RECORD OF DECISION

SASKATOON DEVELOPMENT APPEALS BOARD

APPEAL NO.: 2022 - 35

RESPONDENT: City of Saskatoon, Community Services Division, Planning and Development/Community Standards

In the matter of an appeal to the City of Saskatoon, Development Appeals Board by:

Arbutus Properties Ltd.

respecting the property located at:

Lot: -	**Block:** -	**Plan:** Parcel J, 102361968
Civic Address:	NE ¼ 17-36-4 W3, 2775 Meadows Parkway	

IN ATTENDANCE:

Before	Len Kowalko, Chair June Bold, Vice-Chair Lois Lamon, Member Nick Sackville, Member
Appeared for the Appellant	Curtis P. Clavelle, Solicitor, Robertson Stromberg LLP Kemi Adegoke, Student at Law, Robertson Stromberg LLP Murray Totland, Director of Planning, Arbutus Properties Ltd.
Appeared for the Respondent	Brandon Friesen, Solicitor, City Solicitor's Office, City of Saskatoon Jodi Manastyrski, Senior Solicitor, City Solicitor's Office, City of Saskatoon

The appeal was heard in the City of Saskatoon on Thursday, December 8, 2022, at City Hall, Committee Room E.

PRELIMINARY ISSUES:

The parties were advised of the procedural instructions for the appeal.

During the formal reading of Exhibits into the record the Board agreed that Exhibit R.4 would be entered as a late item.

The Respondent advised the Board that Exhibit A.3 – Affidavit of Philip Shilling and Exhibit A.4 – Affidavit of Cal Sexsmith both dated December 2, 2022, should be excluded as these affidavits were not before City Council and did not factor into Council's decision. The Appellant noted that the issue before the Board was not to review City Council's decision. The Board called a recess at 9:04 a.m. to discuss the matter presented by the Respondent and the appeal resumed at 9:06 a.m. with the Board determining to accept Exhibits A.3 and A.4. The Board noted that although the material was not presented to City Council it provides information for the Appellant. The Respondent further noted concern with Exhibits B.3 and B.4, letters from the public, stating that these individuals are unaffected by the matter not being neighbouring property owners and their opinion is irrelevant. The Respondent's objection was noted for the record; however, the Board accepted the public's input, as the hearing is open to the public. The Exhibits were all formalized and entered into the record.

Murray Totland for the Appellant and the following witnesses for the Respondent affirmed their testimonies would be the truth:

- Darryl Dawson, Development Review Manager, Planning and Development;
- Angela Gardiner, General Manager, Utilities and Environment;
- Cara Fagnou, Director of Building Standards, Community Services;
- Lynne Lacroix, General Manager, Community Services;
- Russ Munroe, Director of Water and Waste Stream, Utilities and Environment; and
- Terry Schmidt, General Manager, Transportation and Construction.

The Chair noted that anyone from the public would also be given an opportunity to speak after the Appellant and Respondent presented their evidence and arguments.

GROUNDS AND ISSUES:

An appeal was filed by Curtis P. Clavelle, Robertson Stromberg LLP on behalf of Arbutus Properties Ltd. (Arbutus) pursuant to subsection 71(5) of *The Planning and Development Act, 2007*, (the PDA) regarding the decision made by the City to deny the amendment of Zoning Bylaw No. 8770 to remove the holding symbol placed on the land for a portion of 2775 Meadows Parkway, described as Parcel J, Plan 102361968, City of Saskatoon (see Exhibit A.1).

The subject property is zoned RM4(H) – Medium/High Density Multiple-Unit Dwelling District (Holding) under Zoning Bylaw No. 8770. The supporting facts and reasons for appeal are as follows:

1. *In 2015, the City approved an amendment to the Rosewood Neighbourhood Concept plan to add development lands to the plan for Arbutus to develop. The City and Arbutus entered a servicing agreement providing that Arbutus would construct a temporary lift station and force main to provide sanitary sewer services to these additional lands. A holding symbol was placed on the subject Land with respect to servicing to ensure adequate services were in place to accommodate development.*

2. *The lift station is in active development and expected to be completed by the end of quarter one of 2023. The requirements related to the lift station construction were set out in a servicing agreement entered in 2015, which did not require a letter of credit. Recently, the City has required Arbutus to obtain a $2.047 million letter of credit prior to issuing final design approval, and this disagreement has led to delay in completion of the lift station.*

3. *Regardless of the development of the lift station, the present sewer service has significant residual excess capacity such that, even upon the full development of the next phase of the project, the existing sewer service would operate at a maximum of 85% capacity. Servicing requirements are therefore met already without the lift station, and the excess capacity will be bolstered once the lift station is complete.*

4. *The City also indicated that it requires all outstanding development levies be paid with respect to the Land prior to the holding symbol being lifted, despite that the Land cannot be developed with the holding symbol attached.*

5. *Phase I of an affordable housing project has been completed by Arbutus. Arbutus has received approval from CMHC to construct Phase II of this project which includes 244 affordable housing units. Conditions of the CMHC Approval Certificate must be met by November 30, 2022, or the CMHC financing to ensure the viability of this affordable housing project will be lost.*

6. *Phase II would be located on the Land in question, which is currently subject to the holding symbol. As such, Arbutus cannot proceed to commence development, which is expected to take 20 months to complete, as compared to the roughly five months required to complete the lift station.*

7. *Arbutus reasonably requested that the holding symbol be lifted so that it could commence construction on the building foundation for Phase II concurrent with the completion of the force main and lift station.*

8. *The decision to deny the application to remove the holding symbol from the Land means that Arbutus cannot proceed with development of Phase II, which places both*

its funding from CMHC, and the entire future of this affordable housing project, at risk.

9. *Council did not provide reasons for its decision to decline Arbutus' request to remove the holding symbol, nor demonstrate why such removal would breach Bylaw No. 9700 (the **"Official Community Plan" or "OCP"**), which is a breach of the principles of procedural fairness and natural justice.*

10. *While no reasons were provided directly by Council for the denial, based on an information report prepared for Council, and comments made by Council during the hearing, it is thought that the following are the reasons for the denial:*

    (a) *It was indicated that it is a requirement of the OCP that servicing be completed prior to development. However, no such requirement exists in the OCP. Rather, the OCP provides that whether there is sufficient existing service capacity or if new services are being provided are considerations relevant to removing a holding symbol, not absolute requirements. Basing a denial on a requirement which does not exist in the OCP is in error;*

        (i) *Alternately, even if the completion of service was a pre-requisite to lift the holding symbol pursuant to the OCP, which is denied, the present service capacity is already sufficient to accommodate the development of the Land as proposed which accords with the intent of the OCP. Basing a denial on an alleged requirement which has already been met is in error;*

        (ii) *It was further indicated that there is a risk that servicing may not be completed as a reason for the denial, without considering that such risk is already being actively alleviated by Arbutus in accordance with section J-5.1(8)(b)(i)-(v) of the OCP through the provision of new services to facilitate the development. Additionally, as explained above, there is no requirement in the OCP for servicing to be completed prior to development commencing or a holding symbol being removed;*

    (b) *Further, a claim was made that Arbutus is in default of a servicing agreement pertaining to construction of a lift station to increase capacity to service the Land and surrounding area, which default is denied by Arbutus:*

        (i) *Council has sought to unilaterally add in a requirement to obtain a $2.047 million letter of credit which is not present in the applicable servicing agreement. This has led to a delay in completion of the lift station, which further delays the completion of services in the area which Council wrongfully indicated is required prior to the holding symbol being removed;*

