

# ***Edmonton Subdivision and Development Appeal Board***

Churchill Building  
10019 - 103 Avenue NW  
Edmonton, AB T5J 0G9  
Phone: 780-496-6079 Fax: 780-496-8175  
Email: sdab@edmonton.ca  
Web: www.edmontontribunals.ca

DATE: April 10, 2015  
PROJECT NO.: 160148899-002  
FILE NO.: SDAB-D-15-047

## **Notice of Decision**

This appeal dated February 10, 2015, from the decision of the Development Authority for permission to:

Operate a Major Home Based Business (Administration office for a Home Renovation Contractor)

on Plan 2097HW Blk 3 Lot A, located at 10844 - 67 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on March 5, 2015 and March 25/26, 2015. The decision of the Board was as follows:

### **March 5, 2015 Hearing:**

At the outset of the appeal hearing, the Presiding Officer informed the Development Authority that the Appellant was not in attendance and staff made attempts to contact him with no success.

Ms. Heimdahl, the Development Authority, indicated that she was prepared to proceed but had no objection to the Board tabling the appeal to a later date.

MOTION:

“that the appeal be TABLED TO MARCH 25 or 26, 2015 at the non-appearance of the Appellant.”

REASONS FOR DECISION:

The Board finds the following:

1. The Board tabled the appeal hearing to March 25 or 26, 2015 to allow the Appellant to attend the hearing.

### **March 26, 2015 Hearing:**

MOTION:

“that SDAB-D-15-047 be raised from the table.”

**SUMMARY OF HEARING:**

At the outset of the appeal hearing, the Presiding Officer noted that the Appellant was not in attendance and staff made attempts to contact him with no success. After postponing the hearing for 30 minutes, to 9:30 a.m., the Board commenced the hearing in the absence of the Appellant in light of the previous tabling at the non-appearance of the Appellant and a complete absence of communication from the Appellant.

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.

The appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to operate a Major Home Based Business (Administration office for a Home Renovation Contractor), located at 10844 – 67 Avenue NW. The subject Site is zoned RF5 Row Housing Zone and is within the Mature Neighbourhood Overlay. The subject site is also within the 109 Street Corridor Area Redevelopment Plan. The development permit application was refused because it is the opinion of the Development Authority that the proposed utility trailer storage would be more suited for a Commercial or an Industrial Zone and due to the resulting deficiency in the number of required on-site parking spaces.

Prior to the hearing the following information was provided to the Board:

- A written submission from the Development Authority; and
- A response in opposition to the proposed development submitted through the on-line system from a property owner within the 60 metre notification radius.

The Board notes the reasons for appeal as submitted by Mr. Hickey, the Appellant, which state:

1. No storage is located on the site at the present time, including wood, tools, supplies and trailers as storage is rented elsewhere. In addition, no customers come to the Site.

In response to questions by the Board, Ms. Heimdahl, representing the City of Edmonton Sustainable Development Department, provided the following information:

1. As there has been no site inspection after March 5, 2015, Ms. Heimdahl cannot confirm that the trailer has been removed to an appropriate storage area. The Appellant has not provided the Development Officer with the address where the trailer is now being stored. There has been no communication between the Appellant and the City of Edmonton Sustainable Development Department since late 2014.
2. Bylaw enforcement inspection will ensue if the Board supports the Development Authority's decision to refuse a Major Home Based Business on this site.
3. If the trailer has been removed from the site it would be more appropriate for the development to be classed as a Minor Home Based Business.

4. The proposed development, as initially applied for, will unduly interfere with the amenities of the neighbourhood and will materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

**DECISION:**

That the appeal be DENIED and the decision of refusal by the Development Authority CONFIRMED.

**REASONS FOR DECISION:**

The Board finds the following:

1. The proposed Major Home Based Business is a Discretionary Use in the RF5 Row Housing Zone.
2. Upon reviewing the documents on file the Board is not satisfied that the concerns of the Development Officer, which led to the refusal of the development permit application, have been met. While the Appellant asserts that the trailer and other equipment and materials have been removed, he has not complied with the request of the Sustainable Development Department to provide the address where those items are currently being stored.
3. The Board accepts that if the Appellant has taken the steps asserted in his reasons for appeal it is more appropriate for the development to be classed as a Minor Home Based Business. However, the Board is unable to accept the bare assertion of the Appellant in light of the inspection photographs provided to the Board in the Development Officer's submission.
4. The Board accepts the Development Officer's view that the proposed Major Home Based Business would be more appropriately located in a commercial or industrial zone.
5. The Board acknowledges a deficiency of on-site parking on the subject site.
6. The development as applied for is inconsistent with purpose of the 109 Street Corridor Area Redevelopment Plan; "To improve the quality and appearance of development and the Streetscape on 109 Street...".
7. One letter of objection was received from an adjacent property owner.
8. The Board cannot conclude that the proposed development would not unduly interfere with the amenities of the neighbourhood and would not materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

