



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: August 27, 2019
Project Number: 315245131-001
File Number: SDAB-D-19-123

Notice of Decision

- [1] On August 14, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on July 23, 2019. The appeal concerned the decision of the Development Authority, issued on July 22, 2019 to refuse the following development:

To install one (1) Minor Digital Off-premises Freestanding Sign (PATTISON C.A.Y. INVESTMENTS INC.)

- [2] The subject property is on Plan 2657NY Blk 80 Lot A, located at 6029 - Gateway Boulevard NW, within the (CB1) Low Intensity Business Zone.
- [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 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 (the “*Municipal Government Act*”).

Summary of Hearing

- a) *Position of the Appellant, Mr. J. Murphy, Q.C., Ogilvie LLP, representing the Appellant, Pattison Outdoor Advertising:*

- [7] The development permit for this Minor Digital Off-premises Freestanding Sign has to be renewed every five years. Variances are required but each one of the variances has been previously granted by the Board.
- [8] A previous Board decision, SDAB-D-14-182, was referenced to confirm that the variance in the minimum required separation distance from an existing sign to the north was granted in that approval based on the finding that the signs cannot be viewed together because of the configuration of the roadway and the buildings on the subject site. It was noted that the Development Officer did not note this as a reason for refusal on this development permit application.
- [9] The proposed Minor Digital Off-premises Sign is a Discretionary Use in the (CB1) Low Intensity Business Zone and is subject to the development regulations contained in Schedule 59F of the *Edmonton Zoning Bylaw*.
- [10] Photographs taken from street view were referenced to illustrate the location of existing signs in this area. The development permit for the Lumican Sign that is located on the west side of Gateway Boulevard was recently approved by the Board. The subject Pattison Sign is located on the east side of Gateway Boulevard. The development permit for the Fascia On-premises Sign located immediately below this sign was approved by the Board approximately six months after the Board issued the development permit for the subject sign. The Pattison sign was the first sign in.
- [11] All three signs are visible at the same time at one point along Gateway Boulevard but the Lumican sign on the west side of Gateway Boulevard disappears behind a mature tree as you drive further north on Gateway Boulevard. All three signs have approved development permits.
- [12] The Board acknowledged in SDAB-D-14-182 that the sign located north of the subject site that would otherwise offend setback requirements is so buried from view behind the building that it was not an issue and nothing has changed since 2014. Paragraph [6] of the reasons for decision states “the Board finds that there is no non-compliance with the objectives of the Calgary Trail Land Use Study”.
- [13] The Calgary Trail Land Use Study was prepared in the 1980s and has not been updated. The Study suggested that billboard and temporary signs should be discontinued and older signage upgraded. The Board has considered the Calgary Trail Land Use Study in many appeals and has recognized that it is not a Statutory Plan within the meaning of the *Municipal Government Act* and therefore is not binding on the Board. The Board has also recognized that the prohibition that is always raised by the Development Authority against signs along Calgary Trail is not a prohibition against modern digital signage, it is a direction to remove the old paper billboards.

