



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: August 8, 2019  
Project Number: 315357832-001  
File Number: SDAB-D-19-111

**Notice of Decision**

- [1] On July 24, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **June 29, 2019**. The appeal concerned the decision of the Development Authority, issued on June 27, 2019 to refuse the following development:

**To construct exterior alterations to an existing Religious Assembly building (57.96 square metres front deck).**

- [2] The subject property is on Plan 2262S Blk 16 Lots 1-4, located at 9425 - 76 Avenue NW, within the (RF3) Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and the Ritchie Neighbourhood Improvement Plan / Area Redevelopment Plan 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 Development Permit application with attachments, proposed plans, and the refused Development Permit;
  - Justification Letter from the Applicant; and
  - The Development Officer’s written submission.

**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 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. R. Van Dewark representing the Appellant, Christian City Church Edmonton:*

[7] The Church is located in a small scale residential neighbourhood and they want to support the community enhancement that is currently taking place.

[8] It is his opinion that the proposed deck will improve the aesthetics of the building and be a positive addition to the streetscape.

[9] The sidewalk in front of the Church is well used by members of the community on their way to the Ritchie Market and the Mill Creek Ravine. The deck could be used as an amenity area for residents of the neighbourhood as well as members of the Church.

[10] Mr. Van Dewark provided the following information in response to questions from the Board:

- a) None of the neighbours have discussed the proposed deck with the Church.
- b) The Church has operated from other locations in Old Strathcona for 27 years.
- c) The Church has always supported the initiatives undertaken by the Ritchie Community League and has a good relationship with all of the adjacent neighbours, including the most affected neighbour who resides across 95 Street.
- d) The plan is to have perimeter seating and approximately four or five tables with chairs on the deck. He estimated that the deck could accommodate 40 or 50 people.
- e) There is currently a day care operating in the basement of the Church and space is also rented to the Red Cross, Alcoholics Anonymous and other small organizations.
- f) The day care has an outdoor play space at the rear of the building.
- g) It was acknowledged that community members would have to access the deck from the subject site and not the public sidewalk. The Church will notify neighbourhood residents that the deck is available for public use.
- h) It is their plan to utilize the deck in the same way that a restaurant uses an outdoor patio. Weddings, wedding receptions and other social events could be held on the deck during the spring and summer months.
- i) The recommended conditions provided by the Development Officer have been reviewed and are acceptable.

ii) *Position of the Development Officer, Ms. H. Xu:*

[11] Ms. Xu did not attend the hearing but provided a written submission that was considered by the Board.

**Decision**

[12] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

1. The development shall be in accordance with the stamped and approved drawings.
2. All new Signs require separate Development Applications. More information about Signs can be found on the city of Edmonton's website: [https://www.edmonton.ca/business\\_economy/signs.aspx](https://www.edmonton.ca/business_economy/signs.aspx).
3. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. (Reference Section 54.1.1.c)
4. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51)

[13] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. The maximum allowable projection for a Platform Structure into the required Front Setback of 2.5 metres per section 44.3(a) is varied to allow an excess of 2.0 metres, thereby increasing the maximum allowed to 4.5 metres.
2. The Front Yard Landscaping requirements per section 55.3(1)(e) are waived.

**Reasons for Decision**

[14] A Religious Assembly is a Discretionary Use in the (RF3) Small Scale Infill Development Zone.

- [15] Pursuant to section 7.8(14) of the *Edmonton Zoning Bylaw*, a Religious Assembly is included in the Community, Educational, Recreational and Cultural Service Use Class.
- [16] The Board grants the required variances for the following reasons:
- a) The Religious Assembly has been operating at this location for some time without any known complaints regarding increased vehicular or pedestrian traffic and the proposed Platform Structure will not impact the day-to-day operations of the Church.
  - b) The Religious Assembly is located on the periphery of a residential neighbourhood in close proximity to the Mill Creek Ravine. Further, the subject Site is located on a tree lined roadway, surrounded on the north and east property lines by mature trees and a significant amount of landscaping which will mitigate the impact of waiving the requirement to provide landscaping in the Front Yard.
  - c) The Court of Appeal in *Newcastle Centre GP Ltd v Edmonton (City)*, 2014 ABCA 295 determined that the Board cannot presume that a development will unduly interfere with the amenities of a neighbourhood or materially interfere with the use, enjoyment or value of neighbouring parcels of land. The Board must only come to that conclusion based on the evidence provided. In this case the Board notes that no letters of either support or opposition were received from any of the affected property owners or the Community League.
  - d) The variance to allow an excess in the maximum allowable projection of a Platform Structure into the required Front Setback is appropriate because it is not uncommon for non-residential Uses, such as those listed in section 7.8 of the *Edmonton Zoning Bylaw*, Community, Educational, Recreational and Cultural Service Uses, which includes a Religious Assembly, to include outdoor amenity spaces that extend to the property line and engage passersby.
- [17] Based on all of the above, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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

Board members in attendance: Ms. K. Cherniawsky, Ms. M. McCallum, Ms. S. McCartney, Mr. L. Pratt

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
  - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
  - b) the requirements of the *Alberta Safety Codes Act*,
  - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - d) the requirements of any other appropriate federal, provincial or municipal legislation,
  - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. 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. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. 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.

*NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.*



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Date: August 8, 2019  
Project Number: 312757486-001  
File Number: SDAB-D-19-112

**Notice of Decision**

- [1] On July 24, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **June 27, 2019**. The appeal concerned the decision of the Development Authority, issued on June 11, 2019, to refuse the following development:

**To operate a Major Home Based Business (HYDRO-VACS UNLIMITED SALES LTD - storage and sales of trucks with demonstrations inside a closed shop).**

- [2] The subject property is on Plan 7521733 Blk 2 Lot 3, located at 2340 - 28 Avenue SW, within the (RR) Rural Residential Zone. The Decoteau Area Structure Plan 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 refused Development Permit;
- The Development Officer’s written submissions including a Court of Appeal of Alberta decision, *Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)*, 2017 ABCA 140;
- The Appellant’s written submissions; and
- One online response in support of the proposed development.

- [4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Court of Appeal of Alberta decision, *Thomas v Edmonton (City)*, 2016 ABCA 57 (“*Thomas*”) submitted by Legal Counsel for the Appellant;
- Exhibit B – SDAB-D-99-043 submitted by an affected property owner; and
- Exhibit C – Previous decisions of the Subdivision and Development Appeal Board submitted by Legal Counsel for 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.
- [8] The Presiding Officer referenced the Court of Appeal of Alberta decision *Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)*, 2017 ABCA 140 (“*Grewal*”). He advised Legal Counsel for the Appellant that the Board is bound by this decision and asked him to address the decision as well as section 75.5 of the *Edmonton Zoning Bylaw* during his presentation.

**Summary of Hearing**

- i) *Position of the Appellants, Mr. K. Heather and Mrs. P. Heather and their Legal Counsel, Mr. P. Barrette, Prowse Chowne LLP:*

- [9] The proposed Major Home Based Business requires the outdoor storage of three commercial vehicles that exceed the maximum allowable gross vehicle weight (G.V.W.R.) of 4600 kilograms.
- [10] The Board is being asked to exercise its discretion pursuant to section 687(3)(d) of the *Municipal Government Act* to allow the required variances and grant a development permit because the proposed Major Home Based Business will not unduly interfere with the amenities of the neighbourhood or materially interfere with the use, enjoyment or value of neighbouring parcels of land.
- [11] The proposed development conforms with the Use prescribed for the land in the *Edmonton Zoning Bylaw*.
- [12] In 2016, the Board allowed an appeal and granted the development subject to conditions that the development permit would expire two years from the date of the Board’s decision, on June 24, 2018, and that no more than three oversized vacuum trucks were permitted to be stored on the site at any one time. At that time the Board determined that the scale and intensity of the proposed Use was appropriate in this neighbourhood based on the evidence provided that several other property owners operated businesses that required the storage of overweight vehicles and because the visual impact of the commercial vehicles being stored on the site would be mitigated by its mature trees and landscaping. The Board determined that it was appropriate to issue a development permit

for a period of two years in order to give the Mr. Heather adequate time to sell the business.