        (ii) *Essentially, Council imposed a servicing requirement not found in the OCP, as discussed above, and is now delaying the completion of this*

requirement by unilaterally imposing conditions on Arbutus related to completion of the servicing. This amounts to heavy-handed and oppressive conduct which is irrelevant to the removal of a holding symbol and should not be used as the basis for a denial. Council is inappropriately attempting to distract from the relevant issues and improve the City's commercial position by refusing to lift the holding symbol;

(c) It was indicated that there is a risk of setting precedent in removing the holding symbol prior to servicing being completed, which risk is significantly overstated given the unique circumstances leading to the application which would differentiate this case from future cases. Further, sufficient sanitary sewer service is already in place to meet the demand added by development of the Land, as discussed above, and so no precedent is being set, and the request to remove the holding symbol accords with the intent of the OCP;

(d) It was indicated that levies due with respect to the development of the Land are outstanding and must be paid prior to the holding symbol being removed. The payment of levies prior to the removal of a holding symbol is not a requirement of the OCP; basing a denial on a requirement which does not exist is in error.

(i) Council is distracting from the relevant issues and attempting to enforce unrelated contractual compliance by withholding its consent to lift the holding symbol;

(ii) Since the Land cannot be developed with the holding symbol in place, requiring the payment of levies beforehand is unduly onerous, particularly where all other requirements to develop the Land have been met and the removal of the holding symbol is still being denied. The levies will happily be paid concurrent with the lifting of the holding symbol which will permit development to proceed;

(e) It was also indicated that there are outstanding levies with respect to unrelated developments. Basing a denial on levies associated with projects not related to the Land in question is an error and distracts from the relevant issues with respect to the removal of a holding symbol;

11. In denying the application, Council failed to consider the importance placed on affordable housing at sections D-2.3 and G-3.3 of the OCP and the Statements of Provincial Interest, and such decision to deny the removal of the holding symbol to allow Arbutus' affordable housing project to proceed amounts to a breach of the OCP in the circumstances.

EXHIBITS:

Exhibit A.1	Notice of Appeal received November 8, 2022, from Curtis P. Clavelle, Robertson Stromberg LLP on behalf of Arbutus Properties Ltd.
Exhibit A.2	Affidavit of Murray Totland, received December 2, 2022
Exhibit A.3	Affidavit of Philip Shilling, received December 2, 2022.
Exhibit A.4	Affidavit of Cal Sexsmith, received December 2, 2022.
Exhibit A.5	Brief of Law from Curtis P. Clavelle, Robertson Stromberg LLP on behalf of Arbutus received December 2, 2022.
Exhibit A.6	City of Saskatoon Council Policy C09-002, received December 2, 2022.
Exhibit A.7	Water Security Agency, Permit for Construction of Waterworks or Sewage Works, for ISC Parcel 203449350, received December 8, 2022.
Exhibit R.1	Administrative Report and Appendices from the October 31, 2022, City Council Public Hearing from Planning and Development, Community Services.
Exhibit R.2	Location Plan from Planning and Development Division, Community Services Department, received November 29, 2022.
Exhibit R.3	City of Saskatoon Brief of Law on behalf of the Respondent, received December 5, 2022.
Exhibit R.4	Recording of Council Meeting held on October 31, 2022, from City Solicitor's Office, received December 7, 2022, late submission.
Exhibit B.1	Notice of Hearing dated November 18, 2022.
Exhibit B.2	Excerpt from City Council Public Meeting held on October 31, 2022.
Exhibit B.3	Neighbour Notification from Laurie Bradley on behalf of East Cory Industrial Park, Overpass Farms Inc., received December 1, 2022.
Exhibit B.4	Neighbour Notification from Ken Achs on behalf of Mid-West Development (2000) Corp., received December 6, 2022.

EVIDENCE AND ARGUMENT OF THE APPELLANT:

The Appellant representatives were Curtis Clavelle, Robertson Stromberg LLP, who served as Advocate, and Murray Totland, Director of Planning, Arbutus Properties Ltd., who presented the evidence and arguments below.

Mr. Totland told the Board he has worked for Arbutus for five years and has been involved with the subject matter since 2018. He has reviewed Arbutus' records regarding the project and has tried to focus on the pertinent material.

The Board was advised that Parcel J is a condominium site of approximately 10 acres that is split in half and being developed as multi-family affordable housing in two phases.

Phase 1 is complete, with the apartment units being fully leased. There is a strong demand for more apartment units. It is a popular rental apartment project with attractive suites and numerous amenities. In addition, it is a Canada Mortgage and Housing Corporation (CMHC) sponsored project, which makes the rents affordable. On the other half of the parcel, which has the holding symbol, Arbutus wants to build Phase 2, the sister building. The benefit of CMHC financing to renters is that the rents are subsidized, if renters cannot pay full rent.

Arbutus cannot proceed with development until the holding symbol is removed. The Appellant explained how Arbutus came to build the lift station, work normally done by the City. In 2015, the Rosewood Neighbourhood Concept Plan was amended to add more lands for development. The City and Arbutus entered into a pre-servicing agreement in which Arbutus agreed to build a sanitary lift station and force main, ensuring enough sewage capacity for the additional development (see Exhibit A.2, Exhibit C). This is a significant task, including 3.5 kilometers of water mains from Meadows Parkway to connect at Taylor Street.

The lift station was delayed for various reasons, including effects of the COVID-19 pandemic which created much uncertainty for land development; however, business priorities naturally shift to adapt to such changes. The success of Phase 1 was an indication of how conditions and circumstances had changed. Along with the tremendous uptake in demand for single family housing and multi-family housing, affordable housing is an urgent need. This led Arbutus to move forward with Phase 2 of the development, which requires the holding symbol being lifted from Parcel J.

The lift station was started in 2022 and is expected to be complete in early 2023. However, it is now on hold, pending final design approval from the City. Arbutus has run into issues with the City during the design review process. The City has taken a position that it is unwilling to give Arbutus the final design approval stating that due to some security requirements that they are seeking regarding the lift station. Arbutus has been trying to progress in spite of this. Permit approvals from the Water Security Agency of Saskatchewan were just received in the last few days just before the appeal hearing.

Construction will take about 20 months once it begins. It is a large 244-unit apartment building, wood frame with a parkade – a substantial undertaking costing approximately $50 million.

Arbutus started the process to remove the Parcel J holding symbol in late 2021. In early 2022, Arbutus contacted City Administration in the hopes of getting administrative support to expediate the process. The Parcel J holding symbol is part of a larger holding designation on a 73-hectare land development in the neighbourhood. Arbutus was not suggesting the City remove the holding provision from the whole land, just off Parcel J. Arbutus was informed by the City Manager that Administration could not support making a recommendation to City Council to remove the holding symbol but that it would provide City Council with a report regarding Arbutus' request. This has been a year-long process.

Mr. Clavelle noted that the approval permit from the Water Security Agency was received after they filed the material for the appeal. Copies of the "Permit for Construction" effective December 5, 2002, were distributed to the parties and the Board; the permit was entered into the record as Exhibit A.7.