- [14] Development Officers always reference the Calgary Trail Land Use Study when reviewing a development permit application for a sign on Calgary Trail. It was his opinion that an issue estoppel is applicable to these circumstances for a number of reasons. Firstly, because this appeal is for the same sign and involves the same parties, namely the City of Edmonton and Pattison Outdoor Advertising. Secondly, the Board has made a final decision on this particular sign at this particular location (SDAB-D-14-182). In the decision, the Board made a particular finding of fact and law that there was no non-compliance with the objectives of the Calgary Trail Land Use Study vis-a-vis this sign. In terms of references by the Development Officer to non-compliance with the Calgary Trail Land Use Study, this decision of the Board is raised as well as a Court of Appeal decision, *Sihota v. Edmonton (City)*, 2013 ABCA 43. The Court determined that matters of issue estoppel can arise and are applicable in the context of the SDAB but it did not find that the Board is bound by its previous decisions. However, the parties are bound by the Board's previous decision where the Board has made a finding that is relevant to a subsequent hearing. Therefore, the City of Edmonton is bound to accept the findings of the Board in SDAB-D-14-182 and there is no argument available to them.
- [15] SDAB-D-15-306, to install a Fascia Major Digital On-premises Sign (PCwhoop Electronics/LED Pros) was referenced. The Board approved this sign to co-exist in harmony with the approved Pattison sign. In making the decision, the Board found that this sign was consistent with the signage on the building and that the two signs could exist together even though it was the opinion of the Development Officer that the proposed sign created visual proliferation and cluttering. However, in July 2014, the Board determined that these signs could exist together.
- [16] In December, 2015, the Board was asked to assess the viability of the Lumican sign located on the west side of Gateway Boulevard. The Board found that the three signs could exist together without offending the use, enjoyment or value of neighbouring properties or the amenities of the neighbourhood and a variance was granted to allow the sign. If the test applies from left to right, the test must equally apply from right to left. If the first sign, the subject sign, is in existence when the Lumican sign is proposed and the Board finds that allowing the two signs together will not affect the use, enjoyment or value of neighbouring properties or the amenities of the neighbourhood then surely that test must apply in reciprocal fashion to the existing sign. If there was a problem, the Lumican sign would not have passed the test and would not have been approved.
- [17] In November, 2017, the Board found that the existence of the subject Pattison sign, the Lumican sign and the Fascia Sign did not negatively impact the use, enjoyment or value of neighbouring properties or the amenities of the neighbourhood. That is not to say that the Board is bound by the decision. The Board is not estopped from deciding otherwise but it would be unusual and unfair for the Board to come to an opposite finding because nothing has changed on the site. However, if the sign is found to create a distraction or a traffic concern in the future, the conditions imposed address this issue and the sign would have to be de-energized.

- [18] Urban Form and Corporate Strategic Development have provided written support for the development permit application with recommended conditions.
- [19] Mr. Murphy provided the following information in response to questions from the Board:
- a) The Fascia Sign existed without a valid development permit when the Board approved this sign five years ago. The Fascia Sign was approved by the Board six or seven months later. The Board was aware of the existence of both signs and the physical surroundings during both appeals. The only thing that has changed since then is that the Fascia Sign was issued a development permit. No physical changes have occurred.
 - b) It would not have been fair for the Board to approve a development permit for the Fascia Sign based on the assumption that the existing Minor Digital Off-premises Freestanding Sign would not be approved in five years. If that was fundamental to the Board's decision it would have been referenced in the reasons for decision.
 - c) Signs are the only Use with a mandatory timed five year development permit. The five year permits are meant to preclude Signs ever becoming a non-conforming Use. The Sign industry agreed to absorb the five year limited permits in the interest of accommodating major changes that may occur in the surrounding area. For example, the construction of an apartment building on the site located south of the Lumican sign would constitute a major change and would impact this Discretionary Use
 - d) The Fascia Sign existed without a development permit when this sign was approved.
 - e) Signs are a Discretionary Use but even if the test is met for a variance, there is presumably some discretion available to the Board to refuse the application. However, it was noted that this issue has not been considered by the Court of Appeal.
 - f) There are too many signs when the Board says that there are too many signs.
 - g) Every time a reapplication is made, it is treated as a new sign application. Two more signs have been approved but has this caused the subject sign to be the problem. Both sign approvals did not require the removal of this sign and neither of the approvals depended on the death of this sign.
 - h) There have not been any complaints about the existence of the three signs.
 - i) This sign is not attached to the building, it is a Freestanding Sign. The development regulations contained in Section 59 apply to a Freestanding Sign in any zone. A Freestanding Sign will never tie into the architecture of the building. This sign raises advertising above the bands on the rest of the building which is helpful. Section 59.2 simply provides discretion for the Board to deny the appeal and refuse the development permit application. In this circumstance, it does not enhance the architecture of the building but works with the architecture, specifically because it is

