



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: March 15, 2019
Project Number: 302268255-001
File Number: SDAB-D-19-027

Notice of Decision

- [1] On March 6, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on February 11, 2019. The appeal concerned the decision of the Development Authority, issued on February 7, 2019, to refuse the following development:

Construct exterior alterations to an Accessory Building (rear detached garage, increase height from 4.30 metres to 4.81 metres)

- [2] The subject property is on Plan 6083KS Blk 12 Lot 26, located at 6612 - 97 Avenue 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 Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions;
 - Documents with 15 signatures from neighbouring property owners in support of the proposed development, submitted by the Appellant; and
 - Email in support from a neighbouring property owner.

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, Ms. Hamidi*

- [7] Her client purchased the 25 year old property several years ago.
- [8] The existing garage is small and he would like to build a three car garage.
- [9] The larger garage will allow him to park his truck in the garage. The increase in Height will provide him extra storage space and will accommodate his family in the future.
- [10] This area falls under the Mature Neighbourhood Overlay and the three car garage will be compatible with other properties in the neighbourhood.
- [11] The original Development Permit was approved for a 4/12 roof pitch. The property owner would like the garage to have a 6/12 pitch and submitted plans to the Development Officer. The Development Officer did not have the authority to approve the proposed development and grant a variance in Height.
- [12] Ms. Hamidi provided the following information in response to questions by the Board:
- a. She confirmed that the original plans were for a 4/12 roof pitch. She emailed the Development Officer requesting a 6/12 roof pitch and submitted plans.
 - b. She attempted to speak to every neighbour within the 60 metre notification radius and received 15 signatures in support. She was not able to speak to every neighbour, some were rental properties and the tenants did not have a concern. One email was received in support of the proposed development.
 - c. The only change from the original plans is the pitch of the roof.

ii) Position of the Development Officer, Mr. Zhou

- [13] The Development Authority did not appear at the hearing and the Board relied on Mr. Zhou's written submission.

Decision

- [14] 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 constructed in accordance with the stamped and approved drawings.

ADVISEMENT:

1. Immediately upon completion of the exterior alterations, the site shall be cleared of all debris.
 2. The driveway access must maintain a minimum clearance of 1.5 metres from all surface utilities.
- [15] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:
1. The maximum allowable Height to the midpoint of the roof of 4.3 metres as per Section 50.3.3 is varied to allow an excess of 0.5 metres to the midpoint of the roof, thereby increasing the maximum allowed to 4.8 metres.
 2. The maximum allowable Height to the peak of the roof of 5.8 metres as per Section 52.2.c is varied to allow an excess of 0.4 metres to the peak of the roof, thereby increasing the maximum allowed to 6.2 metres.

Reasons for Decision

- [16] The proposed development is accessory to a Permitted Use in the RF1 Single Detached Residential Zone.
- [17] Other than the maximum allowable Height, the proposed development meets all other regulations for an Accessory Building in the RF1 Single Detached Residential Zone.
- [18] The Development Officer did not have the authority to grant a variance in Height.
- [19] The proposed development does not create a massing effect on surrounding properties.
- [20] Signatures were received from 18 neighbouring property owners in support of the proposed development.
- [21] No letters of objection were received from neighbouring property owners and no one appeared in opposition at the hearing.

[22] Based on the above, it is the opinion of the Board 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.

Ms. G. Harris, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. B. Gibson; Mr. C. Buyze; Mr. D. Fleming; Ms. D. Kronewitt Martin

CC: City of Edmonton, Development & Zoning Services, Attn: Ms. Zhou / Mr. Wen

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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: March 15, 2019
Project Number: 092647579-019
File Number: SDAB-D-19-028

Notice of Decision

- [1] On March 6, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on February 1, 2019. The appeal concerned the decision of the Development Authority to issue a Stop Order on January 14, 2019 to:

Cease the General Industrial Use and remove all related materials by February 11, 2019.

- [2] The subject property is on Plan 9521823 Lot 6, located at 18981 - 18 Street NW, within the AG Agricultural Zone. The North Saskatchewan River Valley and Ravine System Protection Overlay, the Horse Hill Area Structure Plan and the Marquis Neighbourhood Structure Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Stop Order with attachments;
 - The Compliance Officer’s written submission; and
 - The Appellant’s written submissions.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – PowerPoint Presentation, submitted by the Development Compliance Officer.
 - Exhibit B – Certificate of Title, submitted by 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 (the “*Municipal Government Act*”).

Summary of Hearing

i) *Position of the Appellant, Mr. H. Wilman, who was accompanied by his sons, Mr. M. Wilman and Mr. A. Wilman*

[8] Mr. H. Wilman corrected the Development Compliance Officer’s report that the property was acquired October 1, 2018. He stated that they acquired the property in February, 2017 due to a foreclosure but were not the owners until 60 days later.

[9] They were not aware of what took place on the property prior to the foreclosure. If a caveat had been placed on the property, they would not be at the appeal hearing today.

[10] The previous owners operated a trucking business from the subject Site, but were not able to make their mortgage payments. They allowed the previous owners to rent the property so they did not have to move.