- [13] Since 2016, the business has been scaled down and Mr. Heather has made every effort to sell his business in spite of the downturn in the economy and health issues that he and his wife have been dealing with. He is only seeking a temporary two-year permit in order to facilitate his attempts to sell his business. However, because of his age and his wife's health, if he is unable to sell the business within two years, he has made the decision that the doors will be closed.
- [14] Mr. Heather advised the Board that he is 68 years old and he and his wife have lived on the subject site for 21 years. His wife was diagnosed with Parkinson's disease 15 years ago.
- [15] He estimated that he spends 35 percent of his time as his wife's primary care giver and the remainder of his time is spent operating his business. He does all of the cooking, grocery shopping, banking and all of the other errands because it is difficult for his wife to leave the house. They have a housekeeper who comes in every two weeks to help with the cleaning.
- [16] They live on a large acreage with many gardens and fruit trees that require a lot of upkeep. An aerial photograph was referenced to illustrate the location of the tree farm, the gardens, fish pond and fruit trees.
- [17] The site is not serviced with electricity, water or sanitary services. There are no street lights or sidewalks in the subdivision. The house is approximately 1400 square feet in size and the shop is 1920 square feet in size.
- [18] An aerial photograph was referenced to illustrate where the three commercial vehicles are stored on the site. It was noted that this area cannot be seen from the road.
- [19] There are several other home based businesses operating in the area. One in particular that operates seven gravel trucks. Almost all of his neighbours own a recreational vehicle.
- [20] He started the business that involves the purchase and sale of hydro-vac trucks and trailers in 2007. The shop is used to clean and service the trucks and make minor repairs as well as conduct demonstrations. No major repairs are done on site. The business grew and between 2012 and 2015 there were between 12 and 15 trucks on-site which led to a complaint by one of his neighbours.
- [21] The complaint resulted in the appeal hearing that was held in 2016. The Board approved his development permit for a period of two years. Several ads were referenced to illustrate that following this approval more aggressive attempts were made to sell the business. Equipment was also removed from the site and he currently estimates that there is a truck on site once every month and a customer visit once every two months.



- [22] The business does not have any signage.
- [23] He has one employee who is trained as a mechanic and also in first aid. He stays with his wife when he has to leave for any reason.
- [24] He requires an additional two year approval in order to sell his business. The monies generated from the sale are his pension and retirement plan. However, he has decided to close the doors to his business if it is not sold within two years. Development permits and business licenses are required in order to sell the equipment.
- [25] After the appeal hearing in 2016 most of the equipment was sold at a discounted price and the business was downsized. A copy of a Listing Agreement with Score Business Brokers dated March 2018 was referenced to illustrate the ongoing efforts to sell this business. A Letter of Interest dated July 17, 2019 was also referenced to confirm that there is a potential sale in place if an agreement can be reached on the distribution.
- [26] Letters of support were provided from two of the most affected property owners.
- [27] An aerial photograph was referenced to illustrate the location of other businesses operating in the subdivision. These include a gravel truck operation with 6 or 7 trucks, a mechanic shop, a construction business, a computer manufacturing company and a wedding venue.
- [28] Mr. Barrette and Mr. Heather provided the following information in response to questions from the Board:
- a) Mr. Barrette submitted a Court of Appeal decision *Thomas* that was marked as *Exhibit A*.
  - b) In this decision the Court of Appeal provided an in depth analysis of section 687(3)(d) of the *Municipal Government Act*. Paragraph [29] states:
    - [29] What then is the rationale for this exception? Statutory plans and land use bylaws set out general development standards that are common to all lands in a specific area. These standards are typically defined with precision so that everyone understands what a particular site can be used for, and what can be constructed thereon. But as with all line-drawing, it is recognized that there will be cases in which a strict application of the set standards could lead to an unreasonable result. To relieve against hardship, the Legislature has conferred on subdivision and development appeal boards the authority to relax – that is vary, dispense with or waive – development standards in the applicable land use bylaw providing certain conditions as set out in s 687(3)(d) are met.

In Mr. Heather's case the General Purpose of the land and building is (RR) Rural Residential. Section 240.1 of the *Edmonton Zoning Bylaw* states:

The purpose of this Zone is to provide for Single Detached Residential development of a permanent nature in a rural setting, generally without the provision of the full range of urban utility services. The RR Zone is intended to regulate rural residential development within existing rural residential subdivisions that existed prior to the passage of this Bylaw, and is not intended to facilitate future rural residential development and subdivision, which is contrary to the Municipal Development Plan.

Nothing about the proposed business contravenes the (RR) Rural Residential Zone.

c) Paragraphs [30] and [31] of *Thomas* state:

[30] I have concluded that the SDAB does not have the jurisdiction under s 687(3)(d) to waive compliance with the community consultation requirement under the Zoning Bylaw. Where mandated, community consultation is a condition precedent to the issuance of a valid development permit. There are several reasons for this.

[31] First, under s 687(3)(d) of the Act, the Legislature has conferred on subdivision and development appeal boards in this province a development standard variance power only. The text of s 687(3)(d) describes the scope of, and limitations on, the SDAB's variance power. The Legislature has granted subdivision and appeal boards in Alberta a variance power where a "proposed development does not comply with the land use bylaw". What is it that must not comply with the relevant land use bylaw (in this case, the Zoning Bylaw) to engage the SDAB's variance power? A purposive and contextual interpretation of relevant provisions in the Act reveals that it is the "proposed development" itself that must not be in compliance with the land use bylaw.

