



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: July 14, 2017
Project Number: 244255743-001
File Number: SDAB-D-17-122

Notice of Decision

- [1] On July 6, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **May 31, 2017**. The appeal concerned the decision of the Development Authority, issued on May 24, 2017, to refuse the following development:

To install one (1) Freestanding Minor Digital On-premises Off-premises Sign (two digital panels facing North/Southeast 6.1 metres by 3.0 metres) (BIG SKY MEDIA - St. Paul's Lutheran Church) and to remove one (1) existing Freestanding On-premises Sign (St. Paul's)

- [2] The subject property is on Plan 8221657 Lot 5, located at 5004 - Ellerslie Road SW, within the US Urban Services Zone. The Charlesworth Neighbourhood Structure Plan and Southeast Area Structure Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit; and
 - The Development Officer’s written submissions; and
 - A PowerPoint Presentation submitted by the Appellant.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Chairman outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The Appellant waived his right to be heard within 30 days pursuant to Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”). The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*.

Summary of Hearing*i) Position of the Appellant, Mr. K. Rochat, representing Big Sky Media:*

- [7] St. Paul's Evangelical Lutheran Church made application for a Minor Digital On-premises Off-premises Sign two months ago.
- [8] The proposed Sign will replace an existing vinyl letter message Sign located at the southeast corner of the site.
- [9] The proposed 18.5 square metre Digital Sign will communicate the name of the Church, service times, special events and community relevant information.
- [10] The Church has plans to renovate/replace adjacent buildings on their property. These plans come at a considerable cost and part of their budget includes leasing space to Big Sky Media for its digital billboard. The lease revenue is important to the Church for financing the planned renovations.
- [11] The proposed development was refused because it exceeds the maximum allowable Sign Area of 8.0 square metres for Freestanding Signs. However, it does not exceed the maximum allowed 20 square metres for the combined Area of Digital Sign Copy and any other type of Copy included on the same Sign face. It was his interpretation that the proposed Sign complied with the maximum allowable surface area for this type of Sign.
- [12] The Development Officer also determined that the proposed development is not reasonably compatible with the surrounding developments because the Sign is located adjacent to a Historic Church and a small residence and will adversely impact the character of the zone and the surrounding environment.
- [13] He worked with Ms. Noorman in an attempt to determine the general purpose of the US Zone and why the proposed Sign is not in keeping with this zone.
- [14] He referenced a photograph contained in his submission that was provided by the Development Officer as an example of acceptable signage. It was his opinion that this Sign is not an On-premises Off-premises Freestanding Sign. It is an On-premises Freestanding Sign because all of the panels are dedicated to the Terwillegar Recreation Centre.
- [15] A maximum allowable Sign area of 8.0 square metres is impractical because it does not meet industry standards for the size.
- [16] Aerial photographs of the subject site were referenced to illustrate that the subject site is located on the northwest corner of the site with commercial retail across the avenue.

- [17] This area is currently being developed and is a modern retail power centre. Photographs were referenced to illustrate views of the site looking east along Ellerslie Road. There are a number of empty panels on the existing signage to accommodate the eight additional businesses that will be developed on the site.
- [18] He explained his interpretation of Schedule 59C. It was his opinion that section 4.c does not state that the digital component shall be 8.0 square metres. This requirement is for Freestanding Signs. The digital copy included on the example provided by the Development Officer is much larger than 8.0 square metres.
- [19] The second sentence contained in section 4.c states that the maximum combined area of Digital Sign Copy and any other type of Copy included on the same Sign face shall not exceed 20 square metres. It does not state that the digital component shall be 8.0 square metres within a sign area of 20 square metres. The proposed Sign is only 18.5 square metres which is less than the maximum allowed.
- [20] The proposed Sign will identify Church service times and other community messages. Part of the long term plans for the redevelopment of the Church site are dependent on the leasing revenue that will be generated by the proposed Sign.
- [21] The proposed Sign will be located in the northwest corner of the site adjacent to the parking lot. The proposed digital billboard is 3.048 metres by 6.096 metres wide, with a Sign Area of 81.3 square metres. Photographs were referenced to illustrate views of the proposed Sign at 50 Street and Ellerslie Road.
- [22] Examples of different types of messaging to be included on the proposed Sign were referenced.
- [23] Photographs of existing On-premise Off-premise Signs that exceed the maximum allowable total Sign Area requirements were referenced, including the Sign at Commonwealth Stadium and the Sign at Northlands.
- [24] The General Purpose of the US Urban Services Zone is to provide for publicly and privately owned facilities of an institutional or community service nature. The Development Officer refused the application because it is not in keeping with the land use characteristics of the surrounding development and will adversely impact the amenities and character of the zone.
- [25] Photographs of existing On-premise Off-premise Signage at public institutions that exceed the maximum allowable Sign Area requirements were referenced.
- [26] Neighbouring businesses were consulted regarding the proposed Sign and the variances required. Eight signatures of support were received from business owners and managers and are contained in the written submission.

