



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: May 4, 2017
Project Number: 241549099-001
File Number: SDAB-D-17-071

Notice of Decision

- [1] On April 19, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **March 28, 2017**. The appeal concerned the decision of the Development Authority, issued on March 20, 2017, to refuse the following development:

To temporarily relocate an existing Minor Alcohol Sales on Site from 10210 - 140 Street NW (222.96 square metres) to 10228 - 140 Street NW (168.5 square metres) for five years.

- [2] The subject property is on Plan 1323051 Unit 3, located at 14004 - Stony Plain Road NW and Plan 1320993 Blk 101 Lot 25, located at 14101 - West Block Drive NW, within the DC2.919 Site Specific Development Control Provision.

- [3] The following documents were received prior to the hearing and form part of the record:

- A copy of the Development Permit application with attachments, plans, a threshold map showing other Alcohol Sales, and the refused Development Permit;
- The Development Officer's written submission;
- The Appellant's written submission; and
- E-mails from five affected property owners in support of the proposed development.

- [4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – A site plan marked by the Appellant to show the existing and proposed development; and
- Exhibit B – A new subdivision plan submitted by the Appellant.

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.
- [8] The Presiding Officer explained to the parties that the subject Site is zoned DC2.919 Site Specific Development Control Provision (“DC2.919”) and the Board’s authority is limited under section 641(4)(b) of the *Municipal Government Act*, which states:

Despite section 685, if a decision with respect to a development permit application in respect of a direct control district, is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority’s decision.

The Presiding Officer asked all parties to make submissions to the Board with respect to how the Development Officer did or did not follow the directions of Council.

Summary of Hearing

- i) *Position of the Appellant’s Agent, In House by Beaverbrook (the property owner of the subject Site), Mr. R. Smith and Ms. S. Kheraj:*
- [9] Glenora Liquor has been operating in this neighbourhood for more than 20 years and has been operated by Mr. Puri and his family since 2002. This business is well regarded in the neighbourhood.
- [10] Multiple parcels of land comprise the site, which is undergoing major redevelopment.
- [11] Phase I of this development includes a mixed use high rise tower at the corner of 142 Street and Stony Plain Road, a three-storey commercial building at the central portion of the site, a large urban square from West Block Drive, and a new roadway through the rear portion of the site.
- [12] Glenora Liquor is currently located in the building on the eastern edge of Phase 1.
- [13] To facilitate the safe construction of the Phase I parkade structure, the existing building must be demolished to provide a working area.

- [14] Accordingly, Glenora Liquor must relocate. Upon the completion of Phase I, the business will become a tenant in the newly created retail space.
- [15] Glenora Liquor will temporarily be relocated into a space on the site that is unaffected by construction. The physical location of the store is even further away from the Grovenor School site than the existing location.
- [16] The consolidation of properties to create this land posed a technicality that resulted in the refusal of this development permit application. This change of Use application is for a temporary location.
- [17] The separation distance regulations contained in the *Edmonton Zoning Bylaw* (“the *Bylaw*”) are flawed because measurements are taken as “the crow flies” and do not take into consideration the physical barriers to travel between Grovenor School and Glenora Liquor, which require travelling along Stony Plan Road and across 142 Street, which are both busy arterial roadways.
- [18] In their opinion, the definition of a Site contained in the *Bylaw* is not clear.
- [19] A site plan (Exhibit A) was submitted to illustrate the current location of the business, marked as “A”, the proposed location of the business, marked as “B”, the original separation distance measurement marked as “C”, and the new separation measurement marked as “D”. The condominium plan was consolidated and two lot lines, marked with an “X” were removed.
- [20] A copy of the new subdivision application (Exhibit B) was submitted to show what the subject site will look like when the subdivision is complete. The lot in which Glenora Liquor will be located will be outside of the required separation distance from Grovenor School.
- [21] When the original subdivision application was made, the condominium plan included three units and was registered through the development permit process. In their opinion, this situation is an unfortunate circumstance created by the order of their applications. They reiterated that Glenora Liquor will be located further away from Grovenor School than it is now.
- [22] The Community League was contacted but has not taken a position on this matter. They noted that five e-mails were received from affected property owners in support of the proposed development.
- [23] Upon questioning from the Board, it was their opinion that the lot consolidation has created a technicality that led to the Development Officer being unable to follow the directions of Council.
- [24] They have no concerns with the recommended conditions contained in the written submission of the Development Officer.

