



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: January 25, 2018  
Project Number: 263734077-002  
File Number: SDAB-D-18-501

**Notice of Decision**

- [1] On January 10, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **December 6, 2017**. The appeal concerned the decision of the Development Authority to issue the following Order on November 16, 2017:

**To remove all vehicles exceeding 4600 KG from this property and refrain from parking vehicles over this weight on the property in the future. You must comply with this Order before December 7, 2017.**

- [2] The subject property is on Plan 2544TR Blk 24 Lot 34, located at 226 Lee Ridge Road NW, within the (RMH) Mobile Home Zone.

- [3] The following documents were received prior to the hearing and form part of the record:

- A copy of the Stop Order with attachments;
- A written submission from the Development Authority including photographs;
- Additional photographs from the Development Authority dated January 9, 2018; and
- A copy of the Appellant’s submission.

- [4] The following exhibit was presented during the hearing and forms part of the record:

- Exhibit A – Presentation notes submitted by the Development Authority.

**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, Mr. K. Dunbar:*

[8] The subject vehicle (the “vehicle”) is a 1959 International B-170 antique and not a commercial vehicle by usage or commercial vehicle standards. He does not intend to use the vehicle as a “personal use” vehicle, but rather to restore and register it as an antique.

[9] The City defines a commercial vehicle as any vehicle designed or intended for commercial use. However, this is not the case and it is not the policy of the City to follow their definition.

[10] Alberta Transportation defines a commercial vehicle as “a vehicle used to transport goods, tools or passengers-for-hire, and is not used only as a private passenger vehicle.”

[11] The City makes numerous exceptions to this policy by allowing the storage of camper conversions and school bus operators to park their buses on the roadway in front of their homes.

[12] One ton vehicles have a gross vehicle weight of more than 4,600 kilograms. If a one ton dually truck is registered and insured as a commercial vehicle, this exceeds the weight restriction for commercial vehicles and the City does not enforce these situations. There are numerous large commercial vehicles and motor homes parked in his neighbourhood that have never been identified by the City for non-compliance. In his view he is being unfairly targeted.

[13] The vehicle would not qualify as a commercial vehicle under the Alberta Transportation and Safety Board because it does not meet the minimum standards required. It is not his intention to bring the vehicle up to the minimum standards because of financial and time constraints.

[14] Mr. Dunbar provided the following information in response to questions from the Board:

a) Two previous Bylaw Officers have visited his property over the last three years and both deemed the vehicle to be acceptable. However, a different Bylaw Officer inspected the site last year and issued the Order.

b) The vehicle and another vehicle are parked on his front yard driveway.

c) The vehicle has been parked on the driveway for three years. It was moved from the east side of the driveway to the west side of the driveway after some initial restoration work was completed.

- d) It is his intention to have the vehicle fully restored by this summer so that it can be insured and registered as an antique. He estimated that 60 to 70 percent of the restoration work has been completed with only some work remaining.
- e) The vehicle will be stored in another location on his property once the restoration is complete.

ii) *Position of the Development Authority, represented by Mr. J. Lallemand*

- [15] Mr. Lallemand submitted a copy of his speaking notes, marked *Exhibit A*.
- [16] On October 3, 2017, a Bylaw Officer attended the subject site based on a citizen complaint about an overweight commercial vehicle parked at this residential location. Once on site the Bylaw Officer witnessed a large commercial vehicle parked on the driveway at this property, without any visible company, commercial vehicle or gross vehicle weight markings.
- [17] Subsequently the Bylaw Officer was in frequent contact with Mr. Dunbar via telephone. On numerous occasions Mr. Dunbar stated that his vehicle was under the prohibited weight limit for a commercial vehicle in a residential zone and that he would provide the Bylaw Officer with a copy of the vehicle registration. He also identified the vehicle in question as a 1959 International B-170.
- [18] While the Bylaw Officer was working with Mr. Dunbar and waiting for a copy of the registration, a second citizen complaint was filed regarding the parking of an overweight commercial vehicle at the subject site.
- [19] The Bylaw Officer visited and photographed the subject site on November 10, 2017. Using the information provided by Mr. Dunbar, the Bylaw Officer confirmed that the gross vehicle weight was 8,164 kilograms, approximately double the allowed weight limit in a residential zone. Based on this information, the Order was issued on November 16, 2017.
- [20] An internal review of the address revealed a history of bylaw complaints, including multiple property standards investigations regarding a nuisance vehicle, the truck in question.
- [21] Bylaw Officers who dealt with the subject site in the past about the vehicle did not discuss the *Edmonton Zoning Bylaw* because the complaints were registered under the Community Standards Bylaw, Nuisance section. It was not until this year, when a more experienced Bylaw Officer attended the site and determined that the vehicle was possibly overweight and a zoning investigation was initiated.

