
Appeal File Numbers:	023-STU-019
Application Number:	2023-S-017
Appeal Against:	Subdivision Authority of Sturgeon County
Appellants:	Abdul Aziz El Mustapha
Date and Location of Hearing:	September 19, 2023 Council Chambers and Through Electronic Communications
Date of Decision:	October 3, 2023
SDAB Members:	Julius Buski (Chair), Neal Comeau, Amanda Papadopoulos, Lili Terry, and Don Rigney.

NOTICE OF DECISION

IN THE MATTER OF an appeal by Abdul Aziz El Mustapha against the Subdivision Authority's refusal to subdivide 0.62 hectares (1.53 acres) from 1.24 hectares (3.06 acres) at Plan 4208NY;; Lot 13 (27, 54220 Range Road 250) 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:
- The Notice of Appeal;
 - A copy of the subdivision application with attachments;
 - The Subdivision Authority's written decision; and
 - 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 Appellants raised the following grounds of appeal:

- a. Neighbouring lots along the south, east and west, along with others in the community, have been subdivided.

RECOMMENDATION OF THE SUBDIVISION AUTHORITY

[10] Jonathan Heemskerk, representative for the Subdivision Authority, provided a presentation which included a recommendation that subdivision application 2023-S-017 be refused because it does not comply with the requirements of the *Municipal Government Act* or Sturgeon County's Municipal Development Plan.

[11] Section 654(1) of the *Municipal Government Act* provides that a subdivision authority must not approve an application for subdivision approval unless: (a) the land that is proposed to be subdivided is, in the opinion of the subdivision authority, suitable for the purpose for which the subdivision is intended; and (b) the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan and, subject to subsection (2), any land use bylaw that affects the land proposed to be subdivided.

[12] The proposal does not conform with the Municipal Development Plan policies noted below:

2.2.2 Shall prevent any residential subdivision layout that does not reflect future development potential, or that may result in development restrictions of the adjacent parcel.

2.2.7 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 (LUB).

[13] The proposal does not conform with the Land Use Bylaw as per Section 654(1) of the *Municipal Government Act*. The regulations are noted below:

Part 12.1.3 of the Land Use Bylaw outlines a minimum parcel area of 1 hectare (2.47 acres) for parcels not connected to a municipal sanitary line.

[14] This proposal does not conform to the policy or intent of the Sturgeon Valley South Area Structure Plan. This policy requires the County to develop the area in an orderly and phased manner at densities that align with the Edmonton Metropolitan Region Growth Plan. This application does not meet these requirements.

[15] Mr. Heemskerk referenced section 656(3) of the *Municipal Government Act* (MGA), which provides that, if an application for subdivision approval is refused, the subdivision authority may refuse to accept for consideration, with respect to the same land or part of the same land, a further application for subdivision approval submitted to it within the 6-month period after the date of the subdivision authority's decision to refuse the application. Mr. Heemskerk advised that the Subdivision Authority exercised its discretion in accepting this subdivision application although it was submitted within 6 months of the original application.

SUMMARY OF APPELLANTS' POSITION

- [16] The Appellant's Agent, Waleed Assaf, attended the hearing and advised that the Appellant has been seeking to purchase property in the area for the last decade.
- [17] The Appellant's Realtor indicated that the property would be able to be subdivided so the property was purchased with the intent of building a home and having their family live and grow in the area.
- [18] The Appellant has mentioned his plans to all of the neighbours and believes everyone is in favour.

SUBMISSIONS FROM ADJACENT LANDOWNERS

- [19] Jake Jamieson attended the hearing and spoke in opposition to the appeal. He advised that he is a landowner in the North Point subdivision. He believes that the owner of the property does not live at that location and currently has a tenant. He believes the request to subdivide is for financial gain only.
- [20] The parcel is fully treed and would require clearing prior to any development and this would require the use of heavy equipment which causes stress on the roads and would create a lot of noise.
- [21] He loves the area the way it is and wants it to stay that way. If he wanted to be surrounded by other homes, he would have stayed in the city.

DECISION OF THE BOARD

- [22] **The Board GRANTS the appeal and REVOKES the decision of the Subdivision Authority made on August 16, 2023 to refuse subdivision application 2023-S-017 and approves the subdivision subject to the following conditions:**

- 1) Pursuant to section 654(1)(d) of the *Municipal Government Act* (MGA), any outstanding taxes on the subject property shall be paid or arrangements be made, to the satisfaction of Sturgeon County, for the payment thereof.
- 2) The applicant shall retain the services of a professional Alberta Land Surveyor, who shall submit a drawing to Sturgeon County resembling Exhibit 3, dated September 13, 2023, and submit it in a manner that is acceptable to Land Titles.
- 3) All upgrades to *existing* culverts and/or *existing* approaches, and construction/removal of approaches, as determined necessary by the Development Engineering Officer, will be the responsibility of the developer and upgraded to the satisfaction of Sturgeon County Engineering Services and/or Sturgeon County Transportation Services *before* this subdivision is endorsed.
- 4) Pursuant to Provision 654(1)(c) of the MGA, the proposed subdivision must result in compliance with the 2015 Alberta Private Sewage Systems Standard of Practice. A certificate of compliance will be required from Sturgeon County's Gas & Plumbing Inspector, confirming that the existing open discharge septic system either meets the Standard of Practice as-is, or has either been replaced, relocated, or redesigned to comply. Note: An Alberta Land Surveyor may be required to confirm distances from the septic system to property lines, buildings, or other features – to the satisfaction of the Gas & Plumbing Inspector.

