

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Wednesday, 9:00 A.M.
March 22, 2017**

**Hearing Room No. 3
Churchill Building,
10019 - 103 Avenue NW,
Edmonton, AB**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING ROOM NO. 3**

I 9:00 A.M. SDAB-D-17-504

An Order to remove the Overweight
Commercial Vehicle from the rear of the
property before March 8, 2017

10921 – 126 Street NW
Project No.: 115319830-001

NOTE: *Unless otherwise stated, all references to “section numbers” refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-17-504

AN APPEAL OF AN ORDER ISSUED BY THE DEVELOPMENT AUTHORITY

APPELLANT:

APPLICATION NO.: 115319830-001

ORDER TO: Remove the Overweight Commercial Vehicle from the rear of the property before March 8, 2017

DECISION OF THE DEVELOPMENT AUTHORITY: Order Issued

ORDER DATE: February 15, 2017

DATE OF APPEAL: February 27, 2017

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 10921 – 126 Street NW

LEGAL DESCRIPTION: Plan RN39B Block 59 Lot 19

ZONE: DC1 (Direct Development Control) District for the Westmount Architectural Heritage Area

OVERLAY: N/A

STATUTORY PLAN: West Ingle Area Redevelopment Plan

Grounds for Appeal

The Appellant provided the following reasons for appealing the issuance of the Order:

The vehicle in question is not a commercial vehicle under the Highway Traffic Act.

General Matters

Appeal Information:

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

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.

(3) A person who receives a notice referred to in subsection (2) may appeal to the subdivision and development appeal board in accordance with section 685.

Permit

683 Except as otherwise provided in a land use bylaw, a person may not commence any development unless the person has been issued a development permit in respect of it pursuant to the land use bylaw.

Grounds for Appeal

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

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 within 14 days,

- (a) in the case of an appeal made by a person referred to in section 685(1), after
 - (i) the date on which the person is notified of the order or decision or the issuance of the development permit, or

...

Designation of direct control districts

641(4) Despite section 685, if a decision with respect to a development permit application in respect of a direct control district

...

- (b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

Section 2 of the *Edmonton Zoning Bylaw* concerning Repeal, Enactment and Transition Procedures states the following:

2.4 Subject only to the provisions in the Municipal Government Act respecting legal non-conforming Uses and notwithstanding the effect it may have on rights, vested or otherwise, the provisions of this Bylaw govern from the Effective Date onward. In particular, no application for a Development Permit shall be evaluated under the procedural or substantive provisions of the previous Land Use Bylaw after the Effective Date, even if the application was received before the Effective Date.

...

2.6 Any Direct Control Districts that were in effect immediately prior to the Effective date are hereby deemed to continue in full force and effect and are hereby incorporated into Part IV of this Bylaw.

2.7 Unless there is an explicit statement to the contrary in a Direct Control District or Provision, any reference in a Direct Control District or Direct Control Provision to a land use bylaw shall be deemed to be a reference to the land use bylaw that was in effect at the time of the creation of the Direct Control District or Provision.

At the time of the creation of the subject Direct Control Site, the *City of Edmonton Land Use Bylaw 5996* was in effect. An Alberta Court of Appeal decision in *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309 concluded that section 2.7 of the *Edmonton Zoning Bylaw* only applies if there is an express cross-reference in a Direct Control Bylaw passed before 2001 to a provision of the old *Land Use Bylaw*. In the absence of an express reference in the Direct Control Bylaw to the *Land Use Bylaw 5996*, it does not prevail over section 2.4 of the *Edmonton Zoning Bylaw*.

Hearing and Decision

687(3) In determining an appeal, the subdivision and development appeal board

...

- (a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;

...

- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;

- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

- (i) the proposed development would not

- (A) unduly interfere with the amenities of the neighbourhood, or

- (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

- (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

General Provisions from the DC1 (Direct Development Control) District for the Westmount Architectural Heritage Area ("DC1 District"):

Section 1 states that the **General Purpose** of the DC1 District is:

To establish a Direct Control District for single detached residential development and associated uses, as found under the RF1 (Single Detached Residential) District, in the Westmount Architectural Heritage Area so as to continue the tradition of heritage and community as originally conceived in the subdivision and architecture of the Area. The District is based on the RF1 Regulations but with additional Development Criteria and accompanying voluntary Architectural Guidelines, as written and developed by residents of the Area, that are intended to preserve the Area's unique historical streetscape and architectural features, reflecting the character, location and proportions of existing structures from the early 1900s in the Area, including: Boulevards with mature trees; continuous sidewalks; rear lane access to on-site parking; verandahs; and other features as originally conceived in subdivision plans and architectural designs of the early 1900s.

