



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: April 16, 2019
Project Number: 230675069-001
File Number: SDAB-D-19-045

Notice of Decision

- [1] On April 3, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **March 8, 2019**. The appeal concerned the decision of the Development Compliance Officer, issued on February 8, 2019 to:

Acquire a Development Permit for the overheight Fence before March 1, 2019 or demolish and remove the overheight Fence and clear the site of demolition materials before March 1, 2019.

- [2] The subject property is on Condo Common Area (Plan 0725961), located at 7104C - 127 Avenue NW, within the (RF3) Small Scale Infill Development Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Stop Order;
 - The Development Compliance Officer’s written submission;
 - The Appellant’s written submission; and
 - One online response from a neighbouring property owner in support of the appeal.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The Presiding Officer raised a jurisdictional issue regarding when the appeal was filed. The Presiding Officer explained to the Appellant that the Board is constrained by the 21-day limitation period prescribed by section 686(1)(a) of the *Municipal Government Act*, RSA 2000, c M-26 (“*Municipal Government Act*”), which states:

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,

(a) in the case of an appeal made by a person referred to in section 685(1)

- (i) with respect to an application for a development permit,
 - (A) within 21 days after the date on which the written decision is given under section 642, or
 - (B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,

or

- (ii) **with respect to an order under section 645, within 21 days after the date on which the order is made, [...]**
[emphasis added]

[7] The Board must therefore, determine whether the Appellant filed the appeal within the 21-day limitation period. If the appeal was filed late, the Board has no authority to hear the matter.

Summary of Hearing on Preliminary Matter*i) Position of the Appellant, Ms. S. Grekul*

[8] Ms. Grekul received a letter from the City for a Development Compliance Officer to enter her property in December 2018 or January 2019.

[9] She called the Development Compliance Officer, Ms. Fraser, to see if she was required to be there during the inspection and was told she did not need to be there.

[10] She does not check her mail every day and did not receive the Stop Order until quite some time after it was mailed.

[11] She spoke to Ms. Fraser who explained the Stop Order and the violation ticket she received.

[12] Ms. Grekul's contractor spoke to Ms. Fraser and she provided information on the next process and how to appeal the Stop Order.

- [13] Ms. Fraser granted Ms. Grekul additional time to proceed with the next step.
- [14] Ms. Grekul stated that she was not aware of the time lines to file an appeal.
- [15] She is concerned for her safety if the fence is not approved.
- [16] When she spoke to Ms. Fraser, she was told the Board would allow her to speak at the hearing due to her situation.
- [17] Ms. Grekul provided the following information in response to a question by the Board:
- a. She confirmed that she was not aware that there was a required time period to file an appeal.

ii) *Position of the Development Compliance Officer, Ms. R. Fraser and Mr. J. Young*

- [18] The Stop Order was drafted on February 8, 2019 and the formal decision was issued on February 11, 2019 and sent out that day.
- [19] A violation notice was issued and they did not speak to the Ms. Fraser until the Stop Order and ticket was issued.
- [20] Ms. Fraser spoke to spoke to Ms. Grekul and her contractor on February 19, 2019 and provided information on the appeal process for the Stop Order and the Court process for the ticket.
- [21] Ms. Fraser and Mr. Young provided the following information in response to a question by the Board:
- a. They confirmed that the Appellant was aware in December 2018 that the fence needed to be complied with.

Decision on Preliminary Matter

- [22] The appeal was not filed on time, in accordance with section 686(1)(a) of the *Municipal Government Act*.

Reasons for Decision on Preliminary Matter

- [23] The Stop Order was issued pursuant to section 645(1) and (2) of the *Municipal Government Act*. The Board heard evidence that a Development Compliance Officer had authority under the *Municipal Government Act* to issue a Stop Order.

[24] Section 645 of the *Municipal Government Act* states:

Stop order

645(1) Despite section 545, if a development authority finds that a development, land use or use of a building is not in accordance with

- (a) this Part or a land use bylaw or regulations under this Part, or
- (b) a development permit or subdivision approval,

the development authority may act under subsection (2).