**IMPORTANT INFORMATION FOR 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, R.S.A. 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 5th Floor, 10250 – 101 Street, Edmonton.

Noel Somerville, Presiding Officer  
SUBDIVISION AND DEVELOPMENT  
APPEAL BOARD

CC: City of Edmonton Sustainable Development Dept. – Attn: K. Heimdahl

## ***Edmonton Subdivision and Development Appeal Board***

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10019 - 103 Avenue NW  
Edmonton, AB T5J 0G9  
Phone: 780-496-6079 Fax: 780-496-8175  
Email: sdab@edmonton.ca  
Web: www.edmontontribunals.ca

Robert Little  
1135 - 75 Street NW  
Edmonton, AB T6K 2S4

DATE: April 10, 2015  
PROJECT NO.: 163875841-001  
FILE NO.: SDAB-D-15-059

### **Notice of Decision**

This appeal dated March 1, 2015, from the decision of the Development Authority for permission to:

Operate a Major Home Based Business (Repairing of Firearms) - Expires February 19, 2020

on Plan 7621269, Block 35, Lot 5, located at 1135 - 75 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on March 26, 2015. The decision of the Board was as follows:

#### SUMMARY OF HEARING:

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.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A. 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to approve an application, with conditions, to operate a Major Home Based Business (Repairing of Firearms) - Expires February 19, 2020. The subject site is located at 1135 – 75 Street NW and is zoned RF1 Single Detached Residential Zone. The approved permit was subsequently appealed by an adjacent property owner.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- A written submission from the Development Authority dated March 19, 2015;
- Two petitions opposing the development signed by 14 nearby property owners outside of the 60 metre notification radius; and
- A response in opposition to the proposed development submitted through the on-line system from a property owner within the 60-metre notification radius.

The Board heard from Mr. Verdin, the Appellant, who provided the following information to the Board:

1. A Home Based Business for the repairing of firearms is not appropriate in a residential neighbourhood.

2. The location within 120 metres from a school is inappropriate.

Mr. Verdin provided the following responses to questions.

1. This neighbourhood has been subject to past criminal activity including grow-ops in the area. Gun storage at this location could attract a further criminal element resulting in potential break-ins and other nefarious activity.
2. He was not aware of the petitions submitted in opposition of the development.
3. He only became aware of the proposed Home Based Business when he received the notice of decision and had no discussions with the Respondent prior to submitting his appeal.

Ms. Heimdahl, representing the City of Edmonton Sustainable Development Department, provided the following responses to questions:

1. Only the standard conditions for Major Homes Based Businesses were included in the Development Permit application. There are no specific requirements under the *Edmonton Zoning Bylaw* for firearms repair.
2. She is aware that there are provincial and federal regulations that must be conformed to, but she did not specifically list these in her conditions.
3. The proposed development complies with the *Edmonton Zoning Bylaw* and she did not consider crime rates, or any other laws or regulations.
4. Her decision must be objective.

The Board heard from the Respondent, Mr. Little, who provided the following information to the Board:

1. He understood the concerns that may be present for this type of an operation.
2. He has lived at this address for 23 years.
3. There will be no sales of firearms or ammunition from this location. This is strictly a repair business and the vast majority of the repairs are done “on the spot”. Typically there is no storage of customer’s firearms on site.
4. There are a myriad of federal regulations that must be complied with, including yearly home inspections by the R.C.M.P. and licensing under the *Firearms Act*, S.C. 1995, c. 39.
5. He provided a copy of his Business Firearms License, marked as exhibit “A”. He referred to the extensive requirements he had to go through to get the Business Firearms License, including a Diploma of Certification for the repair of firearms, a Possession and Acquisition Licence (PAL), and the installation of a registered vault and an alarm system to detect motion and glass breakage.
6. He only advertises by word of mouth.

