



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: September 21, 2017
Project Number: 179669631-004
File Number: SDAB-D-17-170

Notice of Decision

- [1] On September 13, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 4, 2017**. The appeal concerned the decision of the Development Authority, issued on August 3, 2017, to refuse the following development:

To add the use of a Minor Impact Utility Service to a Single Detached House site

- [2] The subject property is on Plan 7722309 Lot 1, located at 18011 - 34 Street NW, within the AG Agricultural Zone. The Edmonton Energy and Technology Park Area Structure Plan 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; and
 - The Development Officer’s written submission.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Development Concept map referenced by the Appellant’s Agent
 - Exhibit B – Five letters of support submitted by the Appellant’s Agent

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*, R.S.A 2000, c. M-26 (the “*Municipal Government Act*.”).

Summary of Hearing

i) Position of the Appellant, Mr. V. Bhardwaj, agent for Mr. & Mrs. Grewal:

[8] Mr. Bhardwaj confirmed that on September 11, 2017, City Council gave second reading to a Bylaw to create a new Special Area Zone, (EETIM) Edmonton Energy and Technology Park Medium Industrial Zone. This Bylaw has not received third reading, nor has it been passed.

[9] The proposed Minor Impact Utility Service should be approved as a Discretionary Use for the following reasons.

[10] The General Purpose of the AG Agricultural Use is to “conserve agricultural and rural uses”. For this purpose, the minimum size stipulated is 32 hectares or 80 acres. This site is only 2 hectares which is too small to operate as a Farm, which is a Permitted Use. Therefore, Discretionary Uses have to be considered.

[11] Minor Impact Utility Services are partly defined as “that which is used to provide for public consumption, benefit, convenience or use”.

[12] Almost all of the work is done for the City of Edmonton, and is addressed to the infrastructure of the City, specifically snow hauling, gravel and soil hauling for road building and municipal utilities. Mr. Grewal has been providing this service to the City for the past ten years and considers himself to be an integral part of the service utilities of the City. The trucks are parked on the subject site at night.

[13] Therefore, the Use complies with the definition of Minor Impact Utility Service.

[14] The proposed use will not be incompatible with the future zoning of the site. The new Medium Industrial precinct will allow a General Industrial Use.

[15] A Development Concept map was submitted and marked Exhibit A, to illustrate the area of the proposed rezoning which includes the subject site.

[16] The use of the site will be included as a listed Use in this zone.

[17] At this point, it was clarified by the Presiding Officer that the Board is required to make a decision based on the current zoning of the subject site.

[18] Five letters of support from neighbouring property owners were submitted marked as Exhibit B.

- [19] The City has identified the current use, parking trucks on the subject site, as a General Industrial Use which will be a Permitted Use in the Edmonton Energy and Technology Park Medium Industrial Zone. This rezoning should be complete by the end of this year.
- [20] Mr. Bhardwaj reiterated his opinion that this Development Permit application should be approved as a Minor Impact Utility Service.
- [21] Mr. Bhardwaj provided the following information in response to questions from the Board:
- a) One hundred percent of his client's work is done for the City of Edmonton, some directly and some that is contracted out.
 - b) Mr. Grewal has a Business Licence to operate from the subject site.
 - c) Mr. Grewal operates 8 or 9 large industrial trucks, hauling snow in the winter and sand and gravel for road maintenance during the summer months.
 - d) Any individual has the ability to hire Mr. Grewal's trucking company.
 - e) It was his opinion that hauling sand and gravel should be considered as part of City infrastructure and therefore fits the definition of a Minor Impact Utility Service.
 - f) Consideration was not given to a possible extension of the Stop Order that was previously issued.
 - g) If the Board does not find that the proposed Use is a Minor Impact Utility Service, he asked the Board to postpone the hearing until the Edmonton Energy and Technology Park Medium Industrial Zone is adopted by City Council.
 - h) This is a family business and it is their livelihood.
- ii) *Position of the Development Officer, Mr. P. Belzile:*
- [22] A Development Permit application for this site will have to be reviewed based on the development regulations contained in the Edmonton Energy and Technology Park Medium Industrial Zone after the Bylaw is approved by City Council. Meetings have been held with the Appellant and his agent to discuss the processes and challenges involved in approving a Development Permit for a General Industrial Use in this Zone, even though it may be a listed Use once the land is rezoned.
- [23] Mr. Belzile referenced his written submission to review the history of the site and the reasons for refusal.
- [24] It was his opinion that it is dangerous to say that anyone doing work for the City of Edmonton should be considered as a Minor Utility Impact Service because it would remove the requirement to have a Business Licence or comply with any other regulations. A Utility Service is governed by other regulations.
- [25] Mr. Belzile provided the following information in response to questions from the Board:

- a) It was his opinion that the Appellant's Business Licence is not valid because they do not have an approved Development Permit for the Use that is occurring on the subject site.
- b) The Appellant may have had a Business Licence for the business that was operating from a different site.
- c) He did not consider the support of neighbouring property owners because it was his opinion that the proposed Use is a General Industrial Use which is not listed in the AG Agricultural Zone.
- d) The site can be used as a Single Detached House site until the land is rezoned.
- e) The Appellant does work for the City but that work could end at any time and he would be using his trucks to haul for any other customer.
- f) Meetings have been held with the Appellant to discuss options that would allow the business to operate with a valid Development Permit until the land is rezoned. City staff has been working with the Appellant to locate a site where the trucks could be parked off site. An application for a Minor Home Based Business is pending the outcome of this appeal hearing.

iii) Rebuttal of the Appellant

- [26] The Appellant has a Business Licence to operate his business from the subject address.
- [27] Assurances have been provided by the City and the Mayor that the rezoning process will be completed this winter.
- [28] It was his opinion that the Board can approve the Use as a Minor Impact Utility Service until the land is rezoned.
- [29] The Presiding Officer clarified that the previously issued Stop Order is not before the Board at this time. The Board can only consider the refusal of the Development Permit application to add the Use of a Minor Impact Utility Service to a Single Detached House site. Therefore, the Board has no authority to extend the compliance date contained in the Stop Order.

Decision

- [30] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **REFUSED**.

Reasons for Decision

- [31] The subject site is zoned AG Agricultural Zone. Minor Impact Utility Services is a Discretionary Use in this zone.
- [32] The General Purpose of the AG Agricultural Zone is to conserve agriculture and rural uses.

[33] Section 7.7(7) of the *Edmonton Zoning Bylaw* defines a Minor Impact Utility Service as:

“development for public utility infrastructure purposes which is likely to have some impact on the environment or adjacent land Uses by virtue of its appearance, noise, size, Traffic Generation or operational characteristics. Typical Uses include vehicle, equipment and material storage yards for utilities and services; telephone exchanges; wire centres; switching centres; snow dumping sites; Transit Centres; transit depots and transfer facilities; water towers; hydrospheres; water treatment plants; power terminals and distributing substations; communication towers and gate stations for natural gas distribution”.

[34] The Board agrees with the Development Officer that the proposed Use does not fit the definition of Minor Impact Utility Service Use because the eight or nine semi-tractor trucks used in the trucking business are privately owned by the Appellant, the business does not provide a public service such as electricity, water or natural gas and is not dedicated to public utility infrastructure purposes. The trucks may be used to transport any variety of cargo. The Board also agrees with the opinion of the Development Officer that the proposed Use should be defined as a General Industrial Use, which is neither a Permitted Use nor Discretionary Use in the AG Agricultural Zone.

[35] The Board finds that it would be an error in law to make a decision regarding the proposed Use based on a prospective rezoning application. Indeed, the Board must make a decision based on the current zoning regulations and the listed Uses in that Zone.

[36] The Board acknowledges the request of the Appellant to postpone the hearing until the rezoning process is complete. However, the Board finds that granting a postponement would not be beneficial to the Appellant or the City. This is due to the fact that after the area is rezoned (if at all), a new Development Permit application will be required and it will be reviewed using the development regulations contained in the (EETIM) Edmonton Energy and Technology Park Medium Industrial Zone.

[37] The Board notes that a Stop Order to cease the General Industrial Use (Truck Yard), including all components of the business and remove all related materials by September 15, 2017 was upheld by a panel of the Board on August 11, 2017. However, the only matter that can be considered by this Board is the refusal of the Development Permit application to add the Use of a Minor Impact Utility Service to a Single Detached House site. Therefore, this Board has no authority to extend the compliance date contained in the Stop Order.

[38] The Board acknowledges the support of five affected property owners. However, the ongoing development does not match the definition of the Minor Impact Utility Service Use any more than it matched the Major Home Based Business Use which was the subject of an appeal to the Court of Appeal of Alberta for this same site with the same use (2017 ABCA 140). To deem the proposed Use otherwise would be further propagating the initial 2015 decision in this matter, which was overturned by the Court of Appeal of Alberta earlier this year. In light of the foregoing, this Board seeks to incorporate the

reasons of the Court of Appeal in its decision making and defers to the wisdom of that Honourable Court.

[39] For all of the above reasons, the appeal is denied and the decision of the Development Authority to refuse the application is confirmed.



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

Board members in attendance: Mr. N. Somerville, Ms. S. LaPerle, Ms. E. Solez, Mr. J. Kindrake

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 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.