Objects Prohibited or Restricted in Residential Zones

Section 45(1) states:

No person shall keep in any part of a Site in any Residential Zone:

- a. any commercial vehicle, loaded or unloaded, having a maximum gross vehicle weight (G.V.W.R.) exceeding 4 600 kg.
- b. more than one commercial vehicle having a maximum gross vehicle weight (G.V.W.R.) of 4 600 kg or less, for longer than reasonably necessary while loading or unloading such vehicle.

Section 45(2) states:

For the purpose of subsection 45(1) a commercial vehicle means a vehicle that:

- a. is intended or designed for commercial purposes; or
- b. is used for commercial purposes.

Approval Required for Development

Section 5 states:

5.1 No Person:

- 1. shall commence, or cause or allow to be commenced, a Development without a development Permit therefor issued under the provisions of Section 12 of this Bylaw; or

- 2. shall carry on, or cause or allow to be carried on a development without a Development Permit therefor issued under Section 12 of this Bylaw.

<i>Offences</i>

Section 23.1(9) states:

Notwithstanding subsection 23.1(2), it is an offence to keep an object in a Residential Zone that is prohibited or restricted under Section 45 of this Bylaw without a valid and approved Development Permit when a Development Permit is required.

<i>Previous Subdivision and Development Appeal Board Decision</i>
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<u>Application Number</u>	<u>Description</u>	<u>Decision</u>
<u>SDAB-D-11-290</u>	An Order to remove the Commercial Vehicle from the property	December 23, 2011: “that the appeal be DENIED and the STOP ORDER UPHELD.”

Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing. Bylaw No. 11136 requires that a verbal announcement of the Board’s decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.

Citizen Services
Community Standards

City of Edmonton
5th Floor, 10250 101 Street NW
Edmonton, AB T5J 2R7

edmonton.ca



Date: February 15, 2017

Reference/File No: 115319830-001

ORDER

(Issued Pursuant to Section 645 of the Municipal Government Act, R.S.A. 2000 c. M-26)

TO:

RE: Municipal Address: 10921 - 126 Street NW, Edmonton, AB T5M 0P4

Legal Description: Plan: RN39B, Block: 59, Lot: 19

Tax Roll Number: 2801256

(hereinafter referred to as “the property”)

As a result of an inspection of the property on February 13, 2017:

I find that the use of the land is not in accordance with the City of Edmonton Zoning Bylaw (Bylaw 12800) as follows:

Section 45(1) States: No person shall keep in any part of a Site in any Residential Zone:

- A. Any commercial vehicle, loaded or unloaded, having a maximum gross vehicle weight (G.V.W.R.) exceeding 4 600 kg

In accordance with Section 23.1(9) of The City of Edmonton Zoning Bylaw: it is an offence to keep an object in a Residential Zone that is prohibited or restricted under Section 45 of this Bylaw without a valid and approved Development Permit when a Development Permit is required.

THEREFORE YOU ARE ORDERED TO:

Remove the Overweight Commercial Vehicle from the rear of the property.

YOU MUST COMPLY WITH THIS ORDER BEFORE: March 8, 2017

Officer: COLIN EMEO #71 Telephone: 780-442-1482
Complaints and Investigations
Community Standards Branch

OFFENCE FOR NON-COMPLIANCE:

Pursuant to Section 557(a.3) of the Municipal Government Act (hereinafter referred to as the "Act") a person who contravenes or does not comply with an order under section 645 is guilty of an offence and liable to prosecution.

Pursuant to Section 566(1) of the Act a person who is guilty of an offence is liable,

- (a) to a fine of not more than \$10 000, or
 - (b) to imprisonment for not more than one year,
- or to both fine and imprisonment.

[Include the following provision if the City intends to carry out the order. Otherwise delete.]

ADDITIONAL CONSEQUENCES FOR NON-COMPLIANCE:

Pursuant to Section 646(1) of the Act if a person fails or refuses to comply with an order under section 645 the municipality may, enter on the land or building and take any action necessary to carry out the order.

Pursuant to Section 553(1)(h.1) of the Act when an order is carried out under section 646(1) the expenses and costs incurred in carrying out the order may be placed on the tax roll of the property and that amount:

- a) is deemed for all purposes to be a tax imposed under Division 2 of Part 10 from the date it was added to the tax roll, and
- b) forms a special lien against the parcel of land in favour of the municipality from the date it was added to the tax roll.

If you fail to comply with the provisions of this order the City of Edmonton will, at its election, take action to enforce the order by [insert proposed actions to be taken here], all expenses of which will be placed on the tax roll of the property.

