

**AGENDA**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
LEDUC COUNTY  
COUNCIL CHAMBER, COUNTY CENTRE, NISKU, ALBERTA**

**Friday, May 11, 2018**

1. **Order and Roll Call** – 9:00 a.m.
2. **Agenda Adoption**
3. **Adoption of Previous Minutes**
  - \* April 19, 2018 Subdivision and Development Appeal Board Meeting
4. **Subdivision and Development Appeal Hearing**
  - \* a) 9:00 a.m. D17-237 Appeal by Kevin Haldane, Ogilvie LLP, on behalf of  
Roll #5538031 Frank Hilbich Architect Inc. (Brian Sippert, Church of  
God) – Religious Assembly (4,550 sq. m) on Lot 1,  
Block 1, Plan 0941231, Pt. NW 7-51-24-W4  
  
(Adjourned at April 19, 2018 SDAB Meeting Motion No. 24-18)
5. **Next Meeting Date** – Wednesday, May 16, 2018, commencing at 1:00 p.m.
6. **Adjournment**



**Legend**

- \* Items Attached To Agenda

**MINUTES OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD MEETING, LEDUC COUNTY, HELD ON FRIDAY, MAY 11, 2018 IN THE COUNCIL CHAMBER OF THE COUNTY CENTRE BUILDING, NISKU, ALBERTA.**

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**Order and Roll Call**

The meeting was called to order at 9:00 a.m., Friday, May 11, 2018 by Chair Mary-Ann McDonald and Board Members Shirley Jolly, Doug Ruel and Larry Wanchuk present.

Also present were Mr. Garrett Broadbent, Clerk of the Subdivision and Development Appeal Board; Ms. Joyce Gavan, Recording Secretary; Ms. Daina Young, Reynolds Mirth Richards Farmer LLP (Legal Counsel for the Board); Mrs. Charlene Haverland, Manager of Development Services; and Mr. Colin Richards, Team Lead Development.

Present as well were 13 other individuals.

**Agenda Adoption**

**29-18** Board Member Jolly -- that the Agenda for the May 11, 2018 Subdivision and Development Appeal Board meeting be accepted as circulated.

Carried

**Adoption of Previous Minutes – April 19, 2018**

**30-18** Board Member Ruel -- that the April 19, 2018 Subdivision and Development Appeal Board minutes be confirmed as circulated.

Carried

**Appeal by Kevin Haldane, Ogilvie LLP, on behalf of Frank Hilbich Architect Inc. (Brian Sippert, Church of God) whereby Development Permit Application D17-237 for a Religious Assembly (4,550 sq. m) on Lot 1, Block 1, Plan 0941231, Pt. NW 7-51-24-W4.**

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Chair McDonald called the hearing to order at 9:01 a.m. and introduced Board Members and staff. Board Chair McDonald noted this hearing was adjourned on April 19, 2018.

Chair McDonald asked if any Board Member felt a need step down from this hearing within the boundaries of Conflict of Interest, and there was no one.

Chair McDonald asked if anyone had any objection to any of the members of the Subdivision and Development Appeal Board hearing this appeal, and there was no objection indicated.

Chair McDonald explained the purpose of the hearing, the order of presentation and the procedures to be followed.

Chair McDonald then called upon the Clerk to introduce the subject of this appeal.

Mr. Garrett Broadbent, Clerk, advised of the appeal by Kevin Haldane, Ogilvie LLP, on behalf of Frank Hilbich Architect Inc. (Brian Sippert, Church of God) whereby Development Permit Application D17-237 for a religious assembly consisting of 4,550 sq. m. (48,975 sq. ft.) on Lot 1, Block 1, Plan 0941231, Pt. NW 7-51-24-W4 was refused. The reasons for appeal are as follows:

1. The Development Authority erred in determining that a local area structure plan is necessary prior to development proceeding on the subject site.



2. The Development Authority erred in determining that the proposed development would not be compatible with surrounding land uses.
3. The Development Authority erred in determining that the removal of the subject lands from agricultural production was contrary to statutory plans.
4. The subdivision plan creating the subject site was approved by the subdivision authority in contemplation of the proposed development in 2009.
5. The proposed development is appropriate at the subject location.
6. Such further and other grounds as may be presented at the hearing of this appeal.

Mr. Broadbent advised the following information is attached for the Board:

- 1) Staff Report.
- 2) Appeal Received March 21, 2018.
- 3) Notice of SDAB Hearing package dated March 29, 2018.
- 4) Notice of Development Permit Refusal dated March 13, 2018.
- 5) Development Permit Application D17-237 with Refused Site Plan.
- 6) Business Information Sheet
- 7) Key Plan.
- 8) Aerial Image of Site
- 9) Development Plans and Additional Information
- 10) City of Edmonton Referral Responses (April 13, 2018 and October 13, 2017)
- 11) Adjacent Landowner Letters Responses (5) expressing opposition.
- 12) 2012 SDAB Decision for Application D12-224 to develop a Religious Assembly (Church) on same property.
- 13) Submissions from Scheffer Andrew Ltd., Planners & Engineers prepared for Heritage Valley Church of God:
  - i) Stormwater Management Report dated August 30, 2017; and
  - ii) Traffic Study dated August, 2017.
- 14) Written submission received April 18, 2018 from Ogilvie LLP, on behalf of Church of God – Gemeinde Gottes – Edmonton.

The Board confirmed the appeal was submitted properly and acceptable to the Board.

Chair McDonald asked the Clerk to read/present any other relevant information and/or correspondence, and Mr. Broadbent advised there was none.

Chair McDonald called upon the Planning and Development Department to provide background information.