- [27] The proposed digital portion of the Sign will provide advertising space for the Church. The digital portion of the Sign could be programmed to only display one message. There will be no static copy contained on the Sign.
- [28] The Sign at Commonwealth Stadium contains traditional copy as well as a digital component.
- [29] It was his opinion that the context of the neighbourhood has to be considered. The church site is an island in the midst of a very commercial area.
- [30] The revenue generated from the Sign will finance the redevelopment of the Church site. The proposed Sign will only contain advertising associated with the Church.
- [31] The location for the proposed Sign is not included on the drawings because they were prepared before the installation of a Sign was considered by the church. Landscaping would be required as part of the redevelopment plan and the Sign location will be part of that plan.
- [32] Mr. Rochat reviewed and accepted the recommended conditions of the Development Officer.

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

- [33] The proposed application was refused because Section 59C.3(4)(c)(ii) states the maximum Area for Minor Digital On-premises Off-premises Signs shall be 8.0 square metres for proposed Signs that are Freestanding Signs. The maximum combined Area of Digital Sign Copy and any other type of Copy included on the same Sign face shall not exceed 20 square metres. The photograph of the sign at the Terwillegar Recreation Centre was provided to the Applicant as an example of a Sign that was designed to comply with the maximum allowable 8.0 square metre digital portion.
- [34] The photographs of existing signs at Commonwealth Stadium and Northlands that were provided by the Appellant are much different than the proposed application. Neither site is zoned US Urban Services Zone and are not located on a historic church site.
- [35] Any future Development Permit applications for this site will have to comply with landscaping requirements and the Sign would be part of that application if approved.
- [36] Section 3.6 of the *Southeast Area Structure Plan* requires future urban developing siting and interface to be sympathetic to the Lutherhort Bestal Church and St. Paul's Evangelical Church that are both located on this site.
- [37] Ms. Noorman acknowledged that the date contained in Condition No. 2 of the recommended conditions should be July 6, 2022.

- [38] To clarify, Ms. Noorman stated the maximum digital component of the sign should not exceed 8.0 square metres. The remaining 12 square metres should be comprised of other types of copy to a maximum of 20.0 square metres.
- [39] It was her opinion that the existing cell tower currently located on the subject site is not sympathetic to the church site.
- [40] The proposed Sign will not impact any residential properties.
- [41] St. Paul's Lutheran Church is on the Inventory of Historic Resources.
- [42] It was her opinion that the proposed Sign is not reasonably compatible with the historic characteristics of this historic church site. The Applicant was given the opportunity to modify the Sign by decreasing the size of the digital panel to comply with the Bylaw regulations. However, the Applicant chose to proceed with the current application.
- [43] It was her opinion that the advertising needs of the church could be met with a smaller sign.
- [44] It has been her experience in working with Sign companies that the current technology affords an opportunity to convey effective advertising on smaller Signs that have much less impact.
- [45] It was determined that the proposed development was not reasonably compatible based on a review of Section 3.6 of the Southeast Area Structure Plan and because St. Paul's Lutheran Church is on the Inventory of Historic Resources.
- [46] Even though the subject site is located adjacent to a large commercial site, the site is zoned US Urban Services and there are two historic churches located on the site. It was her opinion that the site is institutional and not commercial in nature.
- [47] While sympathetic to the advertising needs of the Church, it was her opinion that a digital Sign is not in keeping with the historic nature of the site and that a Sign more complimentary to the historical characteristics of the site could be designed.

