

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

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Date: December 10, 2015  
Project Number: 178387031-001  
File Number: SDAB-D-15-277

### **Notice of Decision**

This appeal dated November 2, 2015, from the decision of the Development Authority for permission to:

Operate a Minor Home Based Business (Contractor - Gravel Hauling - SWEETNAM FARMS LTD.)

On Plan 1120417 Blk 1 Lot 2, located at 20350 - 34 Street NW, was heard by the Subdivision and Development Appeal Board on November 25, 2015.

#### **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*, RSA 2000, c M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to operate a Minor Home Based Business (Contractor – Gravel Hauling – Sweetnam Farms Ltd.), located at 10340 – 34 Street NW. The subject site is zoned AG Agricultural Zone and falls within the North Saskatchewan River Valley and Ravine System Protection Overlay and the Edmonton Energy and Technology Park Area Structure Plan.

The development permit application was refused because a Minor Home Based Business shall not change the principal character or external appearance of the building and because the purpose of the AG Agricultural Zone is to conserve agricultural and rural land use activities. The storage of equipment is classified as a General Industrial Use, which is neither a Permitted nor Discretionary Use in the AG Agricultural Zone.

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

- Letters of support received from the Appellant on November 24, 2015
- A written submission from the Development Authority dated November 18, 2015
- A copy of the 60-metre Notification Area Report containing two online responses.

The Board heard from Ms. Shirley Sweetnam, representing the Appellant, Sweetnam Farms Ltd., who made the following submissions:

1. Her husband could not attend the hearing because he was hauling snow throughout the night.
2. They have resided at the property since 1993.
3. The truck is not a gravel hauler; it is strictly used to haul asphalt and stone in the summer and snow in the winter.
4. The truck returns to the subject property empty and without any raw materials.
5. It is parked inside the garage (shop) when on-Site.
6. The use of one truck in their trucking business offers them a subsidized income.
7. Their farming business has been leased out.
8. She was advised by the City that 34 Street is no longer a truck route; that change was made in 2012.
9. The truck has been on-Site since 1995.
10. 18 Street and 50 Street are truck routes with the same structure as 34 Street. Many other trucks, including grain trucks and other agricultural vehicles, use 34 Street.

Ms. Sweetnam provided the following responses to questions:

1. Her husband was issued a ticket, following a vehicle inspection by City Inspectors, who were tagging trucks that were illegally parked in the area.
2. A structure, used as a garage to park the truck and for minor maintenance jobs, was built on the Site in 1993.
3. Her husband washes the truck outside the garage.
4. 34 Street is a two lane rural roadway with no street lights.
5. She could not confirm the weight of the truck, but estimated that it was approximately 8000 pounds.

The Board heard from Mr. Kenneth Yeung, representing the Sustainable Development Department, who provided the following submissions:

1. This property is zoned AG Agricultural Zone and would not typically be re-zoned by the City for any other use.
2. As a result of a complaint, a Community Standards Officer issued a Violation Notice for the property because of the overweight vehicle.
3. It was their understanding that the Minor Home Based Business was not operating in compliance with the conditions that were imposed on the development permit that was issued in 1999. One of the conditions imposed was that the truck had to be parked off-Site at 12213 – 67 Street.
4. Although the property is located within the Edmonton Energy and Technology Park Area Structure Plan, and the long term vision for the area is changing, re-zoning applications must be driven by the property owner, not the City.
5. Mr. Yeung could not confirm details of the long-term plan for this Site.
6. The Minor Home Based Business regulations do not allow outdoor business related activities.

Ms. Sweetnam provided the following information in rebuttal:

1. The accessory building on their site is used for many purposes.
2. They did not apply for a development permit for a Minor Home Based Business in 1999.
3. She thought the address contained in the condition of approval was a fitness studio.
4. The use of 34 Street as a truck route changed in 2012, many years after they purchased the property.
5. They received written confirmation from the City about the restrictions placed on 34 Street (the prohibition of overweight vehicles).

**Decision:**

The appeal is **ALLOWED** and the decision of the Development Authority is **VARIED**. The development is **GRANTED**.

