



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: April 17, 2018  
Project Number: 270891153-001  
File Number: SDAB-D-18-048

**Notice of Decision**

- [1] On April 5, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **March 8, 2018**. The appeal concerned the decision of the Development Authority, issued on March 5, 2018, to refuse the following development:

**Install (1) Freestanding Minor Digital Off-premises Sign (3 metres by 6.2 metres single sided facing South) (PATTISON - CANADIAN PACIFIC RAILWAY COMPANY).**

- [2] The subject property is on Plan 0521161 Blk L Lot 3, located at 7811 - Gateway Boulevard NW, within the CB2 General Business Zone. The Main Streets Overlay, the Whyte Avenue Commercial Overlay, and the Strathcona Junction Area Redevelopment 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
  - The Appellant’s written submissions.

**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 (the “*Municipal Government Act*”).

**Summary of Hearing***i) Position of Mr. Murphy, Legal Counsel for the Appellant, Pattison Outdoor Advertising*

- [7] The existing Sign was previously approved for five years in this location.
- [8] Although the scope of application is to install a new Sign, the development is for a renewal of an existing Sign.
- [9] When a variance is required, notices to property owners are sent out which makes property owners think the proposed development is for a new Sign.
- [10] Since the Sign was approved five years ago, there have been changes to the Main Streets Overlay reducing the maximum allowable Height of a Freestanding Sign or Digital Sign from 8.0 metres to 6.0 metres. The existing Sign is 7.9 metres in Height which will require a variance.
- [11] The refused Development Permit and the reason for refusal are included in his written submission (Tab 1).
- [12] The CB2 General Business Zone provides that a Minor Digital Off-premises Sign is a Discretionary Use (TAB 2).
- [13] Schedule 59E now includes the Main Streets Overlay. Schedule 59E.3(5) applies to Minor Digital Off-premises Signs (TAB 3).
- [14] The existing Sign Width, Sign Area, and Height comply with Schedule 59E. However, the Main Streets Overlay reduces the maximum allowable Sign Height to 6.0 metres. A variance in the Height of the Sign was not required five years ago. The existing Sign meets the Setback requirements.
- [15] The Strathcona Junction Area Redevelopment Plan was consolidated by virtue of the incorporation of the Bylaw, which was an amendment to the original Bylaw. There is no change to the matter that the Development Officer outlined in her written submission (TAB 4).
- [16] The Strathcona Junction Area Redevelopment Plan creates a Business Area and Industrial Area along Gateway Boulevard and Calgary Trail. The Development Concept Map 6 shows the two areas.
- [17] Gateway Boulevard separates the two areas. The subject lot is in the Business Area which is adjacent to the Industrial Area. The existing Sign is in the northern part of this area.

- [18] The Strathcona Junction Area Redevelopment Plan, Section 3.1, states: The Business Area is an underutilized area with opportunity to urbanize. Gateway Boulevard and 104 Street both serve key transportation functions in south Edmonton but have different characteristics and redevelopment trajectories. Development along 104 Street will be street-oriented and reinforce a traditional character with pedestrian-friendly building frontages. Development along Gateway will be set back from the roadway and incorporate architectural features and landscaping to enhance aesthetics along what is expected to remain a predominantly automobile-oriented corridor.
- [19] Section 3.1.6 states that the City of Edmonton will support the subdivision of a narrow strip of CPR property abutting Gateway Boulevard.
- [20] Section 3.1.10 states that Signs will respect the character of an urban area. Billboards will not be allowed. Mr. Murphy stated that “billboards” are not defined in the *Edmonton Zoning Bylaw*. Billboards are still outlined in the Calgary Trail Land Use Study. One of the reasons the Development Officer refused the proposed development was that billboards are not allowed.
- [21] The Strathcona Junction Area Redevelopment Plan talks about the future zoning in the area.
- [22] He referred to the DC1 Direct Development Control Provision from 2015. All third party advertising Signs were removed. The only Signs available in this zoning are On-premises Signs.
- [23] The plan does not speak to what is being proposed. An Off-premises Sign is still permitted.
- [24] Mr. Murphy contrasted the Strathcona Junction Area Redevelopment Plan with the 109 Street Corridor Area Redevelopment Plan. Section 3.2.3.5 states that signage must be of a scale and type that respects the compact, pedestrian oriented character of the District and related to local businesses. Billboards, roof-top, digital and off-premise signage of any type will not be permitted. The statement reads that the City recognized that Digital Signs are different than a billboard Sign. When the City wanted to eliminate all Off-premises Signs in a plan, they made it happen. The Strathcona Junction Area Redevelopment Plan must be different than the meaning in 109 Street Corridor Area Redevelopment Plan. Signs are not defined in the *Edmonton Zoning Bylaw*, but Digital Signs are.
- [25] In 2013, the Board approved one Freestanding Off-premises Minor Digital Sign. He referred to the reasons for the decision and stated that language of the Strathcona Junction Area Redevelopment Plan was the same (TAB 6).