Mr. Colin Richards, Team Lead Development Services, provided the following information relating to the appeal by Kevin Haldane, Ogilvie LLP, on behalf of Frank Hilbich Architect Inc., Church of God:

1. This is an appeal against the decision of the Leduc County Development Authority, whereby an application for a religious assembly building with a 4,550 m<sup>2</sup> (48,975 sq. ft.) footprint was refused at the subject site.
2. Within the 4,550 m<sup>2</sup> footprint of the proposed church building, the proposal includes seating areas for 728 people, along with areas for childcare, kitchen facilities, a fellowship hall, 8 classrooms, 9 offices and meeting rooms, group areas and a number of other facilities and designated rooms. Outside of the proposed building, the development proposes 2 sports fields and 288 parking stalls.

3. The Development Authority refused the application for the five reasons summarized as follows:
  - i) That the development does not constitute orderly development and should be planned through detailed Local Area Structure Plans and Outline Plans.
  - ii) That the proposed development is not compatible with surrounding agricultural and residential land uses in terms of function, form and scale.
  - iii) That the proposed development will remove valuable agricultural lands from production, which is contrary to the Policies of existing statutory plans for the area.
  - iv) That the proposed development is not supported by the City of Edmonton, of which the subject lands fall within the proposed Edmonton annexation area.
  - v) That the proposed development received objections from adjacent and surrounding landowners on the grounds that the Development Authority deemed sufficient to warrant a refusal of the application.
4. In support of the initial application, the applicants provided reports that included a Traffic Study, a Stormwater Management Report and a Geotechnical Investigation. In review of these reports, the County held no concern with the contents and findings of each of these studies, however, due to the key land use policies discussed within the Notice of Decision, support could not be given to the proposal.
5. The subject property is located immediately off of Range Road 250 and approximately 0.5 km south of Township Road 512 - 41 Ave SW, which is currently the City of Edmonton's defined southern boundary. The subject site is situated within the future proposed annexation lands of the City of Edmonton.
6. The site is undeveloped and is utilized for active farming and holds a Farmland Assessment Rating of 81%.
7. In accordance with the Land Use Bylaw 7-08, the subject property, and areas immediately surrounding the site are districted within the Agricultural (AG) District, in which all applications for religious assembly uses are considered a discretionary land use.
8. A planning history search of the subject site indicated a number of historical applications related to this property. These are summarized as follows:
  - 2008: Subdivision Application SD08-104 to subdivide two 4.29 ha parcels from a title area of 8.59 ha was recommended for refusal by the Development Authority and approved by the Subdivision Authority.
  - 2009: Development Permit Application D09-190 to establish a campground at the property was refused by the Development Authority.
  - 2012: Development Permit Application D12-224 to establish a 4,175 m<sup>2</sup> (footprint) religious assembly building at the subject site was refused by the Development Authority. The Subdivision and Development Appeal Board upheld the decision of the Development Authority in a decision dated January 2, 2013.
  - 2018: Development Permit Application D17-237 to establish a 4,550 m<sup>2</sup> (footprint) religious assembly building at the subject site was refused by the Development Authority.
9. The proposal to construct a 4,550 m<sup>2</sup> Religious Assembly building on the site was refused by the Development Authority for the reasons outlined in the Notice of Decision and as discussed in this report.
10. In response to the appeal of this decision, the Development Authority maintains that the decision was correctly issued, as was the application of appropriate policies and regulations to each of the reasons for refusal.



11. This section will examine each ground of appeal as submitted by the appellant, and discuss why the Development Authority did not make error in refusing this proposal.

12. **Ground of Appeal Number 1**

*"The Development Authority erred in determining that a local area structure plan is necessary prior to development proceeding on the subject site."*

With regard to the above, the Development Authority maintains that the proposed development should be properly planned within a Local Area Structure Plan prior to the consideration of a development permit application.

Within the Leduc County North Major Area Structure Plan (ASP), the subject site falls within the designated 'Residential Estate Area'. Part 7.2: Residential Development of the North Major ASP discusses that over the short to medium term, residential developments will be directed to areas identified as Urban Growth Areas, Residential Estate and Country Residential.

Further to the above, Part 7.2 directs that each County neighbourhood be guided by detailed Local Area Structure Plans and Outline Plans in accordance with Part 8.4 of the North Major ASP.

Part 8.4 of the North Major ASP, titled 'Implementation through Local Area Structure Plans and Outline Plans' defines, through policy requirements, the areas of the ASP to which further statutory planning is required prior to considering land use change and development in order to articulate land use and development direction.

With regard to the above, Policy 8.4.2 directs the following:

*8.4.2 Each of the following areas allocated Residential Estate on Map 6 will require a local area structure plan to be adopted by the County to provide more specific guidance to land use change and development:*

*(c) the lands west of Highway 2;*

In accordance with the above, the Development Authority ascertain that as the subject lands fall within the defined Residential Estate Area situated west of Highway 2, that a Local Area Structure is required for development of this nature in this location.

Further to the above, the Development Authority acknowledge that Policy 8.4.10 of the ASP allows consideration of 'minor' development that is consistent with the policies of the ASP without the consideration of a Local Area Structure Plan. Notwithstanding this however, it is not considered that the proposed development at the desired scale is "minor" in any form, and therefore consider that the SDAB should direct that this development requires land use planning through an Area Structure Plan prior to further consideration.

Furthermore, in accordance with their objection dated October 13, 2017, the City of Edmonton agree that development of this scale and nature is required to be planned with appropriate Local Area Structure Plans, questioning whether a 4,550 m<sup>2</sup> assembly building with 278 parking stalls and two sports fields can fit the criteria of a "minor" development.

**Ground of Appeal Number 2**

*"The Development Authority erred in determining that the proposed development would not be compatible with surrounding land uses."*



In response to the above ground of appeal of the appellant, the Development Authority consider that the proposal is not compatible with surrounding land uses.

