
**SUBDIVISION AND DEVELOPMENT APPEAL BOARD HEARING
TOWN OF EDSON
EDSON CIVIC CENTRE - 605 50 STREET**

Hearing Date: November 14, 2022
Development Permit Application Number: 050-2022
Property Location: Plan 1494AC; Block 16; Lots 16-17
Municipal Address: 4912 and 4914, 3 Ave, Edson AB

Appellants: Free-Bird Investments Corp - Greg Templeton and Tracy Templeton
2450116 Alberta Ltd - Joff Kehler

Development Authority: Clayton Kittlitz, General Manager, Infrastructure & Planning
Julia Darling, Development Officer
Jeneane Grundberg – Legal Counsel

Audience Present:* Hussein Saleh (Applicant)
Charles Wells
Rena Preer
Susanne Glober

**Includes only those individuals who identified themselves using the posted Sign-In sheet.*

Before: Maria Carter, Chairperson & Board Member
Debbie Burgess, Board Member
Greg Pasychny, Board Member

SDAB Clerk Daniel Lukac
Scott Harwardt – Legal Counsel

**NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL
BOARD**

This is a decision of the Subdivision and Development Appeal Board (the “Board”) regarding an appeal of a decision of the Town of Edson’s Development Authority dated October 3, 2022 and numbered 050-2022. Two appeals were filed in respect of the decision, and both were received within the time limits prescribed by section 686 of the *Municipal Government Act*, RSA 2000, c. M-26 (the “MGA”).

In accordance with section 686(3) of the MGA, notice of the hearing was given to the appellants, the Development Authority, and those owners required to be notified under the Town of Edson Land Use Bylaw No. 2070, as amended (the “LUB”). In this case, this was all owners within 30.0 metres of the Subject Property. Notice was also given to the applicant for the development permit. A hearing was held in the Council Chambers of the Edson Civic Centre, at 605 50 Street, Edson, Alberta on November 14, 2022.



BACKGROUND AND HEARING OVERVIEW

The Town of Edson's Development Authority approved Development Permit Application No. 050-2022 for a change of use from "Retail Office Space" to "Recycling Depot with Driveway" on the site located at Plan 1494AC, Block 16, Lots 16-17 (the "Subject Property"), subject to specified conditions.

The Appellants filed their appeals, asking the Board to overturn the Development Authority's decision. An additional written submission in support of the appeal was also received.

At the onset of the hearing, the Board Chairperson, Maria Carter, confirmed with those in attendance that there was no opposition to the composition of the Board or to the recording of the hearing.

Mr. Clayton Kittlitz and Ms. Jeneane Grundberg gave a presentation on behalf of the Town Development Authority with respect to the reasoning for the decision. The Appellants made representations as to why they felt the decision should be overturned. Two additional parties – Ms. Susanne Glober and Mr. Charles Wells – spoke in favour of the appeal. The applicant for the Development Permit, Mr. Hussein Saleh, spoke in opposition to the appeal.

At the conclusion of the hearing, the parties in attendance confirmed that they felt they had received a fair hearing.

Jurisdictional and Legislative Considerations

In making its decision, the Board has considered all applicable land use policies and statutory plans; the uses, development standards, and regulations prescribed in the LUB; and has had regard to the subdivision and development regulations. The Board also considered all relevant planning evidence presented at the hearing, including the hearing agenda package and submissions of the parties. The Board acknowledged its variance powers under the MGA s. 687(3)(d), which can be applied to development standards and regulations, but not uses, prescribed in the LUB. As the development permit application was for a discretionary use, the Board considered whether the proposed use was compatible with the surrounding area.

Matters Beyond the Jurisdiction of the Board or the Scope of the Hearing

It is beyond the authority of the Board to decide upon the inclusion of "Recycling Depot" as a discretionary use in the C-1 Retail Commercial land use district under the LUB.

It is neither within the authority of the Board nor is it a relevant planning consideration to evaluate the competence, oversight structures, and diligence of the Town's Planning Department. SDAB hearings are *de novo* hearings, and the Board considers the proposed development based on all evidence submitted, applicable legislation, and relevant planning considerations.

DECISION

The Appeal is denied and the decision of the Development Authority is upheld, subject to the following additional conditions:

1. If the consolidation of lots 16 and 17 is not registered at Land Titles by February 15, 2023, the Development Authority shall suspend the development permit. If the consolidation is not registered at Land Titles by May 15, 2023, the Development Authority shall cancel the development permit.
2. The Developer must submit a detailed grading plan to the Development Authority which complies with condition 3 of the October 3, 2022 Notice of Decision 050-2022.
3. The semi trailer included on the site constitutes equipment and therefore must be screened in accordance with the requirements established under section 51(1)(b) of the Town of Edson Bylaw No. 2070, as amended.
4. The Building included on the site must be freshly painted in a uniform manner.
5. All patron access to the site shall be from the front of the property along 3rd Avenue, and egress shall be to the rear of the property.