[11] They received a Notice to Enter Property dated December 20, 2018 from the Development Compliance Officer.

[12] Mr. M. Wilman spoke to neighbouring property owners and did not receive any opposition or complaints about storage or non-compliance issues on the property.

[13] Mr. H. Wilman stated that the property is not being used as a General Industrial Use under the General Industrial Uses in Section 7.5(3)(d) of the *Edmonton Zoning Bylaw* because the Bylaw refers to “the storage or transshipping of materials, goods and equipment” not “or equipment”.

[14] Mr. H. Wilman stated that no goods or materials are stored on the subject Site and the only equipment on the Site is the trucks.

[15] If the General Industrial Use is applied to this property, it should be applied to all agricultural properties as every farmer would use a dump truck and different types of vehicles used in trades and store them on their farm.

[16] In his opinion, the Stop Order is vague and he disagrees with the statement by the Development Compliance Officer that the property is being used as a General Industrial Use and contravenes the *Edmonton Zoning Bylaw*.

[17] In his opinion, residents in Edmonton who have equipment stored in a shed on their property could also be considered under the Industrial Use.

[18] Mr. M. Wilman stated that there is not a specific definition of what is considered to be farm equipment. In his opinion, the trucks on the Site are regularly used for hauling farming supplies and commodities and could be construed as farm equipment.

- [19] Mr. H. Wilman stated that there is a dwelling on the property where his tenant lives with his son. There are at least two trucks stored on the property that are used to haul soil.
- [20] The subject Site is located in close proximity to a military runway. If the aerial photographs in the Development Compliance Officer's submission were taken without permission from National Defense, they were taken illegally.
- [21] In his opinion, those photographs should not be accepted if they were taken without authorization.
- [22] The tenants' lease will expire at the end of April, 2019. However, if the Stop Order is upheld, he will have to ask the tenants to leave. This would be difficult for the tenants as the trucks are their livelihood. The City will be losing a good business if this is the case.
- [23] The tenants are immigrants and do not have the means to make a living any other way.
- [24] Mr. Wilman provided the following information in response to questions from the Board:
- a. His tenants, A. Thind and L. Thind, were the original property owners as shown on the Land Title Certificate.
 - b. The tenants' trucking company serves the local area and Fort McMurray.
 - c. In the 2019 Property Assessment Notice, they are being charged for Fenced Storage.
 - d. He was not aware that the trucking business did not comply with the regulations of the *Edmonton Zoning Bylaw* until the Stop Order was issued to him and his sons.
 - e. In 2009, the Thind family was using the property for the trucking business and he was not aware of that until he read the Development Compliance Officer's written report.
 - f. From the photographs submitted, he cannot see gravel and sand being stored on the property. In the past, there was gravel on the property.
 - g. There is no Agricultural Use on the subject Site. The properties north and south of the subject Site do not use their property for agricultural.
 - h. They could not confirm if truck repairs are taking place on the subject Site.
 - i. They could not confirm if there are employees working for the trucking business who leave their vehicles at the subject Site while driving trucks.

- j. Mr. M. Wilman confirmed that on February 22, 2019, there were two larger trucks, three smaller trucks, a recreational vehicle, and a small van on the subject Site. There is a small building on the property that does not look like it is being used.
- ii) *Position of the Development Compliance Officer, Mr. Hogberg, accompanied by Mr. Young*
- [25] Mr. Hogberg provided the Board with a PowerPoint presentation (marked Exhibit A) and provided them with background of the subject Site.
- [26] The aerial photograph of the subject Site was taken from Pictometry, which is licensed by the City of Edmonton to take photographs of the entire city twice a year.
- [27] The photograph taken in October, 2018 shows several trucks on the subject Site.
- [28] The subject Site is in the Horse Hill Area Structure Plan and the Marquis Neighbourhood Structure Plan.
- [29] The City has had involvement with the subject Site for approximately 10 years. Previously, a Municipal Enforcement Officer issued a Stop Order for commercial vehicles on the subject Site. The order was upheld on appeal. Subsequent applications for a Home Base Business by the previous property owners were denied.
- [30] The Development Compliance History shows the current file on vehicle storage on the property started in 2012. Between 2012 and 2015, there were several property inspections that resulted in three penalty tickets.
- [31] The file was again reviewed in 2018 and the Notice to Enter Property letter was issued on December 20, 2018 for an inspection on January 9, 2019. The letter was issued to the three owners listed on the Land Title.
- [32] The photographs submitted show an excavator, a passenger vehicle, a dump truck, a semi, and a recreational vehicle stored on the subject Site.
- [33] The definition of a General Industrial Use in Section 7.5(3)(d) means development used principally for one or more of the following activities:
-the storage or transshipping of materials, goods and equipment.
- [34] A General Industrial Use is neither Permitted nor Discretionary in an AG Agricultural Zone.
- [35] Mr. Hogberg provided the following information in response to questions by the Board:
- a. He confirmed there is no license to operate a business from the subject Site.