PROCEDURE FOR STARTING AN APPEAL OF THE ORDER

Pursuant to section 685(1) of the Act a person affected by an order under section 645 may appeal to the Subdivision and Development Appeal Board.

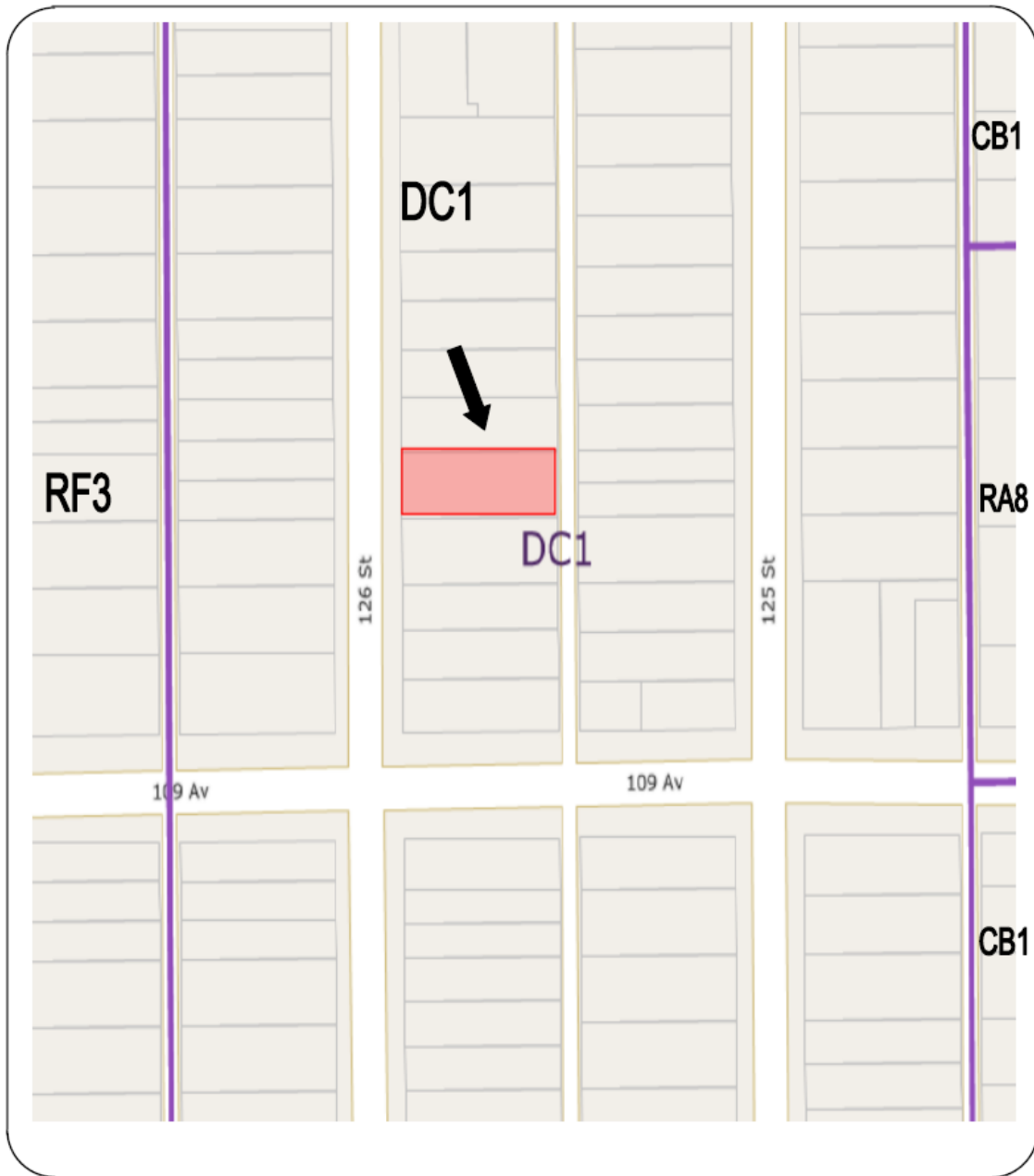
Pursuant to section 686(1) of the Act an appeal to the Subdivision and Development Appeal Board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days after the date on which the person is notified of the order under section 645.

Requests for review must be received by:

Subdivision and Development Appeal Board
Office of the City Clerk
10019 – 103 Avenue NW
Edmonton, AB T5J 0G9

Telephone: (780) 496-6079
Fax: (780) 496-8175

The Notice of Appeal must be accompanied by a cheque or money order in the sum of \$72.00 payable to the City of Edmonton or it is not considered complete and will not be processed. If you are delivering your notice of appeal in person you may pay with cash.



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-17-504

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