ii) Position of the Development Officer, Ms. S. Buccino, in response to questions from the Board:

- [25] DC2.919 was passed March 14, 2016 to allow a Minor and Major Alcohol Sales Use. Section 85 of the *Bylaw* was amended in December, 2016 that prohibited the Development Authority from granting a variance to the required 100-metre separation distance. The limitation on the Development Authority's ability to vary the separation distance came into effect after the approval of DC2.919.
- [26] Ms. Buccino agrees that there is a conflict between DC2.919 (listing Minor and Major Alcohol Sales as a Use) and section 85 of the *Bylaw* (not allowing the Development Authority to waive the separation distance regulation).
- [27] With respect to section 720.3(3) of the *Bylaw*, which states:

All Regulations in the Zoning Bylaw shall apply to development in the Direct Control Provision, unless such Regulations are specifically excluded or modified in a Direct Control Provision,

It was her opinion that this section could provide an interesting argument to counter her decision. However, she declined to provide a response before consulting with Legal Counsel.

- [28] In her opinion, she followed the directions of Council based upon a review of the application and the plans available at the time.
- [29] She acknowledged that only one of either Major Alcohol Sales or Minor Alcohol Sales may be located on the subject site, based on the specific development regulations in DC2.919.
- [30] She acknowledged that she may have erred in referencing section 85.4 and 85.5 of the *Bylaw* in this case since DC2.919 has specific development regulations for Alcohol Sales. There were no other reasons to refuse this development permit application.
- [31] If the refusal is upheld, there is a six-month waiting period before a reapplication can be made.

iii) Rebuttal of the Appellant

- [32] They prefer to proceed with the application that is currently before the Board due to time constraints. Demolition of the existing building and power lines will delay construction for up to four months. The new subdivision application should be approved in late July or early August and will then have to be registered at Land Titles.

Decision

- [33] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:
1. The exterior of all stores have ample glazing from the street to allow natural surveillance;
 2. Exterior lighting should be in accordance with the minimum safety standards prescribed by the Illuminating Engineers Society;
 3. Any landscaping around the facilities be low-growing shrubs or deciduous trees with a high canopy at maturity and that all foliage be kept trimmed back to prevent loss of natural surveillance;
 4. No customer parking is in behind a facility and that all parking areas in front of the building be well-lighted; and
 5. Customer access to the store is limited to a store front that is visible from the street, shopping centre parking lot or a mall access that allows visibility from the interior.

Reasons for Decision

- [34] Section 641(4)(b) of the *Municipal Government Act*, Chapter M-26 states:

if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

- [35] The Board finds that the Development Authority did not follow the directions of Council for the following reasons.

- [36] The Development Officer based her refusal on the generally applicable development regulations contained in sections 85.4 and 85.5 of the *Edmonton Zoning Bylaw* ("the *Bylaw*").

- [37] Section 85.4 of the *Bylaw* states:

Any site containing a Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 100 metres from any Site being used for community or recreation activities, public or private education, or public lands at the time of the

application for the Development Permit for the major Alcohol Sales or Minor Alcohol Sales. Sites that are greater than 2.0 hectares in size and zoned either CSC or DC2, are exempt from this restriction.

[38] Section 85.5 of the *Bylaw* states:

Notwithstanding Section 11 of this Bylaw, a Development Officer shall not grant a variance to subsection 85.4.

[39] The applicable directions of Council are set out in the Site Specific Development Control Zone, DC2.919. Both Major Alcohol Sales and Minor Alcohol Sales are listed Uses pursuant to DC2.919.3(o) and (q). Further, DC2.919.5(i), located under the heading *Development Regulations for Specific Uses*, states that “only one of either Major or Minor Alcohol Sales may be located on this site” and “site” refers to all of the land zoned DC2.919. The remainder of the section sets out additional development regulations specific to these two Use classes.