Part 3.5 of the Land Use Bylaw 7-08 discusses the discretion of the Development Authority and 3.5.1 prescribes the following:

3.5.1 The *Development Authority* may approve a *discretionary use* if in its opinion the proposed development complies with:

- (a) the *Municipal Development Plan* and any other relevant statutory plans and policies adopted by the *County*;
- (b) the general purpose of the land use district as established in this *Bylaw*

In respect of the above, it could not be considered that the proposal meets the intentions of key Plans of the County. Furthermore, although acknowledging that a *Religious Assembly* use is a discretionary land use in accordance with Part 9.1.3 of the Agricultural District of the Land Use Bylaw, with a 4,550 m<sup>2</sup> footprint and 278 parking stalls, the proposed church was not deemed to meet the intent of Part 9.1 of the Agricultural District. Part 9.1 explains the purpose of the district is to “*provide primarily for larger agricultural operations and limited higher intensity agricultural activities on smaller lots, while at the same time providing for limited residential and other uses having a secondary role to agriculture.*”

Further to the above, it is also noted that in the 2012 appeal of the refusal of development permit application D12-224 for a 4,175 m<sup>2</sup> religious assembly building on this same property, the SDAB upheld the Decision of the Development Authority and noted in their reasoning for disallowing the appeal that “*the proposed development is not compatible with surrounding rural agricultural land use*”. Furthermore, it was noted that “*the Board is of the opinion the benefits to the County and general public are limited and do not warrant the premature removal of high capability agricultural lands from production.*” The Development Authority deem these opinions to remain valid in the 2017 application.

### **Ground of Appeal Number 3**

*The Development Authority erred in determining that the removal of the subject lands from agricultural production was contrary to statutory plans.*

In the addressing of this ground of appeal, the Development Authority directs the SDAB to relevant County plans and policies that address the removal of agricultural lands from production, as discussed with reason for refusal #3 of the Notice of Decision.

Within the Municipal Development Plan, Policy 3.3.7 discusses non-agricultural land uses on high capability agricultural lands and states the following:

3.3.7 Non-agricultural land uses and subdivisions on high capability agricultural land shall be avoided unless the County is convinced that the land use or subdivision:

- (a) could not reasonably or practically locate elsewhere in the County on lands with a low capability for agricultural production;
- (b) provides benefits to the County and the general public to the extent necessary to warrant the removal of high capability agricultural lands from production; and
- (c) the area of land for the non-agricultural land use is the minimum required for the intended use; or
- (d) the non-agricultural use or subdivision is consistent with an approved Area Structure Plan.

In accordance with this key agricultural policy, the subject site has a designated 81% Farm Assessment Rating and, in accordance with Part (a), would be better situated on an alternative site. Should the desire to locate the development at the subject property within the County remain, it should be planned within an approved statutory planning document in accordance with Part (d) of Policy 3.3.7.

#### **Ground of Appeal Number 4**

*"The subdivision plan creating the subject site was approved by the subdivision authority in contemplation of the proposed development in 2009."*

The Development Authority acknowledges that in 2008 the Subdivision Authority approved the subdivision of the subject property from a title area of 8.59 ha to two 4.29 ha parcels.

Notwithstanding the above however, the Development Authority notes that the approval of a subdivision regardless of any desired end uses that may have been discussed during the application process, does not constitute an implicit approval of future development. Future development must conform with applicable plans, policies and application requirements at the time of consideration of a development permit application.

#### **Ground of Appeal Number 5**

*"The proposed development is appropriate at the subject location."*

With regard to the above sentiment of the appellant, the Development Authority maintains that the proposed development is not, at this time, appropriate in this location – at least prior to being considered through a Local Area Structure Plan.

In addition to the above, the Development Authority note additional key considerations concerning this development:

As discussed within the Notice of Decision, nearby landowners submitted five (5) letters of concern regarding the proposal. The key concerns were noted to be the scale of the development, the risk of overlooking onto surrounding properties, traffic concerns, diminished property values, and that a similar proposal has previously been refused in this same location. There were no letters of support submitted for this proposal. The County's Engineering Department did not express any objections.

As the City of Edmonton are proposed to annex the subject property and surrounding lands in the near future, in their letter of concern dated October 13, 2017, it was noted that the alignment planning for Edmonton's Light Rail Transit connection from 41 Avenue SW to the Edmonton International Airport could be impacted by the proposed development, given the preliminary conceptual alignment of the LRT along 127 Street / James Mowat Trail SW. The additional April, 2018 letter stated ....

The City of Edmonton also acknowledge that they believe the proposal does not meet key County policies, and that this development should be planned within an approved Local Area Structure Plan. As a result of this, the Development Authority recommend that the SDAB uphold the decision to refuse the proposed development of a 4,550 m<sup>2</sup> Religious Assembly building at this time.

The Development Authority further recommend that should the appellants wish to further pursue this development in this location, that they first consider the creation of a Local Area Structure

Plan for the site and surrounding area to ensure any future development of this area meets the best interests and future development patterns of both Leduc County and the City of Edmonton.

Chair McDonald asked Board Members if there were any questions of the Development Authority, and there were none.

Chair McDonald called upon the appellant(s) to make a presentation on the grounds of their appeal to the proposed development.

Mr. Kevin Haldane, Ogilvie LLP, Appellant, on behalf of the Frank Hilbich Architect Inc. introduced Brian Sippert, on behalf of the Church of God, and Luis Esteves, Scheffer Andrew Ltd., to the Board.

Mr. Brian Sippert, on behalf of the Church of God, provided the following information in support of the appeal:

- As a church planning to relocate, the question of what can be brought to the neighbourhood is uppermost in the minds of many. The planners, developers and the residents of the area all have concerns regarding what the arrival of a church would mean in this area. Questions such as traffic flow, property values and general land use are addressed by studies which have been conducted. Concerns regarding who we as a congregation and how we might affect the neighbourhood are less easily answered.
- The current church building no longer fulfills the needs; Sunday school enrollment has increased and the lack of larger meeting spaces has become an issue. New guidelines in Abuse Prevention Management also make the current building setup less than ideal, something that is of great importance. Keeping kids safe is paramount. With an eye towards more community-involved programming in the future, staying where we currently are is not a tenable solution.
- The generous donation of the land at the proposed building site allows us to dream big as encouraged by the plans we feel God has laid out for us.
- The plans are many – Sunday School for children aged 3-15 every Sunday morning, Tweens program every Wednesday night which runs concurrent to prayer meetings. On Fridays the High School youth and young adult groups meet, the ladies bible study is held every Tuesday morning; men's bible study meets every other month and seniors meet once a month. Also hold a week-long Vacation Bible School (day camp style) from 9:00 a.m. – 1:00 p.m. and wish to expand that to an after-school program to recognize the need for quality child care in the area. There are also plans for neighbourhood barbeques, picnics and other activities that would involve the entire area, should they care to participate.
- There is a music program and currently have a youth choir, a church choir, a men's choir, a ladies choir and a more informal children's choir. In addition to these choral groups is also a band consisting mainly of brass instruments and an orchestra, which is comprised of strings and woodwinds.