The development is subject to the following **CONDITIONS**:

1. The business use must maintain the privacy and enjoyment of adjacent residences and the characteristic of the neighbourhood;
2. There shall be no outdoor business activities, or outdoor storage of material or equipment associated with the business;
3. The Site shall not be used as a daily rendezvous for employees or business partners;
4. The Site shall not be used by employees or business partners as a parking or storage location;
5. This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details changes;
6. This approval is for a five year period from the date of this decision. This Development Permit expires on November 25, 2020. Should the business continue to locate at this location, an extension of the Development Permit must be approved prior to November 25, 2020.

**Reasons for Decision:**

The Board finds the following:

1. A Minor Home Based Business is a Discretionary Use in the AG Agricultural Zone.
2. Based on the evidence provided by the Development Authority and the Appellant, 34 Street is no longer a dedicated truck route.
3. Section 87 of the *Traffic Bylaw 5590* provides that vehicles that exceed 8,000 kilograms, such as a dump truck, can only operate on designated truck routes.
4. Based on the evidence provided, the truck used for the gravel hauling business exceeds 8,000 kilograms, and the only access and egress to the subject Site is via 34 Street.
5. In the opinion of the Board, the subject of this appeal was improperly deemed to be 'General Industrial Use' by the Development Authority. Accordingly, the Board, as a *de novo* panel, finds that the subject of this appeal is, in fact, a Minor Home-based Business, and issues a permit for same for the reasons enumerated herein.

6. The storage of the single vehicle used for this business is in a custom-built garage. It is unlikely a passerby would know that a business operated out of this location, save for a farm, which is another use of the lands.
7. There is no signage respecting the business.
8. The Board accepts the submissions of the Appellant that there is no activity associated with business at the subject site—the gravel truck leaves empty, and returns empty at the end of each work day.
9. The Board acknowledges that the gravel hauling business has been operating from the subject Site for many years with the support of affected property owners, and that a development permit for a Minor Home Based Business was issued in 1999.
10. The Board also notes that the subject Site falls within the Edmonton Energy and Technology Park Area Structure Plan. The Board must have regard for Statutory Plans in effect, as well as the long term plans for the area.
11. Several practical reasons allow the Board to make this decision. Namely:
  - a. The only access to the subject site is along 34 Avenue; and
  - b. The truck-route designation was changed unilaterally by the City of Edmonton, and without consultation or knowledge given to the Appellant;
12. Based upon the foregoing, the Board finds that an exception to the Section 87 heavy truck prohibition is reasonable and should be granted in this case. Section 87(4)(b) allows the Board to do just that.
13. Section 87(4)(b) of City of Edmonton Bylaw 5590, *Traffic Bylaw*, provides that:
  - (4) This Section [Section 87(2)] does not apply to a heavy vehicle being operated on the most direct and practical route between a location and the nearest truck route for:
    - (b) traveling to or from the business premises of the owner of the heavy vehicle;
14. Based on the above, the Board finds that the proposed development, with the conditions attached, 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 the Applicant/Appellant**

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1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5<sup>th</sup> Floor, 10250 – 101 Street, Edmonton.
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*, 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.

*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.*

Mr. W. Tuttle, Presiding Officer  
Subdivision and Development Appeal Board

15210 - 79A Avenue NW  
Edmonton AB  
T5R3H4

Date: December 10, 2015  
Project Number: 179835823-001  
File Number: SDAB-D-15-278

### **Notice of Decision**

This appeal dated October 28, 2015, from the decision of the Development Authority for permission to:

Operate a Major Home Based Business - Jewellery Design, production and Shipping

On Plan 5580KS Blk 3 Lot 11, located at 15210 - 79A Avenue NW, was heard by the Subdivision and Development Appeal Board on November 25, 2015.

**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*, RSA 2000, c M-26.

The Board heard an appeal of the decision of the Development Authority to approve an application to operate a Major Home based Business (jewellery design, production and shipping), located at 15210 – 79A Avenue NW. The subject Site is zoned RF1 Single Detached Residential Zone and falls within the Mature Neighbourhood Overlay and the Medium Scale Residential Infill Overlay.

The development permit application was approved, subject to conditions, and 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 November 20, 2015
- Written submissions from the Respondent dated November 10 and November 20, 2015.
- An online response in opposition to the proposed development.

