the meaning of the North Saskatchewan River Valley ARP, was not before the Board: City Council reserved that determination to itself and made that decision in 2013. That decision cannot be revisited by this Board as it is a determination that the ARP requires only City Council to make. It is the Development Authority, and on appeal this Board, that makes the determination as to whether or not a discretionary use is compatible with adjacent land uses and whether a development permit should be granted. As set out above, the Board completed that analysis and finds that it is not an incompatible land use.
- [314] At the same time, the fact that in 2013 City Council found the fire station to be an essential major facility, so essential that it should be built even though it is within the river valley, is certainly a factor that this Board may take into account when determining whether or not to allow this Discretionary Use. City Council’s 2013 decision is particularly relevant when the Board considers the general purpose of the Metropolitan Recreation Zone, quoted above. The General Purpose specifically references conformity with the North Saskatchewan River Valley ARP, which forbids all major facilities that have not been deemed essential by City Council. As City Council has deemed this essential, this development is in compliance with the General Purpose of the Metropolitan Recreational Zone and a development that is in compliance with the General Purpose of the Zone should be looked at in a more positive light when the Board exercises its discretion.

Conclusion

- [315] The Board finds that returning the fire station to an active fire station, limited as it has been by the conditions attached to this permit by both the Development Authority and this Board, will not constitute a Use which is incompatible with the adjacent land uses. The Board finds that the provisions of the Rossdale ARP and the North Saskatchewan River Valley ARP do not forbid this development and in fact contain provisions to support it.
- [316] The appeal is denied.

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

Board Members in Attendance:

Ms. P. Jones; Mr. L. Pratt; Ms. A. Lund; Ms. K. Thind

- c.c. Rossdale Community League, Attn: Lynn Parish
Edmonton Fire Rescue Services, Attn: Brent Porter
Edmonton Fire Rescue Services, Attn: Ken Block
City of Edmonton, Sustainable Development, Attn: Carman Yeung / Harry Luke
City of Edmonton, Community Services, Attn: Ken Block
City of Edmonton, Integrated Infrastructure Services, Attn: Devin Richards
City of Edmonton, Community Services, Attn: Rob Smith
City of Edmonton, Sustainable Development, Attn: Travis Pawlyk
City of Edmonton, Sustainable Development, Attn: Kalen Anderson
Gabe Shelley
Jackie Westermeier
Kennedy Agrios LLP, Attn: Janice Agrios
City of Edmonton, Law Branch, Attn: Michael Gunther
Sandra & John Mason; Darcey-Lynn Marc; Natalie Bunting; Rick Ewasiuk; Brent Elton;
Jim Rivait; Buff Parry; Bruce James & Leslie Paetz; Robert Rice & Dale Pardy; F.
Vogel; E. Grieve; Sylvia St. Martin; Rob Rondeau; Mary-Lou Hogg; JL Ring; Candace
Scruggs; Corinna Burdek & David Campbell; Brent McDonough; Ellen Hambrook

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 5th Floor, 10250 – 101 Street NW, Edmonton.
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 5th Floor, 10250 – 101 Street NW, Edmonton.

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.