



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: November 30, 2016  
Project Number: 227828340-001  
File Number: SDAB-D-16-252

**Notice of Decision**

- [1] The Subdivision and Development Appeal Board (the “Board”), at a hearing on October 13, 2016, made and passed the following motion:

"That the hearing for SDAB-D-16-252 be TABLED to a later date at the written request of the Appellant and with the agreement of Mr. G. Penney, representing an affected property owner and with the agreement of Mr. B. Liang and Mr. M. Doyle, the Development Officers. The hearing will be scheduled for November 23 or November 24, 2016."

- [2] On November 23, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **September 17, 2016**. The appeal concerned the decision of the Development Authority, issued on September 2, 2016, to refuse the following development:

**Operate a Major Home Based Business (Filling Sandbags: Sandbags.ca).**

- [3] The subject property is on Plan 9723204 Lot 4A, located at 1951 - 232 Avenue NE, within the (AG) Agricultural Zone. The Edmonton Energy and Technology Park Area Structure Plan applies to the subject property.

- [4] The following documents were received and form part of the record:

- A copy of the Edmonton Energy and Technology Park Area Structure Plan;
- A copy of the Development Permit application with attachments and the refused Development Permit;
- The Development Officer’s written submission;
- Letters of opposition for the proposed development; and
- Two Court of Appeal decisions from the Development Officer.

**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 Presiding Officer referenced section 686(1)(a)(i) of the *Municipal Government Act* and indicated that there was a late filing issue to be addressed. The Presiding Officer stated that the Notice of Appeal was filed on September 17, 2016 and the decision of the Development Officer was issued on September 2, 2016, which is beyond the 14-day period to file an appeal.
- [8] The Presiding Officer referenced the Development Officer's written submission that stated that an e-mail with the decision was sent September 2, 2016 to the Applicant.

**Summary of Hearing***i) Position of the Appellant, Mr. F. Jutt, representing the Appellant, Mr. T. Jutt*

- [9] With respect to the late filing issue, Mr. Jutt acknowledged that an e-mail was sent by the Development Officer and received on September 2, 2016. He and his father were under the impression that they had 15 days to file an appeal and used that time to determine if they should file an appeal.

*ii) Position of the Development Officer, Mr. B. Liang*

- [10] Mr. Liang indicated that the e-mail with the decision was sent September 2, 2016 and included the same decision as the registered mail that was sent. The decision attached to the e-mail included directions on how to file an appeal.
- [11] He reiterated that the e-mail with the decision was essentially the same thing as the registered mail that was sent.
- [12] With respect to a receipt of e-mail after it was sent, he indicated that there is no standardized procedure to require a receipt of e-mail delivery.

Mr. G. Penny, acting on behalf of an affected property owner, had nothing to add.

*iii) Rebuttal of the Appellant*

- [13] Mr. Jutt indicated that he received the e-mail from Mr. Liang and indicated that Mr. Liang phoned him ahead of time. There was confusion with the Minor and Major Home Based Business applications, which led to a delay in filing the appeal. He assumed weekends did not count when determining the appeal period deadline.
- [14] Mr. Liang agreed with Mr. Jutt's statement that he first reviewed the application and refused it as a Minor Home Based Business and e-mailed the decision. At Mr. Jutt's request, he received new fees and reviewed the application as a Major Home Based Business and refused it again. He stated that this decision was also e-mailed to the Applicant and clarified that all of these transactions, e-mails and communication occurred all on September 2, 2016.

None of the parties had anything further to say.

**Decision**

- [15] The Board does not assume jurisdiction.

**Reasons for Decision**

- [16] The Board notes that both the Appellant and Development Officer acknowledged that the decision was e-mailed and received on September 2, 2016.
- [17] The Board accepts that the decision attached to the e-mail was essentially the same document that was sent by registered mail.
- [18] The Appellant assumed he had 15 days from the decision to file an appeal.
- [19] The Appellant filed the appeal on September 17, 2016, which is beyond the 14-day appeal period.
- [20] Section 686(1)(a)(i) of the *Municipal Government Act* states that an appeal to this Board must be filed within 14 days of the date which the person is notified of the decision.

[21] Accordingly, the Board does not have jurisdiction to hear this appeal.

A handwritten signature in blue ink, appearing to read "B. Gibson", with a long horizontal flourish extending to the right.

Mr. B. Gibson, Presiding Officer  
Subdivision and Development Appeal Board

**Important Information for the Applicant/Appellant**

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street NW, Edmonton.



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## **SDAB-D-16-264**

Application No. 176981065-003

An appeal by 413140 Alberta Ltd. to construct exterior alterations to an approved Accessory Building (rear detached garage, 7.3 m x 6.1 m) was **TABLED TO DECEMBER 8, 2016.**



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Date: November 30, 2016  
Project Number: 231127978-001  
File Number: SDAB-D-16-298

**Notice of Decision**

- [1] On November 23, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **November 1, 2016**. The appeal concerned the decision of the Development Authority, issued on October 19, 2016, to refuse the following development:

**Install (1) Fascia On-premises Sign (MERCER TAVERN).**

- [2] The subject property is on Plan NB1 Blk 3 Lots 187-188, located at 10363 - 104 Street NW, within the (HA) Heritage Area Zone. The Special Area Downtown Overlay and the Capital City Downtown Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Capital City Downtown Plan;
  - A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
  - The Development Officer's written submission; and
  - The Appellant's submission;

**Preliminary Matters**

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

**Summary of Hearing**

*i) Position of the Appellant, Mr. K. Barabash and Ms. S. Barabash and the property owner of the subject site, Mr. K. Pope*

