

**PALLISER INTERMUNICIPAL
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

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HEARING DATE: November 8, 2024
FILE NO.: 2024-01

Notice of Decision of the Board

INTRODUCTION

[1] On October 10, 2024, the Municipal Planning Commission of the Village of Hussar (the "Village") issued a conditional approval of development permit application no. 2024-005 submitted by Wayne Sornberger (the "Applicant") for a Residential Accessory Building located at Lot 10, Block 10, Plan 0910625, municipally described as 251 1st Ave West Hussar, Alberta (the "Lands").

[2] On November 4, 2024, the Palliser Intermunicipal Subdivision and Development Appeal Board (the "Board") received three appeals: one each from Jonathan & Noah Elbaz, Mike and Michelle Hager, and Kim & Rob Larsen. In attendance at the appeal hearing were Jonathan Elbez (representing himself and Noah Elbez) and Wayne Sornberger, the Applicant. The other appellants did not attend the hearing.

[3] The Board heard the appeal on November 8, 2024 at Hussar Village Office, 109-1 Avenue East Hussar, Alberta, T0J 1S0. The hearing was a hybrid hearing with two of the Board members attending virtually.

PRELIMINARY MATTERS

A. Board Members

[4] At the outset of the appeal hearing on November 8, 2024, the Chair requested confirmation from all parties in attendance that there was no opposition to the composition of the Board hearing the appeal.

- a. Tom Zariski - Chair
- b. Joe Pedersen - Board Member
- c. Kevin Sabo - Board Member

None of the persons in attendance had any objection to the members of the Board hearing the Appeal.

[5] Also in attendance at the hearing were the Clerk, Jennifer Sommerfeldt, and counsel to the Board, Gwendolyn Stewart-Palmer, KC.

[6] At the start of the appeal, the Board clarified that the municipal address of the Lands was noted on the Notice of Hearing as 1st Ave East and the address was corrected to 1st Ave West.

[7] There were no jurisdictional items.

B. Exhibits

[8] The hearing package contained all material provided to the Clerk in advance of the hearing. The Board marked those documents as exhibits as noted at Appendix B to the decision.

[9] At the hearing, the Board received two GIS webmaps of the area. The Board marked these as exhibits (see Appendix B):

- a. GIS Webmap - Satellite - 251 1st Ave West, Hussar was added to the evidence.
- b. GIS Webmap - Satellite - Zoning Districts - 251 1st Ave West, Hussar was added to the evidence.

D. Miscellaneous

[10] The Board is satisfied that it had jurisdiction to deal with this matter.

[11] There were no objections to the proposed hearing process.

[12] There were no preliminary matters raised at the beginning of the hearing.

[13] Other than the Appellants, the Board did not receive submissions from affected parties either in favour of or in opposition to the Appeal, nor were any affected parties other than the Appellant Jonathan Elbaz present at the hearing.

DECISION OF THE BOARD

[14] The Board denies the appeal and upholds the decision of the Municipal Planning Commission. The Board grants the two required variances:

- a. The West side yard is varied from 9.8 ft to 7.8 ft; and
- b. The width of the Manufactured Home is varied 4 inches from 22 ft to 21 ft 8 inches.

[15] The development is approved subject to the following conditions:

- a. Wayne Sornberger (the "Applicant") shall satisfy the requirements of Manufactured Homes as stated in the Village of Hussar Land Use Bylaw 543-22:
 - 1. Section 7.27.2 "The undercarriage of each manufactured home shall be completely screened from view by the foundation or by skirting within thirty (30) days of placement of the manufactured home."
 - 2. Section 7.27.3 "All manufactured homes shall be provided with steps and landings to all entrances within thirty (30) days of their placement."
 - 3. Section 7.27.4 "All accessory structures such as steps, patios, porches, additions, skirting and storage facilities shall be of complementary quality and design to the

Manufactured Dwelling.”

