
Appeal File Numbers:	023-STU-002
Application Number:	2022-S-035
Appeal Against:	Subdivision Authority of Sturgeon County
Appellants:	Ioannis John Kalogeras
Date and Location of Hearing:	January 31, 2023 Council Chambers and Through Electronic Communications
Date of Decision:	February 13, 2023
SDAB Members:	Julius Buski, Neal Comeau, Amanda Papadopoulos

NOTICE OF DECISION

IN THE MATTER OF an appeal by Ioannis John Kalogeras against the Subdivision Authority’s refusal to subdivide 0.26 hectares (0.64 acres) from 0.48 hectares (1.19 acres) at Plan 8020218; Block 4; Lot 2 – Summerbrook Estates within Sturgeon County.

- [1] This is the decision of the Sturgeon County Subdivision and Development Appeal Board (the “SDAB” or “Board”) on an appeal filed with the SDAB pursuant to section 678(1) of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the “MGA” or “Act”).
- [2] In making this decision, the Board reviewed all the evidence presented and considered provisions of the *Municipal Government Act*, Sturgeon County’s Land Use Bylaw 1385/17 (the “Land Use Bylaw” or “LUB”), and Sturgeon County’s Municipal Development Plan (MDP), and any amendments thereto.
- [3] The following documents were received and form part of the record:
 - a. The Notice of Appeal;
 - b. A copy of the subdivision application with attachments;
 - c. The Subdivision Authority’s written decision; and
 - d. Planning & Development Services Report.

PRELIMINARY MATTERS

- [4] There were no preliminary matters addressed at the hearing.

PROCEDURAL MATTERS

- [5] The appeal was filed on time and in accordance with section 678(2) of the MGA.
- [6] There were no objections to the proposed hearing process as outlined by the Chair.
- [7] There were no objections to the composition of the Board hearing the appeal.

[8] The Board is satisfied that it has jurisdiction to deal with this matter.

ISSUES

[9] The Appellant raised the following grounds of appeal:

- a. Despite the provisions of Sturgeon County's Municipal Development Plan, there are other approved and completed panhandle subdivisions in the area.
- b. The subdivision application conforms with the Sturgeon Valley Core Area Structure Plan.

RECOMMENDATION OF THE SUBDIVISION AUTHORITY

[10] Jonathan Heemskerck, representative for the Subdivision Authority, provided a presentation which includes a recommendation that subdivision application 2022-S-032 be refused for the following reasons:

1. The proposal to create a 0.26-hectare (0.64 acre) parcel from 0.48 hectares (1.19 acres) does not conform to the policies of the Sturgeon Valley Core Area Structure Plan. This policy requires that the County encourage orderly and efficient residential development while maintaining the established community character. The proposal does not meet these requirements.
2. The proposal does not conform with the Municipal Development Plan as per section 654(1) of the *Municipal Government Act*:
 - a) Policy 2.2.3 discourages the use of panhandles as a way to provide residential subdivisions with legal and physical access to a municipal roadway.
 - b) Policy 2.2.7 notes the County shall ensure infill subdivision and development complement the established character of the area, comply with the associated Residential Type policies, address any infrastructure constraints, and conform to the Land Use Bylaw.
3. Section 654(1) of the *Municipal Government Act* requires that a subdivision authority not approve an application for subdivision approval unless the land that is proposed to be subdivided is, in the opinion of the subdivision authority, suitable for the purpose for which the subdivision is intended; and, the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan, and subject to section 642(2), any land use bylaw that affects the land proposed to be subdivided.
4. This application is inconsistent with the MDP; therefore, the subdivision authority has refused the application.

SUMMARY OF APPELLANT'S POSITION

[11] David Dhiman, Agent for the Appellant, submitted that the parcel is unique in its location. It is a corner lot along Bellerose Drive with Arcand Lane to the front and a pathway to the back. There would be no traffic impact on Arcand Lane, and Bellerose Drive is a main thoroughfare.

- [12] The Appellant submitted that there are trees along both sides of the lot and behind the lot is a walkway, so the home would not be visible to neighbours and privacy would not be diminished.
- [13] The Appellant further submitted that panhandle subdivisions have been approved in other areas near the subject parcel, including on Fairway Boulevard and in the Green Acres and Noroncal subdivisions.
- [14] The Appellant further submitted that subdividing the lot would not set a precedent as this is a unique location and the Appellant is not in contravention of the spirit of development in the County.