The Board heard from the Appellant, Mr. Demachi, who provided the following submissions in support of the appeal:

1. This is a mature neighbourhood; home based businesses should not be allowed in residential zones.
2. The proposed business creates change in the neighbourhood and may encourage others to follow suit.
3. He is concerned about increased traffic and enforcement issues.
4. If business production increases, more employees may be required.
5. He has safety concerns regarding the possible use of gas blowers and cutting, which is a potential fire hazard.
6. He is concerned with how often the City would inspect the site. He likened this to other approved businesses that require safety checks and questioned how regulations would be enforced.

The Board heard from Ms. Lai, representing the Sustainable Development Department, who provided the following information:

1. She confirmed the information contained in her written submissions and advised the Board that the proposed development complies with all of the regulations for a Major Home Based Business, pursuant to Section 75 of the *Edmonton Zoning Bylaw*.

The Board heard from the Respondent, Ms. Sabrina Siponen, who provided a written submission, marked Exhibit "A" and made the following submissions in support of the proposed development:

1. She started this business five years ago and recently moved into this neighbourhood.
2. The raw materials for her jewelry are made in India and shipped to her house where she uses small tools to assemble the pieces.
3. She does not use any heavy equipment and there is no risk of fire.
4. The primary business activity that occurs in her house is administrative. She receives materials from India that are labelled, boxed, and checked for quality assurance. She estimated that 90 percent of the business is administrative and five percent is online sales.
5. The operation of her business will not impact traffic in the neighbourhood.
6. There is adequate parking because her lot is pie shaped with approximately 50-metres of frontage that provides on street parking. There is a two car garage with one extra parking space available inside the garage.
7. Her address is not listed publicly on any business related documents or marketing material provided online.
8. She currently has one employee who works during regular business hours.
9. A courier comes to her house twice a week and stays for only a few minutes.
10. She canvassed the neighbourhood and received 14 positive responses, two verbal responses and 12 signatures of support.
11. The Appellant is one of the neighbours who objected to the proposed business. She attempted, without success, to discuss her business with the other neighbour who was opposed to the proposed business.

Ms. Siponen provided the following responses to questions:

1. This is strictly a wholesale business.
2. Canvassing the neighbourhood allowed her to meet her neighbours, many of whom she discovered also work from home.
3. Orders from India are delivered every three months, which will not negatively impact traffic in the neighbourhood.

Mr. Demachi made the following submission in rebuttal:

1. He questioned how this could be considered a home based business when materials are imported in from India and not produced on-Site; this is not characteristic of a home based business.

**Decision:**

The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority.

**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 accepts the evidence provided by the Respondent and the Development Authority in its entirety, and is satisfied that the Respondent will operate the proposed Major Home Based Business in accordance with the imposed conditions.
3. The proposed Major Home Based Business is compatible with the development regulations contained in Section 75 of the *Edmonton Zoning Bylaw*, for the following reasons:
  - a) The business is operated within the Dwelling and the design and production processes are handmade. No heavy tools or equipment will be used and therefore no external noise or visible and audible interference will be created;
  - b) One resident employee, one non-resident employee, and the property owner will work on-Site. There is a two-car garage with two parking spaces on the driveway. A courier will come to the Site for delivery two times per week. The maximum number of employees and total business visits per day are within the allowable scope, and the business will not generate additional pedestrian, vehicular traffic or parking issues.
  - c) There will be no outdoor business activity or outdoor storage of material of equipment associated with the proposed business. There will be no customer visits to the subject property. Therefore, the business will not change the principal character or external appearance of the Dwelling, and will not negatively impact the neighbourhood.
  - d) The proposed business hours are Monday to Friday from 9:00 a.m. to 5:00 p.m. The non-resident employee will be on-Site Monday to Friday from 11:00 a.m. to 4:00 p.m., which will not negatively impact the neighbourhood;
  - e) No previous Bylaw complaints related to the operation of this business have been filed by neighbouring tenants or property owners.
4. The Appellant did not provide any valid planning reasons that would deny the property owner's right to the proposed Use, or affect the operation of a Major Home Based Business from this location.
5. Based on the evidence provided, the Board finds that the proposed Major Home Based Business will not create any safety concerns. Enforcement of the imposed conditions is outside the purview of the Board, and is overseen by the Bylaw Enforcement Department.
6. Based on the evidence provided, 12 neighbouring property owners have provided written support for the proposed development.
7. Based on the above, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

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Mr. W. Tuttle, Presiding Officer  
Subdivision and Development Appeal Board