The Respondent put forward questions to the Appellant and were further informed of the following:

- Why was a holding symbol placed on Parcel J? In late 2018 Arbutus had a request to rezone the land and a purchaser wanted to buy the land. The holding symbol was then transferred from Parcel H to half of Parcel J. The Board was referred to Exhibit R.2, Location Plan.
- The Respondent noted that the sewer was at capacity and the Appellant replied that there was currently more than enough capacity for both phases even with the new lift station and force main.
- How much money did Arbutus owe in relation to Parcel J in 2022? The Appellant replied, they owed half of the outstanding levy.
- Did you request an extension for payment? Yes, we did and were denied. The City said it was not their policy to provide extensions.
- The Respondent stated that, at City Council's meeting, it was noted that if Arbutus paid $1.3 million the holding symbol would be removed. The service agreement states if an amount is not paid, interest is charged by the City. The Appellant responded that Arbutus would pay the outstanding amount, including interest, concurrent with the holding provision being removed.
- The Respondent noted that in the 2015 servicing agreement Arbutus was allowed to construct the lift station. When Arbutus approached the City for discussion it was about reallocation of sewer capacity. During this discussion Arbutus was advised by Darryl Dawson, Development Review Manager, Planning and Development, that the force main also needed to be handled. The Appellant stated he had no issue with that.
- In response to the Respondent's observation that developer construction of major water/sewer infrastructure is not the norm, the Appellant indicated they construct those specified services provided within the servicing agreement. The developer builds the neighbourhood and underground services and the City constructs the parks. This can be seen with the Brighton neighbourhood. The servicing agreement for that neighbourhood was clear that Arbutus was to construct the infrastructure.
- The Respondent asked the Appellant to explain their previous comment that the City has been less than co-operative in the matter. The Appellant replied they found the lack of support for, and resistance to, Arbutus' request highly unusual and difficult to follow or understand. The request to remove the holding symbol on Parcel J is not unreasonable. There was a path forward allowing this important project to proceed that would not be onerous on either party. Arbutus has received zero support from the Administration, which said it was not within policy nor their ability to deal with. Arbutus then went to City Council for their consideration. Arbutus does not understand the City's rationale.

- When did Arbutus apply for financing? It was approximately May 2022.
- The Respondent noted that the servicing agreement included $1.3 million in levies. The Appellant commented that they were aware of the levies which is a part of the normal risks of their business.
- The Respondent noted that the Appellant at City Council's October 31, 2022 meeting stated that the lift station was 80% complete, whereas a recent inspection by the Water Security Agency says it is only 15% complete. The Appellant explained this was an estimate of the lift station progress, which was expected to be complete in early 2023. Arbutus was also completing the 3.5 kilometers of force main.
- The Respondent advised that the levies must be paid, the lift station and the force main completed, then the removal of the holding symbol would follow. The Respondent further advised that Arbutus owes the City $1.3 million, because the full amount of $2.6 million was deferred by 50% by the City. The Appellant acknowledged the levies owed and indicated they had paid half the amount and would pay the remainder concurrently with the removal of the holding symbol.
- The Responded stated that the City has accommodated Arbutus' business model and asked whether this had assisted Arbutus in their financing. The Appellant replied that it has and that the City agreed that reallocation could occur.
- The City's representative stated that the City has gone above and beyond to accommodate Arbutus' requests. The Appellant replied that this is a matter of opinion; while the City has been receptive, it sometimes has not been.
- How many of the 244 apartment units are considered affordable? I do not have the exact number. The Respondent noted that in an email the Appellant said 30 to 40 units. The Appellant replied that he believed that it was a percentage.

Mr. Clavelle advised that Arbutus pays interest on outstanding levies and that this stipulation is written into the servicing agreement.

It was noted that sanitary sewer capacity was looked at in 2019. However, the circumstances then were different and there was no need to challenge that. Arbutus and the City arrived at an agreement and accepted it. Engineering reports prepared for Arbutus indicated there is already sufficient sewer and water capacity for both phases, even before the lift station is added to the system.

The Board questions to the Appellant yielded the following additional information:

- What reasons did the City provide for not amending the bylaw to remove the holding symbol on Parcel J? The Administration report said that until the lift station and force main are constructed and the levies paid, the Administration cannot support the application to remove the holding symbol. Administration also expressed concern about setting a precedent. The Appellant's legal counsel advised the Board that it is only a precedent if another case has the same facts or similar facts, which is not common.
- Is there a concern about fulfilling your financial commitment if the holding symbol is not removed? Yes, our CMHC funding is at risk now; December 15th is the

deadline. Maybe we should have waited to apply to the CMHC, but their decision process often takes months. Arbutus built the project because it received the CMHC funding; not having this support will put the whole project at risk. Arbutus has invested $7 million in expenditures. Arbutus has spent about $5 million, so it intends to complete the lift station, it needs it. The investment is tied up and Arbutus cannot access necessary funding. Having the CMHC funding, with a secured interest rate, makes it possible to secure other funding as well.

- Why is Arbutus waiting for the City's final design approval of the lift station and force main at this point? The Appellant explained that it relates to the City's request for a letter of credit as financial protection on $2.1 million owed. A letter of credit is the equivalent of cash. Arbutus offered a bond instead. The letter of credit was not part of the servicing agreement and this request is a new requirement. While the City is reviewing the design plan, they have ordered Arbutus to cease work on the lift station and asked for a letter of credit by December 15, 2022.
- Are there other protections or mitigation provided that would serve in place of a letter? The Appellant explained that Arbutus has $6 million in letters of credit with the City tied to other development work and Arbutus offered that the City could utilize those letters of credit.
- The Appellant further explained that their lenders set the interest rate for their loans, supporting the funding Arbutus puts in place for construction. Currently, with the holding provision in place, Arbutus' lenders will not provide a loan, impeding progress on the development.
- The Board asked whether the Appellant believes they have met the requirements of the serving agreement and the reply was "Yes, but the City has taken a different view".
- What is the current sewer capacity? Arbutus monitors the flow and there is sufficient capacity in the existing infrastructure without the lift station and therefore little to no risk. The holding provision was unnecessary if capacity is the main concern.
- What are some of the off-site services Arbutus pays for? Arbutus pays for interchanges, arterial roads, trunks, etc. The developer shares servicing costs city-wide.
- Would the force main and lift station benefit other City development? Yes, in 2014 these were only for Arbutus lands, and considered in the agreement to be temporary, so the developer should pay for it. The temporary infrastructure will be decommissioned in 15 years when the permanent trunks come from the Holmwood neighbourhood.
- The Appellant noted that other jurisdictions handle the holding provision administratively.
- The Board asked the Appellant if any dispute resolution was considered. The Appellant advised that they have made an offer to the City as listed in Exhibit A.2. Both the City and Arbutus have a common interest to complete this development; affordable housing is an urgent need in Saskatoon and is an element of the Official Community Plan (OCP). Arbutus' offer was rejected by the City. An arbitration process was not pursued.

EVIDENCE AND ARGUMENT OF THE RESPONDENT:

Jodi Manastyrski, Senior Solicitor, City Solicitor's Office, along with Brandon Friesen, Solicitor, City Solicitor's Office, served as Advocates for the City of Saskatoon and called several witnesses who presented the evidence below.

Angela Gardiner, General Manager, Utilities and Environment, was present at City Council's October 31, 2022 meeting and outlined the City's design and development guidelines and requirements used for all development. In the current matter, focus was on sanitary sewer design now and into the future, including seasonal effects and accommodating growth. There are calculations outlined as industry best practice, in alignment with Water Works Association requirements, that the City uses to ensure that all relevant factors are considered, not just actual current capacity.

The City has a monitoring program that looks at flow rates, collects data over a significant amount of time, and uses the information to calibrate the design model that determines flows.