[40] Based on the plain wording of DC2.919, the Board finds that Council contemplated the development of either a single Minor or Major Alcohol Sales Use within this Site Specific Development Control Zone.

[41] Therefore, the Board finds a direct conflict between the directions of Council contained in DC2.919 and the development regulations contained in section 85.4 and 85.5 of the *Bylaw* that are generally applicable to Minor and Major Alcohol Sales Uses.

[42] The Board notes that section 720.3(3) the *Bylaw* states:

All Regulations in the Zoning Bylaw shall apply to development in the Direct Control Provision, unless such Regulations are specifically excluded or modified in a Direct Control Provision.

[43] The Board finds that DC2.919 has specifically excluded or modified the locational criteria pursuant to section 85.4 of the *Bylaw*. Therefore, pursuant to section 720.3(3) of the *Bylaw*, the Development Officer failed to follow the directions of Council by refusing the application based on the development regulations contained in section 85.4 and 85.5 of the *Bylaw*.

[44] This conclusion is also in accordance with the general statutory principle of interpretation that the specific will override the general in the event of a conflict and with the planning principle that Council indicates what is most appropriate for direct control Site in the Site Specific Development Control Provision and therein provides instructions for the development of the Site.

[45] Given its determination that the Development Officer failed to follow the directions of Council, the Board has considered the application and in accordance with the directions of Council, the Board allows the appeal and approves the proposed development for the following reasons:

- a) A Minor Alcohol Sales Use is a listed Use in the DC2.919 Site Specific Development Control Provision.
- b) For the reasons stated above, the Board finds there is no need for a variance to the generally applicable development regulations in section 85 of the *Bylaw* pertaining to Minor Alcohol Sales Uses.
- c) A Minor Alcohol Sales Use has existed and operated from this Site for more than 20 years with no known complaints. The Board has received numerous e-mails and letters of support from affected property owners.
- d) The proposed temporary location is, in fact, further from Grovenor School than the current location.
- e) The five conditions imposed will mitigate any potential adverse impacts associated with the development.

[46] For all of the above reasons, the appeal is allowed and the development is approved.



Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. W. Tuttle, Ms. E. Solez, Mr. R. Handa, Mr. A. Nagy

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.



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Date: May 4, 2017
Project Number: 219851856-001
File Number: SDAB-D-17-072

Notice of Decision

- [1] On April 19, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **March 27, 2017**. The appeal concerned the decision of the Development Authority, issued on March 6, 2017, to approve the following development:

To install one (1) Minor Digital On-premises Freestanding Sign (2 Digital panels 0.7 metres by 1.4 metres facing North and South) and to remove the existing Freestanding On-premises Sign DP: 000988749-001 (ST. ROSE JUNIOR HIGH SCHOOL).

- [2] The subject property is on Plan 1760KS Blk 11 Lot 1, located at 8815 - 145 Street NW, within the (US) Urban Services Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, response from Transportation Services and the approved Development Permit;
 - The Development Officer's written submission;
 - The Appellant's written submission and community consultation;
 - Several e-mails from affected neighbours in support of the appeal; and
 - The Respondent's written submission.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – A notification map plotted with neighbourhood feedback provided by the Appellant;
 - Exhibit B – An aerial map plotted with neighbourhood feedback provided by the Development Officer; and
 - Exhibit C – An e-mail submitted by Mr. Leibel, Principal, St. Rose Junior High School.

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, Ms. J. Bladon*

- [8] Ms. Bladon acknowledged that that the school and the sign company have revised the original plans to address some of the neighbourhood concerns, but it was her opinion that a digital sign should not be approved.
- [9] In her opinion, the brightness of the sign will be distracting for drivers and students. It will create light pollution.
- [10] She understands that other schools have similar signs, however the ones she is aware of are on major roadways and not within residential neighbourhoods.
- [11] There will be a decreased desirability to live near a digital sign, which will make it more difficult to sell houses in this area. Selling homes will take longer. She has been advised by a realtor that property values will decrease as a result of the proposed digital sign and they are receiving no compensation.
- [12] The proposed sign will clearly benefit the school, but will result in a loss of enjoyment for neighbouring properties.
- [13] The sign is commercial in nature and does not benefit the neighbourhood. It favours the school and parents of St. Rose students, not the community.
- [14] This sign will set a precedent for other community organizations to erect digital signs, including a nearby church and community league.
- [15] She contacted 45 neighbours to obtain feedback regarding the initial sign proposal and the current sign proposal and only one neighbour was comfortable with it.
- [16] She believes that a proper community consultation was not conducted by the applicant and the school.

