

NOTICE OF DECISION

FILE NO. **SDAB 2021-001**

APPLICATION No.: **2018-SU-00011**

DEVELOPMENT: **Refusal – Subdivision Application**

LAND USE DESIGNATION: **R1S – Single Family Small Lot Residential**

LEGAL DESCRIPTION: **Lot 34, Block 36, Plan 192 0472**

CIVIC ADDRESS: **108 Cote Bay, Fort McMurray, Alberta**

IN THE MATTER OF AN APPEAL filed with the Regional Municipality of Wood Buffalo Subdivision and Development Appeal Board (“the Board”) pursuant to Sections 685 and 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (“the Municipal Government Act”), the Appeal Hearing was held virtually via MS Teams on Thursday, March 11, 2021 in Fort McMurray, Alberta.

BETWEEN:

Shaker Naser (“the Appellant”)

-and-

The Regional Municipality of Wood Buffalo (“the Municipality”)

BEFORE:

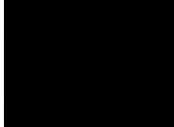
R. Wells, Vice Chair
K. Carruthers
N. Mahgoub
T. Tupper

Administration:

H. Fredeen, Clerk for the Subdivision and Development Appeal Board
S. Soutter, Manager, Legislative Services
D. Soucy, Legislative Officer

- [1] Following the introduction of the Board, the Chair confirmed with the parties in attendance that there were no objections to the constitution of the Board.

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PRELIMINARY MATTERS

- [2] Following a Jurisdictional hearing held on January 21, 2021 the Board heard submissions in relation to a request filed by the Appellant for the Appeal Hearing to be postponed until such time that the hearing can be held in-person.

Appellant Submission:

- [3] S. Naser, Appellant submitted that due to the history involved in this matter, he is requesting that the Board postpone the appeal hearing to a time when they can present their evidence to the Board in-person.
- [4] In support of his request the Appellant submitted that this matter has been ongoing for ten years and as such they have lots of documents which he feels would be very difficult to present in a virtual format.

Municipality Submission:

- [5] S. Chandhiok, Planning and Development submitted that the hearing could proceed in a virtual format as the same avenue for the submission of evidence would be provided for regardless of the hearing being held in-person or virtually. He further submitted over the course of the last year many meetings have been held virtually and this has not affected any party's capability to present evidence.
- [6] The Municipality further submitted that they are not opposed to an in-person hearing.
- [7] The Board notes that there were no further submission's in support or opposition to this matter.
- [8] The Board canvassed the parties for possible dates, to which both parties confirmed that June 17, 2021 would be practicable.

FINDINGS OF FACT

- [9] The Board makes the following findings of fact:
- a. The current restriction's in place in the Province of Alberta due to the COVID-19 pandemic restricts in-person gatherings.
 - b. Government of Alberta and Municipal officials continue to encourage meetings such as appeal hearings be held virtually.

DECISION

- [10] **It is the decision of the Subdivision and Development Appeal Board to postpone the Appeal Hearing for the Refusal of Subdivision Application 2018-SU-00011 as follows:**

Date: Thursday June 17, 2021
Time: 6:30 p.m.

Evidence Submission Dates - Appellant, 12 Noon, Thursday May 27, 2021
- Municipality, 12 noon, Thursday June 3, 2021
- Affected Parties, 12 noon, Thursday June 10, 2021

- [11] **Important Note:**
Due to the ongoing COVID-19 pandemic, should the current Public Health Order that restricts in-person gatherings still be in-place, the Board advises the parties to be prepared for the Appeal Hearing to proceed via Electronic means in accordance with the regulations assigned by the Government of Alberta.
- [12] **The Board will not hear any further requests for postponement or adjournment of this matter.**
- [13] **The Board orders that that the legislated Notice of Hearing contain details on how the parties submit their evidence.**
- [14] **Furthermore, the Board orders that a pre-hearing conference between the parties and the Clerk's office be scheduled on a date to be determined by the Clerk and such notice to be provided ten (10) days before the prehearing conference. The purpose of the pre-hearing conference will be for all parties to familiarize themselves with the meeting platform whether being held in-person or virtual.**

REASONS FOR THE DECISION

- [15] On March 26, 2020 the Government of Alberta issued Order in Council 099/2020, COVID-19 Suppression Regulation (“the Regulation”). The purposes of the Regulation is to provide for meetings such as Subdivision and Development Appeal Board hearings under the *Municipal Government Act* to be held in a manner that avoids exposing persons to COVID-19.
- [16] Section 3(1) of the Regulation states
- Public meetings may be held electronically**
3(1) Where the Act requires a council, **board** [*emphasis added*] or commission to hold a meeting in public, that requirement is deemed to have been complied with by holding the meeting by electronic means,...
- [17] The Board heard submissions from both parties but found the submission of the Appellant to be general in nature. Although, not compelled by the submission of the Appellant, the Board must allow the Appellant a fair opportunity and procedural fairness which includes but not limited to the right to a hearing.
- [18] By delaying the hearing 98 days the Board feels it has acted fairly and this allows the Appellant enough time to be prepared. Barring the lifting of restrictions by the Chief Medical Officer Health and the Government of Alberta, the Board decides that the hearing must proceed.
- [19] The Board encourages the Appellant to reach out to the Clerk’s office and familiarize himself with the virtual meeting platform utilized in the event the hearing is proceeding virtually.
- [20] The Board also wishes to clarify for the Appellant, regardless of the type of the hearing platform (in-person or virtual), the Appellant has a duty to submit all the evidence he wishes to present to the Board in advance of the hearing. This is alignment with the Boards standard practice, details of which can be found by visiting www.rmwb.ca/SDAB. As stated by the Municipality the same avenue will be used regardless of the type of the hearing. Given that the Appellant has submitted that he has lots of evidence, the Board encourages the Appellant to commence digitizing their submissions.
- [21] As previously mentioned, the Board encourages the Appellant to reach out to the Clerk’s Office for assistance.

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- [22] In closing, as the Board noted above, allowing some time before the appeal hearing provides the Appellant enough time to assess the state of the pandemic but also affords the Appellant ample opportunity to prepare should the appeal hearing proceed virtually.
- [23] It is so ordered.
- [24] The decision of the Subdivision and Development Appeal Board is final and binding on all parties, subject only to appeal to the Court of Appeal under Section 688 of the *Municipal Government Act*, R.S.A 2000, c. M-26

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 25TH day of MARCH 2021.

CHAIR

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Rene Wells

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:

EXHIBIT NO.	ITEM	DATE FILED
J1.	Email: Request for Postponement of Merit Hearing (1 page)	2021-01-12
J2.	Email: Request for Preliminary Hearing Date of March 11, 2021 (1 page)	2021-01-18
J3.	Email: No contest with March 11, 2021 Hearing date (1 page)	2021-01-18

APPENDIX "B"

REPRESENTATIONS

PERSON APPEARING

CAPACITY

- | | | |
|----|--------------|--|
| 1. | S. Naser | Agent for Subject Property Owner |
| 2. | R. Naser | Son, Subject Property Owner |
| 3. | D. Dhaliwal | Development Officer, Planning and Development
Regional Municipality of Wood Buffalo |
| 4. | S. Chandhiok | Supervisor, Development Control
Regional Municipality of Wood Buffalo |