Mr. Little provided the following responses to questions from the Board:

1. The majority of repairs are cosmetic repairs to the stocks and barrels of the firearms. No firearms may be loaded or discharged on site as per federal regulations.
2. The storage of a firearm when not being worked on, even if it is disassembled, is not permitted unless it is locked in the vault.
3. He was not aware of any petition in opposition to the proposed development. He did receive one telephone call from a neighbor for clarification and did not seek any feedback from neighbours.
4. Many immediate neighbours are aware he has firearms in the home as he is a sportsman and hunts with some of his neighbours.
5. He provided evidence of a log book in which the serial numbers of all firearms coming in for repair are recorded. This log must be provided to federal authorities annually. He has only repaired 5 firearms since January 1, 2015. The majority of repairs he does are to older long guns and none of these repairs were to handguns.
6. He confirmed that other than the Appellant no neighbours in opposition as noted in the petitions are within-the 60 metre radius.
7. All of his firearms, including personal use firearms, are secured in a vault as per federal regulations. There is a security alarm present on the property.
8. He noted that many people in the City of Edmonton own firearms. His are more secure given the strict regulations he is subject to.

In rebuttal, Mr. Verdin made the following points:

1. He appreciated the clarity and additional information provided at the hearing.
2. He still believes it is inappropriate to have a Home Based Business for repairing firearms in a residential community.
3. He confirmed he is more comfortable now, but not “thrilled”.
4. The Appellant was pleased there is limited on-site storage.

#### DECISION:

That the appeal be DENIED and the decision of approval by the Development Authority CONFIRMED subject to the following conditions:

1. This Development Permit may be revoked or invalidated, at any time, if the Home Based Business as stated in the Permit Details, or if the character or appearance of the Dwelling or Accessory Building, changes. This includes mechanical or electrical equipment used which creates external noise or interference with home electronic equipment in adjacent Dwellings. (Reference Section 23.5)
2. There shall be no exterior display or advertisement other than an identification plaque or sign a maximum of 20 cm (8") x 30.5 cm (12") in size located on the dwelling.

3. This approval is for a 5 year period ONLY from the date of this decision. A new Development Permit must be applied for to continue to operate the business from this location. Expires – March 26, 2020.
4. There shall be no more than five business associated visit per day at the Dwelling. The business Use must be secondary to the residential Use of the building and no aspects of the business operations shall be detectable from outside the property. The number of non-resident employees or business partners working on-site shall not exceed two at any one time
5. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
6. The business Use shall not involve the use of commercial vehicles or vehicles weighing over 4500 kg
7. The business Use must maintain the privacy and enjoyment of adjacent residences and the character of the neighbourhood.
8. No commodity shall be displayed on the premises.
9. Clients visit must be by-appointment only and appointments shall not overlap with each other.
10. A new Development Permit must be obtained should the business change or expand.
11. There shall be no outdoor storage of materials associated with the business.
12. All parking for the Home Based Business must be accommodated on site. Parking on the street in conjunction with this Home Based Business is not permitted.
13. There is absolutely no outdoor business-related activities at any time.
14. All commercial, industrial and overweight vehicles shall be parked at an approved storage facility when not in use. The Development Permit will be revoked if any commercial, industrial and overweight vehicles are parked/stored on the Residential Site.

Notes:

An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

Unless otherwise stated, all above references to section numbers refer to the authority under the Edmonton Zoning Bylaw 12800.

REASONS FOR DECISION:

The Board finds the following:

1. A Major Home Based Business is a discretionary Use in the RF1 Single Detached Residential Zone.
2. The Board is satisfied that the proposed development conforms to all of the regulations in the *Edmonton Zoning Bylaw* related to Home Based Businesses.

3. The Board notes that the concerns of the Appellant were substantially alleviated by the testimony of the Respondent outlining the extensive regulations under the *Firearms Act*, S.C. 1995, c. 39, that control the access to and storage of firearms.
4. The Board acknowledges the receipt of two petitions, but notes none of the signatures are within the 60-metre notification area. Neither the Appellant nor the Respondent had any knowledge of the submitted petitions prior to the hearing.
5. The Board acknowledges the Appellant's concerns related to the safety of the proposed development, but finds that the requirements under the *Firearms Act*, S.C. 1995, c. 39, and the associated regulations, restricting the permitted activities and the storage of firearms addresses those concerns.
6. This proposed development is subject to federal regulations and the issuance of the development permit does not in any way impact the requirements to comply with these federal requirements. Regulating handling and storage of firearms is beyond the purview of the SDAB.
7. While the Appellant expressed concern about lack of consultation beyond the notification he did receive, the Board notes that the Edmonton Zoning bylaw consultation requirements are linked to the Mature Neighbourhood Overlay and only when the regulations of that overlay are varied, neither of which applies to this instance.
8. The Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

