



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca

Date: September 1, 2016
Project Number: 222174111-001
File Number: SDAB-D-16-196

Notice of Decision

[1] On August 17, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on July 25, 2016. The appeal concerned the decision of the Development Authority, issued on July 12, 2016, to refuse the following development:

Install (1) Fascia On-premises Sign and (1) Roof On-premises Sign
(Rayacom)

[2] The subject property is on Plan B4 Blk 10 Lot 218, located at 11004 - 105 Avenue NW, within the DC1 (14141) Direct Development Control Provision. The Mature Neighbourhood Overlay and Central McDougall/Queen Mary Park Area Redevelopment Plan apply to the subject property.

[3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- Canada Post receipt confirming delivery of the refusal decision on July 14, 2016; and
- Development Officer's written submissions, dated August 5, 2016.

Preliminary Matter

[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

[7] The Presiding Officer explained that the subject development falls under a direct control district. As such, the Board's authority with respect to an appeal of the Development Officer's decision is limited by Section 641(4)(b) of the *Municipal Government Act*, which states in part:

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

[8] Accordingly, the Board must determine whether the Development Officer followed the directions of City Council. The Board invited the parties to provide submissions in this regard.

i) Position of the Appellant, Rayacom

[9] The Appellant was represented by Mr. A. Tran.

[10] Mr. Tran submitted that the Development Officer did not follow the directions of Council for the following reasons:

- a) The proposed Sign was incorrectly classified as a Roof Sign. Rather, it is essentially a modified Fascia Sign, with the top of the Sign extending above the roof top.
- b) The applicable Area Redevelopment Plan ("ARP") pre-dates the proposed development, and does not anticipate recent changes to the surrounding area, such as increased traffic. The proposed development will provide greater retail exposure and generate business from pedestrian traffic, which aligns with the City's direction toward downtown revitalization. In support, Mr. Tran referred to Exhibit "A", which included a letter from the Acting Executive Director of the North Edge Business Association.

[11] Upon questioning by the Board, Mr. Tran clarified that the subject development application is for a Sign that extends approximately eight feet above the roof top.

[12] Mr. Tran also drew attention to a letter issued from the City of Edmonton Façade Improvement Program, wherein the proposed development was conditionally approved.

ii) Position of the Development Authority

- [13] The Development Authority was represented by Mr. S. Ahuja and Ms. B. Noorman.
- [14] Upon questioning by the Board, Mr. Ahuja explained that the Façade Improvement Program focuses its review on the design elements rather than on compliance with the *Edmonton Zoning Bylaw*. He noted that the letter in Exhibit “A” was a conditional approval, and that the letter stipulated that the Applicant must still obtain the necessary permits.
- [15] Upon questioning by the Board, Mr. Ahuja clarified that there are two Signs: one Sign is located above the door, and is a compliant Fascia On-premises Sign; the second Sign is located on the corner of the building, and in his view, is a non-compliant Roof On-premises Sign. Both Signs were considered in a joint application, and the overall application was refused.

iii) Rebuttal of the Appellant

- [16] Mr. Tran stated that when the initial designs were first submitted to the Façade Improvement Program for review, the plans showed two buildings on the subject Site. Building B is approximately three feet three inches taller than Building A.
- [17] Although the subject Sign is fixed to Building A, Mr. Tran submitted that the Development Officer’s Height calculation for the subject Sign should have been based off Building B.
- [18] Based on the Development Officer’s calculations, it would appear that the Sign extends eight feet eight inches above the building. However, if Building B is used for the calculations, then the Sign actually extends only five feet five inches above the building.
- [19] Mr. Tran acknowledged that even if the calculations were based off Building B, the Sign would still exceed the requirement that Fascia On-premises Signs shall not extend more than 30 centimetres above the roof top.

iii) Surrebuttal of the Development Authority

- [20] Based on the information provided in the Appellant’s rebuttal, the Board requested that the Development Officer return for further questioning by the Board.
- [21] Mr. Ahuja explained that the Development Authority typically measures the portion of a Roof Sign that extends above the roof top based on the building façade on which the Sign is located. This practice applies even to multi-height buildings.

