



COURT FILE NUMBER 2101-00793
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY
 APPLICANT THOMAS H. FERGUSON
 RESPONDENTS ALI TEJPAR, ZAHRA TEJPAR, REGISTRAR OF TITLES for the LAND TITLES OFFICE, JOHN DOE, JANE DOE, and ABC CORPORATION
 DOCUMENT AFFIDAVIT
 ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Curtis E. Marble
Carbert Waite LLP
 2300 Encor Place, 645 - 7th Avenue SW
 Calgary, Alberta, T2P 4G8
 Phone: 403-705-3642 Fax: 403-263-5553
 File No.: 120632.001

Affidavit of JANE VIRTUE
Sworn on April 24, 2021

I, JANE VIRTUE, of Calgary, Alberta, make oath and say that:

1. I am a resident of Elbow Park in Calgary, Alberta. I am the president of the Elbow Park Resident's Association (the "EPRA"). I spoke with Ms. Zahra Tejpar and Mr. Ali Tejpar (the "Tejpars"), who are the current owners of 1023 32 Ave. S.W. ("the Subject Property") prior to the Tejpars' purchase of that property. I therefore have personal knowledge of the facts and matters deposed to below except where stated to be based on information and belief, in which case I believe them to be true.
2. I have reviewed the affidavit of Ms. Zahra Tejpar, affirmed April 13, 2021 (the "Tejpar Affidavit"). I make this Affidavit in response to the Tejpar Affidavit.

Nature of the EPRA:

3. The Elbow Park Resident's Association (the "EPRA") is a volunteer run organization made up of residents. It has no standing to approve developments, or to enforce Restrictive Covenants. It is my understanding that only individual owners can enforce restrictive covenants.

My Call with Ms. Tejpar:

4. In specific response to paragraphs 13 to 15 of the Tejpar Affidavit, I spoke with Ms. Tejpar on the request of Mr. Tom O'Leary. Ms. Tejpar is a colleague of Mr. O'Leary's.

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5. I spoke with Ms. Tejpar and Mr. Tejpar on January 8, 2020 at 12pm for approximately 1 hour. The conversation that I had with Ms. Tejpar was about a proposed subdivision only. The Tejpars did not tell me during that conversation that they were investigating a caveat on the Subject Property.
6. During our call on January 8, 2020 I advised the Tejpars that:
 - (a) It is sometimes unpredictable how subdivisions are ~~be~~^{JV} viewed by neighbours, and that opposition from neighbours will complicate the process;
 - (b) I suggest that they speak to as many neighbours as possible in the area near the property in order to determine if there would be opposition. I stressed the importance of taking the time to knock on each person's door to speak to each of the neighbours personally about the subdivision and proposed development; and
 - (c) they should attend a meeting of the Development Committee as another avenue to interact with the members of the Elbow Park community with respect to their proposed development prior to the purchase or subdivision of the property. I discuss this more below.
7. Contrary to the statement at paragraph 20 of the Tejpar Affidavit, I did not provide the Tejpars with any indication as to whether the Subject Lands were appropriate for subdivision. I told them that I believed that neighbours would be less likely to object to a subdivision where the lot was over 100 feet wide. This is due to the zoning requirements in an RC-1 neighbourhood as to lot frontage.
8. I note that, given the RC-1 zoning, there are no townhomes in Elbow Park. Contrary to paragraph 20 in the Tejpar Affidavit, I did not mention any townhome developments in Elbow Park. There are no such developments in Elbow Park.
9. I also did not indicate whether the EPRA would approve of a subdivision on the Subject Lands.

The Tejpars Declined to Engage the ERPA in Consultation

10. Further to my comment at paragraph 6 (c), above, there is a Development Committee of the EPRA. Typically, where a landowner wishes to proceed with a development on their land there is a consultation process within the EPRA where the Development Director hosts a Development Committee meeting and invites the potential developer, the residents the architect and builder. The purpose is to facilitate communication between the interested parties.
11. Based on the information gathered at this meeting, typically a letter is drafted to the City of Calgary which advises the City of the ERPA's position on the proposed development. This is not any form of regulatory approval. It only expresses the position of the EPRA. In any event, despite being invited to do so during my call, the Tejpars opted not to attend such a meeting prior to their purchase of the Subject Lands.

