



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: August 31, 2017
Project Number: 242253884-001
File Number: SDAB-D-17-147

Notice of Decision

- [1] On August 17, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on July 25, 2017. The appeal concerned the decision of the Development Authority, issued on July 6, 2017, to approve the following development:

Develop a Minor Impact Utility Service (Compost Curing Pad, Storm Water Retention Pond and fence enclosure) as a Temporary Development (maximum of 5 years), Edmonton Waste Management Centre, Horsehills Site

- [2] The subject property is on NE-35-54-24-4, located at 25104 - 50 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 approved permit, permit application with attachments and plans, and permit fee payment letter;
 - Development Officer's written submissions dated August 10, 2017, including aerial maps and information about composting;
 - Information regarding notification of property owners within the notification area, including correspondence between the City of Edmonton and Sturgeon County regarding notification of Sturgeon Country property owners;
 - Appeal notification letter from the Subdivision and Development Appeal Board to Sturgeon County; and
 - Appellant's written submissions.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – PowerPoint slides regarding the Edmonton Energy and Technology Park Area Structure Plan and proposed amendments.

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.

Summary of Hearing

i) Position of the Appellant, Mr. A. Maxfield

- [8] At the Board's request, Mr. Maxfield referred to an aerial map and identified that he lives just north of Highway 37 (259 Avenue NW) and east of Range Road 240. Both Highway 27 and Range Road 240 are paved. Access to the subject Site is via 50 Street, which is an oiled road.
- [9] Mr. Maxfield reviewed his written submissions and reiterated his concerns about the development's potential noise and odour impacts, as well as the potential for it to attract seagulls and other birds. He questioned whether the proposed development would aggravate his existing health condition.
- [10] On the southern portion of the subject Site, the City operates a snow dump yard. The existing security light for this yard illuminates into his home and his neighbour's home at night. He questioned whether this light could be adjusted so that it does not illuminate as far.
- [11] During a recent bout of high winds, the sand on the existing cement pad located on the subject Site spun into the air, heavily impacting visibility. He expressed concerns about the impact of high winds on the proposed compost curing pads, and questioned whether appropriate dust control mechanisms would be put in place. The majority of winds in the area blow from the northwest.
- [12] To mitigate his concerns, he would like the City to construct a large berm and ensure that noise levels are monitored. The berm would hide the proposed development from public view off of Highway 37. The development should also be fenced.
- [13] Finally, he questioned how the cured compost would be disposed of, and whether the finished product would be sold commercially.

ii) Position of the Development Authority

- [14] The Development Authority was represented by Development Officer, Mr. P. Kowal. He was accompanied by representatives from various City of Edmonton Departments: Mr. G. Beck of City of Edmonton Regional and Economic Development (Edmonton Energy and Technology Park), Ms. M. Lee and Mr. J. Gallinger of Waste Management Services.
- [15] Referring to the 60 metre notification map, Mr. Kowal explained that he sent a copy of the map to Sturgeon County to obtain contact information for the Sturgeon County property owners residing within the 60 metre radius. Notification letters were sent based on this information, and the Appellant does not appear to be within the notification area.

The Development Officer's Review

- [16] Regarding the Use class of the proposed development, Mr. Kowal explained that there is only one other compost curing operation within the city. That operation is integrated on a much larger site that addresses the multiple stages involved with waste management. That larger facility is located in a direct control zone.
- [17] By contrast, the proposed development consists only of the final stage of compost curing, which was why he felt it would be appropriately classified as a Minor Impact Utility Service within the AG Agricultural Zone. He was not aware of any other compost curing facility classified as a Minor Impact Utility Service.
- [18] The Board noted that within the AG Zone, Major Impact Utility Service is not a listed use. After reviewing the definitions for both Major and Minor Impact Utility Service, the Board noted that the former makes reference to major impacts on the environment, including developments with "potential emissions", whereas the latter references only "some impact". Both definitions also list various examples. The Board questioned whether the proposed development, with its potential for odourous emissions, should be properly classified as a Major Impact Utility Service.
- [19] Mr. Kowal explained that the proposed compost curing pad is the final stage of a nine-stage waste management process, therefore, no raw materials will be shipped to the Site. The definition for Major Impact Utility Service includes examples such as sewage treatment plants and sewage lagoons, which hold primary sources of waste and is distinguishable from a curing pad. A compost curing pad is also different from a sludge disposal pond. In the latter, a hydrovac cleans out the raw material from underground, with the collected matter shipped to a pond for settling. Sludge disposal also serves a different purpose from compost curing.