- [17] The neighbours already deal with many problems associated with the school, including increased traffic and distracted drivers. They put up with a lot. The proposed sign will further distract drivers.
- [18] There is currently an adequate letter board sign at the school. There are other sufficient forms of communication available to the school including e-mail, text messaging, websites, newsletters and social media. She questions why the school is proceeding when other means of communication exist and the community does not support it.
- [19] In her view, people did not understand the gravity of what a sign can do to a community. She noted the initial proposal was gigantic and the revised proposal is much smaller, but it is still digital which the community does not support.
- [20] Ms. Bladon provided the following with respect to questions from the Board:
- a) She acknowledged the condition imposed to limit the hours of operation from 8:00 a.m. to 6:00 p.m., but noted that during the winter months it is dark at those times of the day.
 - b) She did not have any evidence or a written opinion from a realtor to support her concern that the proposed sign would decrease property values in the area.
 - c) The proposed digital part of the sign could be replaced with printed inserts that could be changed to display the copy. As these other options exist, a digital sign should not be approved.
 - d) The existing sign is adequate to meet the needs of the school, so a digital sign should not be approved.
 - e) Neighbours that were contacted told her that they do not pay attention to information displayed on the existing sign.
 - f) It is common knowledge that digital signs create a distraction for motorists because of the flashing, but she did not have evidence that this particular sign would be unsafe for drivers.
 - g) She understands that the proposed sign will only advertise events at the school; however, she still is of the view that it is commercial in nature because anything digital is a commercial development in nature.
 - h) She did not receive any information regarding the level of the light emissions for the proposed sign, but believes that a condition limiting lumens is not relevant as she is opposed to anything digital.
 - i) A notification map (Exhibit A) was used to illustrate feedback from her community consultation.

- j) She was not part of the initial consultation process which involved an invitation to six residents. She was not one of them and many people she consulted had no idea it even existed.
- k) She showed neighbours a rendering of the approved sign when she conducted her community consultation and asked if they were comfortable with it.

ii) *Position of the Development Officer, Ms. B. Noorman:*

- [21] The City requested that the applicant, Image Signs, complete a community consultation with residents that would be directly affected by the sign. The responses were conflicting. Initial results indicated that there was opposition to the sign.
- [22] She asked the applicant and the school to work it out, to redesign the sign to mitigate the concerns of the neighbours.
- [23] The concerned residents provided a list of conditions that they considered acceptable. These conditions were taken into consideration and several were imposed on the approved development permit to mitigate the impact that the sign.
- [24] Ms. Noorman noted that the responses received from the original consultation appear to be different from the information provided by the Appellant today.
- [25] Although the applicant made substantial changes to the original application to mitigate the impact of the sign and address the concerns of affected property owners, this does not completely eliminate the impact of the sign on the neighbours.
- [26] The conditions imposed were based on the operation of the sign rather than the content of the sign which is the responsibility of the school and the applicant.
- [27] Transportation Services reviewed the application. As the sign was within the driver cone of vision, they imposed a condition that the digital messages change at a minimum of two minute intervals so it would not impact anyone.
- [28] Ms. Noorman provided the following with respect to questions from the Board:
 - a) The applicant provided a list of the neighbours that were contacted and 11 neighbours did not object to the proposed sign.
 - b) The installation of digital signs in residential areas is a relatively new process for both the City and sign companies.