The Board cannot vary land use but can vary the standards that apply for a development permit.

d) Paragraph [33] of *Thomas* states:

[33] Given the context here, the only relevant subsection is s 616(b)(ii). Hence, to engage the SDAB's variance authority, it is the physical structure that must not comply with the relevant land use bylaw, not the failure to fulfill the procedural requirement for community consultation. That conclusion is supported by the wording of the balance of s 687(3)(d). A subdivision and development appeal board is required to consider whether the proposed development, notwithstanding its non-compliance with a land use bylaw, materially interferes with the amenities of the neighbourhood or materially interferes with or affects the use, enjoyment and value of neighbouring parcels of land. In other words, the test in s 687(3)(d) is directed to those cases where the physical

aspects of the proposed development pose no risk to neighbouring lands notwithstanding non-compliance with development standards.

- e) Therefore, allowing the storage of heavy vehicles on the subject site on a temporary basis does not vary the land Use which is (RR) Rural Residential and is a variance that can be considered by the Board.
- f) Variance power in this case is necessary to alleviate matters that were not apparent in the appeal considered by the Court of Appeal in the *Grewal* decision.
- g) The Major Home Based Business in *Grewal* was much more intense than what is proposed because that business required the storage of eight semi-trailer trucks. In this case, there are only three trucks that require outdoor storage and the demonstration portion of the business is held inside the shop. Approval of this Major Home Based Business is only being sought on a temporary basis.
- h) In Mr. Heather's case there is a hardship circumstance for the Appellant that was not evident in the appeal of the *Grewal* Major Home Based Business. Mr. Heather and his wife are both ill and his business needs to be onsite in order to accommodate their personal circumstances.
- i) It is Mr. Barrette's opinion that based on section 687(3)(d) of the *Municipal Government Act* and these underlying contextual factors that distinguish this appeal from the *Grewal* matter, a decision to extend the development permit in this situation will be consistent with the findings of the Court of Appeal.
- j) A two year limit on the development permit is consistent with the spirit of the *Edmonton Zoning Bylaw* and the (RR) Rural Residential Zone. Variances can be granted to alleviate against hardship when a strict application of the rules is unreasonable. In this case, the outdoor storage of the three commercial vehicles is screened from adjacent property owners by stands of large mature trees and is consistent with the land use.
- k) Mr. Barrette confirmed that the Appellants are requesting a development permit to expire two years from now which is effectively the same request that Board previously denied in 2016 when it approved a permit limited to a two-year term. He also confirmed that the 2016 decision had not been appealed. However, he reiterated that Mr. Heather has been attempting to sell his business since the previous approval by the Board and would now accept a condition being imposed on this approval that no further appeals or extensions could be considered.
- l) Mr. Heather clarified that one of the two trucks on-site is a tandem axle vehicle. All of the new trucks are single axle vehicles.

ii) *Position of an affected property owner in opposition to the Appellant, Mr. D. Kuefler:*

- [29] Mr. Kuefler submitted a copy of a previous decision of the Board, SDAB-D-99-043, marked *Exhibit B*. A condition was imposed on the approval of the Accessory building which stated “the building shall not be used for commercial or industrial business activities”.
- [30] This Accessory building has been used as a fundamental part of the business that has been operating on the subject site for the past 20 years.
- [31] He has attended all of the previous appeal hearings and his concerns have not changed. There is excessive noise generated because the vacuum trucks are tested outside. The trucks are not being stored in the area east of the Accessory storage shed, behind the line of trees than run east to west along the northern part of the site to comply with a condition that was imposed on the approval in 2016.
- [32] This business has not been established legally from the beginning and an extension to allow the sale of the business should not be granted.
- [33] He has tried to be reasonable but it is not fair that he has to bear the brunt of the negative impacts of this business.
- [34] He acknowledged that there are other home based businesses operating in the subdivision but they have approved development permits.

iii) *Position of the Development Officer, Mr. R. Zhou:*

- [35] Mr. Zhou did not attend the hearing but provided a written submission that was considered by the Board.

iv) *Rebuttal of the Appellant:*

- [36] Mr. Heather referenced an aerial photograph to illustrate that Mr. Kuefler’s house is not located west of the area where the trucks are stored. There is a stand of mature trees behind the properties and he questioned Mr. Kuefler’s ability to even see the trucks that are stored on site.
- [37] Mr. Barrette submitted several previous decisions of the Subdivision and Development Appeal Board for other properties located in this subdivision, marked *Exhibit C*.
- [38] Mr. Barrette acknowledged that all of the decisions predate the *Grewal* Court of Appeal decision. He clarified that the decisions are being submitted to illustrate the character of the neighbourhood and that the proposed Use is consistent with that character. In each of the previous decisions referenced, the Board exercised its discretion and approved Major

Home Based Businesses to allow outdoor storage or the storage of vehicles that exceeded the maximum allowable G.V.W.R.