- [20] In his view, the curing pad is similar to a storage yard, which is a listed example within the definition of Minor Impact Utility Service. He explained that during the curing process, some of the dirt is rotated occasionally to circulate oxygen through the compost. However, once the curing is completed, the product remains stored on-site until it is packaged for delivery.
- [21] Regarding the Appellant's concerns, Mr. Kowal emphasized that the only landscaping variance required is along 50 Street. The Appellant's suggestion for a berm along Highway 37 (259 Avenue NW) would result in a very long berm for what will effectively be a temporary development.
- [22] Landscaping could also affect future subdivision, where landscaping could be strewn across multiple lots with multiple zoning. Landscaping could also interfere if additional accesses are needed for subdivided lots.

Compatibility with the Edmonton Energy and Technology Park Area Structure Plan (the "ASP")

- [23] Upon questioning by the Board regarding the proposed operation and its fit within the Area Structure Plan, Mr. Kowal deferred to Mr. Beck.
- [24] Mr. Beck reviewed the history of the ASP, which was adopted in 2010. Since then, many arterial roadways and infrastructure need to be updated. In September 2017, a public hearing will be held regarding amendments to the ASP. One of the proposed amendments is the inclusion of a Medium Industrial Precinct, in which Major Impact Utility Services would be contemplated. These precincts will guide the rezoning that will be supported within the ASP, as well as the developments that would be supported during the transitional period. That being said, interim uses will remain primarily agricultural, and it is expected that agriculture will continue to dominate the area for the next few decades, with a build out of 30 to 50 years.

The Proposed Development: Operations and Impact Management

- [25] Mr. Kowal deferred to Ms. Lee and Mr. Gallinger from Waste Management Services to provide greater context regarding the development. Mr. Gallinger explained that the current City of Edmonton Waste Management Centre ("EWMC") is a much largersite consisting of numerous facilities involved in the waste management process, including sewage lagoons, transfer stations for garbage drop-off, a waste-to-energy plant, and a compost curing pad. This curing pad was built in 1999 and is no longer adequate to serve the City's needs, and the footprint of the Site itself has been exhausted.
- [26] In Mr. Gallinger's view, a properly managed curing process is not particularly odourous. In April, the EWMC invited residents in the vicinity of the proposed development to tour the facility, including the compost curing pad. The Appellant was one of the attendees and at the time, it did not appear that there was any concern about odours.

- [27] The EWMC is also governed by provincial regulations, which have stringent controls for site activities. For example, turning of composting piles may be restricted depending on wind direction, and all turning must be completed by 4:00 p.m., before residents return to their homes from work. The existing odour management plan for the EWMC is for the entire site, therefore, it must take into account all odourous activities from the various on-site facilities.
- [28] By contrast, though the proposed development will remain governed by stringent provincial regulations, the odour management plan for the proposed site will likely be less intensive than the EWMC plan, since the proposed Site will only house a compost curing pad. However, one of the impact management mechanisms at the EWMC site which will carry over to the proposed development is a hotline that nearby residents can utilize to submit concerns about odour or dust. In cases where multiple calls are received within a certain timeframe, an outside independent consultant attends the Site to investigate the complaints.
- [29] Waste Management Services would not be opposed to Board-stipulated conditions regarding odour management, should it be a requirement for the development permit. However, it would be preferable to leave regulation of the compost curing pad to the provincial regulator rather than through the Subdivision and Development Appeal Board.
- [30] Alberta Environment has not reviewed the proposed curing pad. They will do so only after a development permit is granted. Waste Management Services had previously obtained a development permit for the same development at a different site; however, upon review by Alberta Environment, that site was denied approval by the provincial regulator. It is possible that even if the Board approves the subject development, Alberta Environment may still deny the site.
- [31] Dust and noise control methods will be through restriction of operating hours, with more activity during the summer months. However, Waste Management Services is amenable to altering its hours of operation based on community needs. Their policy is to allow only one shift for a maximum of 12 hours, which also limits the hours of operation.
- [32] The only traffic to and from the Site will be for the delivery of compost and pick-up of the cured product. An maximum of 10 to 12 trailers per day is anticipated. The schedule for the trailers can be staged to minimize impact. The final product is sold only to commercial clients, mostly for the Alberta coal mines. There would be no additional traffic from individuals as the product is not sold to the general public.
- [33] Regarding the Appellant's concerns about lights from the Site, Waste Management Services confirmed that no additional lights will be installed to the north side of the Site where the curing pad will be constructed. However, the south side of the Site, which houses the snow dump operation, is maintained by Transportation Services.