Mr. Haldane, Ogilvie LLP, and on behalf of the applicant Frank Hilbich Architect Inc., presented the following information in accordance with his written submission:

- Section 617, Municipal Government Act states, *"the purpose of this Part and the regulations and bylaws under this part is to provide means whereby plans and related matters may be prepared and adopted:*
  - (a) *to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and*





(b) *to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,*

*without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest."*

- The proposed site was approved by the Subdivision Authority on March 17, 2009. In approving the subdivision, the County helped themselves to 20 metres of road right of way for Range Road 250 along the entire western frontage of the title area, in accordance with Condition 3, *"Pursuant to 662(1) of the Municipal Government Act, the developer/owner shall dedicate by Plan of Survey, 19.94 metres of road right of way for Range Road 250 along the entire western frontage of the title area."*
- Wish to remind the Board that prior decisions by the Subdivision Authority or Subdivision and Development Appeal Boards are not to be considered by the Board today. The Board must make their decision on what is submitted and not be influenced by prior decisions.
- In accordance with the reasons for refusal by the Development Authority, submit the following:
  - i) Refusal reasons #3 *"that the proposed development will remove valuable agricultural lands from production, which is contrary to the Policies of existing statutory plans for the area."*
    - Section 3.3.3 of the Municipal Development Plan states when land shall not be considered high capability agricultural land. Ten (10) acres is not viable for agricultural land in this location.
    - Section 3.3.1 talks about subdivided lots to be a suitable size and shape ( $\pm 32$  ha). The proposed parcel is 1/8 of what is referenced in this section.
    - Section 3.3.7 references non-agricultural land uses and subdivisions on high capability agricultural land. This section does not apply to the subject parcel within the meaning of the Municipal Development Plan.
  - ii) Refusal reason #4 *"that the proposed development is not supported by the City of Edmonton, of which the subject lands falls within the proposed Edmonton annexation area."*
    - The City of Edmonton is opposed due to the construction of the anticipated LRT line.
    - Tab 7 shows the location of the subject site within the North Major Area Structure Plan. The proposed location of the LRT was identified within Tab 5 which is anticipated to stop at Ellerslie Road; the route would be on the west side of 127 Street by Desrochers neighbourhood and west of James Mowat Trail.
    - The proposed development would not interfere with the LRT alignment.
    - The end of the LRT line will likely end at the EIA; it is unlikely the line would be constructed over 200 metres to subject site.
    - There is a 90 metre setback from the front lot line; if by chance the LRT line does come this far there would still be ample clearance for the line to be adjacent.
  - iii) Refusal reason #1 *"that the development does not constitute orderly development and should be planned through detailed Local Area Structure Plans and Outline Plans; and part of #4 "lands fall within the proposed Edmonton annexation area."*
    - The County is stating this is premature without a Local Area Structure Plan.
    - The Municipal Development Plan and law has interpretive capability.
    - The Land Use planning framework identifies that the LASP is contemplated by the NMASP as identified under Tab 6.

- 8.4.10 references that the requirement for a local area structure plan or outline plan may not require a local area structure plan or outline plan to be in place should the proposed development or land use change be deemed as minor in nature, consistent with the policies of this Plan and not unduly impact on adjacent land uses.
- This development is only 10 acres vs. 1200 acres which is obvious 10 acres is not relevant.
- The County is suggesting the client who owns 10 acres is to develop an ASP; however larger developers are the relevant parties to drive ASP's. They are done by parties that want to develop large parcels of land e.g. Royal Cubera (196 ha owners); WAM development holds 227 – 317 acres and these developers are the ones that are suited to drive an ASP.
- The County is freezing development by stipulating owners of 10 acres to develop an ASP. It would be very costly for developing a plan for an entire area with planned area of only 10 acres.
- With respect to Statutory Plans, reference Tab 8 excerpts from Frederick A. Laux as follows:

*"Municipal development plans, and area structure or redevelopment plans to a lesser extent, reflect fairly long-range goals and aspirations of the community. They are based on ideals that may or may not come to pass. On the other hand, land use bylaws deal with current conditions and, most notably, articulate and define the rights and obligations pertaining to the development of privately owned land. The objective of Pt. 17 of the Municipal Government Act is to strike a reasonable balance between private rights and the long-term public interest."*

*"Second, the overall scheme of Pt. 17 seeks to assure at least some minimum and immediate development rights for private land owners. If the long-range goals which are set out in a municipal development plan had to be studiously and immediately implemented in the land use bylaw, these rights would, in many cases, be compromised for many years."*
- Requiring a developer to prepare an ASP is taking away from private ownership rights.
- This similar development was turned down about 6 years ago due to no LASP; there may never be one; this is speculative and it may be many years before development occurs.
- Frederick A. Laux also address *Plans State Goals and Do Not Regulate* in Section 5.6(3)(b) whereby the courts have said that statutory plans are policy documents that set out "proposals" for future development in a municipality and are not intended to regulate in any definitive way what can be done at the present time. The Land Use Bylaw sets forth the development rules and regulations that must be adhered to during the currency of the bylaw. A land use bylaw serves to implement the proposals set out in the plan. It is based on fact, not hypothesis.
- It follows then, for purposes of assessing development rights, that the primary document to be scrutinized is the land use bylaw and not the statutory plan.
- Accordingly the Leduc County Land Use Bylaw shows the proposed Religious Assembly use is a discretionary use and the proposed development meets all the setback requirements.