- [26] The position of the Board is challenged this time as the Development Officer refers to Section 3.5(2) in her written Submission that outlines that “billboard” is not a defined term in the Area Redevelopment Plan or the *Edmonton Zoning Bylaw* and the Development Officer must apply the ordinary meaning to this word.
- [27] The Development Officer is not interpreting the *Edmonton Zoning Bylaw* but instead the Area Redevelopment Plan. The Strathcona Junction Area Redevelopment Plan is not part of the *Edmonton Zoning Bylaw*. The Development Officer is using an interpretation method that only applies to the *Edmonton Zoning Bylaw*.
- [28] With regard to separation space, in 2013, the Board approved a Freestanding Minor Digital On-premises Off-premises Sign with variances across the street from the subject Site. Pattison Outdoor Advertising was not aware of that sign when they made a Development Permit application for their sign. The Pattison Sign was approved even though there was another sign across the street.
- [29] The Sign across the street could not be renewed as it was now too close to the Pattison Sign after it was constructed.
- [30] The Board approved the Sign across the street in 2017. In the reasons for the decision, the Board indicated that the Sign has been in this location for five years with no known complaints or concerns.
- [31] Transportation did not have an issue with the sign.
- [32] He referred to the photographs showing the subject Site and the location of the existing Sign. There is commercial property on the west side of the road. There is no pedestrian area on the east side of the road as there is no sidewalk on that side (TAB 7).
- [33] The Development Officer outlined in her written submission that signs shall complement the pedestrian-oriented commercial environment. Mr. Murphy stated that there is no pedestrian area on this side of the road and will most likely remain this way.
- [34] The Sign is located on the CPR right-of-way and people are not allowed in this area.
- [35] With regard to the Height and the impact on pedestrians, he stated that this is not accurate for the Development Officer to stress this point as this is not a pedestrian area.
- [36] There is confusion in the Main Street Overlay and the Statutory Plan. The Board is bound by the Statutory Plan but not the Overlay. He referred to Section 800 City-Wide Master Plan in the *Edmonton Zoning Bylaw* that states that the General Purpose of this Overlay is to provide a means to alter or specify regulations for Permitted and Discretionary Uses in otherwise appropriate Zones (TAB 9).