## Decision

[39] The appeal is **DENIED** and decision of the Development Authority is **CONFIRMED**. The development is **REFUSED**.

## Reasons for Decision

[40] A Major Home Based Business is a Discretionary Use in the (RR) Rural Residential Zone.

[41] A development permit application to operate a Major Home Based Business (Storage and sales of trucks with demos inside a closed shop – Hydro-Vac Unlimited Sales Ltd.) was approved by the Board on June 24, 2016 for a period of two years. That development permit expired on June 24, 2018.

[42] In 2016, the Board granted the appeal and approved the development permit for a period of two years to facilitate the sale of the business. The Appellant confirmed that the factual circumstances have not changed but a conditional approval is now being sought because of the current economic climate.

[43] Since the previous approval by the Board in 2016, the Court of Appeal of Alberta decision *Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)*, 2017 ABCA 140 (“*Grewal*”) has been rendered.

[44] The Development Authority refused this development permit application for the following reasons:

1. The purpose of the Rural Residential Zone is to provide for Single Detached Residential development of a permanent nature in a rural setting, generally without the provision of the full range of urban utility services. (Section 240.1)

Proposed: In the opinion of the Development Officer, the proposed Major Home Based Business does not meet the general purpose of the Rural Residential Zone.

2. 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 kg (Section 45.1.a)

Proposed: Outdoor storage of 3 commercial vehicles over 4600kg.

3. There shall be no outdoor business activity, or outdoor storage of material or equipment associated with the business. (Section 75.5)

Proposed: Outdoor storage of 3 commercial vehicles.

4. The Major Home Based Business shall not be allowed if, in the opinion of the Development Officer, such Use would be more appropriately located in a Commercial or Industrial Zone. (Section 75.9)

Proposed: In the opinion of the Development Officer, the use would more appropriately be located in a Commercial or Industrial Zone.

- [45] The Development Officer elaborated further on each of these reasons in his written report and also stated:

Based on the precedent set by the Court of Appeal in 2017 for the case of Edmonton (City) v Edmonton (Subdivision and Development Appeal Board) 2017 ABCA 140, a Major home Based Business use class does not capture, nor is intended to capture, business uses that occur on the property outside an approved Dwelling or Accessory Building. The Court of Appeal found that outdoor business activity does not conform with the criteria of the Major Home Based Business use class.

- [46] The Board acknowledges and is sympathetic to the personal hardships being experienced by the Appellants. However, based on a review of the verbal and photographic evidence provided, three business related vehicles that exceed the maximum allowable gross vehicle weight (G.V.W.R.) of 4600 kilograms are being stored outdoors on the subject Site.

- [47] The Board is bound by the recent decision of the Court of Appeal of Alberta in *Grewal*. As noted by the Development Officer, in this decision, the Court of Appeal provided an interpretation of the definition of a Major Home Based Business, pursuant to section 7.3(7) of the *Edmonton Zoning Bylaw*. Paragraphs [7] through [10] of the Court of Appeal decision concluded that the Major Home Based Business use class does not capture, nor is it intended to capture, business uses that occur on the property outside an approved Dwelling or Accessory building.

- [48] While the Court of Appeal noted that outdoor business activity or storage is prohibited by the regulations contained in section 75.5 of the *Edmonton Zoning Bylaw*, the Court of Appeal found that the definition of a Major Home Based Business does not allow the outdoor storage or parking of vehicles on Site. The decision stated “All elements of a Major Home Based Business definition refer to the use of the dwelling or accessory building, making it clear that it is the building which must be used to conduct the business”.

- [49] The Court of Appeal specifically found that “the outdoor storage/parking” of trucks related to the business brought the nature of the activity outside the definition of a Major Home Based Business. The Board does not have the power to vary definitions in the *Edmonton Zoning Bylaw*.

[50] An adjacent property owner attended the hearing, as he has for all of the previous appeal hearings, to oppose the existing Major Home Based Business. The Board was advised that his concerns regarding the operation of this business from the site have not changed over the years and the Board acknowledges those concerns.

[51] For these reasons, the Board dismisses the appeal and confirms the decision of the Development Authority.

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

Board members in attendance: Ms. K. Cherniawsky, Ms. M. McCallum, Ms. S. McCartney, Mr. L. Pratt

**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.