- hidden behind one of the L-jogs in the building which softens the impact. This is a third party advertising sign that complies with the development regulations. The building architecture has not changed over the past five years and no problems have arisen even with the development of two additional signs in the area.
- j) The regulations for this zone allow a Sign to be a maximum of 65 square metres in size. The existing sign is 10 feet by 20 feet in size. The exact measurements of the Lumican sign could not be confirmed.
 - k) Pattison Outdoor Advertising has no intention of constructing a larger sign at this location. In any event, a new development permit application would have to be made to construct a larger sign.
 - l) Neighbouring property owners were not canvassed regarding the proposed sign. Business owners in this complex have been invited to advertise on the sign.
 - m) The recommended conditions have been reviewed and are acceptable.

ii) *Position of the Development Officer, Ms. K. Mercier:*

[20] Ms. Mercier did not attend the hearing but provided a written submission that was considered by the Board.

Decision

[21] 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 and ADVISMENTS**:

1. The permit will expire on August 27, 2024.
2. The proposed Minor Digital Off-premises Sign shall comply in accordance to the approved 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 59.2(18)).
6. All Freestanding Signs, Major Digital Signs, Minor Digital On-premises Signs, Minor Digital Off-premises Signs, and Minor Digital On-premises Off-premises Signs 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 (Subdivision Planning), shall apply to the proposed Minor Digital Off-premises Sign, in accordance to Section 59.2.11:
 - a. That, should at any time, City Operations determine 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 City Operations.
 - b. That 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/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, City Operations will require a safety review of the sign prior to responding to the application.

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

1. The minimum required separation distance of 200 metres from Digital Signs greater than 8.0 square metres or other Off-premises Signs greater than 20 square metres as per Schedule 59F.3(6)(e) is varied to allow a deficiency of 42 metres, thereby reducing the minimum required distance to 158 metres.
2. The minimum required separation distance of 100 metres from Digital Signs greater than 8.0 square metres or other Off-premises Signs greater than 20 square

metres as per Schedule 59F.3(6)(e) is varied to allow a deficiency of 35 metres, thereby reducing the minimum required distance to 65 metres.

Reasons for Decision

[23] A Minor Digital Off-premises Freestanding Sign is a Discretionary Use in the (CB1) Low Intensity Business Zone.

[24] In determining the Appeal, the Board considered three main issues:

1. The Application of the Calgary Trail Land Use Study;
2. The nature of the proposed Discretionary Use; and
3. The variances required in the minimum required separation distance from two other existing Signs.

Issue 1: Calgary Trail Land Use Study

[25] The Board heard evidence that the proposed Minor Digital Off-premises Freestanding Sign does not contravene the Calgary Trail land Use Study. In coming to this conclusion, the Board was directed to its previous decision SDAB-D-15-306.

[26] In that decision, the Board found:

“Further, the Calgary Trial Land Use Study is not a statutory plan within the definition of the Municipal Government Act.”

[27] This Board agrees with the reasoning in that decision and notes that it is not bound by the Study because it is not a statutory plan pursuant to section 616(dd) of the *Municipal Government Act* and the reasons outlined in SDAB-D-15-306.

[28] Moreover, the Board agrees with the opinion of the Appellant that because the proposed development is a Discretionary Use, it has to be prima facie assumed that the Use is consistent to some degree with the findings of the Calgary Trail Land Use Study.

[29] Finally, the Calgary Trail Land Use Study is an aspirational document for future planning and policy development in this area. The Board has already found that this document is not binding on the Board but acknowledges that it may use its principles to inform decisions relating to variances or Discretionary Uses.

Issue 2: Discretionary Use

[30] In order to determine whether a Discretionary Use should be allowed in a Zone, the Board must consider whether the development is reasonably compatible with the

surrounding neighbourhood. The Board finds that the proposed Sign is reasonably compatible with neighbourhood for the following reasons:

- a) The site is located on Gateway Boulevard, a major arterial roadway for traffic, travelling north through a heavily commercialized and industrialized zone. The roadway has an abundance of signs, both digital and stationary, specifically at the area in question.
- b) This sign has existed for five years without any known complaints
- c) The sign is characteristic of this very commercial area. The Board viewed photographic evidence provided by the Appellant and agrees with the submission that the proposed Discretionary Use is reasonably compatible with the surrounding land uses.

