



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

10019 – 103 Avenue NW  
Edmonton, AB T5J 0G9  
P: 780-496-6079 F: 780-577-  
3537  
[sdab@edmonton.ca](mailto:sdab@edmonton.ca)  
[edmontonsdab.ca](http://edmontonsdab.ca)

Date: March 31, 2017  
Project Number: 115319830-001  
File Number: SDAB-D-17-504

**Notice of Decision**

- [1] On March 22, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **February 27, 2016**. The appeal concerned the decision of Community Standards to issue the following Order on February 15, 2017:

**To remove the Overweight Commercial Vehicle from the rear of the property. You must comply with this Order before March 8, 2017.**

- [2] The subject property is on Plan RN39B Blk 59 Lot 19, located at 10921 – 126 Street NW, within the DC1 Direct Development Control Provision. The West Ingle Area Redevelopment Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Order; and
  - The Municipal Enforcement Officer’s written submissions.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Community Consultation
  - Exhibit B – Series of Photographs of vehicles throughout the neighbourhood
  - Exhibit C – Specifications for Freelander Coachmen Motorhomes

**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*, R.S.A 2000, c. M-26.

### Summary of Hearing

i) *Position of the Appellant, Mr. K. Albert*

[8] Mr. Albert stated he is the registered owner of the subject vehicle which has been parked behind the residence for the last 10 years. It is no longer registered as a commercial vehicle and is currently being used for storage.

[9] The Ministry of Alberta, the Transportation Board, and the *Highway Traffic Act* do not consider this to be a commercial vehicle as it is not certified and does not have the proper decals.

[10] None of the the neighbours within the 60 metre notification area have any objections and he provided 29 signatures of support, marked "Exhibit A". Many of these neighbours also have a variety of vehicles and various other items stored or parked on their driveways or behind their houses; some of which have been there for many years.

[11] His vehicle is not an eye sore and there is no drive line hanging down as claimed by the Municipal Enforcement Officer. The vehicle is contained within the property lines and does not obstruct garbage trucks, service vehicles or emergency vehicles. The overall height of his vehicle is 10 feet 4 inches with the tires on and is well within the maximum gross vehicle weight of 4,600 kilograms allowed by the *Edmonton Zoning Bylaw*. The gross vehicle weight is different than the actual weight of the vehicle.

[12] He presented a series of photographs taken from 107 to 111 Avenues depicting various items in the neighbourhood including a skid steer on a trailer, holiday trailers, cars sitting in a yard being worked on, cars stored on a rear driveway, a 16 to 17 foot sea can, and an overweight commercial vehicle which is parked on the street at 108 Avenue and 126 Street during the day and at night. These photographs were marked "Exhibit B".

[13] He is being treated unfairly and if the vehicle in question were a motor home similar in size to the subject vehicle there would be no issue. He could have a Class A motor home which would need an air brake endorsement but could be operated with a Class 5 license because it is not a commercial vehicle. The specifications for Frelander Coachmen Motorhomes were submitted, marked "Exhibit C".

[14] He disputes that Section 45.1 of the *Edmonton Zoning Bylaw* should apply in this case as his vehicle does not meet the definition of a commercial vehicle. It has not been used as a commercial vehicle for the last 20 years. The registration has expired and he could register it as a private vehicle, turn it into a motor home or put a box on it.

[15] In response to questions, he confirmed that there is no drive line hanging down from his vehicle as this has been removed. The only item hanging down is the muffler and that is the way it is manufactured.

- [16] He confirmed that this is the same vehicle which was the subject of an order that was upheld by this Board on December 23, 2011. He did remove the vehicle at that time but brought it back 2 years later. There have been no complaints and he found out it was the officer who had initiated the investigation.
- [17] He purchased the vehicle in approximately 1989 and used it for commercial purposes for approximately three years. Since then it has been used to store engine parts and mechanic's tools. He is currently in the process of re-building the transmission.
- [18] He confirmed the vehicle is currently parked 6 to 8 inches over the fence line but there is room to move it further forward into the property.
- ii) *Position of the Municipal Enforcement Officers, Mr. C. Stewart and Ms. T. Sustrik (Team Lead)*
- [19] The details of the subject section 645 *Municipal Government Act* Order were reviewed. The Order was issued due to a contravention of Section 45.1 of the *Edmonton Zoning Bylaw*. The property where the vehicle is located is zoned DC1 Direct Development Control and falls within the Westmount Architectural Heritage Area.
- [20] On November 25, 2016, Officer Stewart was actively patrolling the neighbourhood when he noticed a large pile of nuisance debris and a commercial overweight vehicle parked on the rear yard just north of the driveway. He felt these were violations of Section 45.1 of the *Edmonton Zoning Bylaw* as well as Section 6.1 of the *Community Standards Bylaw* and issued a section 545 *Municipal Government Act* Order to clean the debris and remove the derelict vehicle.
- [21] On December 29, 2016, Officer Stewart received a phone call from the land owner, Ms. T. Hansen, advising that all nuisance items had been removed and that the vehicle was inoperable and being used only for storage.
- [22] On January 10, 2017, the Officer received a call from Mr. K. Albert who advised this was no longer an operable vehicle as the transmission and drive train were missing and it was not registered with the Province as a commercial vehicle. Mr. Albert advised that the vehicle does not have a gross vehicle weight. At the time of the last registration it was registered at approximately 7,600 kilograms.
- [23] Officer Stewart provided the Appellant with information pertaining to Section 45.1 of the *Edmonton Zoning Bylaw* and advised him that the vehicle would have to be removed if it was determined to be over 4,600 kilograms.
- [24] On January 18, 2017, Officer Stewart, along with his supervisor, met with the Appellant at the subject property to measure the vehicle and determine its weight. He determined it to be a cube van intended for commercial use, not for storage. He measured the length of the vehicle to be approximately 25 feet and the width to be approximately 8 feet. The