The City has received various drawing submissions for the force main from Arbutus. Approval is pending the conditions of the 2019 servicing agreement being met. In regard to the lift station, the City has not actually received the full package of construction drawings. Various components such as the mechanical drawings have been received along with the structural and architectural drawings. The City has provided comments on all of these and are currently working with Building Standards.

The City has been in discussion back and forth for a number of months with Catterall & Wright Consulting Engineers regarding Arbutus' design options.

Russ Munroe, Director of Water and Waste Stream, addressed sewer capacity. He noted that although a flow monitor was installed by Catterall & Wright, the data produced is only a snapshot and is not sufficient to assess sewer capacity year-round. When the ground is frozen, lower than normal sewer flow is expected. The best practice is to take data from across the city and apply standards from the Water Works Association.

If actual flows for one month were used, we could miss collecting data on significant rain events and seasonal variations that is important for the City in projecting future needs. It is important the data set is complete.

The Board was advised that a life cycle of a lift station is probably 15 to 25 years. The gas build up is hard on the equipment. Although the lift station at issue here is temporary, it probably will go through the life cycle of most of the equipment being installed.

The inspection conducted by the Water Security Agency was done as part of the servicing agreement. The infrastructure is inspected to ensure that it is built to the City's standards. The City has the right to inspect the infrastructure and this was facilitated through the design engineer consultant to evaluate the progress of the project. There is a

schedule for inspection that is part of the servicing agreement. The Board heard the inspection completed on December 7, 2022 showed that the foundation for the lift station exists but there was no backfill and no structure above ground. The percentage of completion of the project is approximately 10 to 15%.

It is not typical that lift stations are built by developers, so the current situation is different from normal. The City needs to ensure standardization and that all requirements are met. All the lift stations across the city have to communicate effectively with one another and be interoperable. It is a network; one lift station does not operate independently. The City obtains permits to construct municipal infrastructure ensuring it is done in order and that the sequencing of the infrastructure is proper.

The Board put forward questions to the Respondent and were further informed of the following:

- Arbutus received approval permits from the Water Security Agency on Monday (December 5, 2022). The City does not have the full plans.
- From the study done by Arbutus' engineer, which was short term, I would conclude that there was capacity on certain days, but it would be too risky to project what happens year-round, particularly in the higher demand season. Typically, higher capacity is required during spring melt or if there is some sort of rain event.
- There was an inspection for the lift station, but no permit for its construction. It is the drawings that require the City's approval.
- What is the benefit of having the developer build the lift station? The Respondent replied this decision was made before his time.

The next witness for the Respondent, Darryl Dawson, Manager of Development Review, advised that he was present at City Council's October 31, 2022 meeting and provided an overview of Administration's report, the background, current situation and Administration's recommendation to City Council. He explained that in 2014 Arbutus approached the City asking to amend the rules of conception to bring in new development to the Rosewood area. The subject area was initially identified for a commercial development and had a holding symbol "H" applied to it. Arbutus was considering changing the land use and looking at a development opportunity for a multi-unit residential building. The Administration worked with Arbutus to go through the sanitary service review, transportation review, and other technical reviews to bring forward a recommendation to City Council to amend the area concept plan. Arbutus had an opportunity to sell Parcel H, facilitated by having its holding symbol "H' transferred to Parcel J.

There is nothing unique about this site. The City tries to stay away from split zoning and this was looked at as an alternative to work with the developer to accommodate their request for development. The Administration makes recommendations to City Council and City Council makes decisions.

The Administration's position is that, in order to have the holding symbol removed, Arbutus has to build the lift station and pay the levies. This has been the City's position since the concept plan was adopted in 2014. It was part of the conditions of that approval. The servicing agreement states when levy payments are due. The developer needs to fulfill all parts of the agreement. The City's history is that the conditions related to the holding symbol always have to be resolved prior to removal. If another developer requested to remove the holding symbol before the terms of servicing agreement were satisfied, the City would deal with that in the same way; the conditions are outlined in the report. The City requires the lift station be operational as this was part of the servicing agreement and mitigates against other similar situations.

It was noted by legal counsel that there is financial risk with regards to unknowns such as supply chain issues. Also, the change of ownership carries financial risk that has to be evaluated so that the City is not imparting that risk to the city's residents.

The City does not want the Phase 2 building to get built and occupied without servicing which is why the holding symbol is there. The City also does not want occupants to risk health issues as a result. Removing the holding symbol ahead of servicing could also set a precedent in other areas of the city where the holding symbol is used.

There is limited sewer capacity in Rosewood. What the analysis looked at was where the City could adjust and put the holding symbol to make the sanitary sewer system functional for the area.

The Administration has worked collaboratively with Arbutus on a resolution and would do that with any developer. Mitigating risk from the beginning is important. When feasible, the City looks to work collaboratively with developers to move forward. When issues arise, the City has to evaluate the risk.

The holding symbol is used when necessary to control phasing within the city. The conditions to remove the holding symbol are listed in the Administration's report, Exhibit R.1.

Board questions yielded the following additional information:

- Arbutus was asked to take on the unusual responsibility of building the lift station and force main because there was limited servicing capacity in the area. Water was there, but sewer was limited and long-term provision for sufficient capacity (the future McOrmand trunk line) would take 20 years. A temporary solution was to have the developer build the force main and lift station for the Rosewood development to proceed. Normally, the City builds the infrastructure and charges the developer 100% of the cost. Arbutus felt they could do this for less and faster and the service agreement was signed (see Exhibit A.2, Exhibits B and C).
- Mr. Dawson was not part of the pre-serving agreement negotiations.

- Mr. Munroe was asked if there is an actual release switch or valve on the system and he explained how the overall system works. Each property is serviced individually and connected to the water main and to a City water meter.
- The Board asked about the flow analysis done by the Appellant's engineers which determined capacity to be sufficient; however, the City questioned the analysis. The Respondent stated that the engineers have an appropriate scope of practice and the ability to make such an analysis, but they do not have the authority to make a risk-based decision for the City and its wastewater system.
- The Board noted that the uniqueness of the situation arose because all parties wanted to move the development forward. The Respondent commented that the arrangement is unique; the City worked with the developer and applied the rules and regulations for the development.
- The Board also noted that there was a collaborative interest for the City and Arbutus to work together but wondered why this interest seemed to dissolve over time. The Respondent replied that trust is still there and the City is still trying to work with Arbutus. Business happens and Arbutus made decisions and the Administration had to make decisions on the City's behalf.
- What are the risks to the City if the holding symbol is removed? Risks include: outstanding levies; further circumstances like supply chain demand; going against City policy; the building gets built and occupied without services; ensuring fair and consistent practices so other developers will not expect similar decisions.
- Does the City not have control over the occupancy? Yes, but occupancy permits deal with safety but not with water and sewer matters.
- The removal of the holding symbol is necessary for further approval permits to be issued. The removal is dependent on the lift station being built and the $1.4 million in levies being paid.
- The Board heard that the holding symbol mechanism was used in this case when other mechanisms exist because of the outstanding debt, which is a condition of the agreement.
- Mr. Dawson noted that the Administration works in good faith and is accountable for its decisions; once the services are in place, we can remove the holding symbol.
- Currently, the City does not have a letter of credit submitted for this development.