- [7] Ms. S. Barabash referenced their submitted photographs to show several Fascia On-premises Signs and neon Signs currently attached to the subject building and adjacent buildings.
- [8] They assumed based on the number of Fascia On-premises installed, a precedent was set.
- [9] With respect to the subject Sign being refused, they were confused how the other Signs were approved by the City.
- [10] Ms. Barabash referenced the existing flashing light bulb Signs on the subject building to demonstrate the type of the Sign under appeal.
- [11] She indicated that some of the neon signs on the (south) elevation of the subject building are a part of the Edmonton Neon Sign Museum.
- [12] She referenced the illuminated and neon Signs on 104 Street and the subject building as well as the digital Signs across 104 Avenue at Rogers Place to show that the proposed Sign is in character with the neighbourhood.
- [13] She referenced a Fascia On-premises Sign for the Canadian Border Services Agency on the building immediately to the south. In her opinion, this Sign is not architecturally pleasing and its design does not meet the style of the historical nature of this Zone.
- [14] With regard to the second reason for refusal from the Development Officer, Ms. Barabash showed an aerial photograph to demonstrate that there is a lot of pedestrian traffic on 104 Street and 104 Avenue, especially with Ice District and Rogers Place next door. During events, there are thousands of pedestrians on these roadways.
- [15] She indicated that the subject Sign is visible from the Winter Garden (Ford Hall) and westbound vehicular and pedestrian traffic on 104 Avenue.
- [16] She referenced her traffic volume document and indicated that this Sign provides a lot of business exposure for the subject building.
- [17] They reiterated that the architectural finish of the Sign is similar to the existing Signs in the neighbourhood and it was erected to provide a retro look and fit in with the historical design of the area and the Neon Sign Museum.



[18] With respect to questions from the Board, the Appellants provided the following:

- a. Mr. Pope indicated that the existing Signs that are similar in design to the subject Sign were built approximately 24 months ago and he indicated that those Signs were approved.
- b. He indicated that the subject Sign was installed before the decision because they assumed based on the other similar Signs in the area and feedback from the City, the subject Sign would be approved.
- c. The flashing light bulb Sign on the (south) elevation of the subject building that is almost identical to the subject Sign was approved approximately 36 months ago.
- d. He indicated that part of the reason for this type of illumination is that it lights up the area and deters vandalism. He indicated that the subject building does not get graffiti because it is well lit. He reiterated that they feel the subject Sign is attractive and complements the Neon Sign Museum.
- e. He confirmed that they are applying for a permanent Fascia On-premises Sign.

[19] The Presiding Officer indicated that there is a difference between a Fascia and a Projecting Sign. The Appellants acknowledged that they know the difference between the Sign Use and acknowledged that a Fascia Sign is not allowed in the Heritage Zone.

*ii) Position of the Development Officers, Ms. R. Lee and Mr. B. Noorman*

[20] With respect to questions from the Board, the Development Officers provided the following:

- a. With regard to whether other Fascia Signs on the subject building and in the area have permits, Ms. Lee indicated that those Signs are not part of this application and she does not have information about them.
- b. They did not know when the (HA) Heritage Zone was created.
- c. Ms. Lee stated that any proposed Sign in the (HA) Heritage Zone must be reviewed by a City Heritage Planner and that Planner did not support the proposed Sign.
- d. With regard to if the proposed Sign was a Projecting On-premises Sign; they indicated if the Use is allowed, they would consider approving the Sign. In this case, they have no authority to approve a Use that is not listed in the Zone.

- e. With respect to the definition of a Temporary On-premises Sign, they indicated that the proposed Sign would have to be relocatable and removable. In this case, the proposed Sign is permanent. Ms. Noorman referenced the definition of “Permanent Sign” in the *Edmonton Zoning Bylaw* to show that the proposed Sign falls under this definition as it is affixed to the building.
- f. With regard to the other Signs on the building, they indicated that the Appellant did not ask about the other Signs with this application.
- g. They reiterated that despite other Fascia Signs on the building, they are required to review the current application based on the current *Edmonton Zoning Bylaw* and cannot comment on the legality of the other Signs or if they were approved.

*iii) Rebuttal of the Appellant*

[21] Mr. Pope indicated that the letters and words on the copy of the subject Sign changes and are temporary but they admitted that the structure of the Sign is permanent.

**Decision**

[22] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

**Reasons for Decision**

[23] Fascia On-premises Signs are neither a Permitted Use nor a Discretionary Use in the (HA) Heritage Zone.

[24] Under section 7.9(2) of the *Edmonton Zoning Bylaw*, Fascia On-premises Signs means:

any Sign painted on or attached to an exterior building wall, or any other permitted structure, on which a two dimensional representation may be placed. The Copy on such a Sign identifies or advertises a business, activity, service or product located on the premises or Site where the Sign is displayed.

[25] The Appellants agreed that the proposed development is a permanent Fascia On-premises Sign.

[26] Section 687(3)(d)(ii) of the *Municipal Government Act* states:

In determining an appeal, the subdivision and development appeal board may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion, **the proposed development conforms with the use prescribed for that land or building in the land use bylaw.**

[27] Accordingly, the Board does not have the authority to allow this appeal as the proposed Use Class is not contained within the (HA) Heritage Zone.

A handwritten signature in blue ink, appearing to read 'B. Gibson', is written over a faint, light blue grid background.

Mr. B. Gibson Presiding Officer  
Subdivision and Development Appeal Board

**Important Information for the Applicant/Appellant**

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