The EPRA was not contacted with respect to the Caveat

12. At no time did either Ms. Tejpar or Mr. Tejpar contact me with respect to the Caveat. My discussion was with respect to a proposed subdivision only. If the Tejpars had told me that they were investigating the Caveat on the property I would have been able to facilitate their search using the EPRA's contact list.
13. Despite my advice to the Tejpars to take further steps to communicate with neighbouring land owners in person, I note that the condition of the sale were waived within five hours of my conversation with the Tejpars.
14. Given that no steps were taken by the Tejpars to reach out to all of their neighbours, and that I was never asked about a Caveat during my one-hour conversation with the Tejpars, and that there was no Development Committee meeting requested prior to the purchase of Subject Property, I do not agree that there was a "multitude of efforts" taken by the Tejpars to locate the Caveat prior to choosing to purchase the Subject Property.

The September 22, 2020 Development Committee Meeting:

15. I am aware through my involvement with the EPRA that there was a zoom meeting held with the Tejpars on August 27, 2020 (the "August Meeting"). This meeting is referenced at paragraph 36 of the Tejpar affidavit. I was unable to attend this meeting as I was on vacation. As a result of the August Meeting, a letter dated August 27, 2020 was sent to the City of Calgary by the EPRA. A copy of this letter is appended to the Tejpar Affidavit at Exhibit "R".
16. Following the August Meeting and the letter sent to the City of Calgary as set out in Exhibit "R" of the Tejpar Affidavit, there was significant outcry expressed with respect to the Tejpars potential development. As a result of this outcry, I called Ms. Meghan Ducette at the City of Calgary on September 7, 2020 and left her a voicemail advising that the EPRA was rescinding the August 27, 2020 letter sent by Ms. Coppus and would rely upon a new letter that had I had revised, dated September 7, 2020 (the "Revised Letter"). Ms. Ducette returned my call and advised that she had received the Revised Letter, and that the City would rely upon the Revised Letter for the EPRA's position. A copy of the Revised Letter is appended to my affidavit at **Exhibit "A"**.
17. Following sending this revised letter, a further Development Committee was held on September 22, 2020. It is my practice to attend such meeting when I know that there are neighbours who are opposed to the subdivision or development permit application. I do so in order to provide support to the Development Committee. My recollection of this meeting is that:
 - (a) There were numerous neighbours who expressed opposition to the subdivision;
 - (b) The neighbours were not aware of a proposed development until such time as the development permit was submitted.
18. My understanding from attending this meeting is that contrary to my recommendation during my phone call with the Tejpars on January 8, 2020, the concerned neighbours had not been contacted by the Tejpars personally, or by their legal counsel, with respect to either the proposed development or the Caveat on title.

THIS IS EXHIBIT "A" TO THE
AFFIDAVIT

OF JANE VIRTUE

SWORN BEFORE ME

this 24TH day of April, 2021.

Curtis E. Marble
Barrister & Solicitor

epv

Date: September 7, 2020

Ms. Meghan Dunnette

City of Calgary

Planning, Development Assessment #8201 Municipal Building, 800
Macleod Trail S.E. Calgary, AB T2P 2M5

Sent via email: Cpag.circ@calgary.ca Meghan.dunnette@calgary.ca

Dear Meghan,

I left you a voice message on Friday, August 4 indicating that EPRA will submit a REVISED letter to replace the letter previously sent on August 27. Please accept the following Revision:

Re:SB2020-0165

A meeting of the Development Review Committee was held on August 27, 2020. The applicant and several neighbours joined the meeting.

Following the meeting, there has been a flurry of additional input from neighbours who were either away and unable to attend or who were unaware of the meeting.

EPRA has received several responses from residents indicating their adamant opposition to this application. EPRA would like to file the following specific concerns that were highlighted by residents at the meeting and in follow up.

1. Contextual Sensitivity:

People choose to invest in Elbow Park and raise their families in Elbow Park because of it's charm and character. Charm and Character created by large tree canopies on our streets, back expansive landscaped front yards, century old homes mixed with new, landscaped front boulevards, impressive gardens, pathways leading to the river and yards that make it easy to visit with your neighbour. The residents of Elbow Park have spoken clearly in a recent EPRA survey that they want to preserve this character of our neighbourhood.

