



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: July 19, 2017
Project Number: 251377712-001
File Number: SDAB-D-17-119

Notice of Decision

- [1] On July 5, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **June 12, 2017**. The appeal concerned the decision of the Development Authority, issued on May 30, 2017, to refuse the following development:

Operate a Major Home Based Business. (Tax and Bookkeeping Services –
Cybal Finance & Tax Services)

- [2] The subject property is on Plan 942MC Blk 19 Lot 39, located at 13407 - 92 Street NW, within the RF1 Single Detached Residential 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:
- Copy of the permit application with attachments and refused permit;
 - Appellant's written submissions and supporting materials;
 - Development Officer's written submissions; and
 - Correspondence from one neighbouring property owner in support of the development.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Google aerial view of the subject site.

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 Appellants, Ms. A. Cybulsky and Mr. I. Cybulsky

[8] Ms. Cybulsky was surprised to receive the letter of refusal as there are very many similar small businesses in the City of Edmonton and she feels her business should be permitted as well.

[9] This is a residential area with a school on the opposite side of the street. The amount of cars parked on the school side of the street fluctuates and is very busy during school pick-up and drop-off times.

[10] There is a residential parking restriction on the Cybulsky's side of the street until 4:00 p.m. However, Mr. Cybulsky feels he does not own the street and never objects to anyone parking in front of his house. Mr. Cybulsky believes that street parking is not designated for any household in particular and anyone can use it.

[11] The business has been operating since 2008 and up until last March, they have never received any complaints. During the recent tax season, the neighbours approached them and complained that someone parked too close to their driveway. Ms. Cybulsky instructs her clients to park along the school fence and to stay away from her neighbour's driveway.

[12] Many of their clients are corporate and they drop off and pick up papers from the mailbox, business is conducted via e-mail, or the Cybulskys attend their clients' offices.

[13] They do not have any walk-in business and clients have scheduled appointments. They never schedule clients for the same time although occasionally there is a bit of overlap if an appointment goes longer than expected.

[14] Currently, Ms. Cybulsky has no on-site employees but this could increase to two from October to June, which is her busiest period. These employees could park on the property. There are three on-site parking spots available including inside the garage. Currently one employee parks across the street and one parks in front of the house. There are also two off-site employees who come by once a week to pick up paperwork.

[15] The Cybulskys have three vehicles registered to them although one is currently off-site as it is not working. Mr. Cybulsky intends to sell this non-working vehicle within the next few weeks.

[16] They were not aware that the only sign permitted was a small sign attached to the house. They removed all of their signs as soon as they received the letter from the City.

- [17] They reviewed the conditions suggested by the Development Officer should this permit be approved and confirmed that they are in agreement with all of them.
- [18] There have never been any issues with parked vehicles interfering with snow removal. Mr. Cybulsky makes sure all snow is always kept cleared away.

ii) Position of the Development Officer, Mr. C. Kennedy

- [19] Mr. Kennedy was accompanied by Mr. J. McArthur.
- [20] Mr. Kennedy confirmed that only a small sign, located on the dwelling, is permitted for a Home Based Business in order to maintain the residential appearance of the neighbourhood.
- [21] The *Edmonton Zoning Bylaw* limits the number of business associated visits to five per day. This number includes both employees and customers. The application listed a maximum of three business visits per day as well as two off-site employees for a total of five visits. Client visits must be by appointment only and cannot overlap.
- [22] The Development Officer is not really concerned about a quick two minute stop to pick up or drop off something in the mailbox. It is the visits where people actually enter the home which should be by appointment. All parking for a Home Based Business must be accommodated on-site.
- [23] Between May 16 and 24, 2017, Mr. Kennedy received approximately 10 calls of complaint from a concerned community member regarding the parking and how it is affecting the neighbourhood and their property.
- [24] Mr. Kennedy confirmed that parking is restricted to residents with valid permits between 8:00 a.m. and 4:00 p.m. on the residential (east) side of the street. He referred to two photos in his submission showing the location of the *no parking* sign in relation to the business as well as a close-up of the sign's wording. There are no parking restrictions in place on the school (west) side of the street.
- [25] A Google overhead view was shown (marked Exhibit A) which depicted the layout of the Garage and the Driveway. The Development Officer considered this to be a two car Garage. The Driveway cannot be considered a parking space because the garage door faces the interior of the lot. A parking space on the Driveway would be within the required turning radius of the Garage and would effectively block off two spaces.

iii) Position of affected Property Owners Ms. J. LaForge and Mr. Y LaForge

- [26] They confirmed they are the immediately affected neighbours to the south of the subject Site and have one of the very few front Driveways on the street. Since 1982, they have lived at their property, which is their retirement home.