Vehicle Identification Number (VIN) was unreadable and the make was a Ford F Super Duty.

- [25] On February 15, 2017, a section 645 *Municipal Government Act* Order was issued.
- [26] Ms. Sustrik read out Section 45.1 of the *Edmonton Zoning Bylaw* and provided the definition of a commercial vehicle as “a vehicle intended or designed for commercial purposes or is used for commercial purposes”.
- [27] A search conducted on a U-Haul website of a 20 foot truck with comparable dimensions showed it would have a gross vehicle weight of approximately 6,600 kilograms. Based on these comparable vehicle specifications, the Officers are satisfied that the vehicle, which is the subject of today’s appeal, meets the definition of an overweight commercial vehicle.
- [28] Ms. Sustrik reviewed the contents of the submission that was provided to this Board from the Community Standards Branch.
- [29] They confirmed that this was an officer initiated investigation and was not the result of a complaint.
- [30] Motor homes would not be dealt with as a commercial vehicle and would fall under a different section of the Bylaw banning motor homes from being parked in front yards between October to April.
- [31] They confirmed that the Appellant stated the vehicle had previously been registered with a gross vehicle weight of 7,600 kilograms; if it were below 4,600 kilograms there would be no problem.
- [32] The basis for issuing the Stop Order was the specifications obtained from U-Haul. Normally the gross vehicle weight would be ascertained from the VIN which was unreadable and the Appellant was not willing to provide it.

*iii) Rebuttal of the Appellant*

- [33] The vehicle the officers are using for comparison is a 3 ton from U-Haul which is three times the size of his vehicle. The cabin chassis is 1988 and that’s why the VIN cannot be clearly seen. He did not provide the VIN as he felt it was not relevant.
- [34] 7,600 kilograms is gross vehicle weight – that is what you can drive down the road. This is not the same as the gross weight of the vehicle which is 4,500 kilograms.
- [35] The subject vehicle is an F450 one and a half ton. It is basically a one ton 4 by 4 with a drive train in the front.

[36] He disputes the measurements provided by the Municipal Enforcement Officers and states that the overall dimension of the box is 21 feet by 8 feet and it is just under 10 feet 4 inches high on wheels.

### **Decision**

[37] The appeal is DENIED and the decision of the Municipal Enforcement Officer is CONFIRMED. The Stop Order is UPHELD.

### **Reasons for Decision**

[38] This is the second time this Board has dealt with this vehicle at this property. In December 2011, this Board upheld a Stop Order requiring the vehicle to be removed from the Site. The Appellant removed the vehicle but apparently brought it back to the Site about three years ago.

[39] Based on the evidence provided, it is the opinion of the Board that this vehicle is a commercial vehicle as per Section 45.2 of the *Edmonton Zoning Bylaw*.

[40] The Board accepts the evidence provided by Ms. Sustrik and Mr. Stewart that the vehicle has a maximum gross vehicle weight that is over 4,600 kilograms as stated in the Stop Order. The Appellant himself indicated that the vehicle was previously registered with a gross vehicle weight of 7,600 kilograms.

[41] The Board has considered the support of the neighbouring property owners; however, that support is not relevant to the issuance or validity of the Stop Order.

[42] The Board also considered the Appellant's evidence of other vehicles and trailers in the neighbourhood that may or may not be violating the *Edmonton Zoning Bylaw*. However, those vehicles are not before the Board and are not relevant to this appeal.

[43] Based on the evidence provided, it is the opinion of the Board that the Stop Order was issued correctly and the infraction was accurately identified.

Mr. B. Gibson, Presiding Officer  
Subdivision and Development Appeal Board

### Board Members in Attendance:

Mr. M. Young; Mr. J. Kindrake; Mr. R. Handa, Ms. C. Van Tighem

**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 Stop Order 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 2<sup>nd</sup> Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.