4. Section 7.27.5 “Each manufactured home shall be connected to and be serviced by electrical power, natural gas and the Village’s sanitary sewer and water supply.”
5. In addition to section 7.27.5, the service utilities shall not be on the front elevation of the structure.
6. In accordance with section 7.6.1, the Applicant must landscape the front yard within 2 years of the date of the approval and must install a minimum of 2 trees, or a minimum of 2 shrubs, or a combination of trees and shrubs. The landscaping must enhance the appearance of the site and the neighborhood of 1st Ave West, west of 2nd Street West.
7. The Applicant shall orientate the manufactured home so that the picture-bay window, as indicated in the floor plan (see Evidence page 15), faces the street view (north). Section 8.4.14 (b)

b. The Applicant shall include in the Manufactured Home:

1. the use of thick columns or brackets on roof overhangs;
2. dormers, gables, cross gables or varied pitches for articulated roof lines;
3. large or bay windows on the front façade, with strong window trim;
4. architectural features or other detailing over entrances;
5. changes in exterior siding materials, textures and colors to break up long wall expanses; and
6. the use of trim and moldings that contrast the exterior siding.
(Section 8.4.14 (c-h))

SUMMARY OF HEARING

[16] The following is a brief summary of the oral and written evidence submitted to the Board. At the beginning of the hearing, the Board indicated that it had reviewed all the written submissions filed in advance of the hearing.

Submissions of the Development Officer

[17] The Development Authority presented:

- a. that the Development Permit and variances were approved as a Manufactured Home is considered a Discretionary Use in the Land Use Bylaw 543-22. The Manufactured Home presented was reviewed, met all the standards, exceeded 22 feet with eaves, and placement on the lot was determined to be within the Land Use Bylaw 543-22.
- b. the Applicant requested a variance of the west side yard from 9.8 feet to 7.8 feet,

which was granted.

- c. The development on 1st Ave West, north of 2 St West started 18 years ago. The lots were sold from the Village. There were no stipulations on when the purchasers would need to build their houses on the lots. The first house was built approximately 15 years ago (Lot 261) and was stick built with a basement. Lots 245-247 has a moved on house with a concrete foundation, which went in last year.

Submissions of the Applicant

[18] The Applicant presented:

- a. that a horizontal orientation was considered if a neighboring lot was purchased, however, each lot on each side of 251 1st Ave West (lots 253 and 249) is already owned and the owners are not willing to sell.
- b. that 1st Ave West has a manufactured home, located at 213 1st Ave West.
- c. that the Manufacture Home is a new build and meets all required codes and will meet all conditions of the current proposed Development Permit.
- d. that he thought the town would want to bring people in, not push people away.

Submissions of the Appellant Jonathan Elbaz

[19] The Appellant presented:

- a. is the owner of multiple lots along 1st Ave West.
- b. that there is no other Manufactured Home in the subdivision.
- c. that the approval of the Manufactured Home undermines what was promised in the subdivision. The Appellant had spoken with Hussar's previous Chief Administrative Officer and was told that the area was zoned to not place Manufactured Homes there.
- d. that the Land Use Bylaw 543-22, section 7.27.1 relates to consideration of the condition and appearance; a Manufactured Home does not fit with the harmony of the neighborhood.
- e. that the Appellant may reconsider the investment of building in the area if Manufactured Homes are allowed.
- f. that the other Manufactured Home on 213 1st Ave West is not part of the same neighborhood because it is part of the old street, not part of the new subdivision.
- g. that the definition of "the neighborhood" needs clarification.
- h. that stated in the Land Use Bylaw 543-22, section 8.4.14(b) "horizontal wall articulation"; the proposed Development's orientation is not compatible.

- i. that to not enforce the Bylaws makes them more like suggestions.

FINDINGS OF FACT

[20] In addition to any facts found by the Board which are set out in its reasons, the Board makes the following findings of fact:

- a. that the Lands are located within the Residential District in the Land Use Bylaw 543-22.
- b. that Manufactured Homes are a discretionary use within the Residential District.
- c. The appeal and written submissions were received within the appeal period as set out in section 678(2) of the Municipal *Government Act*.

REASONS

Jurisdiction

[21] The Board notes that its jurisdiction is found in section 687 of the *Municipal Government Act*, RSA 2000, c M-26 (the "MGA"). In making this decision, the Board has considered the oral and written submissions made by the Development Authority and the Appellants.

- 687(3) In determining an appeal, the subdivision and development appeal board
- (a) repealed;
 - (a.1) must comply with any applicable land use policies;
 - (a.2) subject to section 638, must comply with any applicable statutory plans;
 - (a.3) subject to clause (a.4) and (d), must comply with any land use bylaw in effect;
 - (a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;
 - (b) must have regard to but is not bound by the subdivision and development regulations;
 - (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
 - (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
 - (i) the proposed development would not
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
 - and
 - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

Issues to be decided

Affected Persons

[22] The Board notes that the appellants are all owners of property along 1st Ave West. Due to their proximity to the Lands, the Board finds that they are affected by the proposed development. The Board notes that the Applicant's permit was under appeal and therefore, under section 687(1)(a) of the MGA, the appellant is entitled to be heard.