- 5) Pursuant to the Sturgeon County Residential Lot Grading Policy, the applicant shall complete and submit a lot grading plan to the satisfaction of Sturgeon County Engineering Services *before* this subdivision is endorsed.

REASONS FOR THE DECISION

- [23] The Appellant's request is to subdivide 0.62 hectares (1.53 acres) from 1.24 hectares (3.06 acres) at Plan 4208NY; Lot 13 within Sturgeon County. The property is in the southern region of the County within the multi-lot subdivision of North Point. The property is in the R1 Country Residential district. There is an existing residence on the east side of property.
- [24] The proposal is to split the lot in equal halves creating two lots of 0.6 hectares. The existing residence would remain on the remnant lot and the new lot would be on the west side and constitute proposed Lot 1.
- [25] In recommending refusal of the subdivision application, the Subdivision Authority submitted that, pursuant to section 654(1) of the *Municipal Government Act* (MGA), a subdivision authority must not approve an application for subdivision approval unless: (a) the land that is proposed to be subdivided is, in the opinion of the subdivision authority, suitable for the purpose for which the subdivision is intended; and (b) the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan and, subject to subsection (2), any land use bylaw that affects the land proposed to be subdivided.
- [26] The Subdivision Authority submitted that the proposal does not conform with the Municipal Development Plan, specifically Policy 2.2.2 which restricts any residential subdivision layout that does not reflect future development potential, or that may result in development restrictions of the adjacent parcel, and Policy 2.2.7 which promotes infill subdivision and development that complements 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. The Sturgeon Valley Core area has specific regulations with respect to lot size, width, and access and all of these requirements must be met for a subdivision application to be considered for approval.
- [27] The Appellant submitted that neighbouring lots to the south, east and west of the proposed lots have been subdivided and this subdivision would allow their family to live and grow in the area. He submitted that other parcels in the neighbourhood have been subdivided and do not meet current Land Use Bylaw requirements.
- [28] The Board heard a submission from Jake Jamieson, an adjacent landowner who expressed concerns about the property owner not living on the lot and seeking the subdivision for financial gain. Mr. Jamieson expressed further concerns about heavy equipment damage to the roads, noise from future construction, and removal of trees on the lot.
- [29] The Board's jurisdiction is limited to the appropriateness of subdivision and development matters in the context of conformance to land use policies while considering the impacts of proposed subdivision and development on adjacent property owners and the community. Therefore, the Board placed no weight on Mr. Jamieson's submission as it relates to the Applicant's motives in seeking the subdivision. The Board is also not persuaded that concerns with potential future construction is a relevant consideration as a temporary increase in traffic and noise during construction is to be expected with any development and is

irrelevant to the long-term impacts of land use planning decisions, which is the Board's purview.

- [30] The Board finds that it may approve an application for subdivision approval even though the proposed subdivision does not comply with the Land Use Bylaw if, in its opinion, the proposed subdivision would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land, and the proposed subdivision conforms with the use prescribed for that land in the Land Use Bylaw. Having received no relevant evidence from the parties in attendance at the hearing in opposition to the appeal, and in consideration that no other adjacent landowners indicated opposition to the application, the Board finds that the proposed subdivision would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land.
- [31] 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, the Board finds the lot configuration to be a clean, straight line and equally divided.
- [32] For all of these reasons, the Board grants the appeal, revokes the decision of the Subdivision Authority to refuse the subdivision, and approves the subdivision subject to the conditions listed above.

Dated at the Town of Morinville, in the Province of Alberta, this 3rd day of October, 2023.



Julius Buski, Chair

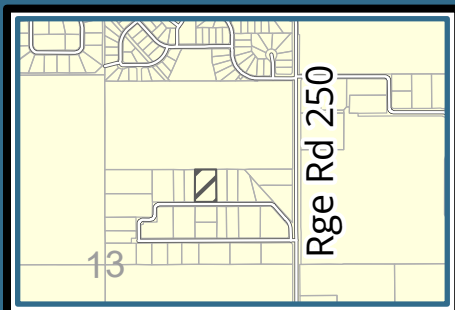
Pursuant to Section 688(1)(a) of the Municipal Government Act (MGA), an appeal of a decision of the Subdivision and Development Appeal Board lies with the Alberta Court of Appeal on a matter of law or jurisdiction. In accordance with Section 688(2)(a), if a decision is being considered, an application 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

Exhibit 3

File Number: 2023-S-017



Legal Description: 4208NY;;13

Roll Number: 2725000




Total Acres/Hectares: 3.10ac / 1.25ha

Municipal Address: 27 54220 Rge Rd 250

Land Use: R1 - Country Residential Date:

9/13/2023

Legend

-  Approach
-  Garage
-  Dwelling
-  Shed