iii) Rebuttal of the Appellant, Mr. Rochat:

- [48] Any future redevelopment plans for the site will be required to comply with landscaping regulations.
- [49] The Church was provided with a number of different design options but in the end it was their choice to proceed with the proposed design.
- [50] He disagreed with the Development Officer's opinion that there is no unnecessary hardship for the Applicant because of the financial hardship that would be incurred from a loss of revenue that would be generated by the Sign.

- [51] The Chairman explained that hardship has a particular meaning when considering development and zoning. In this context, hardship would be applicable if any limitations are placed on the development of special or unique lot. The Board cannot consider financial hardships or the economics of a development.
- [52] The proposed Sign is an allowable use and the proposed design was chosen by the Church and is important to their long term planning.

Decision

- [53] That the appeal be DENIED and the decision of the Development Authority CONFIRMED.

Reasons for Decision

- [54] Minor Digital On-premises Off-premises Signs are a Discretionary Use in the US Urban Services Zone.
- [55] St. Paul's Evangelical Lutheran Church and Lutherhort Bestal Church are located on the subject site. The Board notes that St. Paul's Lutheran Church is on the Inventory of Historic Resources in Edmonton. The Lutherhort Bestal Church is not on the Inventory of Historic Resources but it is specifically referenced in section 3.6 of the *Southeast Area Structure Plan* which states that:
- “Two churches, Lutherhort Bestal and St. Paul's Evangelical Lutheran Church, are located within S1/2 SE 26-51-24-4 of Charlesworth, north of Ellerslie Road west of 50 Street. Although it is not on the Inventory of Historic Resources in Edmonton, the Lutherhort Bestal Church was built in 1898 (relocated from another location) and has served this community since early settlement. Adding to the cultural history of this site is St. Paul's Evangelical Lutheran Church, which is located within the same overall church site. This second structure is one of the few solid civic structures in the area, and is of particular architectural note. Future urban development siting and interface will be sympathetic to both church sites”.
- [56] The Board notes that the *Southeast Area Structure Plan* describes St. Paul's Evangelical Lutheran Church to be “one of the few solid civic structures in the area, and is of particular architectural note”.
- [57] Section 59.2(7) requires the Development Officer to review all Sign Applications for Minor Digital On-premises Off-premises Signs in the context of surrounding development which includes “the architectural theme of the area” and “any historic designations” and “the requirements of any Statutory Plan”.

- [58] The proposed Sign is a large Digital Sign that contains 18.3 square metres of digital copy. The Sign is composed of two digital screens that face in opposite directions, supported by a single pylon constructed of steel and cement. The proposed Sign does not contain any architectural design features.
- [59] The Board has decided to refuse the proposed Discretionary Use on this site. The Board is of the opinion that the proposed Sign is not sympathetic to the architectural theme of the subject site or the historically significant architecture of St. Paul's Evangelical Lutheran Church or the smaller Lutherhort Bestal Church that have existed on this site since 1898.
- [60] The Board therefore accepts the reasons for refusal identified by the Development Officer and finds that the proposed development does not comply with Section 59.2(7) of the *Edmonton Zoning Bylaw* or section 3.6 of the *Southeast Area Structure Plan*.
- [61] For all of these reasons, the appeal is denied and the proposed Minor Digital On-premises Off-premises Sign is refused.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

Board members in attendance: Mr. R. Hobson, Mr. J. Kindrake, Mr. V. Laberge, Ms. S. LaPerle