(2) If subsection (1) applies, the development authority may, by written notice, order the owner, the person in possession of the land or building or the person responsible for the contravention, or any or all of them, to

- (a) stop the development or use of the land or building in whole or in part as directed by the notice,
- (b) demolish, remove or replace the development, or
- (c) carry out any other actions required by the notice so that the development or use of the land or building complies with this Part, the land use bylaw or regulations under this Part, a development permit or a subdivision approval,

within the time set out in the notice.

(2.1) A notice referred to in subsection (2) must specify the date on which the order was made, must contain any other information required by the regulations and must be given or sent to the person or persons referred to in subsection (2) on the same day the decision is made.

[25] Based on the evidence submitted, the date specified on the Stop Order is February 8, 2019 and the Stop Order was sent to the Appellant on February 11, 2019. The appeal was filed on March 8, 2019.

[26] Section 686(1)(a) of the *Municipal Government Act* states:

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,

- (a) in the case of an appeal made by a person referred to in section 685(1)
 - (i) with respect to an application for a development permit,

- (A) within 21 days after the date on which the written decision is given under section 642, or
- (B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,

or

- (ii) **with respect to an order under section 645, within 21 days after the date on which the order is made, [...]**
[emphasis added]

[27] The Board finds that the appeal was not filed in time and the Board does not assume jurisdiction to hear the appeal and would be a contravention of the *Municipal Government Act* and an error in law to do so.



Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. S. LaPerle; Ms. L. Delfs; Mr. D. Flemming; Ms. M. McCallum.

CC: City of Edmonton, Development & Zoning Services, Attn: Ms. R. Fraser / Mr. J. Young;
Mr. A. Reid; Mr. C. Getzinger

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26.
2. When a decision has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.



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Date: April 16, 2019
Project Number: 136835201-004
File Number: SDAB-D-19-046

Notice of Decision

- [1] On April 3, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **February 14, 2019**. The appeal concerned the decision of the Development Authority, issued on January 18, 2019, to approve the following development:

Operate a Major Home Based Business (administration office ONLY for concrete and landscaping contractor). No storage of business materials or equipment on site, no visits to the home. Expires on January 18, 2024.

- [2] The subject property is on Plan 7922524 Blk 28 Lot 65, located at 16336 - 99 Street NW, within the (RF1) Single Detached Residential Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments and the approved Development Permit;
 - The Development Officer’s written submission;
 - The Appellant’s written submission and attachments; and
 - Online responses from two adjacent properties opposed to the proposed development.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – Photograph submitted by the Appellant.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, Ms. D. Lodenquai

- [8] When the original development permit was approved, the Respondent was not complying with the conditions of the approval. In her opinion, the Respondent will not comply with the conditions on the new permit.
- [9] Over time, business activity on the property has escalated with machinery being used at the property.
- [10] Ms. Lodenquai stated she continually hears noise from the use of equipment, maintenance of the equipment, and power washing of vehicles on the subject site. The equipment is not being used on the weekend but that is when maintenance on the equipment takes place.
- [11] The Respondent services vehicles used for the business and vehicles used by his friends.
- [12] Debris from power washing vehicles runs into the rear lane and into the sewer, which should be a concern of the City.
- [13] The residential neighbourhood feels like a commercial area because of the Respondent's business.
- [14] The Development Officer indicated in her written submission that several complaints were received but no violations were issued and the file was closed. However, it can take four days for a Compliance Officer to come to inspect the site due to a complaint. Vehicles stored at the subject site are moved when the Compliance Officer arrives.
- [15] The front yard of the subject site is concrete and the rear of the property is used for the business and looks like a commercial area.
- [16] The Major Home Based Business is negatively impacting the use and enjoyment of her property.
- [17] Ms. Lodenquai does not have an issue with an administrative business but feels large equipment and storage should take place off site. If the business is impacting the neighbourhood, there is an issue.