- c) The initial consultation request was to contact the most affected neighbours, those who resided closest to the proposed sign, not the entire neighbourhood or the Community League.
 - d) She could not provide information about the intensity of the light that would be emitted by the sign.
 - e) The City takes feedback into account and that is the reason they requested consultation even though it is not mandated by the *Edmonton Zoning Bylaw*. Substantial opposition would cause her to reconsider the decision of approval.
 - f) Ms. Noorman reviewed a map (Exhibit B) to illustrate the location of properties that supported and opposed the proposed sign.
 - g) Five neighbours who originally opposed the sign later advised her that they had met with the school and the applicant and that they would support the redesigned sign with the suggested conditions.
 - h) She noted that based on the information provided in the Appellant's community consultation, some of the property owners who originally supported the proposed sign have now apparently changed their opinion.
- iii) *Position of the Respondent, Mr. D. Bussiere representing Image Signs, Mr. B. Leibel, Principal of St. Rose Catholic School and Ms. R. Sykes, Edmonton Catholic School Board:*
- [29] Ms. Sykes advised the Board that a condition has been imposed to restrict the brightness level for the proposed sign. The brightness level shall not exceed 0.3 foot-candles, which will result in the projection of light approximately 4 inches in front of the proposed sign.
- [30] Mr. Leibel advised the Board that the application process for this sign commenced approximately 13 months ago.
- [31] He spent one Saturday visiting neighbourhood residents along the north, west and south perimeter to discuss the proposed sign and receive feedback. He did not meet with neighbouring properties to the east as the two storey school building blocks the sign from their view.
- [32] A meeting was held with the neighbours who expressed concerns to discuss the proposed plans and discuss possible revisions.
- [33] A digital sign will make it easier for the school to provide information to parents and students.

- [34] The existing sign has larger lettering than the text that will be displayed on the proposed digital sign. It currently takes 1 to 2 hours for a staff member to change messages on the existing sign. He considers this a waste of educational time and that the assistant principal's could be better used.
- [35] The digital portion of the sign has been reduced to 2 feet by 4 feet and will only project light approximately 4 inches in front of the sign. The background will be black, which is the same as the existing sign. The text on the sign will have a similar appearance to the lettering on the existing sign.
- [36] He reiterated that the sign text will have two minute intervals. In his view, it will not cause more of a distraction to motorists than the existing sign.
- [37] He is not aware of any traffic accidents occurring in front of the school or that anyone was hit in front of the school during his tenure.
- [38] Mr. Leibel was concerned about the accuracy of the information presented to the Board at the hearing with regard to residents changing their mind about the sign.
- [39] Mr. Leibel submitted a copy of an e-mail marked "Exhibit C". He expressed concern regarding the consultation conducted by the Appellant because this e-mail was sent on April 18, 2017 by a neighbour who was involved in the initial consultation with himself. In her email this neighbour questioned the information provided by the Appellant during their canvassing because a copy of the original plan was shown. He felt there may have been some confusion about what was approved which would have impacted support for the sign. He believes that the petition signatures were obtained based on a presentation of the original 14 foot high sign which was rejected and changed in a number of ways.
- [40] The proposed sign is substantially smaller than the sign in front of Jasper Place Composite High School. It will have letter resembling the current sign. In his opinion, the proposed sign will not cause any more distraction for motorists than the existing sign.
- [41] Mr. Leibel objects to the Appellant's position that the sign provides absolutely no benefit to the neighbourhood of Parkview. He noted that half of the students of St. Rose come from the community so the sign will serve a purpose for the immediate residents.
- [42] Mr. Leibel, Ms. Sykes and Mr. Bussiere provided the following with respect to questions from the Board:
- a) If there is only one message on the sign, the text will remain on the copy longer than two minutes.
 - b) They are not opposed to any of the recommended conditions contained in the Development Officer's written submission.

- c) A committee was formed with some of the neighbours who reside immediately west of the school as they are closest to the sign. They sought to address their concerns and an open house was held with neighbours who were opposed to the sign.
- d) A digital sign has recently been installed at another school site in a residential portion of the city without any complaints from neighbours.