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



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Date: July 14, 2017
Project Number: 251319953-001
File Number: SDAB-D-17-123

Notice of Decision

- [1] On July 6, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **June 9, 2017**. The appeal concerned the decision of the Development Authority, issued on June 7, 2017, to refuse the following development:

To install one (1) Fascia On-premises Sign (Car Wash)

- [2] The subject property is on Plan 1521954 Blk 4 Lot 3, located at 3515 - Allan Drive SW, within the DC1 Direct Development Control Provision (Ambleside; Bylaw 17494). The Ambleside Neighbourhood Area Structure Plan and Windermere Area Structure Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions and photographs of the site; and
 - Photographs and a letter of support submitted by the Appellant.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Site Plan submitted by the Appellant

Preliminary Matters

- [5] At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Chairman outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”).

- [8] The Chairman referenced Section 641 of the *Municipal Government Act*, which states that despite section 685, if a decision with respect to a development permit application in respect of a direct control district is made by a council, there is no appeal to the subdivision and development appeal board, or 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 Chairman asked the Appellant to explain how the Development Authority failed to follow the directions of council in refusing this development permit application.

Summary of Hearing

i) Position of the Appellant, Mr. Konowalchuk, representing Landale Signs:

- [9] The proposed size and elevation of the Fascia Sign complies with the development regulations.
- [10] It was his opinion that City Council considered the impacts of illuminated signage on neighbouring property owners when adopting the development regulations.
- [11] The proposed Sign is not illuminated and will not negatively impact any of the neighbouring property owners.
- [12] Because of the creation of the lots in this area, there is existing signage on other businesses that is not perpendicular to the public roadway.
- [13] His client wants to install signage to identify his business from as many locations as possible. The proposed Fascia Sign is not illuminated and will not negatively impact any of the neighbouring properties but it will ensure the success of his business.
- [14] A site plan, marked Exhibit A, was referenced to illustrate that the proposed Sign will face northeast and will be visible from the circular roadway that is located north and east of the subject site.
- [15] The proposed lettering is two by two and one-half feet high and will be installed approximately 12 feet from the ground. It will not be illuminated and there will not be any indirect lighting installed.
- [16] Signage is not visible from the main entrance to this site. Motorists exiting from Anthony Henday to Windermere Boulevard will be able to see the proposed signage.
- [17] Mr. Konowalchuk confirmed that the Sign faces a parking lot.

- [18] The empty lots located north and east of the subject site will be developed but the proposed signage will still be visible from the Windermere Boulevard and the circular roadway located north and east of the site because of the pie-shaped nature of the lots and the siting of the buildings.
- [19] He could not confirm whether or not the Development Permit application was part of a Comprehensive Sign Design Plan that is a requirement of DC1 Direct Development Control Provision, Section DC1.5.e.i.
- ii) *Position of the Development Officer, Ms. B. Noorman:*
- [20] This development application was not reviewed as part of a Comprehensive Sign Design Plan. The decision was not made based on the number or location of existing signs on the site. Ms. Noorman could not confirm the existence of a Comprehensive Sign Design Plan.
- [21] The development application was refused because the requested variance is not in keeping with the intentions of City Council as provided in the Direct Development Control Provision.
- [22] The proposed sign is located on the rear of the building and faces the rear of the lot, a lane way and an adjacent property. It was acknowledged that the Sign may be visible from a public roadway, but it does not face a public roadway.
- [23] It was her opinion that the sign may adversely impact the neighbouring property once it is developed.
- [24] The possibility of relocating the Sign to the side of the building that is adjacent to the public roadway was discussed with the Applicant. However, they chose to proceed with this application.
- [25] The examples of other similar existing Signs, located on multiple sides of a building and illuminated are not precedent setting.
- [26] The existing Signs marked A to F on a diagram submitted by the Appellant were approved and have valid Development Permits. It could not be confirmed if they were part of a Comprehensive Sign Design Plan.
- [27] This application was not reviewed as part of a Comprehensive Sign Design Plan.
- [28] It was her opinion that there was no unnecessary hardship or practical difficulty peculiar to the site. The business has several other Signs on the site, and was given the opportunity to place a Sign on the east elevation of the building, which would have complied with the *Edmonton Zoning Bylaw*, however, the Applicant refused. Business owners have the opportunity to purchase property directly adjacent to major arterial roadways.