- [18] Ms. Lodenquai provided the following information in response to questions by the Board:
- a. Her property is across the rear lane and her garage backs onto the garage of the subject site.
 - b. There is a front garage and an oversized detached garage on the subject site.
 - c. She has lived at her property since 1990.
 - d. She confirmed that outdoor activity is currently taking place at the subject site. The noise and use of equipment is minimal in the winter.
 - e. She could not confirm if vehicles associated with the business are stored outside in the winter and she could not confirm if they are stored in the garage.
 - f. She has to maneuver around the Respondent's vehicles when backing out of her garage because they block the rear lane.
 - g. She confirmed that the photographs submitted to the Board were taken last summer.
 - h. Her concerns vary depending on what activity is taking place at the subject site.

ii) Position of the Development Officer, Ms. C. Potter

- [19] The Development Authority did not appear at the hearing and the Board relied on Ms. Potter's written submission.

iii) Position of the Respondent, Mr. A. and Mrs. R. Eltassi

- [20] With regard to the back hoe in the photographs submitted by the Appellant, Mr. Eltassi stated that he does not own the back hoe and it was being used for work being done at the subject site.
- [21] The flat deck truck in the photograph is not his and is owned by a plumber.
- [22] Equipment shown in the photographs was used at the subject site for repairs to his property.
- [23] The bobcat and quad shown in the photographs is used to remove snow on the property and they are usually stored in the garage.

- [24] Mr. Eltassi owns a half ton truck and a van.
- [25] He stated that vehicles shown in the photographs are only there for a short time. If they were stored there regularly, the business would not be making money.
- [26] Employees occasionally load the trucks on the property and then drive to where the work takes place.
- [27] The administration office receives calls and makes appointments. They travel to their customer's property to discuss the work. No work is done at the subject site.
- [28] The trucks associated with the business are sent out to be serviced.
- [29] The power washer is used for his personal use and the rear lane is cleaned after items are washed on the property.
- [30] If there was an issue with the rear lane not being cleaned, they would receive a violation notice or a ticket and they have not.
- [31] Mr. Eltassi provided the following information in response to questions by the Board:
- a. He confirmed that the business has two employees but they do not work in the winter. The business starts operation in May if there is work to be done.
 - b. The only equipment stored in the garage is the quad and bobcat. The quad and bobcat are only outside when the garage is being cleaned. The bobcat has recently been sold.
 - c. Maintenance of equipment is not taking place in the garage.
 - d. The rear lane may be blocked for a short period of time for the trucks to be loaded of materials to take to the work site.
 - e. He confirmed that he has four vehicles. He parks his small car in the front garage and two trucks are parked in the rear garage.
 - f. His motorhome is not stored at the subject site.
 - g. The previously approved permit was for five years and they recently applied for a renewal of the development permit.
 - h. The dump truck is used to haul concrete away but is owned by a different company.
 - i. He works with another company who provides him with vehicles to use for the business. All of the vehicles are registered to the other business. These vehicles come to the property on occasion.

- j. With regard to the noise concerns from two neighbouring property owners, he stated that the noise is from other neighbours in the area. The only noise generated from his property is when he is using the pressure washer.
- k. With regard to the conditions of approval, he stated that lumber is only stored at the subject site. In his opinion, he has complied with all conditions listed on the development permit.
- l. In his opinion, a truck coming to the subject site to pick up items is the same as a regular car coming to the property.
- m. Trucks may come to the property to drop off and pick up items approximately five to six times per year.
- n. His family has lived at the subject site for 10 years.
- o. He confirmed that the development permit has changed somewhat from the original development permit and he confirmed that there will be no customer visits to the subject site.
- p. He stated that although the development permit indicates that commercial vehicles are not permitted at the subject site, he confirmed that commercial vehicles come to the subject site.
- q. In his opinion, he is able to comply with the conditions of the approved development permit.
- r. He confirmed that there are two businesses at the subject site. One business deals with small landscaping and concrete jobs and the other business deals with larger concrete jobs.
- s. The one ton truck and one other truck are used for the concrete business. A Kenworth truck is stored at another property and is only at the subject site if he is picking up something.
- t. Ms. Eltassi stated that she paid for the development permit application in November 2018 and they were told that the renewal application was approved.
- u. The trucks used for the businesses are five tons and 10 tons. The dump truck is a single axle truck and is owned by Sureway.

