



EDMONTON
TRIBUNALS

*Subdivision &
Development
Appeal Board*

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SDAB-D-16-293

Application No. 227741333-001

An appeal by Pattison Outdoor Advertising to install (1) Freestanding Off-premises Sign (3.0m x 6.1m facing North) (PATTISON) was **TABLED TO DECEMBER 1, 2016.**



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Date: December 2, 2016
Project Number: 152981405-001
File Number: SDAB-D-16-270

Notice of Decision

- [1] The Subdivision and Development Appeal Board (the “Board”), at a hearing on October 27, 2016, made and passed the following motion:

"That the hearing for SDAB-D-16-270 be tabled to November 16/17, at the request of the Appellant and with the consent of the Development Authority."

- [2] The Board, at a hearing on November 17, 2016, made and passed the following motion:

“That SDAB-D-16-270 be raised from the table.”

- [3] On November 17, 2016, the Board heard an appeal that was filed on **October 3, 2016**. The appeal concerned an order of the Development Authority, issued on September 19, 2016, which states, in part to:

Cease the use (General Contractor Services) and remove all related materials from the site before October 10, 2016

- [4] The subject property is on Plan 4347HW Blk 12 Lot 1, located at 4604 - 119 AVENUE NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.

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

- Copy of the Stop Order; and
- The Development Officer’s written submissions.

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

- Exhibit A – Vehicle data submitted by the Appellant
- Exhibit B – Photographs submitted by the Appellant
- Exhibit C – Community Consultation submitted by the Appellant
- Exhibit D – Copy of business license submitted by the Appellant

Preliminary Matters

- [7] Mr. J. Young advised that Brendan Bolstad works for him and he is unsure if he was related to Board member Allan Bolstad. Allan Bolstad indicated that Brendan Bolstad is his son. Mr. J. Young advised that Brendan Bolstad has not worked on this file and Allan Bolstad advised that his son had not discussed this file with him. The Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [8] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [9] 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. S. Boonstra*

- [10] The Appellant objected to the Development Officer's characterization of the use of his property as General Contractor Services. He submitted weight data for his vehicles, marked Exhibit A, as evidence that they are under 4600 kilograms and complied with the *Edmonton Zoning Bylaw*.
- [11] He stated that essentially any vehicle used for a business purpose can be considered a commercial vehicle. As an example, the wagon a child uses to deliver flyers could be considered a commercial vehicle.
- [12] He submitted a series of photographs evidencing a number of vehicles prevalent in his neighbourhood, marked Exhibit B, such as pick-ups with signage, utility vans, cube vans, panel vans, a dump truck and a school bus. It is common for people to bring work trucks home and he wondered why that is not considered commercial development as well. He felt the definition of commercial vehicles is too broad and most individuals in the City did not comply. The photographs also included a picture of his skid steer and tractor. As well, the photographs included pictures of recreational vehicles, trailers and utility trailers present in the neighbourhood.
- [13] The Appellant submitted letters of support from his neighbours, marked Exhibit C.
- [14] The Appellant submitted a copy of his General Contractor business license, marked Exhibit D, showing he has a Home Based Business at 11918-37 Street NW, Edmonton, which is not the subject Site. He also has a post office box. His clients are not aware of the subject Site.

- [15] The Presiding Officer referred the Appellant to the definition of General Contractor Services in Section 7.4(21) of the *Edmonton Zoning Bylaw*. Specifically, this definition states “development used for the provision of...services of a construction nature which require on-site storage space for materials, construction equipment or vehicles normally associated with the contractor service.” The Stop Order is to cease the Use of General Contractor Services. The definition does not refer to commercial vehicles or to the weight of vehicles, rather, it refers to on-site storage of vehicles associated with contractor services. The Appellant stated the City has not proved what he is using the vehicles for. The Appellant refused to answer when asked what the vehicles are used for.
- [16] The Appellant submitted that the definitions are so broad a large percentage of the population is not complying. The City is picking and choosing who to apply the rules to. He is being unfairly targeted. His neighbours do not have an issue with the use he is making of this property.
- [17] Upon questioning from the Board, the Appellant stated the business license location is his office where he conducts office administration. There is room on site for storage of his equipment. However, because of a neighbour complaint, he can no longer use that property for the storage of his equipment. As well, there are security issues. Warehouse storage is too expensive. When examining businesses, the City should consider vehicle weight, parking, traffic, noise and general nuisance.
- [18] The Appellant stated his business is called S.N.O.W. Enterprises. He has an acreage in Tofield where he stores out of season equipment. He cannot store everything there all the time because it is located 45 minutes out of town. Equipment is kept in city during the season.
- [19] Regarding the letter provided by the church, he advised that they let him park his truck and trailer on their property when there is street cleaning. The truck and trailer would be parked on street otherwise.
- [20] The Appellant clarified the business license property is also located in a residential area. He used to live there, but currently does not. He is not sure if he has a Development Permit at that property.
- [21] The Appellant confirmed that at the subject Site he has three trucks registered to the business as well as a trailer, tractor and a skid steer. He employs two to four people. Pick-up and drop-off of the equipment is done at the subject Site.