- [29] Granting the required variance may add to sign proliferation and negatively impact the amenities of the neighbourhood and materially interfere with the use, enjoyment or value of neighboring properties.
- [30] A condition requiring the Applicant to submit a Comprehensive Sign Design Plan was recommended to the Board if the appeal is supported and the development approved in order to ensure a cohesive approach to complement the architectural features of all buildings on the site when considering any Sign applications in the future.

iii) Rebuttal of the Appellant

- [31] It was his opinion that the photograph submitted by the Development Officer is strategic at best and does not illustrate an accurate depiction of the visibility of the Sign from Rabbit Hill Road.
- [32] The proposed location is most advantageous for his client's business.
- [33] This Sign application was made to address problems with the visibility of the building.
- [34] A Fascia Sign advertising the Car Wash has been installed on the Green Bottle Depot building.
- [35] The majority of the existing eight Signs on the site cannot be seen from either roadway.
- [36] The proposed Sign will be the most visible of any of the existing Signs.

Decision

- [37] That the appeal be DENIED and the decision of the Development Authority CONFIRMED

Reasons for Decision

- [38] The subject site is zoned DC1 Direct Development Control Provision (Ambleside; *Bylaw 17494*).
- [39] Pursuant to DC1.3.2 Area B(z) a Fascia On-premises Sign is a Listed use in the DC1 Direct Development Control Provision.
- [40] DC1.4.k states that "Signs shall comply with the regulations found in Schedule 59E of the *Edmonton Zoning Bylaw*".
- [41] Section 59E.2(1)(a) of the *Edmonton Zoning Bylaw* states that "Fascia On-premises Signs shall only face a public roadway other than a Lane".

- [42] Based on the evidence provided, the proposed Fascia Sign is located on the rear of the building and faces the adjacent property. While it may be visible from a public roadway, it does not face a public roadway. Therefore, the proposed Fascia Sign does not comply with the development regulations contained in section 59E.2(1)(a) and as a result does not comply with the development regulations contained in DC1.4.k of Bylaw 17494.
- [43] The Board is satisfied that the Development Authority did follow the direction of City Council in refusing the proposed development.
- [44] The Board also notes that section 5.e.i of *Bylaw 17494* requires the submission of a Comprehensive Sign Design Plan and Schedule, consistent with the overall intent of Section 59.3 of the *Edmonton Zoning Bylaw* prior to the approval of any development.
- [45] A Comprehensive Sign Design Plan and Schedule was not provided to the Board and it could not be determined if one had been submitted with the Development Permit Application. Therefore, the Board could not determine whether or not the Development Authority followed the direction of Council by failing to require the Applicant to submit a Comprehensive Sign Design Plan.
- [46] Section 641(4)(b) of the *Municipal Government Act* allows the Board to substitute its decision for the decision of the Development Authority if it is determined that the Development Authority failed to follow the directions of City Council. The Board can determine in its decision that that it is in accordance with the direction of City Council.
- [47] The Board finds that the Development Authority failed to follow the directions of Council by failing to require the Applicant to submit a Comprehensive Sign Design Plan and Schedule. Therefore, the Development Permit application would be refused on those grounds which would still result in the denial of the appeal and the refusal of the Development Permit application.
- [48] Based on the above, the appeal is denied and the development is refused.

Mr. I. Wachowicz, Chairman
Subdivision and Development Appeal Board

Board members in attendance: Mr. R. Hobson, Mr. J. Kindrake, Mr. V. Laberge, Ms. S. LaPerle

Important Information for the Applicant/Appellant

3. 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.
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