- b. He confirmed that several trucks have been stored at the subject Site throughout the years.
- c. He met with Mr. M. Wilman in January, 2019 to go over the details and gather evidence of what was taking place on the property.
- d. He could not confirm when the violation tickets were issued as they were not part of the appeal before the Board. The tickets were issued to the previous property owners.
- e. He did not have any contact with the Wilmans prior to issuing the Notice to Enter Property letter, dated December 20, 2018.
- f. Investigations are usually started by citizen enquiries or complaints, which could have happened years ago.
- g. He could not confirm if gravel or stock piling was taking place at the subject Site when he visited the property.
- h. He is agreeable to extending the date for the Wilmans to comply with the Stop Order.
- i. Mr. Young stated that there was some discussion that the use occurring on the subject Site is Temporary Storage. However, that use is neither a Permitted nor Discretionary in an AG Agricultural Zone

iii) Rebuttal of the Appellant, Mr. H. Wilman and Mr. M. Wilman

- [36] Mr. H. Wilman stated that if the photographs were taken by Pictometry, there should have been permission to do that as the site is close to a military base. He questions whether or not the City has a license to fly over a military base. He provided a copy of his Certificate of Title, marked Exhibit B, as proof that the Minister of National Defence has registered a caveat on the title.
- [37] He agrees that there may have been a different number of trucks on the Site previously but when the economy is slower there are fewer.
- [38] He does not agree that investigations are started from complaints because they spoke to neighbouring property owners and did not receive any opposition.

The Presiding Officer recalled Mr. Hogberg for additional questions.

- [39] Mr. Hogberg stated that the City has a contract with a third party for Pictometry for the entire City and not specifically for this investigation. Aerial photographs of the entire City are taken at the same time. The legality of the operation is dealt with at a different level that they have no control of.

Mr. H. Wilman's rebuttal:

[40] Mr. H. Wilman stated that it is speculation on behalf of the City that the aerial photographs are taken by a third party and he would like confirmation of that.

Decision

[41] The appeal is DENIED and the decision of the Development Compliance Officer is UPHeld. The wording of the Stop Order is VARIED as follows:

1. Cease the General Industrial Use and remove all related materials by **April 30, 2019**.

Reasons for Decision

[42] The Stop Order was issued pursuant to section 645(1) of the *Municipal Government Act*. The Board heard evidence that a Development Compliance Officer had authority under the *Municipal Government Act* to issue a Stop Order and that the Development Authority had grounds for issuing the Stop Order because a General Industrial Use was being carried out on the site without a Development Permit.

[43] Based on a review of both the verbal and photographic evidence provided, the Board finds that a General Industrial Use is being carried out on the Site pursuant to section 7.5(3) of the *Edmonton Zoning Bylaw* as the development is being used for "the storage of materials, goods and equipment". In the (AG) Agricultural Zone, a General Industrial Use is neither a Permitted Use nor a Discretionary Use.

[44] The Appellant acknowledged the tenant operates a trucking company from the Site serving the local area and Fort McMurray. He argued that as the tenant on the property hauls farm supplies and commodities, the use of the trucks on the property is for agricultural purposes in accordance with the (AG) Agricultural Zone. The Board was not provided with evidence that agricultural activity is taking place on the property.

[45] The Board acknowledges Mr. H. Wilman's submissions on interpretation of General Industrial Use and characterizing the tenant's activities as agricultural. However, in light of the photographic evidence and Mr. Wilman's submission that the tenant operates a trucking business involved in hauling farm supplies and commodities and serves the local area and Fort McMurray, the Board is satisfied the activities being conducted on the site fall within the description as set out in the *Edmonton Zoning Bylaw*.

- [46] The Appellant argued that under the Marquis Neighbourhood Structure Plan, the property is slated for an alternative use. The Board notes the property is currently zoned AG Agricultural Zone and, until the rezoning is approved by City Council, the Board cannot consider any uses other than those listed in that Zone. Further, the tax assessment on a property has no bearing on whether a use occurring on the property has a valid Development Permit or is even Permitted or Discretionary in that zone.
- [47] The Appellant argued that the aerial photographs presented by the Development Compliance Officer should not be accepted by the Board as it was questioned whether or not the Ministry of Defense authorized the photographs to be taken. However, pursuant to Section 629 of the *Municipal Government Act*, the Board “may, while carrying out its powers, duties and responsibilities, accept any oral or written evidence that it considers proper, whether admissible in a court of law or not, and is not bound by the laws of evidence applicable to judicial proceedings.”
- [48] The Appellant indicated that if the Board upholds the Stop Order, he would be asking the tenant to leave the property when the lease expires on April 30, 2019. The Development Compliance Officer consented to an extension of the date for compliance to April 30, 2019. Accordingly, the Board has upheld the Stop Order but has extended the date of the compliance to April 30, 2019. In varying the compliance date for this Stop Order, the Board reiterates that the use occurring on subject Site, as it currently exists, is not a listed use in the AG Agricultural Zone and no Development Permit has ever been issued. This decision in no way authorizes such a Use.

Ms. G. Harris, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. B. Gibson; Mr. C. Buyze; Mr. D. Fleming; Ms. D. Kronewitt Martin

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. Hogberg / Mr. Jabs / Mr. Young / Mr. Gowda / Ms. Fraser

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.
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