Mr. Luis Esteves, Scheffer Andrew Ltd., provided clarification on area structure plan development as follows:



- A Local Area Structure Plan is not necessary as the existing policy framework allows for the development to proceed; the development will not preclude the requirement for an ASP.
- Given the size of the development it is not necessary for an additional structure plan to be developed.
- It is unlikely an agricultural use will occur as the County has deemed this area as residential with the density of acreages.
- Churches are considered part of residential uses and the Agricultural district allows them as a discretionary use.
- When developing an ASP there is usually a large section of land e.g.  $\frac{1}{4}$  or  $\frac{3}{4}$  section vs. a 10 acre parcel. A church on a 10 acre site will not compromise the area.
- The process of developing an ASP always brings constraints e.g. creeks and adaption is required. See the proposed church development as an opportunity for long term planning to integrate into the community.
- From a servicing perspective (e.g. sanitary) into a broader system; this development does not preclude into that study; proposing to privately service the development with either a septic field or tank system. There are other opportunities with newer technology to deal with sewage treatment system that may also be considered.
- In the interim if the annexation occurs the development could tie into Edmonton's system.
- This 10 acre parcel will not have a major impact on the ASP as some would suggest and can be integrated into a plan in the future by a major development.

Mr. Haldane continued his presentation in rebuttal of the reasons for refusal by the Development Authority:

- iv) Refusal reason #2 *"that the proposed development is not compatible with surrounding agricultural and residential land uses in terms of function, form and scale."* and reason #5 *"receiving objections from adjacent and surrounding landowners"*.
  - The impact to surrounding agricultural and residential land uses are addressed within the Stormwater Management Study and Traffic Study.
  - The concerns expressed with traffic flow are addressed within the traffic study e.g. turning lanes, traffic projections, etc.
  - The submitted site plans identify adequate parking.
  - This is the first development (with nothing developed yet) within the area so it will be out of scale of development until the area fills in.
  - In comparison to the small churches submitted there is no parking on their sites.
  - The submitted site plan identify setback distances: front setback is 80 metres, the requirement is 35 metres; the side setback is over 19 metres back from neighbours and requirement is 17.5 metres; the rear setback is 220 metre vs. 7.5 metres.
  - The elevations submitted in site plan shows not a tall building with few windows; so there will be no impact to the neighbours.

Mr. Haldane further provided:

- The Development Authority report indicated that the County had no concerns with the Studies submitted by the applicant.
- Their only objection is the requirement of an area structure plan.
- With no planning concern to be addressed by the applicant and with the use being identified as a Discretionary Use, this Board ought to issue the permit.
- If refused there must be sound argument why it does not comply.
- The proposed development can be incorporated seamlessly into an ASP development by a major developer.

Chair McDonald asked if there were any questions by the Board Members of the appellant(s).

In response to a question by a Board Member, Mr. Haldane indicated his understanding with respect to the difference between a Local Area Structure Plan and an Area Structure Plan.

Mr. Richards provided an explanation in accordance with Leduc County as follows:

- An Area Structure Plan (ASP) is a broad-brush statutory planning document that covers a large area and provides a framework for future development that identifies locations for future land uses, utilities, servicing, infrastructure and any other applicable matters.
- The North Major Area Structure Plan is the adopted ASP that covers a large area of the County's northern boundary that borders the City of Edmonton. This ASP specifically requires a Local Area Structure Plan be required for the lands west of Highway 2 to provide more specific guidance to future land use change and development.
- A Local Area Structure Plan essentially focuses on a smaller area from within the Area Structure Plan and provides more detail on the area's development, focusing on matters that may include phasing, zoning, detailed servicing & transportation routes and consistency with the ASP.
- A Local Area Structure Plan, like an Area Structure Plan is a statutory document.

### **Recess**

The meeting recessed at 10:09 a.m. and reconvened at 10:19 a.m., with Chair Mary-Ann McDonald and Board Members Shirley Jolly, Doug Ruel and Larry Wanchuk present.

Also present were Mr. Garrett Broadbent, Clerk of the Subdivision and Development Appeal Board; Ms. Daina Young, Reynolds Mirth Richards Farmer LLP; Ms. Joyce Gavan, Recording Secretary; Mrs. Charlene Haverland, Manager of Development Services; and Mr. Colin Richards, Team Lead Development.

Present as well were 13 other individuals.

Chair McDonald called upon anyone wishing to speak in support of the appeal (in support of the proposed development):

Mrs. Barbara Zenbin, owners of land directly north of the land gifted to the Church of God, provided the following information in support of the appeal (in favour of the proposed development):

- 1) When father passed away on January 29, 2018, my brother's family and my family became neighbours to land gifted to the Church of God for the purpose of building a new church on the subject land.
- 2) The Henry Gussey foundation was established in 2007 to support educational initiatives abroad.
- 3) Her Dad purchased 21 acres in Leduc County over 40 years ago. He had plans for the property and settled on the idea of making 10 acres available to the church that he regularly attended to serve the community in a broader way. This gift of land was foundational to his vision for the future.
- 4) The Church is in the process of creating ministry teams as an outreach to those struggling with grief, marital issues, etc. in the community. Hope to make a positive difference in people's lives.



- 5) The current location has many barriers to our congregation in being able to minister to the community effectively, given the unique blend of strengths and resources.
- 6) Humbly ask the Leduc County to accept the request to build a new church on the gifted land where our aim is to make the local community a vibrant place for people to live.

In response to questions by Board Members, Mrs. Zenbin provided the following additional information:

- Dad originally bought 21 acres and then subdivided into two parcels. The 10 acres are gifted to the Henry Gussey Foundation of which my brother, Larry Gussey, and I are trustees.
- The other 11 acres belong to my brother and myself.
- We do not live on subject lands currently.