- [22] Mr. Ahuja submitted that it would be inappropriate to base such calculations on the highest point of a multi-height building. For example, a shopping centre may have multiple connected buildings of varying heights. Based on the Appellant's submissions, a Roof Sign located on the façade of a one-Storey building could extend two or three Storeys high, if the shopping centre had a building that was two or three Storeys high.
- [23] Mr. Ahuja acknowledged that some factors could be taken into consideration, such as how close the proposed Sign is to the taller portion of the building. However, in this case, the proposed Sign is located on one end of the shorter building, while the roof top of the taller building is located quite far from the Sign.
- [24] Upon questioning by the Board as to how he determined that the proposed development is a Roof Sign rather than a Fascia Sign, Mr. Ahuja referred to Schedule 59B.2(1)(c), which states, in part, that "The top of a Fascia On-premises Sign shall not extend more than 30 cm above the building roof or parapet wall". Since the proposed Sign extends more than 30 centimetres above the building roof, it does not meet this requirement and therefore, cannot be a Fascia Sign.
- [25] In his view, it would be more appropriate to classify the subject Sign as a Roof Sign. He referred to Section 6.2(21), which defines Roof Signs as "any Sign erected upon, against, or above a roof, or on top of or above, the parapet of a building".
- [26] The Board noted that neither the definition of Fascia Sign nor Roof Sign stipulates a limitation to how much the Sign can extend above the roof top. The 30 centimetres limitation referenced by Mr. Ahuja appears to be a development regulation and does not fall under the Use Class definition itself. The Board questioned whether the subject development could feasibly be classified as a Fascia Sign.
- [27] In response, Mr. Ahuja submitted that Use Class definitions do not always encompass all the factors for the determination of whether a Sign should be classified as a Roof Sign or a Fascia Sign. When reviewing Sign applications, he must also consider the development regulations for Signs which provide guidance when determining the appropriate Use Class.

v) *Sur-Surrebuttal of the Appellant*

- [28] Mr. Tran reiterated that the subject development should be classified as a Fascia Sign, and that the 30 centimetres limitation on the portion of the Sign that can extend past the roof top was incorrectly applied to Building A (the shorter portion of the total building) rather than to Building B (the taller portion).
- [29] Upon questioning by the Board, Mr. Tran clarified that although Building A and Building B were formerly connected by a hallway, it has since been filled in, and there is no direct access between the two buildings.

Decision

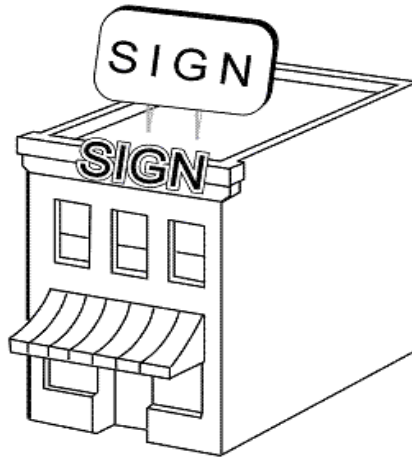
- [30] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision

- [31] The proposed development falls under the DC2 (14141) direct control district. As such, the Board's authority with respect to an appeal of the Development Officer's decision is limited by Section 641(4)(b) of the *Municipal Government Act*, which states in part:

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

- [32] Accordingly, the Board must determine whether the Development Officer followed the directions of City Council.
- [33] This development application deals with two proposed Signs: the first Sign is for a Fascia On-premises Sign that meets both the development regulations under Schedule 59B as well as the Use Class definition of a Fascia On-premises Sign. However, the second Sign is for a Roof On-premises Sign, which is not a Listed Use within this direct control district.
- [34] The Appellant submitted that the Development Officer failed to follow the directions of Council by classifying this second Sign as a Roof On-premises Sign rather than a second Fascia On-premises Sign.
- [35] The Board considered the information presented by the Appellant, and confirms the Development Officer's finding that the second proposed Sign is, by definition, a Roof Sign.
- [36] Section 6.2(21) of the *Edmonton Zoning Bylaw* states: "Roof Signs means any Sign erected upon, against, or above a roof, or on top of or above, the parapet of a building". Included in the definition is the following diagram:



- [37] The diagram shows two Signs: one erected above a roof, and a second erected against a roof, with a portion of the Sign extending above the roofline.
- [38] Given the drawings and presentations, the Board finds that the proposed second Sign in this development application is a Roof Sign, as the proposed Sign has been erected against a roof, with a portion of the Sign extending above the roofline as per the diagram included in the definition of a Roof Sign under Section 6.2(21).
- [39] Even if the Board had found that the Roof Sign is, in fact, a Fascia On-premises Sign, Section 59B.2(1)(c) provides that “The top of a Fascia On-premises Sign shall not extend higher than 75 cm above the floor of the second Storey... [and] shall not extend more than 30 cm above the building roof or parapet wall”. Since the proposed Sign extends more than 75 centimetres above the floor of the second storey and 30 centimetres above the building roof, it also does not meet the development requirements for a Fascia On-premises Sign.
- [40] As the Board heard no convincing evidence that the Development Authority failed to follow the directions of Council, the Board has no authority to substitute its decision for that of the Development Authority’s pursuant to Section 641(4)(b) of the *Municipal Government Act*. As such, the decision of the Development Authority is confirmed and the development is refused.

Mr. Vince Laberge, 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*, R.S.A. 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, Edmonton.

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.



Date: September 1, 2016
Project Number: 127140622-004
File Number: SDAB-D-16-136

Notice of Decision

- [1] On June 1, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on May 4, 2016. The appeal concerned the decision of the Development Authority, issued on April 21, 2016, to refuse the following development:

Extend the duration of a Freestanding Minor Digital Off-premises Sign
(3.05m x 10.37m Single Sided Facing South)

- [2] The subject property is on Plan 3860V Blk 10 Lot 15, located at 7222 - 99 Street NW, within the IB Industrial Business Zone. The Strathcona Junction Area Redevelopment Plan applies to the subject property.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - Canada Post receipt confirming delivery of the refusal decision on April 30, 2016;
 - Appellant's written submissions including a report regarding light levels, an expert opinion from a realtor, and a safety report from CIMA;
 - Development Officer's written submissions, dated August 5, 2016, with correspondence from Transportation Services;
 - Copies of the Subdivision and Development Appeal Board's previous decisions with respect to the subject property, file numbers SDAB-D-12-254 and SDAB-D-14-266;
 - Seven letters, including one submission with a video clip, provided in opposition of the development from neighbouring property owners; and
 - Four letters in support of the development.

Preliminary Matters

- [4] The Board passed the following motion:

That SDAB-D-16-136 be raised from the table.

- [5] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.
- [6] At the outset of the appeal hearing, the Board received a volume of materials from the Appellant. The Presiding Officer confirmed with the parties in attendance whether they were in receipt of the materials, and whether they required additional time to review those materials. With the exception of the Respondent, City of Edmonton, all parties in attendance informed the Board that they were either in receipt of the materials or most of the materials and did not require additional time, or that they did not receive the materials but did not require additional time.
- [7] The Respondent requested a brief recess to review the volume, as it appeared from the index that the materials contained new information that the Respondent had not yet reviewed.
- [8] The Board granted the Respondent's request, and after a brief recess, all parties in attendance confirmed that they were prepared to proceed.
- [9] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [10] The Appellant then raised, as a preliminary matter, the question of whether the Panel might have had prior exposure to information pertaining to this appeal through media outlets or other publicly accessible sources. The Panel confirmed that it had no prior exposure to such information.
- [11] Ms. A. Lund from the Panel disclosed that she has appeared in Chambers opposite of Ms. Steen, legal counsel for one of the neighbours appearing in opposition to the development.
- [12] There was no opposition to the composition of the Board.

Summary of Hearing

i) Position of the Appellant, Bill Co. Incorporated

- [13] The Appellant was represented by legal counsel, Mr. B. Katz, who clarified that he was representing the landowner. He was accompanied by Mr. K. Grey.
- [14] Mr. Katz noted that some of the documents provided by some of the neighbours in opposition to the development are irrelevant, including a petition signed by individuals from outside the notification area. In his view, this information could potentially bias the Board. In support, he submitted Exhibit "A", a handout referencing case law that indicate the Board should not entertain irrelevant evidence.

[15] The Presiding Officer noted Mr. Katz's concerns, and explained that the Board is not bound by the rules of evidence, and that its practice is to weigh all evidence only after all submissions have been heard, at which time, the Board will give due consideration to the relevancy of the evidence and submissions.