The next Respondent witness, Terry Schmidt, General Manager, Transportation and Construction, explained that servicing agreements are issued through that division. Payment levies in the servicing agreement are meant to outline what services are provided, who is to provide those services, and who is responsible for the funding of those services. There is a schedule of payment within the servicing agreement and it is tied to the date of the servicing agreement. There are four payments that are to be made within a 14-month time frame. The consequence of not paying is that interest is charged until payment is made. Letters of credit are provided for the levy payments. Drawing on the letter of credit is a last resort for the City and the City would not do that until it had further discussions with the developer to see when the payments are due. In this case, the City does not have a sufficient letter of credit for the outstanding levy

payment of $1.3 million set in 2019, because the original letter was used to cover other commitments. A levy payment or letter of credit in the amount of $2.047 million is needed.

It was noted that there were other conditions in this servicing agreement. There is a repayment schedule for some other servicing agreements with a total amount of approximately $3 million. In order to allow for phase two of construction, 50% was deferred until two years after the signing of the servicing agreement in November 2019. The remaining fees were due in November 2021. There is no letter of credit in place for the $1.3 million. The City did consider drawing down on the letters of credit on some of the outstanding payments but decided not to. Instead, it entered into another revised repayment schedule to get payment on the outstanding fees addressed in the October 2019 agreement.

In order for Arbutus to be able to proceed and for the City's financial risk to be offset such that the taxpayers are not impacted, there is still the $1.3 million outstanding and the City request for a letter of credit for $2.047 million. Earlier there was reference to $4.5 million that was part of the conditions of the original pre-service agreement in 2015. Since then, this amount has been drawn down to under $1 million.

In the current servicing agreement, there is a clause that allows the City to request the $2 million. Arbutus said it would build the lift station but it has not been completed. There are conditions in the agreement allowing for the discretion of the City Manager to put in reasonable conditions, and the reasonable condition in this case would be a letter of credit. This is for security purposes in case the construction cannot be completed or there were issues with standards. The letter of credit is not intended just to cover completion of the public station, but also to cover deficiencies that may occur afterwards.

A letter of credit ensures that funds are in place and this cost will not be on taxpayers. The letter of credit will cover the City's financial needs. Letters of credit are non-transferable; they are tied to a specific agreement.

Mr. Clavelle advised the Board that Arbutus offered to transfer the letters of credit if that was agreed upon. The Respondent noted that there is no available letter of credit to currently transfer.

The next Respondent witness, Lynne Lacroix, General Manager, Community Services, discussed CMHC financing requirements for affordable housing. CMHC requires 20% of the available rental units be considered affordable and that is tied to the Saskatchewan Housing income maximum limits. Twenty percent is not an entire complex. In email communication with the Appellant in late 2020, Arbutus indicated it was planning to make enough affordable units within this project to meet CMHC funding requirements.

The average rent of such units depends on whether they are one-bedroom or two-bedroom units and on whether the renter is able-bodied or disabled. Currently,

affordable monthly rent rates for an abled-body renter for a one-bedroom unit is approximately $700 and approximately $1,200 for a two-bedroom unit. Rates are reviewed annually.

The City has an innovative housing incentives program and undertakes to facilitate the development of affordable housing in Saskatoon. This has been driven by the City's housing business fund that has been in place for over 10 years. Participation in the program is based on qualification. It was noted that Arbutus has not applied to the City for these initiatives or abatements.

The City provided a letter of support to Arbutus in 2020 when the company was applying for the CMHC favorable lending rates for their project, along with information about the City's incentive programs.

Board questions yielded the following additional information:

- Having 20% affordable units is the threshold CMHC requires for its funding and the development could be in jeopardy if that is not met. Arbutus has indicated that the CMHC funding is critical to this project.
- Arbutus wanted to take on the lift station development because of the timing and were given the permission to do so.
- The Board asked about the competing interests of providing for both housing and servicing; the Respondent's legal counsel stated that competing interests are for City Council to weigh and a decision was made.
- How often does a request for removal of the holding symbol go to Council? Legal counsel for the Respondent was not aware of it happening in the past 10 years. The City has removed the holding symbol from property, but Administration's recommendation in this case was that it remain.

The next Respondent witness, Kara Fagnou, Director of Building Standards, addressed occupancy permits and noted that permits can be issued when a building is under construction; approval is based on things like animal life safety requirements, working fire alarm systems, fire separation exists, water availability, etc., following the National Building Code of Canada. The City does not require an occupancy permit to be issued when development occurs if all conditions are met and the minimum inspections are done. If occupancy happens prior to development completion and life safety risks are identified, a stop work order is issued.

The issuance of a building permit is based on the fact that the development permit is issued for the building. This assumes that the land is suitable for the servicing capacity. Occupancy does not affect a holding symbol. The holding symbol has to be removed before a building permit is issued.

Mr. Clavelle noted that occupancy is based on life safety and sprinklers and you need water to operate these. The Respondent replied that sanitary sewer service and water supply to the property are different things.

The Chair then invited members of the public present to speak if they wished.
Don Atchison, a former City Mayor, addressed the Board, stating support for Arbutus' request and development and saying that the City's affordable housing numbers have declined since 2013. Arbutus is providing another 244 affordable housing units in this project, which is greatly needed in the community. The City could be more accommodating. The request here is to move forward with a foundation permit, which has been done for developers before.

Mr. Atchison further commented that he disputes some of the comments made at the appeal and recalled that Arbutus was told they had to put in the force main; otherwise, the development could not go ahead. It is difficult to understand why a solution cannot be reached regarding the matter.

He noted that while City Council may have turned down Arbutus' request, the Development Appeals Board can proceed as it sees fit for this particular project. The Board can make a difference for 244 families in the community.

No questions were put forth by any of the parties.

Appellant's Summary

In closing, Mr. Clavelle noted that the Board has a number of Exhibits to use for their information and reference. The Board's authority in determining this appeal is important. The City's brief focuses on levies and servicing agreements. No one is saying the agreements will not be upheld in terms of servicing and levies. It is important to understand that the levies and servicing agreements are completely separate from the appeal. These are contractual issues between the parties for which the City has other resources and are not part of lifting the holding symbol. The OCP does not state that the levies must be paid prior to the holding symbol being removed. The agreements do not require that all the prescribed servicing must be fully completed before development proceeds.

The only real issue is what the OCP and PDA say; these are what govern the powers of the Board. Subsection 71(7) of PDA speaks to the Board's authority to either dismiss the appeal or direct City Council to amend the Zoning Bylaw in accordance with the Board's decision. The Board's focus should be Section 221 of the PDA regarding the OCP as the Board is bound by the Plan. The wording is simple and clear in terms of lifting a holding symbol. If the intent of the OCP was to have servicing 100% complete, it would clearly state so and it does not. Instead, the wording provides the flexibility to allow the Board to consider the presence of sewer capacity or the provision of new services being provided in making its decision.

There are three things to note. One, the list of factors that the City is requiring the developer to have fulfilled before the holding symbol is removed are not included in the OCP. If this was a strict requirement to lift the holding symbol, it would have a provision for it. Two, the OCP indicates in general that development will not be permitted without

the provision of full services. This is not an all or nothing statement. It provides for flexibility and exceptions where they are appropriate such as this case, where servicing is nearly complete and will be completed well ahead of the apartment building. Three, as noted, the OCP indicates generally the need for full services, and full services are being provided for the project. It does not strictly indicate those services have to be provided in advance. This allows services to be developed concurrently with construction of the project.

The City spoke to its policy, which prescribes that everything must be completed prior to development. The Board is not bound by City policies. It is not restricted by them and does not need to defer to them. The Board is restricted by the PDA and the OCP. The City has never actually demonstrated that this is policy and that no exceptions have ever been made.