Mr. Larry Gussey, brother, property owner to the north, provided the following additional information in support of the appeal:

- In listening to the appeal, heard lots of speculation and how this area may be developed, along with how agricultural can be residential; and now the potential location of the future LRT line. This could happen sooner or later and we do know that Edmonton is bursting with development; the area of 41<sup>st</sup> avenue is alive but quieter and may take years to develop.
- The area is question may be annexed to the City but the date is not yet confirmed.
- To add a church in this area within a residential area would give balance; while the community is residing and living in community the church could be a benefit to this area.
- Request the County to leave this legacy within the community and allow the proposed development.

Chair McDonald then called upon anyone in attendance to speak against the appeal (in support of the refusal by the Development Authority).

The following individuals spoke against the appeal and in support of the refusal by the Development Authority:

1. Mr. Michael Gunther, Legal Counsel on behalf of City of Edmonton; expressed opposition of the appeal and recommend that the Board uphold the refusal of the proposed development as follows:
  - This area will be annexed pending approval by the Municipal Government Board within the next few months (January 1, 2018).
  - The City is an affected party and not intending to be anti-development.
  - The concerns by the City are primarily that the proposed development is premature; this land is on the verge of ongoing substantial changes.
  - Request the Board uphold the refusal decision on the land use planning basis being premature.
  - The April 13, 2018 letter from Lindsay Butterfield, City of Edmonton Director, identifies concerns as follows:
    - This is a major development for a structure that can accommodate up to 725 people. Any large scale religious assembly use on this site should be deferred until such time as there is an urban area structure plan in place for the neighbourhood. This will allow for logical and economical development of servicing and transportation networks, while ensuring that future land use conflicts are minimized.

- The future of the LRT line is proposed adjacent linking Heritage Valley in southwest Edmonton and the Edmonton International Airport (EIA). This corridor is identified within the Edmonton Metropolitan Region Growth Plan and careful planning consideration needs to be given to development that could impact this corridor. Heritage Valley to the north and the Crossroads Area Structure Plan area to the south have land set aside for a future transit corridor within their respective statutory plans.
  - The development could result in traffic impacts. Large scale religious assembly uses often result in large traffic volumes coming and going during short periods of time (services, weddings, funerals, etc.). The intersection at 41 Avenue SW and James Mowat Trail (which continues south as Range Road 250) is not signalized, nor is it currently designated to accommodate large traffic volumes from the south.
  - Stormwater servicing is proposed to occur on site. Deferring development of this site until a neighbourhood wide utility concept plan is in place will ensure that stormwater is addressed in an orderly fashion to account for neighbourhood wide drainage requirements.
  - This is a major development on basis of size and scope of development. Acknowledge it is listed as a Discretionary Use; suggest this was meant to be characterized as a “country” church being small scale and a minimal impact.
  - What is proposed is a large scale occupying the entire 10 acre parcel. This is premature to undertake without further planning to not conflict with other development.
  - Recognize the comments that a church is important however without a comprehensive plan in place it is our position that the proposed development is premature.
2. Mr. Adrian Wahl, Acting Senior Planner City of Edmonton, provided the following comments against the appeal (in favour of the refusal by the Development Authority):
- There is no Intermunicipal Development Plan in place between Leduc County and the City of Edmonton; however have initiated joint planning through the Annexation process and a coordinated effort has been established to address future development in the subject area.
  - Anticipate further collaborative planning in the future will occur which may not be in the form of an Intermunicipal Development Plan but would have the same affect.

Chair McDonald asked if there were any further questions by the Board Members.

In response to questions by Board Members, the following additional information was provided:

- When ad hoc development occurs without detailed planning the municipality is limited in future planning of the area. There are factors that are not known in this area and feel the proposed development is premature.
- A collection of landowners could come together to prepare an ASP; they would then have the opportunity to have input into the planning; and could do this on a macro scale vs. on an individual basis.
- While the North Major Area Structure Plan (NMA SP) is a statutory plan, this does not conform to the Edmonton Metropolitan Growth Management Plan. Must be developed to maximum of 45 dwellings per unit. Substantial amendments need to take place to meet the regional context.
- Approval by the EMRB must be given to other plans for development. A new growth plan was adopted by the province in October, 2017 and compliance must be adhered to. This new growth plan has a new format of how development is to be planned out. The area in question



is in the Metropolitan tier which has a table demonstrating the minimum density targets for that area and in that table it states the Leduc County west of QE2 have a maximum 45 dwelling units. This plan supersedes all other plans.

- Each municipality must submit a new plan for conformance with the EMRB Growth Plan. Within 3 years all the amendments must be completed and dependent on the timing, any statutory plans would need to conform.
- It was requested that a copy of these plans be submitted to the Board Members for their reference.

Chair McDonald asked if there was anyone else in attendance who wished to speak to the appeal, and there was no one.

Chair McDonald asked if there were any additional submissions received from individuals who have not provided submissions today and there were none.

Chair McDonald called for closing comments from administration (technical staff).

Mr. Richards provided the following closing comments:

- 1) Section 8.4 of NMASP specifically directs the requirement of a Local Area Structure Plan to guide specific development.
- 2) The County considers the proposed development is a large development and will bring a large amount of people (over 700 people).
- 3) A development of this size requires extensive planning.
- 4) The appellant(s) note that the annexation may never happen, however the annexation agreement has been signed by both parties and anticipate formal approval by the Municipal Government Board that the proposed date is to take effect on January 1, 2019.
- 5) The County acknowledges the studies provided by the applicant(s); the County does not have concerns with the traffic impact due to the fact the proposed development affects only  $\pm 700$  metres of County roadway. There will, however, be a huge impact on the City of Edmonton Roads.
- 6) With respect to parking – the request for parking stalls has been proposed with  $\pm 455$  stalls, which is short of the Leduc County Land Use Bylaw requirements.
- 7) The County requires further detailed planning be completed in accordance with the NMASP.
- 8) As stipulated in the Land Use Bylaw, Religious Assembly use is a discretionary use; however the proposed development does not meet the requirements based on the scale and detailed planning required.
- 9) The City of Edmonton will be taking over this property and suggest in good neighbourly planning, the application be postponed to properly plan for the development.