iv) Rebuttal of the Appellant

- [43] Ms. Bladon contacted the most affected neighbours who reside west of the school.
- [44] She showed pictures of the original and approved signs to some, but not all the neighbours.
- [45] The property owner who e-mailed Mr. Leibel told the Appellant that she was opposed to any digital sign being installed at the school. She said that concessions and promises were made to reduce the size of the sign, but she told Ms. Bladon that she felt trapped into making concessions.
- [46] Another neighbour told her that they still did not want the digital sign to be installed even with the changes that had been made.
- [47] During her consultation she did explain that only a portion of the proposed sign would be digital and she showed both the original and revised signs.
- [48] Ms. Bladon provided the following with respect to questions from the Board:
 - a) It is possible that some of the neighbours that she spoke to were not aware of the plan that had been approved, but reiterated that all of the neighbours except one, told her that they were opposed to a digital sign being installed at the school.
 - b) She informed neighbours that conditions would be imposed if they asked, but she did not provide all of the specifics to the individuals she canvassed.
 - c) She conceded that the approved plan is better than the original plan but it is still a digital sign which she opposes and it opens the door for other community organizations to apply for a digital sign.
 - d) She confirmed that it is the digital aspect of the sign that she opposes - she is opposed to any digital sign.

Decision

[49] That the appeal be **DENIED** and the decision of the Development Authority **CONFIRMED**. The development is **GRANTED** as approved by the development Authority, subject to the following **CONDITIONS**:

1. The proposed Minor Digital On-premises Freestanding Sign shall comply in accordance to the approved plans submitted and the location shall match the existing Sign.
2. Minor Digital On-premises Signs shall use automatic light level controls to adjust light levels at night, under cloudy and other darkened conditions to reduce light pollution in accordance with the following:
 - (a) Ambient light monitors shall automatically adjust the brightness level of the Copy Area based on ambient light conditions. Brightness levels shall not exceed 0.3 footcandles above ambient light conditions when measured from the Sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise/Sunset calculator from the National Research Council of Canada; (Reference Section 59.2(5)(a))
 - (b) Brightness level of the Sign shall not exceed 400 nits when measured from the Sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise/Sunset calculator from the national research Council of Canada (Reference Section 59.2(5)(b))
3. The background colour during the operation of the Digital component of the Sign will be black only;
4. There will be no pictures or images used, text only. The St. Rose school logo may be used on black background only;
5. The static portion of the Sign with St. Rose School Name & Logo (non-Digital) will NOT be lit;
6. The Minor Digital On-premises Freestanding Sign shall be energized only on Monday through Friday from 8:00 a.m. to 6:00 p.m. The Sign will be turned off on weekends and holidays, as well as for the summer from the last day of the school year until the last week of August;
7. The Minor Digital On-premises Freestanding Sign shall have a message duration of not less than 2 minute intervals; and
8. The Minor Digital On-premises Freestanding Sign is approved for five years and will expire on May 4, 2022.

9. The proposed Minor Digital On-premises Freestanding Sign shall comply with the following conditions in consultation with Transportation Planning, in accordance with Section 59.2(11):
- a) That, should at any time, Transportation Planning and Engineering determines that the sign face contributes to safety concerns, the owner/applicant must immediately address the safety concerns identified by removing the sign, de-energizing the sign, changing the message conveyed on the sign, and or address the concern in another manner acceptable to Transportation Planning and Engineering.
 - b) That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by Transportation Planning and Engineering within 30 days of the notification of the safety concern. Failure to provide corrective action will result in the requirement to immediately remove or de-energize the sign.
 - c) The proposed sign shall be constructed entirely within private property. No portion of the sign shall encroach over/into road right-of-way.

ADVISEMENT:

1) Should the Applicant wish to display video or any form of moving images on the sign, a new Development Application for a major digital sign will be required. At that time, Transportation Services will require a safety review of the sign prior to responding to the application.

- [50] In granting the development, the requirements of section 59.2(3) of the *Edmonton Zoning Bylaw* have been varied to permit the Minor Digital On-premises Freestanding Sign to be constructed where Sign illumination may project onto surrounding residential premises.