[16] Mr. Katz then submitted Exhibit "B", a summary of his submissions, namely:

- a) The subject development meets the test as set out under Section 687(3)(d) of the *Municipal Government Act*, as evidenced by the community support from neighbouring property owners, a safety report, an expert opinion from a real estate agent, and a light report.
- b) Given the unique shape of the Site, the necessary setback variance is appropriate, without which the property is effectively made sterile.
- c) The required variance to the separation distance requirement for Signs is appropriate, given that the subject Sign's area is halfway between 20 square metres and 40 square metres. A sign under 20 square metres requires a separation distance of 100 metres, and a sign between 20 and 40 square metres requires a separation distance of 200 metres. Although the zoning bylaw does not contemplate such a possibility, Mr. Katz suggested that if the distances were more graduated, the separation distance required for a 30 square metre sign would be 150 metres (halfway between 100 metres and 200 metres).
- d) He characterized the neighbourhood opposition to the sign as the conduct of one neighbour, Ms. Ayres. He argued that privileging the interests of one individual in a planning decision goes against the usual practice of engagement in community consultation, and should not be rewarded.

Test Under Section 687(3)(d) of the *Municipal Government Act*

[17] Section 687(3)(d)(i) provides as follows:

687(3) In determining an appeal, the subdivision and development appeal board

...

(d) 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,

(i) the proposed development would not

- (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,

[18] Mr. Katz argued that the subject development meets the test as set out under Section 687(3)(d) of the *Municipal Government Act*, as evidenced by the community support from neighbouring property owners, a safety report, a light report, and an expert opinion from a real estate agent

a) *Community Support from Neighbouring Property Owners*

[19] With respect to the letters and submissions provided by neighbouring property owners in opposition to the development, Mr. Katz noted that the opposition was mainly generated by property owners east of 99 Street. He submitted that more weight should be given to the letters of support provided by the property owners immediately adjacent to the subject property to the west of 99 Street.

[20] He acknowledged the Ritchie Community League's letter of opposition, but in his view, the Community League clearly represents the interests of residences to the east, which is not reflected in the opinions of those businesses to the west of 99 Street.

[21] Mr. Katz referred to Tabs 1 through 11 of his written submissions, which consisted of various letters of support submitted by neighbouring property owners. Based on information presented in these letters, it was his submission that the subject development does not unduly interfere with the amenities of the neighbourhood, nor does it materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

[22] The letters conveyed the following points:

- a) A Sign has always existed at the subject property, and there are a multitude of Signs in the area.
- b) The area west of 99 Street consists of industrial properties, experiences very little pedestrian traffic, and it is rare for anyone to cross 99 Street.
- c) There is no history of traffic accidents in the area surrounding the subject property.

b) *Section 59.2(2)(c) Driver Field of View and Traffic Safety*

[23] One of the Development Officer's grounds for refusal included a determination that the proposed Sign "encroaches into the 20 degree cone [of vision] associated with the intersection of 72 Avenue and 99 Street", in apparent violation of Section 59.2(2)(c) of the *Edmonton Zoning Bylaw*.

- [24] Mr. Katz referred to Tab 13 of his written submissions, a safety report conducted by a traffic engineering firm, CIMA. Mr. Katz provided an overview of the report writers' credentials, and drew attention to their finding that "the absence of a collision history is an indication that the sign is not contributing to collisions."
- [25] The report also consisted of a safety review using the Traffic Impact Assessment ("TAC") Guideline, which consists of recommendations for various Sign properties such as transition time and effects, message sequencing and text scrolling, brightness, proximity to traffic control devices, and proximity to decision-making points. With the exception of frame duration, the subject Sign meets all TAC recommended guidelines.
- [26] Based on the CIMA safety report, Mr. Katz submitted that the Development Officer's determination with respect to the criteria under Section 59.2(2)(c) was incorrect, and that the proposed Sign presents no traffic safety concerns. He also noted that in an email dated August 12, 2016, Mr. M. Gunther from the City of Edmonton Law Branch confirmed that the "Transportation Department will not be disputing the conclusions reached in the [CIMA safety] study."
- [27] Through the Alberta Emergency Management Agency, the subject Sign also provides assistance with publicizing AMBER Alerts and potentially lifesaving information regarding emergencies or disasters. The subject Sign is therefore a positive contribution to the safety of the community.