1. What is the use and what is the nature of the use?

[23] The Applicant has applied for a Manufactured Home. There was no disagreement among the parties that the use being applied for was a Dwelling, Manufactured Home and the Board finds so as a fact. There was also no disagreement among the parties that the lands are zone Residential District (R) under the Village's Land Use Bylaw and that Dwelling, Manufactured Home is a discretionary use in the Residential District and the Board finds so as a fact.

2. Is a Dwelling, Manufactured Home compatible with the neighborhood?

[24] Since the use is a discretionary use, the Board must determine whether the use is compatible with adjacent uses.

[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.¹

[25] In considering this question, the Board notes that the Court of Appeal has used the words "adjacent uses", but the Board interprets these words contextually to mean the "neighbourhood uses".

[26] The Applicant and the Appellant had different views of what the "neighbourhood" was. The Applicant argued that the presence of a manufactured home at 213 1st Ave West was an indicator that manufactured homes were compatible with neighbouring uses. The Appellant argued that the "neighbourhood" did not encompass 213 1st Ave West.

[27] The Board examined the GIS maps presented at the hearing. In viewing the maps, the Board noted that 1st Ave West, west of 2nd Street West is comprised mainly of lots without houses on them, comprising lots 241 through 267. By contrast, the area east of 2nd Street West is already built out. The Board is of the opinion that the "neighborhood" in which the Board must assess compatibility is the lands located on 1st Ave West, west of 2nd Street West, comprising lots 241 thru 267. These lots were created as a subdivision, and by such, are the neighborhood for lot 251. The mobile home sited at 213 1st Ave West is in an older section of Hussar and, therefore, is not part of the neighborhood in question. Although there is a manufactured home located within this older section of Hussar, the Board has not considered this area as the neighbourhood within which it must assess the compatibility of the manufactured home for the purpose of its assessment.

[28] Having determined what the "neighbourhood" is for the purposes of assessing compatibility, the Board has assessed the neighbourhood to determine whether the Dwelling, Manufactured Home is compatible with the neighbouring uses. The use of the Dwelling, Manufactured Home, is for a dwelling, which is the same as the other dwellings in the "neighbourhood". The Board is of the view that the issue in the appeal was not about the use of the Lands as dwellings, but rather the aesthetics and impact of the building form on the

¹ Rosedale Community League (1974) v. Edmonton (Subdivision and Development Appeal Board), 2009 ABCA 261 (CanLII), at [para 14](#).

neighborhood. The evidence before the Board was that there were two other homes on 1st Ave West in the new subdivision-

- a. located at 261 1st Ave West is a stick built home which was built in the first 3 - 5 years of the lot's development; horizontal orientation to the street.
- b. located at 245 1st Ave West is a move-on home with a concrete foundation built in 2023; horizontal orientation to the street.

[29] Because there are only two houses within the immediate vicinity of lot 251, the Board notes that there are limited comparables to determine whether the proposed Manufactured Home is compatible with the neighborhood. These two homes in the neighborhood do not provide enough comparison to conclude that a Manufactured Home lacks compatibility. The Board understood the concerns of the Appellant to be that a Manufactured Home would have a different "look" or "esthetic" than a traditional house. It is the opinion of the Board that compatibility is not guaranteed by the type of build of a home. The Board notes that there is no defined list of what makes a Manufactured Home compatible.