The City states that the only question before the Board is whether City Council made a reasonable decision. This is not the case at all. There is no authority for this. The job of this Board on appeal is not to assess whether City Council made a reasonable decision, nor to defer to Council's decision. This is not what the PDA says. Section 71 does not instruct the Board to examine Council decisions for reasonableness and only lift the holding symbol if you find the decision was unreasonable.

This is a judicial review. This is an appeal of City Council's decision. The focus is on whether the interpretation of the OCP is correct. After that, the Board is free to make its own decision on the facts before it, regardless of what Council may have thought or decided. The Board has an opportunity to make its own decision on whether the holding symbol should be lifted to secure the future of this affordable housing project.

The Appellant has clarified that the entire project, both the lift station and force main are about 80% complete and would be done within a few months. The apartment building will take 18 to 20 months to complete. There is no risk that the servicing being provided will not be complete prior to that partnership.

Arbutus is very motivated to finish the servicing. The servicing is required in order for them to continue to develop the rest of their land in the Rosewood neighbourhood. It is not realistic to think they are going to walk away and not develop the rest of their land. Arbutus is very motivated to complete the lift station and force main, which will also service other parts of the Rosewood development.

The Board heard about the present service capacity in the area. Even if the lift station and force main are not completed prior to the development, there is no risk of lack of capacity. The discussion around actual versus flow model rates is a hypothetical discussion. Both Exhibits A.3 and A.4 speak to there being adequate capacity at present. If the City is concerned with the service availability for renters, it can withhold occupancy permits. This allows the development of the foundation to proceed, so that Arbutus can access its financing and continue with the project.

There is also the issue of no reason being provided for City Council's decision. Council's decision is not germane to the cause of appeal. The Board can make its own decision regardless of what Council decided. There is no evidence that certain factors were not considered by Council. The Court of Appeal states that Council must provide at least some reasons along with their resolution. In this case, Arbutus has gone to Council to apply for some relief and deserves reasons for the decision. Regardless, the Board does not have to defer to Council and can make its own decision.

The Appellant respectfully submits that the logical conclusion is to allow the appeal and lift the holding symbol.

Respondent's Summary

In closing, the Respondent noted that City Council voted 8 to 1 against Administration lifting the holding symbol. The question for the Board is whether Council's decision was reasonable. This is not to be a rehearing; it is about simple application and not a brand-new decision. The Board has to determine whether Council's decision was reasonable and if it was then this appeal should be dismissed.

It is important to keep in mind that Council is an elected body, elected to represent the interests of the residents of Saskatoon. This is not an appeal from a decision of a non-elected official. Council decisions carry more weight than those made by Administration and a Council decision should not be easily overturned.

Generally speaking, a reasonable decision is one that makes sense in the context of the relevant legislation and policy, in this case, the PDA and the OCP. The Council decision is one that reasonably fits within the words of the legislation. It does not have to be the best decision, just has to be a reasonable decision.

RULES AND STATUTES:

Section 71 of the PDA governs the holding provision as follows:

> *71(1) The council may, in a zoning bylaw, by the use of the holding symbol "H" in conjunction with any zoning district designation, specify the use to which lands or buildings may be put at any time that the holding symbol is removed by amendment to the zoning bylaw.*
> *(2) If a council proposes to amend a zoning bylaw to remove the holding symbol, the council is exempt from:*
> *(a) notwithstanding section 75, complying with the public participation requirements of Part X; and*
> *(b) notwithstanding section 76, obtaining the minister's approval of the amending bylaw.*
> *(3) If a holding symbol has been removed pursuant to subsection (2), the municipal administrator shall file with the director a certified copy of the amendment of the bylaw within 15 days after the date that the amendment is adopted.*
> *(4) If the council has designated lands with a holding symbol, the council may require the applicant to post the land with a notice in any form that the council*

may specify.
(5) Subject to subsections (6) to (8), an applicant may appeal to the Development Appeals Board, if, on receipt by the municipal administrator of an application to amend a zoning bylaw to remove the holding symbol:
(a) the council refuses the application; or
(b) the council refuses or fails to make a decision respecting the application within 60 days after the date on which the application is received.
(6) Pursuant to clause 28(1)(b), a council that has been declared an approving authority pursuant to subsection 13(1) may, in its zoning bylaw, extend the time limit set out in subsection (5).
(7) On hearing an appeal pursuant to subsection (4), the Development Appeals Board may:
(a) dismiss the appeal; or
(b) direct the council to amend the zoning bylaw in accordance with the board's decision.
(8) The council and the applicant may agree to extend the period for making an appeal pursuant to subsection (5).
(9) A decision of the Development Appeals Board may be appealed to the Saskatchewan Municipal Board in accordance with section 226.

Section 221 of the PDA governs the determination of an appeal as follows:

221 In determining an appeal, the board hearing the appeal:

(a) is bound by any official community plan in effect;
(b) must ensure that its decisions conform to the uses of land, intensity of use and density of development in the zoning bylaw;
(c) must ensure that its decisions are consistent with any provincial land use policies and statements of provincial interest; and
(d) may, subject to clauses (a) to (c), confirm, revoke or vary the approval, decision, any development standard or condition, or order imposed by the approving authority, the council or the development officer, as the case may be, or make or substitute any approval, decision or condition that it considers advisable if, in its opinion, the action would not:

(i) grant to the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district;
(ii) amount to a relaxation so as to defeat the intent of the zoning bylaw; or
(iii) injuriously affect the neighbouring properties.

APPLICATION/ANALYSIS:

The Appellant's appeal is in regard to City Council's decision of October 31, 2022, to deny the request made by Arbutus to remove the holding symbol "H" from Parcel J in the Rosewood neighbourhood (see Exhibit A.1). The appeal was made pursuant to subsection 71(5) of the PDA which provides for an appeal on the holding provision. The Board is bound by subsection 71(7) and section 221 of the PDA in determining the appeal.

The Appellant's position was that no reasons were given for Council's decision on the request to remove the holding symbol "which is a breach of the principles of procedural

fairness and natural justice" (see Exhibit A.1, paragraph 9). Arguments in support of this position were presented in Exhibit A.5, paragraphs 24 to 29.

The Appellant also argued that the City's denial of the removal of the holding symbol "H" is in conflict with the City's OCP. The Appellant noted that "While the Official Community Plan provides that service capacity should be considered in lifting a holding symbol, it does not provide that all service upgrades prescribed by the City must be completed before the holding symbol is lifted" (see Exhibit A.5, paragraph 4).

The Appellant indicated that the City requires a $2.047 million letter of credit prior to issuing final design approval, which led to disagreement and delay in completing the sewage lift station, and that all outstanding development levies had to be paid for the subject site prior to removal of the holding symbol. The Appellant acknowledged the original servicing agreement and subsequent servicing extension agreement, and that there were unpaid levies, but also noted that interest was accruing to the City. The Appellant pointed out that the letter of credit does not form a part of the servicing agreements. The Appellant also took issue with the need to pay all outstanding levies for the subject site prior to removal of the holding symbol.