EPRA is opposed to this particular subdivision because it will negatively impact the character of Elbow Park. When one home is built on a 100 foot lot, there is enough room to provide for larger side yards between homes, there is only one front garage versus two, there is more room for green space and vegetation and the streetscape remains intact.

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The proposed subdivision would result in the construction of two homes with an elevation dominated by driveway and garage. The impact is a driveway versus grass, the loss of trees and less soft landscaping between homes.

The reason that people love Elbow Park is because we can walk down our sidewalks and feel like we have a bit more nature than urban concrete. If we continue to replace our green grass and gardens with concrete, the character of our neighbourhood is damaged. The entire community loses out.

When there is space between homes, more light is able to shine into the yard of the neighbouring home, there is more space & light for vegetation to be planted and there is more space for people to chat over their fences. This is the character of Elbow Park that people love, and, it needs to be protected.

Historically, others also wanted to protect the character of Elbow Park and they did this by designating it as RC1 on a variety of different lot sizes. Subdivisions of the larger lots in Elbow Park slowly, but, surely negatively impacts the character and social fabric of our neighbourhood.

It may not seem like a big deal to approve one subdivision, however, there has been a trend to subdivide lots and EPRA is opposed to this practice. We do not want the trend to continue and we do not want the City to become complacent and base their decisions on this trend.

When you walk down a sidewalk in Elbow Park, there are very few front garages as a result of garages off of the back alley. The experience is much different walking down a sidewalk where the front of the house is greenery and garden versus concrete driveway. It is not possible for back garages on this particular lot. Subsequently, front garages and driveways are necessary. Two driveways significantly reduces the amount of landscaped yard. Having two driveways doubles that impact and negatively impacts the streetscape for not just the residents living on the street, but those who walk through our neighbourhood to the river pathways every day.

2. Retaining wall and drainage along the west property line.

The neighbour abutting this property line expressed concerns that the exist-

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ing retaining wall will not withstand any construction related stress. He would like to see a condition put on the subdivision approval to ensure that a potential buyer will construct an adequately designed retaining wall. His concern is not only for the finished product but to ensure adequate stabilization during construction as well. There have been several issues with improper stabilization and subsequent collapse of retaining walls during construction in Elbow Park. In some cases this has resulted in damage to neighbouring properties and litigations.

3. Preservation of mature trees and flood mitigation.

There are several healthy mature trees that add to the character of the neighbouring properties. The Applicant assured that he will do anything in his power to retain these trees. According to his preliminary design, he will only need to remove one tree. If any other trees are removed, they will re-plant slightly mature trees as replacement. This is not acceptable. The canopy of mature trees is one of Elbow Park's defining characteristics and must be preserved.

Some of these trees will be on the west parcel of the subdivided lot and there is concern that nothing can be done to ensure the survival of these trees other than hope that the future owner will value these trees as well. This is unacceptable.

There has been a significant loss in the number of mature trees due to the degree of house and garage lot coverage in several recent developments. The lots are being overbuilt and Elbow Park wants to reverse this trend. This is a serious issue that requires attention as we know that trees and their capacity for water absorption are one of the best defences in flood mitigation and protection from climate change.

3. Utility Easement along the west side?

The neighbour to the south mentioned that she has an easement along her west property line and was wondering whether this easement continues along the subject property. Nobody seemed to know about this. It should be investigated.

4. Privacy for the neighbour to the south.

The Applicant explained that the preliminary design for his house will have all setbacks as per R-C1 bylaw and possibly a bigger setback to the south. They are planning to have a 2-story Great Room to the south, so there won't be any second story windows overlooking the backyard. However,

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promises have been made and broken in other development applications with no recourse. This has created tremendous conflict in the neighbourhood. The privacy concerns remain.

Due to the above noted concerns and the degree of opposition from Elbow Park residents, we object to this subdivision. We respectfully request that the application is denied.