[34] Mr. Gallinger confirmed that the development will require a phased development, and the consultant has recommended a south-to-north construction schedule based on access off 50 Street. He emphasized that the proposed development is for a five year term, as Waste Management Services is still examining options for permanent operations. They do not intend to develop the full site, though it may be possible in the future.

iii) Rebuttal of the Appellant

[35] Mr. Maxfield's main concern is that the City commit to mitigation measures for dust control and visual impacts. He acknowledged that he was not included in the 60 metre notification, but in his view, he resides on a portion of the land that is within the notification area, and he would like to be included in such types of notifications in the future. The Board explained that the City of Edmonton has no access to the personal information of property owners outside its jurisdiction; his request would have to be taken up with Sturgeon County.

Decision

[36] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority, subject to the CONDITIONS as set out in Permit 242253884-001, issued on July 6, 2017, in addition to the following conditions:

- 1) Turning of outdoor composting piles must be done before 3:00 p.m. to reduce potential odours in the evening.
- 2) Turning of compost piles must be reduced or stopped during conditions of high potential odour migration to communities. During such weather conditions, only older mature piles of compost are to be turned.
- 3) Operating hours are restricted to 7:00 a.m. to 7:00 p.m.

[37] In granting the development, the following VARIANCE to the *Edmonton Zoning Bylaw* is allowed:

- 1) Section 55.3 is waived, and no landscaping is required for the Front Setback abutting 50 Street, and Rear and Side Setbacks abutting 259 Avenue (Highway 37).

Reasons for Decision

[38] The proposed development is for a Minor Impact Utility Service, which is a Discretionary Use in the AG Agricultural Zone.

[39] Under section 685(2) of the *Municipal Government Act*, “any person affected by an order, decision or development permit made or issued by a development authority may appeal to the subdivision and development appeal board.” The Appellant confirmed that he did not receive notice of the development as his property is not located within the 60 notification area. However, he identified that his property is located just north of the proposed development, across from Highway 37 (259 Avenue). In his view, he is a person who may be potentially affected by the proposed development. The Board accepted his position and proceeded to hear his appeal.

[40] Under section 687(3)(d) of the *Municipal Government Act*,

In determining an appeal, the subdivision and development appeal board

...

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

[41] The proposed development requires one variance to the landscaping regulations under the *Edmonton Zoning Bylaw*. The landscaping requirements were waived by the Development Authority. This Board confirms the decision of the Development Authority, and finds that the proposed development will not materially impact the neighbourhood or neighbouring parcels of land for the following reasons:

- a) The Board heard that there were concerns about potential odour from the proposed compost curing pad, as well as an increase in dust movement created by the compost piles sitting in the open. However, Waste Management Services submitted that an odour management plan will be put in place, and that compost curing activities are governed under strict provincial regulations. These regulations include the restriction of turning compost piles under certain environmental conditions. The Board is satisfied that odour and dust concerns will be managed appropriately.

- b) In addition to the provincial regulations, the Board has imposed additional operational conditions upon the development, including the restriction of its operations between the hours of 7:00 a.m. and 7:00 p.m., and the requirement that compost piles be turned no later than 3:00 p.m. These conditions will further mitigate the concerns regarding dust and odour.
- c) The Appellant expressed concerns over the existing light emission from the subject Site. However, the existing lighting is located on the southern portion of the Site, which is a snow dump site and is not managed by Waste Management Services. The Board was also assured that no such lighting will be installed on the northern portion of the Site.
- d) The Appellant suggested the construction of a berm along Highway 37 to mitigate the visual impact of the proposed development. However, the compost curing pad is separated from the lots to the north by Highway 37. Furthermore, the proposed development will have a south-to-north construction, while the nearest property to the north is located 116 metres from the northernmost portion of the subject Site. These factors will mitigate the potential visual impact of the compost curing pad along Highway 37.

[42] For the above reasons, the Board finds 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. The appeal is denied.



Brian Gibson, Presiding Officer
Subdivision and Development Appeal Board

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, 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 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.