The Appellant also indicated that Arbutus was prepared to provide the City a $2.047 million letter of credit to cover its intention to complete the sewage lift station and force main within six months of final design approval by the City (see Exhibit A.5, paragraph 17). The Board heard that the force main has been completed and the lift station is about 20% compete for an overall 80% completion of the required infrastructure. The lift station is expected to be completed early in 2023, in compliance with the City's design standards and well ahead of the finished construction of the proposed apartment. Exhibits A.3 and A.4 received by the Board provided a professional engineering analysis based on an actual flow rate which indicated there is sufficient capacity to accommodate the proposed apartment. The Board also heard that the City relies on design flow standards based on more seasonal data collection for calculating sewer capacity and new infrastructure would need to meet this standard (see Exhibit R.3, paragraph 54). The Board understood from the Appellant that there is urgency in obtaining approval for the apartment building foundation as funding from CMHC would be in jeopardy if the foundation cannot be constructed in a timely manner.

In response to the Appellant, the Respondent's position, as noted in Exhibit R.3, paragraph 2, indicated "that Council's decision was made in accordance with the OCP, *The Planning and Development Act*, and the principles of natural justice". The City's position requires that the proposed development must be fully serviced prior to removal of the holding symbol. Exhibit R.3, Paragraph 11, states that "… the development of a temporary lift station and force main was identified to service lands and provide for full development to proceed. The timeframe that the temporary lift station is expected to operate is approximately 15-20 years". At that time, the Holmwood sector sanitary trunk is expected to be extended to provide long-term sewage capacity for Rosewood.

The Board heard from the Respondent that the proposed development is covered by an original servicing agreement dated September 2, 2015, and a servicing extension agreement dated November 12, 2019. Exhibit R.3, paragraphs 13 to 15, indicate that Arbutus agreed to construct a sewage lift station and force main and meet the City's design standards for the infrastructure. The 2015 servicing agreement provided for the provision of both onsite and offsite services, payment of levies for specified services including payment dates, interest charges for levies not paid, and a $4.59 million letter of credit. The Board also heard that not all of the levy payments have been made as of the date of the appeal hearing. In addition, the Board heard that the 2019 agreement did not include a letter of credit.

On October 26, 2022, the City indicated that a further $2.1 million letter of credit was required to offset any failure to construct the sanitary sewer force main and lift station to City specification (see Exhibit R.3, paragraph 49). The Board heard that this amount remained unpaid but that Arbutus was willing to pay it concurrently with the removal of the holding symbol. Also, the Board heard that the City does not accept the sewer flow rate assessment completed by the Appellant for sanitary sewer and stressed the need to meet the City's design standards for the required infrastructure.

In determining the appeal, the Board was governed by sections 71 and 221 of the PDA. Subsection 71(7) authorizes the Board to either dismiss the appeal or direct the council to amend the Zoning Bylaw in accordance with the Board's decision. The Board is bound by the City's OCP in effect; it must conform to the use of land, intensity of use, and density of development established by the Zoning Bylaw; and its decision must be consistent with the statements of provincial interest. The Board may confirm, revoke, or vary the decision of the council provided the decision complies with subsection 221(d) and in doing so must consider whether or not granting a variance would:

(a) give an applicant a special privilege;
(b) defeat the intent of the Zoning Bylaw; or
(c) negatively impact neighbouring properties.

Subsection 221(a) of the PDA requires that the Board's decision comply with the City's OCP. The Respondent argued that the new sewage lift station had not been completed and that full servicing must be in place prior to any development; not doing so is a contravention of the OCP and a reason for not removing the holding symbol "H". The Appellant disputed the Respondent's argument, noting full servicing is not required prior to removing the holding symbol. However, the evidence indicated that new services are being provided in accordance with the existing servicing agreements and, in the opinion of the Board, is consistent with the City's OCP.

Subsection 221(b) of the PDA requires that the Board's decision comply with the use of land, intensity of use, and density of development established by the Zoning Bylaw. The Board heard that the proposed 244 dwelling unit apartment building conforms to the use of land as multiple-unit dwellings are a permitted use in the RM4 District; therefore, it meets the legislative directive to the Board requiring that its decision conform to the use

of land, intensity of use, and density of development established by the City's Zoning Bylaw No. 8770.

Subsection 221(c) of the PDA requires that the Board's decision comply with provincial land use policies and statements of provincial interest. *The Statements of Provincial Interest Regulations* require that planning documents such as the City's OCP include policies for public works and residential development including providing for a broad range of housing options. The evidence indicated the City's OCP addresses public utilities and servicing, and makes use of servicing agreements and development levy agreements. Similarly, residential policies support a broad range of residential uses that appear to be reasonably consistent with the noted regulations. The Appellant suggested that the City failed to consider provincial interests in promoting affordable housing; however, in response the Respondent noted the OCP addresses provincial interests in providing for affordable housing and must balance competing interests including servicing (see Exhibit R.3, paragraphs 124 to 126). The Board agreed with the Appellant's statement in Exhibit A.5, paragraph 88(c), that there are no requirements within the noted regulations for removing a holding symbol designated in a zoning bylaw.

Regarding the Appellant's appeal application and the suggested lack of a reason for denying the removal of the holding symbol, and the related argument this was a breach of the principles of procedural fairness and natural justice, the Board noted the response from the Respondent that Council was not required to give reasons for its decision. The Board heard the arguments of both parties on this matter and noted the court cases that were considered by the parties to be relevant to the perceived lack of reasons for denial by the City. The Board referred to the authorities and directives provided in sections 71 and 221 of the PDA. The Board agreed with the Respondent's opinion identified in Exhibit R.3, paragraph 76, that there is no specific provision in the PDA requiring Council to provide a reason. The Board determined that this matter is not a subject for adjudication in this case and the focus must be on what the PDA authorizes and directs in the noted sections.

The Board reviews each appeal as an individual case and based on its own merits, and for an appeal to succeed it must clear all of the three bars for variance relief defined in subsection 221(d); otherwise, the appeal cannot be granted. The Board's analysis of the three bars is as follows:

1. **Does the granting of this appeal grant to the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district?**

The test to be applied in determining special privilege is whether the Board would be prepared to grant a special privilege to another party where the same needs and conditions existed and the same bylaw standards applied. The Board considered if there were any unique circumstances, specific needs or site conditions that would support granting this appeal.

Section 3.7 of the Zoning Bylaw No. 8770 states that “Subject to the policies of the Official Community Plan, the Holding Symbol “H” may be used in conjunction with any zoning district to identify the future use of land”. The subject site is zoned RM4 - Medium/High Density Multiple-Unit Dwelling District and has the holding symbol applied; it is denoted as RM4(H) on the Zoning District Map.

Section J 5.1 of the OCP prescribes the criteria that are applied in a request made to the City to remove the holding symbol. Of particular relevance is clause (8)(b)(i), which requires sufficient existing service capacity or if new services are being provided for the proposed development. The Respondent argued that “Both considerations must be weighed and a decision must be based on this balance; this was a task before Council” (see Exhibit R.3, paragraph 100). Also, “… Arbutus has not made sufficient economic provision for the construction of new services” (see Exhibit R.3, paragraph 101). The Board noted new services are being provided which were included in the original September 2, 2015, service agreement and subsequent November 12, 2019, servicing extension agreement.

The Board was told that City Council denied removing the holding symbol as the proposed development is not as yet fully serviced. The Respondent argued that full services must be in place prior to removing the holding symbol, and removing the symbol “may set a precedent that defeats the functioning of servicing agreements and the holding symbol” (see Exhibit R.3, paragraph 55). The Respondent also pointed out that there is nothing unique about the subject property to support approval of this appeal.

The Board heard that issues arose respecting the services identified in the agreements including late levy payment; however, the dispute resolution process included in the servicing agreement may have been a means of resolution, but was not pursued. The Appellant noted at the hearing that Arbutus continues to bear the responsibility for late payment charges.