[31] While the Board finds that this Discretionary Use is reasonably compatible as of this date, that reality may change over the next 5 years. Future Boards may consider whether an area has gone through an evolution to render the Use no longer compatible. The Board believes that this is precisely the reason for the 5-year expiration clause on these types of permits.

Issue 3: Variances

[32] Having disposed of the first two issues, the Board must now turn its mind to the variances being sought. When deciding whether to grant a variance, this Board's test is laid out in Section 687(3)(d) of the *Municipal Government Act*. Namely, the Board must consider whether:

(i) the proposed development would

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

[33] The Board was presented with three areas of the Bylaw that the Development Officer identified as regulations requiring variance. Two of the regulations (Schedule 59F) relate to separation distances from other Digital Signs and the third (Section 59.2(6)) relates to regard to the architectural character of the area.

[34] With respect to the Schedule 59F regulations regarding separation distances between Digital Signs, the Board heard evidence from the Appellant that those distances were considered already by this Board in SDAB decisions SDAB-D-14-182 and SDAB-D-17-193. On both occasions, this Board found that the same separating distances did not offend either prong of this Board's test. While the previous decisions are not binding on this Board, they provide clarification on the factors that were considered when the Sign was approved.

- [35] In addition, the Board was presented with submissions by the Appellant that there has been no physical changes in the area since those decisions were decided which would otherwise affect the impact of the variances being sought.
- [36] This Board agrees with those submissions and that of previous Boards on this issue. Namely, this Board finds:
- a) There were no letters of objection received and no one appeared in opposition to the proposed development;
 - b) Urban Form and Corporate Strategic Development (Transportation Services) did not object to the proposed Minor Digital Off-premises Freestanding Sign at this location subject to several conditions that have been imposed by the Board;
 - c) The offending Fascia Sign located on the West side of Gateway Boulevard is integrated into the east façade of the building which mitigates the impacts of the proposed Sign when combined with the impact of the existing Sign;
 - d) The offending sign north of the subject site is not visible until within close proximity due to the configuration of the roadway and buildings existing on the subject site; and
 - e) The offending sign north of the subject is configured in such a way that only one third of the total sign area is visible from Gateway Boulevard.
- [37] Therefore, the separation distances will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [38] With respect to Section 59.2(6), the Board is presented with a consideration relating to aesthetic and architectural character. The Board has in some way already addressed this issue, both in the separation distance variances and in Issue 2 of this decision relating to the Discretionary Use.
- [39] The Board has already found that the Use is reasonably compatible with the surrounding neighborhood. In addition, the Board has found that variances to separation distances between sign, dictated by the size of the sign, would not in any way offend this Board's test in section 687(3)(d) of the *Municipal Government Act*.
- [40] These findings are indicative that this development does not offend the architectural character in the area. The Board does not accept the Development Officer's submission that the Proposed Sign, when considered in conjunction with the Fascia Sign, renders it incompatible with the architectural character of the building.

- [41] The Board comes to this conclusion because of the fact that when the Fascia Sign was placed on the building, it became part of the architectural character of the building. Therefore, to say that the Freestanding Digital Sign that is the subject of this appeal is inconsistent with the architectural character of the building would be an incorrect assertion. This instead suggests greater compatibility of the Digital Sign with the architectural character of the building.
- [42] For these reasons, the Board finds that a variance to Section 59.2(6) does not apply to this development.

Conclusion

- [43] Based on the foregoing, the Board finds that Calgary Trail Land Use Study does not preclude the development, the proposed development with the conditions imposed is reasonably compatible with the neighbourhood, and is of the opinion that granting the required variances will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

A handwritten signature in black ink, appearing to read 'R. Handa', with a stylized flourish at the end.

Mr. R. Handa, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. M. Young, Mr. C. Buyze, Mr. D. Fleming, Mr. J. Kindrake

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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SDAB-D-19-124

Project No. 298214168-002

An appeal of a development permit to construct four Apartment House buildings (total of 725 Dwellings) with an underground parkade, Building 4 has main floor Convenience Retail Store Uses was **WITHDRAWN**.