



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: March 10, 2017
Project Number: 231010857-001
File Number: SDAB-D-17-042

Notice of Decision

- [1] On March 1, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **February 1, 2017**. The appeal concerned the decision of the Development Authority, issued on January 19, 2017, the following development:

Comply with a Stop Order to cease the General Industrial Use and remove all related materials from the site before February 20, 2017

- [2] The subject property is on Plan 9925026 Lot 11, located at 21451 - Fort Road NE, within the AG Agricultural Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Stop Order;
 - The Development Compliance Officer’s written submissions; and
 - Online responses.

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

Summary of Hearing*i) Position of Mr. Burchak, who was speaking on behalf of the Appellant, Mr. H. Boparai*

- [7] Mr. Burchak stated that Mr. Boparai is asking for a one year extension to comply with the Stop Order.
- [8] It will cost between \$500 to \$800 to remove each truck as they will need to be towed and will total approximately \$10,000 to \$15,000.
- [9] The additional time will be a financial help to the Appellant.
- [10] The trucks are frozen to the ground and extending the time will allow for the ground to thaw for easy removal.
- [11] The Board pointed out that granting a one year extension would result in the trucks still being onsite in winter months. Mr. Burchak stated that the Appellant just needs time over the summer to make sure everything can be easily removed.
- [12] In response to a question, Mr. Burchak stated that the Appellant will not continue to repair vehicles onsite if an extension is granted.

ii) Position of the Development Officer, Mr. M. Doyle

- [13] Mr. Doyle does not have a presentation since the Appellant is not contesting the Stop Order.
- [14] The Appellant was advised of the problems regarding his use of the property in September 2016 and now it is March 2017, so he feels the Appellant has had more than sufficient time to deal with the problems. Development Compliance felt it was necessary to issue the Stop Order because the Appellant was not dealing with the issues in a timely manner.
- [15] In response to questions from the Board regarding the Appellant's position that spending \$15,000 to deal with the issue in a short period of time would be a hardship, Mr. Doyle responded that the Appellant has had since September 2016 to deal with the issue and that financial hardship was not a valid reason to grant an extension for an illegal Use. Also, he noted that this improper use of the property is affecting the neighbourhood.
- [16] He stated that the Stop Order could be complied with in approximately one month or perhaps two months at the most.
- [17] He expressed the opinion that, while removing the heavy equipment in the winter while the gravel road leading to the property is frozen would cause less damage to the road, it is a relatively short distance to Manning Drive. This means that any damage to the gravel road would be minimal even if the equipment were moved in the summer months.

[18] He confirmed that some of the vehicles have already been removed from the subject Site.

iii) Rebuttal of the Appellant, Mr. H. Boparai

[19] He reiterated that the main issue to complying with the Stop Order is incurring all the cost to remove the vehicles in a short time period.

Decision

[20] The appeal is DENIED and the Stop Order UPHELD.

Reasons for Decision

[21] The Stop Order was issued pursuant to Section 645(1) of the *Municipal Government Act*.

[22] The Appellant has been conducting a General Industrial Use on the property by using the Site for the storage and servicing of heavy commercial trucks. The Site is zoned AG Agricultural. In this zone, General Industrial Use is neither a Permitted nor a Discretionary Use.

[23] The Appellant's representative did not take issue with the validity of the Stop Order but simply wanted an extension of the deadline to remove the equipment from the property. The reasons he gave for wanting the extension were that some of the trucks were frozen to the ground and that incurring the approximate cost of \$15,000 to clean up the Site in a short period of time would be prohibitive.

[24] The Board is satisfied that the Stop Order was issued correctly. The only question is whether it is appropriate to grant an extension of the deadline to comply with the Order.

[25] The Board notes that a violation notice was issued with respect to the property on October 21, 2016. In the period from November 2016 to January 2017 the Appellant removed only eight vehicles from the Site, leaving 22 trucks, two passenger vehicles and four trailers onsite. It was because of the slow pace of compliance that Development Compliance felt it was necessary to issue the Stop Order.

[26] Further, the Board notes that two of the affected property owners indicated that they want the Stop Order complied with. One of them voiced concerns about constant heavy truck traffic entering and leaving the Site, the noise from power tools in the evenings and on weekends and the unsightly conditions on the property.

- [27] In the circumstances, the Board is of the view that the illegal Use on the property is significantly interfering with the use and enjoyment of neighbouring parcels of land and should be dealt with expeditiously. The Board is also of the opinion that the fact that some of the trucks are frozen to the ground will not prevent them from being moved. The Board feels that the Appellant has had adequate time to deal with the problem and the request to extend the deadline for a year is unreasonable.
- [28] The Board is confident that the Development Compliance Officer will consult with the Appellant with respect to the timing and the enforcement of the Stop Order.

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-17-043

Application No. 238668895-001

An appeal by Hanna Lytovchenko VS Sunny Valley Homes to construct a Single Detached House with front attached garage, front veranda, fireplace and rear uncovered deck (2.44m x 3.96m) was **WITHDRAWN**.