Regards,

Jane Virtue
EPRA President

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DOCUMENT	AFFIDAVIT
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Curtis E. Marble Carbert Waite LLP 2300 Encor Place, 645 - 7th Avenue SW Calgary, Alberta, T2P 4G8 Phone: 403-705-3642 Fax: 403-263-5553 File No.: 120632.001

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 - (a) There were numerous neighbours who expressed opposition to the subdivision;
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18. My understanding from attending this meeting is that contrary to my recommendation during my phone call with the Tejpars on January 8, 2020, the concerned neighbours had not been contacted by the Tejpars personally, or by their legal counsel, with respect to either the proposed development or the Caveat on title.

- 19. At no time prior to the September 22nd, 2020 meeting did the Tejpars provide any indication to the EPRA of their awareness that there was a caveat on title, or that they were seeking to have the caveat removed.
- 20. I was not physically present before the commissioner, but was linked with the commissioner using video technology. The process described in paragraphs 2-9 of NPP#2020-02, Notice to the Profession and Public, Remote Commissioning of Affidavits for Use in Civil and Family Proceedings during the COVID-19 Pandemic, was followed.

SWORN BEFORE ME at Calgary, Alberta,)
 on April 24, 2021.)



_____)
 Curtis E. Marble)
 A Commissioner for Oaths)
 in and for the Province of Alberta)

_____) **JANE VIRTUE**

Curtis E. Marble
 Barrister & Solicitor



THIS IS **EXHIBIT "A"** TO THE
AFFIDAVIT

OF JANE VIRTUE

SWORN BEFORE ME

this 24TH day of April, 2021.



Curtis E. Marble
Barrister & Solicitor



Date: September 7, 2020

Ms. Meghan Dunnette

City of Calgary

Planning, Development Assessment #8201 Municipal Building, 800
Macleod Trail S.E. Calgary, AB T2P 2M5

Sent via email: Cpag.circ@calgary.ca Meghan.dunnette@calgary.ca

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EPRA is opposed to this particular subdivision because it will negatively impact the character of Elbow Park. When one home is built on a 100 foot lot, there is enough room to provide for larger side yards between homes, there is only one front garage versus two, there is more room for green space and vegetation and the streetscape remains intact.

Handwritten signature in blue ink, followed by a circled number 6.

The proposed subdivision would result in the construction of two homes with an elevation dominated by driveway and garage. The impact is a driveway versus grass, the loss of trees and less soft landscaping between homes.

The reason that people love Elbow Park is because we can walk down our sidewalks and feel like we have a bit more nature than urban concrete. If we continue to replace our green grass and gardens with concrete, the character of our neighbourhood is damaged. The entire community loses out.

When there is space between homes, more light is able to shine into the yard of the neighbouring home, there is more space & light for vegetation to be planted and there is more space for people to chat over their fences. This is the character of Elbow Park that people love, and, it needs to be protected.

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promises have been made and broken in other development applications with no recourse. This has created tremendous conflict in the neighbourhood. The privacy concerns remain.

Due to the above noted concerns and the degree of opposition from Elbow Park residents, we object to this subdivision. We respectfully request that the application is denied.

Regards,

Jane Virtue
EPRA President

A handwritten signature in blue ink is located in the bottom right corner of the page. Below the signature is a circled number '9'.

CERTIFICATE

CANADA

PROVINCE OF ALBERTA

TO WIT:

I, Curtis E. Marble, a Commissioner of Oaths in and for the Province of Alberta, by royal authority duly appointed, residing in the City of Calgary in the said Province, DO CERTIFY that the attached Affidavit, being:

- Affidavit of Jane Virtue sworn April 24, 2021;

was sworn before me by the affiant through the use of video technology using the process described in the Notice to the Profession and Public, NPP #2020-02 dated March 25, 2020.

The use of this process was necessary as it was unsafe for the affiant to attend to a commissioner of oaths in Calgary, Alberta due to the COVID-19 Pandemic. This process was used in observation of the ongoing public health advice to maintain physical distancing.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal of office at the City of Calgary in the Province of Alberta this 24 day of April, 2021.



A COMMISSIONER OF OATHS in
and for the Province of Alberta

Curtis E. Marble
Barrister & Solicitor