SUMMARY OF ARGUMENTS

Submissions in Support of the Appeal:

1. It was argued that it is inappropriate for "Recycling Depot" to be listed as a discretionary use in the C-1 Retail Commercial land use district.
2. Notifications and consultation

The Development Authority's Notice of Decision was provided to those owners within 30.0 metres of lot 16 only, rather than lots 16 and 17 jointly; the property description contained in the notice excluded lot 17.

The property description in the SDAB Clerk's Notice of Hearing excluded lot 17.

In addition to the notice required under the MGA and LUB, it was argued that enhanced consultation with a wider range of parties, including internal and external referrals, should have occurred before and during the review of the development permit application.

3. It was argued that it is inappropriate to treat multiple lots as a single development site for the purposes of processing Development Permit Application Number 050-2022 and applying land use regulations to the development.



4. Drainage from the parcel

It was argued that water from the subject property may drain across parcel boundaries or sidewalks, in contravention of section 53(7) and 91(4)(d) of the LUB, and that silt runoff may also become an issue.

5. Parking and traffic

The supplied off-street parking was argued to be insufficient based on the parking requirements contained in section 92(1)(b) of the LUB, with adverse implications for traffic flow and the availability of street parking.

6. Aesthetic considerations and nuisances

It was argued that the operation of a recycling depot on the site could promote problems such as graffiti/vandalism, odours, pests, and aesthetic blight.

Requirements for the planting of trees and/or shrubs contained in section 56(5) of the LUB were not included as an approval condition for the development permit.

It was argued that the semi trailer pictured on the site plan included in the development permit application constitutes "equipment" and should thus be screened in accordance with section 51(1)(b) of the Land Use Bylaw.

7. Pedestrian safety

It was argued that the curb cut allowing access to the site, along with potential drainage issues, could cause inconveniences or safety issues for pedestrians.

8. Questions were raised regarding the supervisory practices of the Town's Planning Department, and its members' diligence in executing their responsibilities given their qualifications. It was argued that the decision issued is inconsistent with robust training and supervision.

9. It was argued that the proposed use would diminish the value of nearby properties, reduce owners' enjoyment of the same, and reduce demand for tenancies and rentals, in light of the foregoing considerations.

10. It was argued that a decision should not have been issued in regard to the Development Permit Application, given the role of the Beverage Container Management Board in regulating facilities and uses such as those outlined therein.

Development Authority Submissions:

1. It was argued that the proposed use is consistent with the LUB and Municipal Development Plan.
2. It was argued that due consideration was given to relevant offsite impacts, including site drainage, traffic, and materials processing and storage in the development permit application and Development Authority decision.
3. It was argued that the supplied off-street parking is adequate, based on the requirements contained in section 92(1)(b) of the LUB.
4. It was argued that it was appropriate to treat multiple parcels as a single development site for the purposes of processing Development Permit Application Number 050-2022 and applying land use regulations to the development.
5. An account was provided of the notification process and omissions therein. The Development Authority's Notice of Decision was provided to those owners within 30.0 metres of lot 16 only, rather than lots 16 and 17 jointly. The SDAB Clerk's Notice of Hearing was mailed to all owners within 30.0 metres of both lots 16 and 17, but the property description given excluded lot 17.

Submissions in Opposition to the Appeal:

1. It was argued that due consideration was given to relevant offsite impacts, including site drainage, traffic, pedestrian safety, and materials processing and storage.

REASONS FOR DECISION

Notification of Decision and Hearing

1. Despite the issues identified with both the Notice of Decision and the Notice of Hearing, the Notice of Hearing was mailed to all owners within the 30.0 metre notification radius. Individuals had an opportunity to present to the SDAB in a hearing *de novo*, whether or not they were notified of the Development Authority's original decision, and those present indicated an understanding of the proposed development. The SDAB therefore finds that the misdescription in the legal description set out in the notice of the development permit and the Notice of Hearing was a technical error only and there was no prejudice against the parties in the provision of notice and in the right to a fair hearing. Public notice was also provided in multiple forums.