### **Recess**

The meeting recessed at 10:53 a.m. and reconvened at 11:03 a.m., with Chair Mary-Ann McDonald and Board Members Shirley Jolly, Doug Ruel and Larry Wanchuk present.

Also present were Mr. Garrett Broadbent, Clerk of the Subdivision and Development Appeal Board; Ms. Daina Young, Reynolds Mirth Richards Farmer LLP; Ms. Joyce Gavan, Recording Secretary; Mrs. Charlene Haverland, Manager of Development Services; and Mr. Colin Richards, Team Lead Development.

Present as well were 13 other individuals.





Chair McDonald called for closing comments from any of the Presenters today (City of Edmonton), and there were none.

Chair McDonald called upon the Appellant(s) to provide final closing comments.

Mr. Kevin Haldane, Ogilvie LLP, Appellant, on behalf of the Frank Hilbich Architect Inc. (Brian Sippert, Church of God Gemeinde Gottes – Edmonton) provided the following closing comments:

- 1) The Board heard several times this is premature planning, and that the annexation is coming January 1, 2019, subject to approval by the Municipal Government Board; however the Board must make its decision on the grounds of what is in effect today.
- 2) Major development does not constitute major due to the fact there is a large building to be constructed. This is only a 10 acre parcel with a large development carefully planned and compatible with the area.
- 3) The speculation may have a negative impact on planning the LRT corridor, however to make a decision on speculation does not constitute adequate reasons for refusal.
- 4) With reference to non-compliance with the EMRB Growth Plan, the proposed development is not relevant to the required 45 dwelling density.
- 5) The County suggested the parking is in excess; however the applicant submitted a request for variance within the August 30, 2017 letter from Frank Hilbich, Architect Inc. Further the lack of parking is not cited as a reason for refusal.

Chair McDonald asked the appellant(s) if they felt they received a fair hearing, and Mr. Haldane responded affirmatively.

### **Conclusion of Public Hearing**

Chair McDonald declared the Public Hearing concluded at 11:11 a.m.

Chair McDonald advised that in accordance with Provincial legislation, the Board is required to hand down a decision within 15 days from the date of today's hearing. No decision is binding on the Board until it issues a written decision. The decision of the SDAB is final and binding on all persons subject only to an appeal upon a question of law or upon a question of jurisdiction pursuant to Section 688 of the Municipal Government Act, Revised Statutes of Alberta.

Mrs. Haverland, Mr. Richards and 13 Individuals

Mrs. Haverland, Mr. Richards and 13 individuals exited the Council Chamber at 11:13 a.m.

### **In Camera**

**31-18** Board Member Jolly -- that the Subdivision and Development Appeal Board meet In Camera.

Carried

The In Camera session commenced at 11:12 a.m.

### **Revert to Subdivision and Development Appeal Board Meeting**

**32-18** Board Member Ruel -- that the In Camera session revert to the Subdivision and Development Appeal Board meeting.

Carried





The In Camera session reverted to the Subdivision and Development Appeal Board meeting at 12:32 p.m.

**Appeal by Kevin Haldane, Ogilvie LLP, on behalf of Frank Hilbich Architect Inc. (Brian Sippert, Church of God) whereby Development Permit Application D17-237 for a Religious Assembly (4,550 sq. m) on Lot 1, Block 1, Plan 0941231, Pt. NW 7-51-24-W4.**

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**33-18** Board Member Ruel -- that the Subdivision and Development Appeal Board disallow the appeal by Kevin Haldane, Ogilvie LLP, on behalf of Frank Hilbich Architect Inc. (Brian Sippert, Church of God) and uphold refusal of Development Permit Application D17-237 for a Religious Assembly (4,550 sq.m) on Lot 1, Block 1, Plan 0941231, Pt. NW 7-51-24-W4.

Findings of Fact

1. The site of the proposed development (the "Lands") is located in the Agricultural (AG) District. The Lands are currently undeveloped and used for agricultural purposes.
2. The Lands are located approximately 0.5 kilometres from the City of Edmonton's municipal boundary, and are the subject of an annexation agreement between the City of Edmonton and Leduc County. The evidence presented by the City of Edmonton and Leduc County, which the Board accepts, was that annexation is intended to occur effective January 1, 2019. The Board acknowledges that the annexation of the Lands is subject to approval by the Municipal Government Board, however, based on the evidence provided to it the Board finds that it is very likely that the Lands will be annexed by the City of Edmonton in the near future. Further the City of Edmonton presented that the alignment planning for the Edmonton's Light Rail Transit connection from 41 Avenue SW to the Edmonton International Airport could be impacted by the proposed development and expressed this development should be planned within an approved Local Area Structure Plan.
3. The proposed development is a 4550 square metre Religious Assembly. The proposed development includes seating for 728 people along with areas for childcare, kitchen facilities, a fellowship hall, 8 classrooms, 9 offices and meeting rooms, group areas and a number of other facilities and designated rooms. The proposed development also includes 2 sports fields and 288 parking stalls.
4. The operations associated with the proposed development are described in further detail in the Business Information submitted by the Appellant as a part of the Development Permit Application, and include regular Sunday services, office hours for pastoral and administrative staff, and various ministry and congregational uses including adult seminars, prayer meetings, choir/music practice and recreational use. Frank Hilbich Architect Inc., on behalf of the Appellant, indicated that regular attendance at the proposed development is anticipated to be in the range of 300-450 people whereas the full designed capacity of the building is intended for occasional events.
5. The Appellant submitted a Traffic Study, Stormwater Management Report and Geotechnical Investigation as a part of the Development Permit Application. The County did not identify any concerns with the contents of the reports. The development is proposed to be serviced with on-site water and wastewater.
6. There were five affected landowners who submitted letters in opposition to the proposed development, plus two letters were submitted from the City of Edmonton expressing opposition. The Board also received two (2) submissions from owners of property directly north of the subject parcel in support of the appeal.