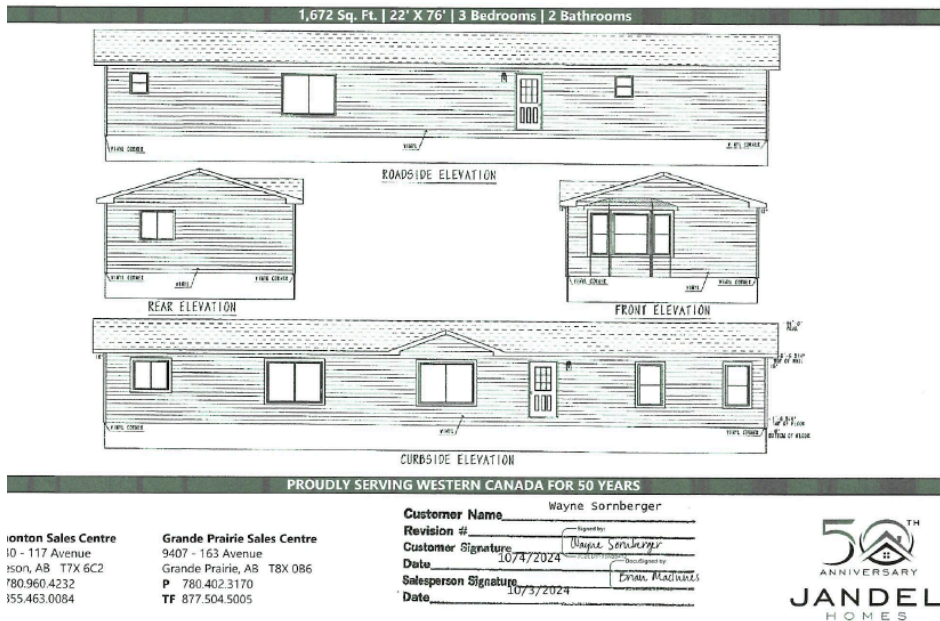
[30] The Board notes that Bylaw 543-22 section 8.4.14 authorizes the Development Authority to impose design elements for the design and appearance of a Manufactured Home. Given the concerns identified by the Appellants, the Board is of the view that visual or other constructional consideration from an appearance perspective may enhance the compatibility of the Manufactured Home. Upkeep, fencing, landscaping to beautify add to compatibility.

[31] In light of the concerns regarding esthetics, the Board has examined the elevations and images included with the Applicant's development permit application and considered what conditions from section 8.4.14 of the Land Use Bylaw might be imposed to aid in having an esthetically compatible dwelling.

[32] The Board notes that the front façade shows a large window, which seems to be articulated.

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Serial# S60-012-582



[33] The Board places a condition that the proposed Manufactured Home must have a large window on the front elevation (facing 1st Ave West), as shown on the plans.

The Applicant shall orientate the manufactured home so that the picture-bay window, as indicated in the floor plan (see Evidence page 15), faces the street view (north).

[34] In accordance with section 8.4.14.(c) – (h), the Board imposes the following additional conditions:

- The Applicant shall include in the Manufactured Home:
- the use of thick columns or brackets on roof overhangs;
 - dormers, gables, cross gables or varied pitches for articulated roof lines;
 - large or bay windows on the front façade, with strong window trim;
 - architectural features or other detailing over entrances;
 - changes in exterior siding materials, textures and colors to break up long wall expanses; and
 - the use of trim and moldings that contrast the exterior siding.

[35] The Board notes that the images contained within the development permit application identify the features specified by the above conditions. For instance, there is a high contrast of colour between the colour of the siding and that of the window and door trim. There is a wide trim around the windows and doors, providing a strong focal point. The Board is of the opinion that the above conditions will provide for visual interest in the Manufactured Home and

provide an enhanced visual interest in the neighbourhood.

[36] As noted, the Board is also of the view that the visual compatibility will be enhanced by the landscaping. Section 7.6 of the Land Use Bylaw provides discretion to the Development Authority to require landscaping.

7.6 LANDSCAPING:

Any area required to be landscaped may, at the discretion of the Development Officer, be left in its natural state or be loamed and planted with grass, trees, shrubs, and/or flowers or similar materials or a combination thereof which enhances the appearance of the site and which complements the development thereon.

[37] In order to enhance the visual compatibility, the Board imposes a condition that the Applicant must landscape the front yard within 2 years of the date of this decision and must install a minimum of 2 trees, or 2 shrubs, or a combination of a minimum of 2 trees and shrubs.

[38] With conditions in place, the Board is of the view that the proposed Manufactured Home will be compatible with the neighbouring uses and will enhance an aesthetically pleasing neighborhood.

[39] The Board notes that the original development permit contained conditions about which the Board received no comments or concerns. The Board is of the view that those conditions should remain, in addition to the Board's newly added conditions.