- [37] Mr. Murphy stated that anything in the Overlay is going to be amenable to the Board's variance powers.
- [38] He referred to Section 819 Main Streets Overlay in the *Edmonton Zoning Bylaw* that states the purpose of this Overlay is to encourage and strengthen the pedestrian-oriented character of Edmonton's main street commercial areas that are located in proximity to residential and transit-oriented area, by providing visual interest, transparent storefront displays, and amenities for pedestrians (TAB 10).
- [39] He referred to Section 819.3 (26) Development Regulations (TAB 10) that states that Signs shall complement the pedestrian-oriented commercial environment and shall be provided in accordance with Schedule 59E of this Bylaw, except that: the maximum Height of a Freestanding Sign or Digital Sign shall be 6.0 metres.
- [40] Mr. Murphy stated that is the General Purpose and applies to an area where there are no pedestrians. That change was made in 2017 and the purpose on the Height restriction is to keep it pedestrian oriented but that is not the case in this area.
- [41] The existing Sign will not negatively impact the neighbourhood or the enjoyment or value of neighbouring properties.
- [42] He referred to an email from Transportation indicating that they do not have an issue with the existing Sign (TAB 11).
- [43] He referred to two emails regarding consultation that was done by the Development Officer. Neighbouring property owners were of the opinion that a new sign would be installed from the wording on the notice due to the variance in Height (TAB 12).
- [44] One email received was from a neighbouring property owner that had a concern with regard to the light output. Mr. Murphy stated that digital lights are required to have an ambient light meter on them which lowers the light at night. Lighting has not been turned off at any Pattison Sign.
- [45] A neighbouring property owner responded and asked how the light from a sign works. They did not have a response in support or opposition.
- [46] He referred to an aerial photograph showing the distance from the condominium building where residents responded to the consultation. Even at the closest point, the sign is still over 100 metres from the condominium building. The sign faces the road and not the building which will not negatively impact residents (TAB 14).
- [47] In his opinion, there is no reason to refuse the proposed sign as it is a renewal and not a new sign.

- [48] In response to questions by the Board, Mr. Murphy stated there is only one message on the Sign at a time. Photos often show that the message is different than what it really is.
- [49] There have been no modifications to the Sign in the last five years.
- [50] He is agreeable to the conditions suggested by the Development Officer.
- [51] In his opinion, the CPR site will not be developed for approximately 10 to 15 years which will be dependent on Canadian Pacific.
- [52] Properties on the west side of the street are privately owned.

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

- [53] The Development Authority provided written submissions and did not attend the hearing.

### **Decision**

- [54] 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 permit expires on April 17, 2023.
  2. The proposed Minor Digital Off-premises Sign shall comply in accordance to the approved stamped plans submitted.
  3. 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))
  4. 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))
  5. Minor Digital Off-premises Signs shall have a Message Duration greater than or equal to 6 seconds. (Reference Section 7.9(8))

6. The Minor Digital Off-premises Sign shall be located so that all portions of the Sign and its support structure are completely located within the property and no part of the Sign may project beyond the property lines unless otherwise specified in a Sign Schedule. (Reference Section 59.2(12))
7. The following conditions, in consultation with the Transportation department (City Operations), shall apply to the proposed Minor Digital Off-premises Sign, in accordance to Section 59.2(11).
  - a) The owner/applicant must immediately address any safety concerns identified by City Operations 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 City Operations.
  - b) The owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by City Operations 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/onto road right-of-way.

**ADVISEMENT:**

An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the Edmonton Building Permit Bylaw or any caveats, covenants or easements that might be attached to the Site (Reference Section 5.2).

[55] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:

1. The maximum allowable Height of 6.0 metres as per Section 819.3(26)(a) is varied to allow an excess of 1.9 metres, thereby increasing the maximum allowed Height to 7.9 metres.
2. The minimum required separation distance of 200.0 metres from a Digital sign greater than 8.0 square metres or other Off-premises Sign as per Section 59E.3(5)(d) is varied to allow a deficiency of 116.0 metres, thereby decreasing the minimum required to 84.0 metres.