iv) Rebuttal of the Appellant, Ms. Lodenquai

- [32] Mr. Eltassi may not be aware that servicing of vehicles is taking place at the subject site as more than one person lives at the property.
- [33] Two online responses were received in opposition showing that she is not the only neighbour that has concerns.
- [34] She provided the Board with an additional photograph showing a large truck parked at the subject site (*Exhibit A*).
- [35] She reiterated that there are several vehicles coming to and from the property.

v) Rebuttal of the Respondent, Mr. Eltassi

- [36] He confirmed that the truck shown in *Exhibit A* is not being worked on and is only there to be loaded at the subject site.

Decision

- [37] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **REFUSED**.

Reasons for Decision

- [38] The proposed development, a Major Home Based Business, is a Discretionary Use in the (RF1) Single Detached Residential Zone.
- [39] The Board heard conflicting evidence from the Appellant and the Respondent. For instance, the Board heard from the Appellant that there is significant business activity taking place at the subject Site. On the contrary, the Board heard from the Respondent that business activity was minimal but could be attributed to two businesses owned by the Respondent.
- [40] The Board finds that it would be difficult for a resident of the neighbourhood to distinguish that two businesses are operating at the subject Site. The Respondent confirmed this to be the case.

- [41] The Board accepts the evidence submitted by the Appellant that there is an intensity of the Use of what is beyond that of a regular office used for administration purposes of a Home Based Business. Namely, the Board was provided with photographic evidence of large trucks at the subject Site.
- [42] The Respondent indicated to the Board that such trucks stayed at the subject Site for short periods of time. However, the noise was enough for the Appellant and two neighbouring property owners to be concerned with the Major Home Based Business. The Board accepts the evidence submitted that the Respondent has a half ton truck and one van.
- [43] The Board finds that the development permit application that was approved by the Development Officer had several inaccuracies which the Respondent conceded at the hearing. For instance, the permit was applied for with no employees, and no vehicles at the subject Site. The Major Home Based Business has employees and at least two trucks associated with the Major Home Based Business.
- [44] The Board was presented with photographic evidence of a truck that is over 10,000 kilograms that is associated with the business when trucks are not permitted pursuant to conditions of a Major Home Based Business.
- [45] Based on the evidence submitted, the Board finds that the Respondent is in violation of several conditions of the approved permit including regulations of the *Edmonton Zoning Bylaw*. Based on the reasons above the Appellant is in violation of the following regulations:
- Section 75.2:
- there shall be no mechanical or electrical equipment used that creates external noise, or visible and audible interference with home electronics equipment in adjacent Dwellings;
- Section 75.3:
- the Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located;
- Section 75.5:
- there shall be no outdoor business activity, or outdoor storage of material or equipment associated with the business. [...]
- [46] Based on the evidence submitted from both parties, the Board finds that a Major Home Based Business of this magnitude would be better suited in a Commercial or Industrial Zone as per section 75.9 of the *Edmonton Zoning Bylaw*.

[47] Based on the above, it is the opinion of the Board that the proposed development is not reasonably compatible with the surrounding neighbourhood and that the proposed development will unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Mr. W. Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. S. LaPerle; Ms. L. Delfs; Ms. M. McCallum; Mr. D. Fleming

CC:

City of Edmonton, Development & Zoning Services, Attn: Ms. C. Potter / Mr. A. Wen

Important Information for the Applicant/Appellant

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