3. Should the Board grant the two variances?

[40] The information before the Board was that there were 2 variances granted:

- a. The Manufactured Home applied for is 21 ft 8 inches wide. Section 8.4.13 provides that the minimum width of a Manufactured Dwelling must be 6.7 m or 22 feet. The Board grants this variance. The difference between the required minimum and the size of the Manufactured Home is 4 inches. There were no submissions in opposition to this variance and the Board is of the view that it is too small to cause any impact to the amenities of the neighbourhood or to the use, value or enjoyment of other parcels. Therefore, the Board is prepared to exercise its variance power under s. 687(3)(d).
- b. Section 8.4.8(a)(iii) of the Land Use Bylaw provides that the minimum sideyard for a principle building with a front access is 9.8 feet. The Development Authority granted a variance of the west side yard to 7.8 feet. The Board grants this variance. There were no submissions in opposition to this variance. The Board is of the view that the reduction of the sideyard on the west side of the Lands will not cause any impact to the amenities of the neighbourhood or to the use, value or enjoyment of other parcels because there is still a significant side yard, and the variance will occur on the side of the Manufactured Home that does not have the front door. There will be little to no impact given that access to the Manufactured Home is on the other side of the Manufactured Home. Therefore, the Board is prepared to exercise its variance power under s. 687(3)(d).

Other Comments

[41] The Board notes that the Appellant stated that he was advised by the previous CAO that Manufactured Homes were not permitted in the Residential District. The Board places little weight on this comment because, Manufactured Homes are currently a discretionary use in the Residential District. The previous CAO was not present at this hearing, and the Land Use Bylaw as passed does include Manufactured Homes as a discretionary use. The Board must consider only the current Land Use Bylaw 543-22 in determining compatibility with the Bylaws and with the neighborhood.

[42] Issued this 12th day of November, 2024 for the Palliser Intermunicipal Subdivision and Development Appeal Board.

Jennifer Sommerfeldt, Clerk of the ISDAB, on behalf of Tom Zariski, Chair
PALLISER INTERMUNICIPAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This decision may be appealed to the Court of Appeal of Alberta on a question of law or jurisdiction, pursuant to Section 688 of the Municipal Government Act, RSA 2000, c M-26.

APPENDIX "A" REPRESENTATIONS

PERSONS PRESENTING TO THE BOARD

1.	Liz Santerre, Development Officer
2.	Wayne Sornberger, Applicant
3.	Jonathan Elbaz, Appellant

APPENDIX "B" DOCUMENTS RECEIVED AND CONSIDERED BY THE ISDAB

Exhibit	Description	Page #
A	Package - Notice of Subdivision and Development Appeal Board Hearing	1
A	Package - Notice of Decision, October 10, 2024	2
A	Package - Conditions of Approval	3
A	Package - October 10, 2024 Letter to Applicant of completed Development Permit Application	4
A	Package - October 10, 2024 Letter to Adjacent Property Owner - FrenFil Construction Services	5
A	Package - October 10, 2024 Letter to Adjacent Property Owner - Jonathan and Noah Elbaz	6
A	Package - October 10, 2024 Letter to Adjacent Property Owner - Mike and Michelle Hager	7
A	Package - October 10, 2024 Letter to Adjacent Property Owner - Rob and Kim Larsen	8

Exhibit	Description	Page #
A	Package - MPC Meeting Minutes [DRAFT] - Sept 12, 2024	9
A	Package - Application for A Development Permit - Sept 2, 2024; includes request for 20% variance for the west side yard	10-12

A	Package - Winfield by jandelhomes.com	13
A	Package - Winfield elevation drawings	14
A	Package - Winfield Floor Plan	15
A	Package - Lot map of subdivision	16
A	Package - Sample exterior of Winfield	17-20
A	Package - GIS Webmap - home placement on lot	21
A	Package - Letter to Wayne Sornberger, October 2, 2024 - Development Permit Application Notice of Decision with LUB conditions	22-23
A	Package - Appeal Letter - Jonathan & Noah Elbaz - October 28, 2024	24
A	Package - Appeal Letter - Rob & Kim Larsen - October 21, 2024	25
A	Package - DUPLICATE - Appeal Letter - Jonathan & Noah Elbaz - October 28, 2024	26
A	Package - Appeal Letter - Mike & Michelle Hager - undated	27
A	Package - Application for a Development Permit - Sept 2, 2024	28
A	Package - Letter to Council from Wayne Sornberger	29
A	Package - Lot map of subdivision with Lot 10 outlined	30
A	Package - Photographs of an unlabeled Manufactured Home	31
A	Package - Email communications between CAO and W. Sornberger	32-38
B	MPC Meeting Minutes [DRAFT] - October 10, 2024	39
C	GIS Webmap - Lots 241 thru 267	40
C	GIS Webmap - Residential District (Yellow) Lots 241 thru 267	41