Drainage

2. Drainage considerations are addressed in condition 3 of the October 3, 2022 Notice of Decision, and were reviewed as part of the Town's internal referral process (as outlined in the Development Authority's Report included in the hearing agenda package). The Board finds that condition 3 minimizes adverse effects of surface drainage on neighbouring properties and

ensures that water will be directed from the Subject Property into the municipal storm system. Further, the Board accepts the Development Authority's submission that the gutters in the roadway are an integral part of the municipal storm system, and that draining across the sidewalk is not uncommon in the area. Allowing such drainage despite sections 53(7) and 91(4)(d) of the LUB by granting a variance 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. To ensure compliance with condition 3, the Board has imposed an additional condition on the developer, requiring the submission of a detailed, compliant grading plan.

3. As the parking area will be hard-surfaced pursuant to condition 6 of the October 3, 2022 Notice of Decision, any issues associated with silt runoff have been appropriately mitigated, and should decrease rather than increase as a result of this development.

Parking and Traffic

4. While there is a potential for increased traffic in the area as a result of the development, the developer's plans, both for parking and for the flow of traffic and people on-site, mitigate congestion or safety concerns to a sufficient extent, such that the use is not incompatible with the surrounding area. As egress will occur at the rear of the property, this will reduce traffic along 3rd Avenue and help to mitigate potential pedestrian safety concerns.
5. As outlined in section 92(1)(b) of the LUB, the off-street parking requirements for patrons are calculated by dividing the gross floor area (344.08 square metres) of the building by 55, yielding a result of 6.26 stalls. While section 92(7) of the LUB provides that, if a fractional number of stalls is produced through the application of this formula, the next highest number of stalls shall be required, in this case the overage is sufficiently small that the Board is of the opinion that the requirement of 6 stalls is sufficient, and granting this variance 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.

Aesthetic Considerations and Nuisances

6. The Board has taken measures to minimize potential aesthetic blight by requiring that the building be freshly painted in a uniform manner.
7. The Board also finds that the on-site trailer constitutes "equipment," and must therefore be screened in accordance with section 51 of the LUB, further mitigating the aesthetic impacts of the proposed development.
8. The Board finds that the above measures will be sufficient to remedy any aesthetic impacts on the surrounding area and notes that no reliable evidence was presented to demonstrate that the proposed use would negatively impact the value of neighbouring properties, once the steps required to minimize the aesthetic impact of the development have been completed.



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9. The Board accepts the position of the Development Authority that the tree-planting requirements of the Land Use Bylaw s. 56(5) should not be applied in the case of this development. A change of use, as opposed to the development of a new building, represents a minimal change or disruption to the existing site. Moreover, as the site does not currently feature the trees or shrubs that would be required were section 56(5) applied, exempting the current development from these requirements would 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.
 10. Indoor storage and processing of materials significantly reduces the risk of odours or pests, and the parties supporting the appeal did not provide sufficient evidence to demonstrate a substantial risk of vandalism, graffiti, or similar problems.

Pedestrian Safety

11. The primary pedestrian safety concerns raised relate to the curb cut allowing access to the site. It is the view of the Board that such curb cuts are consistent with the general practice in the surrounding area, and that insufficient evidence was provided to demonstrate a safety concern.

Lot Consolidation

12. The Board accepts the suggestion of the Development Authority that the requirement to consolidate lots 16 and 17 could be strengthened to reduce the risk associated with a sale of one of the lots prior to consolidation. In its decision, the Board has adapted the language suggested by the Development Authority to remove the Development Authority's discretion over the suspension or cancellation of the permit.
13. Given that consolidation of the lots is a requirement of the Development Permit, and is already underway, the Board considers it reasonable, in reviewing the regulations and standards applicable to the development, to treat both lots as a single site.

Beverage Container Management Board and Other Regulatory Bodies

14. This decision does not constitute or provide any guarantee of approval from the Beverage Container Management Board or any other regulatory body which may have jurisdiction over the development or the activities of the developer on the site, and from whom the developer must acquire any necessary permits or authorizations. Rather, it applies relevant land use planning legislation, evidence, and principles to assess the suitability of the proposed use to the area.

November 28, 2022

DATE



MARIA CARTER
CHAIR, SUBDIVISION AND
DEVELOPMENT APPEAL BOARD

COURT OF APPEAL INFORMATION

Section 688 of the Municipal Government Act ("MGA"), R.S.A 2000, c. M-26, allows you to appeal the decision of the Subdivision and Development Appeal Board on a question of law or jurisdiction.

An application for permission to appeal must be filed and served within 30 days after the issue of the decision sought to be appealed, and notice of the application for permission to appeal must be given to

- (a) the Land and Property Rights Tribunal or the subdivision and development appeal board, as the case may be, and
- (b) any other persons that the judge directs.