DECISION OF THE BOARD

- [15] **The Board DENIES the appeal and UPHOLDS the decision of the Subdivision Authority made on December 22, 2022 to refuse subdivision application 2022-S-035.**

REASONS FOR THE DECISION

- [16] The Appellant's request is to create a 0.26-hectare (0.64 acre) parcel from 0.48 hectares (1.19 acres). The proposal meets the minimum parcel area regulations of the Land Use Bylaw, but the minimum parcel width (25 metres) is not met as a result of the proposed panhandle access but is met at the rear of the proposed lot.
- [17] In recommending refusal of the subdivision application, the Subdivision Authority submitted that, pursuant to section 654(1) of the *Municipal Government Act*, a subdivision authority must not approve an application for subdivision approval unless the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan, and any land use bylaw that affects the land proposed to be subdivided.
- [18] The Subdivision Authority submitted that the proposal does not conform with the Municipal Development Plan, specifically Policy 2.2.3 which discourages the use of panhandles as a way to provide residential subdivisions with legal and physical access to a municipal roadway, and Policy 2.2.7 which states that the County shall ensure infill subdivision and development complement the established character of the area, complies with the associated Residential Type policies, addresses any infrastructure constraints, and conforms to the criteria outlined in the Land Use Bylaw.
- [19] Further, the Subdivision Authority advised the proposal does not conform to Policy 5.5.1 of the Sturgeon Valley Core Area Structure Plan, which requires the County to encourage orderly and efficient residential development while maintaining the established community character. The Subdivision Authority further asserted that the proposed subdivision could result in new development that does not complement the built form, and also create precedent for subdivision that, in the long-term, could affect infrastructure capacity.
- [20] The Board received evidence from the Appellant that, despite Policy 2.2.3 of the MDP discouraging the use of panhandles as a way to provide residential subdivisions with legal and physical access to a municipal roadway, there are at least three other examples near the

subject parcel where a panhandle subdivision has been approved. However, the Board received verbal evidence that the subdivisions were approved at the time the community was originally built out, and not by way of a subsequent subdivision. Therefore, the Board finds these subdivisions incomparable to the subject application.

- [21] In considering Policy 2.2.7 of the MDP and Policy 5.5.1 of the Sturgeon Valley Core Area Structure Plan, and the impact of the proposed subdivision on the character of the community, the Board was persuaded by the letters provided by adjacent landowners to the Subdivision Authority that the proposed subdivision would impact the character of the community.
- [22] Although not bound by precedent or a precedent-making body, the Board recognizes that its decisions must be equitable and contribute to a planning and subdivision framework that provides a level of certainty and reliance. A decision to approve this subdivision alone may not significantly impact the character of the community or place significant constraints on the infrastructure of the Sturgeon Valley area; however, a decision to approve this subdivision would require the application of equity for potential future applications, which at a larger scale, could have negative consequences, which the MDP anticipates and seeks to prevent.
- [23] In weighing the merits of Appellant's application against the consistent application of land use policies that seek to promote the orderly development of the community as a whole, including maintaining the character of communities on lands subject to Residential Type 1 of the MDP, the Board determines that the regulations of the MDP shall be applied to the lands in question.
- [24] For all of these reasons, the Board denies the appeal and upholds the decision of the Subdivision Authority to refuse the subdivision application.

Dated at the Town of Morinville, in the Province of Alberta, this 13th day of February, 2023.



Julius Buski, Chair

Pursuant to Section 688(1)(a) of the Municipal Government Act (MGA), an appeal of a decision of the Subdivision and Development Appeal Board lies with the Alberta Court of Appeal on a matter of law or jurisdiction. In accordance with Section 688(2)(a), if a decision is being considered, an application for permission to appeal must be filed and served within 30 days after the issuance of the decision and, notice of the application for permission must be provided to the Subdivision and Development Appeal Board and in accordance with Section 688(2)(b), any other persons that the judge directs.

APPENDIX "A"
List of Submissions

- The Notice of Appeal;
- A copy of the subdivision application with attachments;
- The Subdivision Authority's written decision;
- Planning & Development Services Report