Reasons for Decision

- [51] A Minor Digital On-premises Freestanding Sign is a Discretionary Use in the (US) Urban Services Zone.
- [52] The Appellant and others opposed to the development argue that the Sign should not be allowed because it:
- a) Decreases property values, desirability and enjoyment of neighbouring properties;
 - b) Creates light pollution for adjacent properties;
 - c) Is essentially a commercial Sign in a residential area;

- d) Distracts drivers, putting pedestrians at increased risk;
 - e) Is unnecessary because the existing static Sign is sufficient and the \$48,000 initial cost and ongoing expenses should be spent enhancing children's education;
 - f) Gives absolutely no benefit to the neighbourhood residents;
 - g) Proselytizes Christian dogma which may be offensive to non-Christians; and,
 - h) Sets a precedent for the approval of other Digital Signs in this residential area.
- [53] During the appeal, it became clear that the Appellant's principal objection is to the 2 foot by 4 foot Digital portion of the Sign.
- [54] The Board received conflicting information concerning community support for the proposed Sign.
- [55] At the request of the City, months before the approval, the Applicant and School principal voluntarily canvassed properties adjacent properties to the south, north and west of the school Site through a one day door-to-door survey during which no information was left with residents. After receiving feedback expressing concerns, the school focused on the most directly affected residents in the properties immediately west which face the school and are in closest proximity to the Sign. Based on further consultation, these residents and the school reached a mutually acceptable compromise that formed the basis for the submitted Development Permit application and proposed conditions. One of these residents confirmed this process and her continued support for the revised, approved Sign by e-mail dated April 18, 2017. The Development Officer relied on the information provided by the Applicants and the indications of support when she approved the application and imposed the stated conditions.
- [56] The Appellant provided a petition with 35 signatures (including her own and her partner's) from properties within the notification area in support of the appeal. Some of the signatories were the individuals who appeared to previously support the Sign. The cover letter accompanying the petition is dated April 17, 2017 - two days prior to the hearing. However, the Appellant also acknowledged that not all of the neighbours were provided with or aware of the particulars of the approved plans, nor of the conditions imposed specifically to deal with potential adverse impacts including light pollution.
- [57] The Respondent expressed concern that there may have been confusion amongst the signatories about the details of the approved Sign. This confusion is demonstrated in an e-mail sent to the Board by an affected property owner (a variation of which was sent to the school and submitted at the hearing, marked "Exhibit C"). In this e-mail one of the most affected neighbours indicated that she was confused by the Appellant's presentation during her petition canvassing and that the neighbour remained supportive of the revised approved plan. The Appellant disputed this.

- [58] The Board notes that a second e-mail it received from a signatory to the petition indicates that the Sign will be “significantly larger and disruptive.” This is inconsistent with the approved plans as the proposed Sign is actually the same size as the existing Sign and the digital portion is significantly smaller and subject to conditions limiting its brightness and hours of operation. A third e-mail received by the Board from the same address and signed by a name which appears on the petition also erroneously states the sign is “considerably larger than the present sign” The e-mail is dated April 18, 2017 and also cites many of the concerns outlined in the cover letter prepared by the Appellant to accompany the petition.
- [59] Based on the Appellant’s own comments and the four emails, the Board finds that some signatories to the petition may have been confused or based their opinions on incorrect or incomplete information. Therefore, the Board has considered the stated concerns, but given less weight to this petition. The Board also notes that the two-storey school building completely blocks the Sign from view from all of the properties to the east and many of the properties to the southeast and northeast. The most directly affected properties are the 18 lots located along 145 Street which have a view of the Sign. The Appellant presented signatures from 11 of those properties.
- [60] Based on all the materials before it, the Board finds that the proposed Minor Digital On-premises Freestanding Sign, with the conditions listed above, is reasonably compatible with the surrounding residential uses for the following reasons:
- a) The Applicant originally planned to construct a significantly larger and taller Sign with a larger Digital copy area and a more contemporary style. The Applicant and St. Rose Junior High School voluntarily consulted with affected residents. Based on the feedback, particularly concerns received from the most affected neighbours (those who reside immediately west of the school Site and in closest proximity to the Sign), the School held additional meetings, revised the plans, decreased the size of the Sign and agreed to impose a number of conditions to address the concerns and ameliorate the impact of the proposed Sign.
 - b) A Freestanding On-premises Sign has been in place at the proposed location for many years. The proposed Sign is almost identical in overall size and design to the existing Sign at the school. The proposed Sign will be erected in the same location as the existing Sign.
 - c) The Digital copy area of the proposed Sign is smaller than the current copy area. The Digital copy area was substantially reduced from the original proposed size of 0.97 metres by 1.91 metres to 0.71 metres by 1.36 metres.
 - d) The Board has reintroduced a mutually agreed upon condition that the background colour during the operation of the Digital component of the Sign will be black only.
 - e) The Digital component will be text only and will not include pictures or images. It will operate only from Monday to Friday, 8:00 a.m. to 6:00 p.m. It will be turned off