- [27] Ms. LaForge retired in September of the previous year and has found the situation at the subject property uncomfortable. She has no prejudice at all toward the Cybulskys or their business; she is only concerned about what they are doing in a residential area which is not set up for business.
- [28] There is already a lot of traffic due to the school across the street and the Home Based Business adds to this traffic. Cars often use their Driveway as public property to make U-turns and drive over their grass.
- [29] She confirmed that their Driveway is right next to the Cybulsky's property as shown on the Development Officer's photo. Their driveway has often been mistaken as belonging to the business. She has had to go next door up to three times a day to request that clients' vehicles be moved to allow them access to their own driveway. She does not want to request that a vehicle be moved if emergency access were to be required.
- [30] People are also parking on the street but too close to their Driveway. Regulations state that cars must be parked 1.6 metres from either side of a Driveway to allow for maneuvering in and out.
- [31] There are often far greater than five visits a day during tax season and they have seen up to twenty or more cars in a day. They have also seen up to four employees per day, not just two as stated.
- [32] The signs are also an issue and business started picking up once the commercial-type signs were put on the front lawn. Ms. LaForge confirmed that the sandwich sign has now been removed but the lighted sign remains, although the name has been removed.
- [33] There is only a Minor Home Based Business permit in place for this Site and the City would not have known that it was being run as a Major Home Based Business if Ms. LaForge had not called.
- [34] There are vacant commercial spaces in a strip mall about a block and a half away which would be more appropriate for this type of development.
- [35] She reviewed the conditions recommended by the Development Officer should this permit be approved; however, she would still have the same concerns if these conditions were imposed.
- [36] While the Appellant states that the complaints have made it uncomfortable for their entire family it is equally as uncomfortable for the LaForges' family.

iv) Rebuttal of the Appellants

- [37] Over the past years they have always had good relations with their neighbours but they are currently not speaking because of this situation. They have attempted to speak with the LaForges on numerous occasions but are ignored.

- [38] There is no evidence that it is their clients turning onto the LaForges' Driveway and driving over their grass. She always instructs her clients to park on the opposite side of the street along the school fence. She has not seen any of her clients parking on the driveway.
- [39] Mr. Cybulsky has installed a camera to track traffic and has found that it is mostly the school traffic creating issues. He saw school parents doing U-turns quite a few times during the winter. He did not have any camera footage with him today.
- [40] No complaints have been received from any other neighbours and the whole street agrees that the business does not affect them at all. They submitted a petition of support with their appeal and a letter of support was provided by the other most adjacent property owner to the north.
- [41] Ms. Cybulsky has already explored possible lease opportunities in the nearby area but nothing is available. She has also considered leasing an alternate location for the busiest months of March and April to avoid inconveniencing her neighbours.

Decision

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

Reasons for Decision

- [43] The Board notes there was conflicting evidence in this case and had the difficult task of weighing same.
- [44] The Board heard from the Appellant who advised she has been operating her business out of her home since 2008 and that the business has had as many as four employees during high season (tax season) and as few as no employees during low season.
- [45] The Board also heard from an affected party, being the neighbour to the south of the proposed development, who advised that there were as many as twenty employee and client visits per day and that they had to go and knock at the proposed development several times per day to ask if they could use their driveway as it was blocked by clients of this business.
- [46] Given that the proposed development is a Discretionary Use in the RF1 Single Detached Residential Zone and the fact that the business seems to be of a substantial commercial Use and less of a residential Use, the Board finds that the residential character of the neighbourhood is materially impacted by the proposed development. The best location for this business would be in a commercial zone in accordance with the decision of the Development Authority.

- [47] The Board notes that a petition was received with five names from four separate addresses as well as a written letter and e-mail in support of the proposed development from the immediate neighbour to the north. While the Board weighed this evidence, none of these parties attended hearing. The submission of the immediate neighbour to the south, who did attend, was enough to convince the Board that the heavy Use of the site for commercial purposes made this more than a Home Based Business. Written submissions of other neighbours are mitigated by the fact that these neighbours are less affected than the immediate neighbour to the south.
- [48] The on-site parking requirement and a limit of five employee / client visits per day suggests it is not possible for this business to comply with these requirements, especially during tax season, which is the majority of year.
- [49] For the foregoing reasons the appeal is denied.



Winston Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board Members Present:

Mr. N. Somerville; Mr. R. Handa; Ms. D. Kronewitt Martin; Ms. N. Hack

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. 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.
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.