ii) Position of the Development Officers, Mr. J. Bailey and Mr. J. Young

- [22] Mr. Bailey reviewed his written submission. He is a duly appointed officer pursuant to the *Municipal Government Act* to enforce the *Edmonton Zoning Bylaw*. The property is zoned RF1 Single Detached Residential Zone. There is no permit history at 4604 – 119 Avenue NW. Eight inspections were conducted by Development Compliance between May 2014 and August 2016 and they have determined a Use (General Contractor Services) has been developed on site without a Development Permit. Mr. Bailey reviewed in detail the chronological summary of investigation activities and permit history. He believes the proposed development is more appropriately located in a commercial zone.
- [23] The Board asked the Development Officers to comment on the Appellant's submission that there are many other types of commercial vehicles present in the neighbourhood. Mr. Young advised that Development Compliance operates on a complaint basis. They do not have the background on those vehicles. If complaints are filed, they would assess the situation, conduct a site inspection, and then come to a determination as to use.
- [24] They submitted the Appellant would face similar issues at his business license site, which is also in an RF1 Zone where General Contractor Services is not an allowed use. It is not typical for a file to take two years to be resolved. In this instance, the file changed hands between officers. The Appellant was using the Site for storage only during certain hours, so it took some time to investigate. There was some contact between them and the Appellant. The Appellant considered the equipment to be for personal use. He has been issued several violation notices so he is aware of the issue.
- [25] The Development Officers stated the nature of business requires outdoor storage which is not allowed under a Major Home Based Business Development Permit. There can be some Site visits, but not unlimited. However, this is an appeal of a Stop Order, not a Development Permit.

iii) Rebuttal of the Appellant

- [26] The Appellant stated it has been a long process. He is trying to be cooperative and he has had many discussions with the enforcement officers. They do not agree on the interpretation of definitions. He has offered to put a fence up but was told the only way to resolve the issue is to remove the equipment. He has to be non-compliant to get in front of the Board.

Decision

- [27] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The Stop Order is UPHELD.

Reasons for Decision

- [28] Based on the evidence, the Board finds the following. The Appellant has a General Contractor business license for 11918-37 Street NW, Edmonton. Associated with that business are three trucks as well as trailers, a skid steer loader and a tractor. He used to store that equipment at 11918-37 Street NW, which is in a residential neighbourhood, but because of complaints he no longer does so. Now he stores the equipment at the subject Site. Between May 2014 and August 2016, eight inspections of the subject Site revealed equipment such as a skid steer loader, a utility tractor and a trailer for hauling the tractor and loader were being stored on the property.
- [29] The Development Compliance Officer issued an order to cease the Use of General Contractor Services and remove all related materials from the Site before October 10, 2016.
- [30] The allegation is that the Appellant is operating a General Contractor Services Use in a RF1 Single Detached Residential Zone where General Contractor Services is neither a Permitted nor a Discretionary Use.
- [31] Section 7.4(21) defines General Contractor Services as “development used for the provision of building construction, landscaping, concrete, electrical, excavation, drilling, heating, plumbing, paving, road construction, sewer or similar services of a construction nature which requires on-site storage space for materials, construction equipment or vehicles normally associated with the contractor service. Any sales, display, office or technical support service areas shall be Accessory to the principal General Contractor Services use only. This Use Class does not include Professional, Financial and Office Support Services.”
- [32] The Board is satisfied the equipment being stored on-site is typically used as construction equipment or is normally associated with contractor service. The Board agrees with the Development Compliance Officer that the storage of this equipment on-site constitutes a General Contractor Services Use. The Board is further satisfied that the Stop Order was properly issued to the registered owner in accordance with the requirements of 645 of the *Municipal Government Act* by a duly appointed official and should be complied with. Accordingly, the Appeal is denied.

[33] Although the Appellant showed the Board photographs that he claimed showed neighbours storing commercial vehicles on their property, those matters are not before the Board. As well, although the Appellant presented a petition signed by several neighbours saying they did not object to the use of his property, that does not change the fact that General Contractor Services is neither a Permitted nor Discretionary Use in the RF1 Zone and this Board has no power to allow a Use that is not listed in the Zone.

Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

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 5th Floor, 10250 – 101 Street, Edmonton.

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-D-16-292

Application No. 230719333-001

An appeal by Vishal Aggarwal / Ogilvie LLP to change the Use of a General Retail Store to a Major Alcohol Sales was **TABLED TO JANUARY 11, 2017.**