- [22] Three sets of photographs were submitted, the first set was taken on October 3, 2017, the second set was taken on November 10, 2017 and used to issue the Order and the third set was taken January 9, 2018, to show an accurate condition of the property.
- [23] The Order is based on the weight of the commercial vehicle in a residential zone and not the exterior aesthetics of the vehicle.
- [24] In his opinion it is clear from the photographs submitted that the vehicle is intended or designed for commercial purposes pursuant to section 45(2)(a) of the *Edmonton Zoning Bylaw* and is therefore prohibited based on the weight of the vehicle. Whether or not the vehicle can be certified for commercial use through Alberta Transportation or is used for commercial purposes has no effect on the prohibited weight limit outlined in the *Edmonton Zoning Bylaw*.
- [25] The Order was issued by a designated Officer of the Development Authority as defined in section 624 of the *Municipal Government Act* and as a Bylaw Enforcement Officer appointed to enforce the *Edmonton Zoning Bylaw*.
- [26] The vehicle contravenes section 45(1) of the *Edmonton Zoning Bylaw* and the Order should be upheld.
- [27] Mr. Lallemand provided the following information in response to questions from the Board:
- a) After the Order was issued, Mr. Dunbar provided the Bylaw Officer with a list of addresses where he perceived Bylaw infractions to be occurring. These addresses were reviewed and investigations are ongoing.
  - b) The vehicle was never in contravention of the Community Standards Bylaw, Nuisance section because it was being restored, and it was not deemed to be abandoned or derelict. The biggest concern is that the truck exceeds the maximum allowable vehicle weight.
  - c) Mr. Dunbar must apply for a development permit to allow the storage of an overweight vehicle at this site. Information regarding this process has been provided to Mr. Dunbar but an application has not yet been made.
  - d) It was his recommendation that the compliance date should be 30 days from the date of the Board's written decision plus 7 days to allow for mail service.

*iii) Rebuttal of the Appellant, Mr. K Dunbar*

- [28] Mr. Dunbar was never advised by any Officer that there was a process available to apply for a development permit that would allow him to legally park an overweight vehicle on his property.

- [29] He advised the Bylaw Officer that he did not consider the vehicle to be a commercial vehicle and provided the weight of the truck on October 25, 2017.
- [30] In his opinion the vehicle is an antique and not a commercial vehicle.
- [31] He questioned why the weight of the vehicle was never raised as an issue by any of the Bylaw Officers that visited his property in the past.
- [32] The dry weight of the vehicle is between 2,900 and 3,200 kilograms.

### **Decision**

- [33] The appeal is **DENIED** and the Stop Order is **UPHELD**.

### **Reasons for Decision**

- [34] The Board accepts and confirms that the Order was issued by a designated Officer of the Development Authority as defined in section 624 of the *Municipal Government Act*.
- [35] Based on the evidence provided, the subject vehicle is a commercial vehicle, pursuant to section 45(2)(a) of the *Edmonton Zoning Bylaw* which states “for the purpose of subsection 45(1) a commercial vehicle means a vehicle that is intended or designed for commercial purposes; [...]”
- [36] The Board accepts the evidence of the Development Authority that the gross vehicle weight of the subject vehicle is 8,164 kilograms and therefore does not comply with section 45(1)(a) of the *Edmonton Zoning Bylaw* which states that:
- No person shall keep in any part of a Site in any Residential Zone any commercial vehicle, loaded or unloaded, having a maximum Gross Vehicle Weight (G.V.W.R) exceeding 4,600 kilograms.
- [37] The investigation was triggered by specific complaints from two citizens regarding the storage of an overweight commercial vehicle at this location. The Stop Order that was issued dealt specifically with the Commercial Vehicle restrictions in a Residential neighbourhood and the Board confirms the findings of the Development Authority.
- [38] The Appellant described the vehicle as an “Antique” and felt that given this designation that it exempts it from the definition of a Commercial Vehicle. The Board found nothing contained within the *Edmonton Zoning Bylaw* that supported this designation. Again, the Board confirms the position of the Development Authority that this is a Commercial Vehicle.

[39] Based on all of the above, the appeal is denied and the Stop Order is upheld.

Mr. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. N. Somerville; Mr. R. Hobson; Ms. D. Kronewitt Martin; Mr. J. Wall.

**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 on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.



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**SDAB-D-18-004**

An appeal to operate a Major Home Based Business (licensed Massage Therapist – Massage Me) expires November 23, 2022 was **WITHDRAWN**