7. The Board heard evidence regarding the approval of Subdivision Application SD08-104 for the Lands in 2008, and the SDAB's refusal of Development Permit Application D12-224 for a Religious Assembly at the same site in 2012. However, the Board did not consider this evidence relevant to the determination of the merits of the appeal before it, and did not take it into account in making its decision.

### Reasons for Refusal

Development Permit Application D17-237 is refused for the following reasons:

1. The Lands and the properties surrounding the Lands are located in the Agricultural (AG) District. Religious Assembly is a discretionary use in the Agricultural (AG) District.
2. The Board concludes that the proposed development does not comply with the applicable statutory plans, the provisions of the Land Use Bylaw, and that other planning considerations including the pending annexation of the Lands by the City of Edmonton weigh against the Board exercising its discretion to issue a development permit.

### **Statutory Plans**

3. Section 687(3)(a.2) requires a SDAB, in determining a development appeal, to comply with any applicable statutory plans.
4. The Board has considered the provisions of the Municipal Development Plan referred to and relied upon by the parties, however, does not consider them determinative of this appeal.
5. The Board does note that one of the planning goals set out in the MDP is the preservation and enhancement of the agricultural community. For the reasons set out under the heading of "Land Use Bylaw", below, the Board does not consider the proposed development to be consistent with this planning goal.

### *Area Structure Plan*

6. The Lands are subject to and are located within the "Residential Estate Area" of the Leduc County North Major Area Structure Plan (the "ASP"), and situated west of Highway 2. Part 8.4 of the ASP, including Policy 8.4.4, requires the adoption of a local area structure plan prior to further development of the Lands
7. Policy 8.4.10 of the ASP provides an exception for proposed developments that are minor in nature:  
*8.4.10 Notwithstanding the requirement for a local area structure plan or outline plan within the policies of this section, should a proposed development or land use change be deemed as minor in nature, consistent with the policies of this Plan and not unduly impactful on adjacent land uses, the County may not require a local area structure plan or outline plan to be in place.*
8. The Board does not consider the proposed development minor in nature, even taking into account the size of the Lands. The scale and intensity of the proposed development is significant in terms of the proposed operations. The proposed development is also physically significant, in terms of the size of the proposed building and site coverage.
9. The Board concludes that the proposed development is not minor in nature, and that the ASP requires the preparation of a local area structure plan prior to development of this nature. The Board therefore finds that the Development Permit Application does not comply with the ASP.



### Land Use Bylaw

10. Section 687(3)(a.2) requires a SDAB, in determining a development appeal, to comply with any land use bylaw in effect, subject to the variance power set out in subsection (d).
11. The purpose of the Agricultural Land Use District, in the County's Land Use Bylaw, is to:  
*... provide primarily for larger agricultural operations and limited higher intensity agricultural activities on smaller lots, while at the same time providing for limited residential and other uses having a secondary role to agricultural.*
12. The Board recognizes that the inclusion of Religious Assembly as a discretionary use in the Agricultural (AG) District means that Council has determined that there are circumstances under which a use of this nature will be appropriate. However, the proposed development for consideration by the Board is not minor in nature and the Board finds that it would not have a secondary role to the predominantly agricultural land use in the area.
13. The Board accepts that no concerns have been identified with respect to the Traffic Study, Stormwater Management Report and Geotechnical Investigation. However, the scale of the proposed development is nonetheless such that it would unduly interfere with the amenities of the neighborhood and materially interfere with and affect the use and enjoyment of neighboring parcels of land.
14. The traffic generated by a development which regularly services 200-300 people, and which has the capacity for more than 700 people, will have nuisance impacts independent of the capacity and safety of County roads including increased noise and dust. The proposed on-site servicing will similarly impact neighboring landowners, due to the requirement for the hauling of water and wastewater to and from the Lands.

### Other Land Use and Planning Considerations

15. The Board finds that it is likely that the Lands will be annexed within the next 7 months. The Board concludes that the pending annexation of the Lands should be taken into account in determining this appeal, in order to achieve the orderly, economic and beneficial development of land in accordance with s. 617 of the MGA.
16. The Board considers the proposed development significant in nature, and that development of this scale warrants further consideration in the form of a local area structure plan or similar document. Given the pending annexation of the Lands, the Board considers it appropriate that the City of Edmonton have a role in the preparation of the application planning and development framework in order to address matters such as servicing and transportation to an urban standard.

### Conclusion

17. The Board acknowledges that s. 617 of the MGA requires a balancing of individual rights with the public interests. However, in the circumstances of this appeal the Board concludes that the overall greater public interest requires this appeal to be disallowed and the Development Permit Application refused, taking into account:
  - i) the scale and extent of the proposed development,
  - ii) the absence of a local area structure plan as required by the ASP, and
  - iii) the incompatibility of the proposed discretionary use with the Land Use Bylaw.
18. The Board has taken into account the pending annexation of the Lands by the City of Edmonton, and finds that the pending annexation is a valid planning consideration which weighs against granting the Development Permit Application. However, the Board is of the



view that the proposed development would properly be refused regardless of the pending annexation, taking into account the factors outlined above.

Carried

**Next Meeting**

The next scheduled Subdivision and Development Appeal Board meeting will be held on Wednesday, May 16, 2018 commencing at 1:00 p.m.

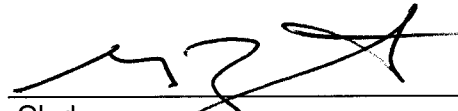
**Adjournment**

**34-18** Board Member Wanchuk -- that the Subdivision and Development Appeal Board meeting be adjourned.

Carried

The Subdivision and Development Appeal Board meeting concluded at 12:33 p.m.

  
Chair

  
Clerk