on weekends and holidays as well as from the last day of the school year to the last week of August when school starts again. The Digital messages will play at a minimum of two minute intervals.

- f) Conditions 2(a) and (b) have also been added limiting the impact of the Digital portion of the Sign, in particular to account for changes in ambient light during hours of operation, to reduce the brightness of the Digital portion. Further, Condition 5 provides that the static portion of the Sign cannot be lit at all.
- g) The Appellant provided no evidence to support the view that the addition of a 0.71 metres by 1.36 metres Digital copy area will have any measurable impact on property values or resale, particularly given that a static Sign of almost identical size and design has been in place with a larger copy area at that location for many years.
- h) The Appellant argued that the proposed Sign is essentially commercial and therefore not appropriate in a residential area. The Board disagrees. The proposed Sign is an On-premises Digital Freestanding Sign, this Use class is not synonymous with a commercial Sign. The copy may only be used to communicate information about school related events and activities. The Sign is accessory to the principal Use of a school which is a Community, Educational, Recreational and Cultural Service Use. If the Sign is used for a commercial purpose, that would be a violation of the approved Development Permit and subject to compliance actions by the City.
- i) The Board acknowledges the safety concerns raised by the Appellant. However, Transportation Services has reviewed the Development Permit application and had no objections to the development if the usual conditions were added and if the minimum interval was set at least 30 seconds. Condition 7 increases the minimum message interval to two minutes (120 seconds) which reduces the potential for distraction and the impact of changing copy. The Board notes that in addition to its authority under other City Bylaws, Transportation Services has the authority to address any potential safety concerns that may arise, pursuant to section 59 of the *Edmonton Zoning Bylaw*.

[61] With the revisions and conditions noted above, the Board also finds that varying the requirements of section 59.2(3) of the *Edmonton Zoning Bylaw* to permit the Sign to be constructed at the same location as the existing Sign where illumination may project onto surrounding residential premises will not have a material adverse impact on surrounding developments, nor unduly interfere with the amenities of the neighbourhood for the following reasons:

- a) Based on the site plan, the closest residential property is located more than 18 metres west of the location of the proposed Sign which is oriented North/South (perpendicular to those residences along 145 Street).
- b) The height of the proposed Sign has been reduced substantially from the original proposal and the maximum allowed under the *Edmonton Zoning Bylaw* which will mitigate the impact of the proposed Sign on neighbouring residents.

- c) The proposed Sign carries fewer impacts because of the limited size of the Digital portion of the Sign (which is smaller than the current copy area) and the conditions that have been imposed concerning illumination and energizing of the Digital copy area.
 - d) The Board has also added a condition limiting the duration of the Development Permit. The Sign has only been approved for a period of five years which will allow sufficient time for all affected parties to evaluate the impact of the Sign on the surrounding area and provide feedback to the City on renewal.
- [62] The Board based its decision on planning considerations only. It has not considered arguments concerning the need for this specific type of Sign, the propriety of spending educational funds on such a Sign, or whether the content of the Sign may constitute offensive proselytization of Christian dogma.
- [63] The Board is not bound by precedent and must consider each proposal based on its own unique merits. Accordingly it is not persuaded by the argument that the approval of this Sign for the school will result in the proliferation of Digital Signs in the Parkview neighbourhood generally.
- [64] Based on the above, the proposed Minor Digital On-premises Freestanding Sign with the attached conditions is reasonably compatible with surrounding development and will not have a material adverse impact on the use, enjoyment and value of surrounding developments, nor unduly interfere with the amenities of the neighbourhood.



Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. W. Tuttle, Ms. E. Solez, Mr. R. Handa, Mr. A. Nagy

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.