The Board also heard that the City typically installs major infrastructure such as all of the sewage lift stations. This the first instance where a private developer agreed to construct a lift station and force main. In the Board’s opinion, this represents an anomaly in the provision of major sewage disposal infrastructure and is a unique circumstance. Also, challenges occurred attributed to COVID-19 which created supply chain difficulties and uncertainty in construction. Consequently, there was a delay in obtaining essential parts for construction of the lift station. Substitute parts needed to be purchased that were compatible with the City’s lift station design requirements. These extraneous factors led to a delay in the construction of the lift station.

In addition, the Board heard that the subject site represents only a small portion of the entire lands that Arbutus owns in the Rosewood neighbourhood (about 5 hectares of the total 73 hectares) and remaining lands will remain with the holding provision. Upon completion of the required infrastructure, opportunities will exist for urban expansion. Also, facilitating the proposed development at this time will complement the competing public interest of providing for diverse housing options supported in the City’s OCP. The

Appellant asserted that the lift station will be completed early in 2023 and the force main is complete; this is well before the Phase 2 apartment development being completed about 20 months in the future. Full completion will support the sustainable growth of the Rosewood neighbourhood.

The Respondent pointed out that "No other developer has been permitted to proceed with development before adequate servicing is in place, as this would breach OCP requirements" (see Exhibit R.3, Paragraph 111). However, the Board heard that development has occurred in the Hampton Village neighbourhood without required off-site services being fully completed (see Exhibit A.2, Exhibits I to K), and flexibility was provided in accommodating development at River Landing and Preston Crossing (see Exhibit A.2, paragraph 29). At the hearing, the Board heard from the former Mayor of the City of Saskatoon, that flexibility was provided in previous urban development. Examples were noted when Walmart was constructed in the Stonebridge neighbourhood and when the Willows neighbourhood was developed.

The Board determined that the unique circumstances in this case warrants removal of the holding symbol "H" and it would not be a special privilege inconsistent with restrictions on the neighbouring properties in the same zoning district.

The appeal, therefore, passes the first bar of entitlement.

2. Does the granting of this appeal amount to a relaxation of the provisions of the Zoning Bylaw so as to defeat the intent of the Zoning Bylaw?

The Board noted that section 3.7 of the Zoning Bylaw No. 8770 provides for the use of the holding symbol "H" subject to section J 5.1(8)(b) of the City's OCP. The underlying zoning district regulations apply upon removal of the holding symbol "H" and is contingent upon the capacity of servicing (see Exhibit R.3, paragraph 72).

As noted above, the subject site is zoned RM4(H) – Medium/High Density Multiple-Unit Dwelling District. The RM4 Zoning District accommodates multiple-unit dwellings. With removal of the holding symbol (H), the proposed apartment building is a permitted use and can be constructed.

The evidence indicated the Appellant is in the process of completing the required services in a reasonable period of time and prior to completion of the proposed residential apartment. Exhibit A.7 indicates that on December 5, 2022, the Water Security Agency approved a permit for Arbutus to construct a new sewage pumping station (lift station), precast wet well, pumps and related appurtenances. The Appellant has expressed a willingness to secure completion of the lift station and force main with a letter of credit to ensure the City's design standards are met.

The Respondent argued that proposed development must be fully serviced prior to removing the holding symbol; to do otherwise defeats the functioning of servicing

agreements and the holding provision. The Board noted the signed servicing agreements provide for new services which is consistent with the Zoning Bylaw.

The Board concurred with the Appellant that there would be no relaxation of the Zoning Bylaw regulations with removal of the holding symbol (H) (see Exhibit A.5, paragraph 88(d)(ii)). Allowing the appeal would not compromise, defeat or be offensive to the purposes of the Zoning Bylaw.

The appeal, therefore, passes the second bar of entitlement.

3. Does the granting of this appeal injuriously affect the neighbouring properties?

No letters of objection were received in regard to this appeal. The Board noted that two letters of support for the appeal was received from property owners. The Respondent took exception to having these submissions as they are not neighbouring property owners. The Board agreed to receive these letters for information and noted that this bar of entitlement relates to notice that is sent to neighbouring property owners within 75 metres of the subject site that may be negatively impacted by a proposed development.

The Respondent noted that “Servicing land is an enormous undertaking and the construction of a force main and lift station serve a large area, potentially impacts thousands of residents should operation of such infrastructure fail” (see Exhibit R.3, paragraph 112).

The Appellant noted in Exhibit A.5, paragraph 88(d)(iii) that the development will improve the amenity of the neighbourhood. Any sewage system overload is not expected given the existing services and upcoming servicing upgrades. The Board noted that the Appellant expressed a willingness to secure the provision of new services.

During the hearing, the need for more affordable housing was noted by both parties. The Board noted that affordable housing is an important part of the OCP. Phase 2 of the Arbutus project will address this need and provide a benefit to not only the neighbours but also to the broader community.

There was no evidence before the Board to prove that granting this appeal would directly result in the unreasonable interference in the use and enjoyment of the neighbouring properties in the immediate area. Granting this appeal does not injuriously affect the neighbouring properties.

The appeal, therefore, passes the third bar of entitlement.

DECISION:

The Board grants the appeal and directs that:

1. the City shall within 30 days after the effective date of this decision, pass a Bylaw to remove the holding symbol “H” from the subject site, as identified in Exhibit R.1; and

2. Arbutus shall within seven days of the City removing the holding symbol “H” from the subject site, pay the outstanding levies for the subject site as offered in Exhibit A.5, paragraph 69.

The Board notes that the Appellant expressed a willingness to obtain a letter of credit in the amount of $2.047 million to secure the construction of new services as referred to in Exhibit A.5, paragraphs 65 and 67. This is a matter that can be discussed with the City of Saskatoon.

DATED AT SASKATOON, SASKATCHEWAN, THIS 3rd DAY OF JANUARY, 2023.

CITY OF SASKATOON DEVELOPMENT APPEALS BOARD

Len Kowalko, Chair

TAKE NOTICE that in accordance with subsection 226(1) of *The Planning and Development Act, 2007,* the minister, the council, the appellant or any other person may appeal a decision of the Development Appeals Board to the Saskatchewan Municipal Board. In the event that no such appeal is made, this Decision becomes effective after the expiry of 30 days from the date of the Decision of the Development Appeals Board.

A notice of appeal form can be downloaded from **www.publications.gov.sk.ca** (select Saskatchewan Municipal Board from the Ministry list, and select Notice of Appeal to the Planning Appeals Committee). The notice of appeal must be filed, **within 30 days after being served with this Record of Decision**, to:

Planning Appeals Committee
Saskatchewan Municipal Board
4th Floor, Room 480
2151 Scarth Street
Regina, SK S4P 2H8
(Telephone: 306-787-6221; FAX: 306-787-1610; info@smb.gov.sk.ca)

An appeal fee of $50 is also required by the Planning Appeals Committee. Cheques should be made payable to Minister of Finance. Your appeal will be considered received on the date the appeal fee and the notice of appeal have both been received.

Please note a copy of the notice of appeal must also be provided to the Saskatoon Development Appeals Board, c/o The Secretary, Development Appeals Board, City Clerk's Office, City Hall, Saskatoon, SK, S7K 0J5.

For additional information, please contact the Planning Appeals Committee, Saskatchewan Municipal Board, at the address and/or telephone number indicated above.