**Reasons for Decision**

- [56] A Minor Digital Off-premises Sign is a Discretionary Use in the CB2 Zone.
- [57] Two variances were requested and granted in the approval for this Sign. They will be discussed under the headings of Height and Separation Distance.
- [58] Height:
- i) The original Sign was constructed in 2013 at the Height of 7.9 metres. This Height was permitted under the *Edmonton Zoning Bylaw* at that time.
  - ii) The Height restriction of 6.0 metres was recently imposed pursuant to the Main Street Overlay. Therefore, if this Sign were to be built today it would have to comply with the lower Height, but as it was constructed in 2013, the Board agrees to the variance in Height as it complied at the time of construction.
  - iii) This is not a new Sign. The Appellant argued that the Development Permit should have read “leave as built” instead of “to install” as this gives the impression that it is a completely new Sign instead of being a renewal of an existing sign with no changes contemplated.
  - iv) The Sign complies with Width, Sign Area and Setback requirements and the Sign has existed at its present Height for some five years without any complaints with regards to Height.
- [59] Separation Distances:
- i) The minimum required separation distance from Digital Signs greater than 8.0 square metres or another Off-Premises Sign is 200 metres. The proposed separation distance is 84 metres and a deficiency of 116 metres is granted.
  - ii) The original application was approved by this Board February 21, 2013 (SDAB-D-13-030). This was for one Freestanding Off-Premises Minor Digital Sign to be constructed and operated by Pattison Outdoor Advertising.
  - iii) On October 13, 2017, an application was approved by this Board to Install a Freestanding Minor Digital On-Premises Off-Premises Sign (SDAB-D-17-169) constructed and operated by Astral. At paragraph [19] of that decision, the Board wrote “the Development Officer outlined that the existing sign does not meet the required 200 meter separation distance. The Pattison Outdoor Advertising sign was approved by the Board after the subject sign was approved in 2012. The subject sign met the separation distance at the time of approval.” (emphasis added)
  - iv) The approved Astral sign is 84 metres from the Pattison Outdoor Advertising Sign. As the Board has approved this separation distance in one instance, it stands to reason that the same separation distance should be approved for the proposed Sign. Therefore, the Board grants this separation distance.
  - v) Both the hearings for these two signs are recent, were for renewals, and not for the initial construction of the signs.



- [60] The Strathcona Junction Area Redevelopment Plan contains two separate and distinct areas – The Business Area and the Industrial Area. The Sign is located in Business Area. In the Overview of the Business Area, it states:
- “Development along Gateway will be set back from the roadway and incorporate architectural features and landscaping to enhance aesthetics along what is expected to remain a predominantly automobile-oriented corridor.
- [61] The Board finds that Signs of this size are not out of place on an automobile corridor which does not have a pedestrian sidewalk on one side of the road, the one closest to the placement of this sign. The sign is reasonably compatible in this area and does not adversely impact the built environment.
- [62] There was considerable discussion about the term ‘billboard’.
- i) The Development Officer stated that “billboard” is not a defined term in the Strathcona Junction Area Redevelopment Plan or the *Edmonton Zoning Bylaw*. The Development Officer characterized this Sign as a ‘billboard’ and stated that the Area Redevelopment specifically uses mandatory language to prohibit ‘billboard’ signage at this location.
  - ii) SDAB-D-13-030 specifically addressed the meaning of the word ‘billboard’:  
“The Board accepts that the meaning of the word “billboard” is unclear given “billboard” is not defined in the current Edmonton Zoning Bylaw or the Strathcona Junction ARP. The Board is unable to give “billboard” a meaning which would eliminate the proposed development since Minor Digital Signs are listed as Discretionary Uses in the CB2 General Business Zone.” This Board adopts this same reasoning.
  - iii) The *Edmonton Zoning Bylaw* differentiate between types of Signs such as Digital, On-premises, Off-premises or a combination of the two latter Signs and directs where they may be placed. Billboards are not covered under any of these definitions.
  - iv) Pattison Outdoor Advertising uses the generic term ‘billboards’ for all of its Signs as its variety of Signs have commonly become known as ‘billboards’.
- [63] Transportation Services has not objected to the proposed development.
- [64] There were two letters of comment regarding the signs. Both were concerned about the lighting on the sign, not necessarily about the construction of the sign. However, the owners of condominiums would not be negatively affected as the proposed development lies south of the condominium development and is one sided which only faces south.
- [65] There have been no known complaints about the sign over the last five years.
- [66] The Appellant agreed with the conditions and advisements. The term of renewal is for 5 years.

[67] Based on the above, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Ms. P. Jones, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance

Ms. L. Gibson; Ms. M. McCallum; Mr. A. Nagy

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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.*