### **IMPORTANT INFORMATION FOR APPLICANT/APELLANT**

1. **THIS IS NOT A BUILDING PERMIT.** A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. 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.
3. A Development Permit shall expire and shall no longer be valid after one year from the date of approval of the Permit, if no construction has been initiated. However, if the permit holder is unable to proceed pending a court decision involving the proposed development, time shall not run until such proceedings are finally completed. For further information, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.
4. Notwithstanding clause (3) above, if a Building Permit is issued for the development within the twelve month period, the Development Permit issued therefore shall not lapse unless and until the Building Permit so issued is cancelled or allowed to lapse by virtue of work not having commenced within the statutory minimum period.

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, R.S.A. 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 5th Floor, 10250 – 101 Street, Edmonton.

Noel Somerville, Presiding Officer  
SUBDIVISION AND DEVELOPMENT  
APPEAL BOARD

cc: Paul Verdin  
City of Edmonton Sustainable Development Dept. – Attn: K. Heimdahl / Luke  
Tamayo / Hailley Hancharik

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10019 - 103 Avenue NW  
Edmonton, AB T5J 0G9  
Phone: 780-496-6079 Fax: 780-496-8175  
Email: sdab@edmonton.ca  
Web: www.edmontontribunals.ca

Pick-n-Pull  
10850 Gold Center Dr. Suite 325  
Racho Cordova CA  
95670 USA

DATE: April 10, 2015  
PROJECT NO.: 159215385-001  
FILE NO.: SDAB-D-15-060

### **Notice of Decision**

This appeal dated February 27, 2015, from the decision of the Development Authority for permission to:

Construct an Accessory building to an existing General Industrial Use (cold storage)

On Plan 0227465 Blk 1 Lot 1, located at 18649 - 118A Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on March 26, 2015. The decision of the Board was as follows:

#### **SUMMARY OF HEARING:**

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.

The Presiding Officer first addressed the issue of jurisdiction and whether the appeal was filed within the allowable 14-day appeal period, pursuant to section 686 of the *Municipal Government Act*, R.S.A. 2000, c. M-26

The Board heard from D. Proulx of KellerDenali Construction, representing the Appellant, P. Landon of Pick-n-Pull, who provided the following information with regard to the timing of filing the appeal:

1. The Appellant indicated she had first received notification of the issuance of a development permit subject to conditions on February 9, 2015, and subsequently requested further information from the Development Authority via e-mail.

The Board heard from I. Welch, representing the City of Edmonton Sustainable Development Department, who provided the following information with regard to the timing of filing the appeal:

1. He received the first inquiry regarding the conditions of the issued development permit via e-mail on February 12, 2015. Fourteen days from February 12, 2015, would make the appeal deadline February 26, 2015. The appeal was not filed until February 27, 2015, making it at least one day late.

## MOTION:

That the Board does not assume jurisdiction pursuant to Section 686(1)(a)(i) of the *Municipal Government Act*.

## REASONS FOR DECISION:

1. The Board determined that the Appellant was notified of the issuance of a development permit subject to conditions by the Development Authority no later than February 12, 2015, as she contacted the Development Officer for clarification of the decision on that date.
2. The Board applied the provisions of Section 686(1)(a)(i) of the *Municipal Government Act*, and therefore finds that the appeal was filed outside of the allowable 14 days.
3. The Board does not have jurisdiction to extend the time for filing an appeal. Having determined that the appeal was filed more than 14 days following the date on which the Appellant received notice of the decision of the Development Authority, the Board cannot take jurisdiction to hear this appeal.

**IMPORTANT INFORMATION FOR 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, R.S.A. 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 5th Floor, 10250 – 101 Street, Edmonton.

Noel Somerville, Presiding Officer  
SUBDIVISION AND DEVELOPMENT  
APPEAL BOARD

cc : KellerDenali Construction – Attn: D. Proulx / T. Bussiere  
City of Edmonton Drainage Dept. – Attn: S. Khan  
City of Edmonton Sustainable Development Dept. – Attn: I. Welch