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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SDAB-S-17-120

Application No. 239859787-001

An appeal to Demolish an existing Freestanding Off-premises Sign & install (1) Freestanding Minor Digital Off-premises (14.6 m x 4.26 m - West face Digital & East face static) located at 2010 - 80 Avenue NW was **WITHDRAWN**.



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Date: July 19, 2017
Project Number: 235482683-003
File Number: SDAB-D-17-121

Notice of Decision

- [1] On July 5, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on June 9, 2017. The appeal concerned the decision of the Development Authority, issued on May 23, 2017, to approve the following development:

Operate a Temporary Storage (RV Storage) and Outdoor Participant Recreation Service (driving range with clubhouse) on a portion of the site (Temporary - 5 years)

- [2] The Appellant is appealing condition number 3 of the Approved Permit:

This lot is within the Ebbers & Gorman Arterial Roadway Assessment (ARA) catchment area. The entire amount of ARA using the 2016 rate totals \$491,870 for the entire site. The proposed development represents a 10% increase in development on the property, therefore 10% of the ARA for the entire property in the amount of \$49,187 is owing with this development application and payable under this Agreement. Upon future development or subdivision of the site, the deferred amount will be collected. Notwithstanding the entire ARA amount as cited above, the assessment amount owing may be adjusted to reflect the current ARA rate at the time the Servicing Agreement is signed. The owner must contact Dan-Christian Yeung (780-496-4195) of Sustainable Development for more information on the Servicing Agreement and ARA owing. The owner must enter into a Servicing Agreement with the City of Edmonton for the payment of the ARA owing on the portion of the property being developed.

- [3] The subject property is on Plan 2705NY Lot A1, located at 15821 - 34 Street NW, within the AGI Industrial Reserve Zone. The Pilot Sound Area Structure Plan applies to the subject property.

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

- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit; and
- The Development Officer's written submissions.

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

- Exhibit A – Revised Condition Three as agreed to by all parties

Preliminary Matters

[6] 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.

[7] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[8] 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) *Joint Submission by Mr. S. Saraya, representing the Appellant, and Mr. G. Gunther, City of Edmonton Law Branch.*

[9] Mr. C. Saraya, Appellant; Mr. I Welch, Development Officer; and Ms. S. Dargatz and Mr. C. Shah, both representing the Transportation Department, were also present.

[10] Mr. Gunther advised the Board that all affected parties have reached an agreement and will be making a joint submission.

[11] Aside from the City and the Appellant, the other party that has expressed an interest is Cameron Developers, more specifically Albari Holdings, the operating entity of Cameron Developers, who is an adjacent land owner and owns quite a bit of land in the vicinity of the Appellant's property.

[12] At issue was the payment of the Arterial Road Assessment, in particular a portion in the amount of 10% of what would be owing on the property. All parties have agreed to defer the calculation, collection and payment of the Arterial Road Assessment until either a future development permit or subdivision of the land.

- [13] The subject property is a large parcel of land in the Gorman Industrial area in the far northeast part of the City of Edmonton, inside the Anthony Henday ring road. This is an area in transition and is still developing; development of the City has come almost right up to the property line. The current Development Permit is for a driving range and RV storage, which is rural in nature and not the highest and best long term use of the land. The permit is only granted for 5 years.
- [14] The City is satisfied there will be other opportunities to collect the full amount owing when the land undergoes substantial redevelopment. They have opted to accept the deferral. Cameron Developers, the adjacent land owner who is the party that is owed a substantial amount of the monies that would be paid, has also opted to accept the deferral.
- [15] Mr. Gunther submitted the revised wording of Condition 3 of the subject Development Permit which has been agreed upon by all parties. (marked Exhibit A).

Decision

- [16] The appeal is **ALLOWED** and the decision of the Development Authority is **VARIED**. The development is **GRANTED** as approved by the Development Authority with the following change:
- [17] Condition 3 has been revised to read:

This lot is within the Ebers & Gorman Catchment Area for the Arterial Road Assessment (ARA). Given the nature and scope of this Development Permit, the calculation, collection, payment of the ARA is deferred until future subdivision or a future development permit.

Reasons for Decision

- [18] This was a joint submission of an agreed upon resolution to this matter.
- [19] The City was represented by the Development Officer, two members from Transportation and their own legal counsel who made today's submission.
- [20] The Board confirms that the Appellant is in agreement with the amended condition.

[21] For the foregoing reasons the appeal is allowed.



Winston Tuttle, Presiding Officer
Subdivision and Development Appeal Board

Board Members Present:

Mr. N. Somerville; Mr. R. Handa; Ms. D. Kronewitt Martin; Ms. N. Hack

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.