c) Section 59.2(3) Sign Illumination

- [28] With respect to illumination from the Sign, Mr. Katz referred to Section 59.2(3) of the *Edmonton Zoning Bylaw*, which states, in part: "Minor Digital Off-premises Signs... shall be located or constructed such that Sign illumination shall not project onto any surrounding residential premises [and] shall not face an abutting or adjacent Residential Use Class".
- [29] Mr. Katz submitted that the subject Sign does not face an abutting or adjacent Residential Use Class. Abutting the Sign immediately to the east is George's Auto Body and Paint Shop, and to the southeast is Old Country Inn. Neither of these properties are Residential Use Classes. Furthermore, the Sign faces southeast, which looks upon 99 Street, a north-south arterial roadway separated by a median. It was his view that the residential properties do not abut the subject development.
- [30] The Board noted that the subject property is zoned IB Industrial Business Zone, and that the zone line separating the IB Zone from the adjacent RF3 Small Scale Infill Development Zone appears to run along the median of 99 Street. It would therefore appear that the subject property does abut a Residential Use Class.

- [31] Mr. Katz acknowledged that while the IB Zone may abut a RF3 Zone, the illumination from the Sign still does not face onto the abutting RF3 Zone. It was the Appellant's position that the Sign essentially faces onto 99 Street, and therefore, there is little to no illumination upon the neighbouring properties east of 99 Street.
- [32] He referred to Tab 19 of his written submissions, a confirmation letter from the Sign manufacturer, Yesco Electronics, that the subject Sign does not exceed 0.3 footcandles or 400 nits. Tab 20 of the Appellant's written submissions includes a light report, which explained that "a light source emitting 0.3 foot candles of light emits a **remarkably insignificant amount of measurable light** measured from 62.24 meters away." [emphasis as per original document]
- [33] The report also provided an account of the physical readings of light measured from three different locations surrounding the Sign. In all three cases, the direct reading of the light emitted from the Sign was lower than the ambient light level.
- [34] The Appellant therefore disagreed with the Development Officer's determination that the Sign illumination projects onto surrounding residential properties. Based on the orientation of the Sign and the light report, Mr. Katz submitted that there is no support for the position that light from the Sign extends into the residential zone across the street.

d) *Expert Opinion of Realtor*

- [35] Mr. Katz submitted that the subject Sign meets the test under Section 687(3)(d) of the *Municipal Government Act*. In support, he referenced an expert opinion letter provided by a realtor, Mr. L. Bedford.
- [36] In his letter, Mr. Bedford noted that "The backdrop to the property... is a busy industrial neighbourhood... with their own pronounced signs and other visual activity... [T]hese businesses operate *outside* of normal hours (i.e. do not work a typical M-F, 9-5:00 workweek)." [emphasis as per original document]
- [37] Mr. Bedford also noted that "There are more signs [than] I can count all along 99th street's west edge (frankly, almost uninterrupted at every 100 meter interval). In my opinion, this use not only is consistent with the neighbourhood it could even be expected."
- [38] The expert opinion letter concluded that the Sign 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.
- [39] Upon questioning by the Board, Mr. Katz was unable to clarify whether the realtor's conclusions were based on an analysis of the mitigating factors or based on a comparison of property sales values before and after the Sign's construction.

Section 59F.3(6)(j) Setback Requirement

- [40] Mr. Katz explained that when the property was purchased by the Applicant from the City of Edmonton, the existing Sign had a 1.5 metre Setback, as does the subject Sign under appeal. The required Setback variance therefore has not changed.
- [41] Further, unlike other developments, the subject Sign is located above driver or pedestrian line-of-sight, and will not impact driver or pedestrian visibility.
- [42] Mr. Katz also noted that due to the unique shape of the Site, which is 10 metres wide, the property cannot accommodate normal Setback regulations under the *Edmonton Zoning Bylaw*. To enforce the Setback requirements under Section 59F.3(6)(j) would effectively sterilize the property.
- [43] In support, the Appellant referenced *Campeau Corporation v Calgary (City)*, 1978 AltaSCAD 266, at paragraph 70, which quotes with approval, from *Re City of Coquitlam and Karamanoles*, [1977] 79 DLR (3d) 235, 1977 CanLII 375 (BC SC):

[The learned judge] says at page 240:

“The conclusion that I have reached is that a "holding zone" is the very thing the Council intended for Lot 74 in the adoption of By-law 1516...

The evidence in this case, and in particular the extracts which I have quoted, has satisfied me that the Council in By-law 1516 has attempted to do that which it has not the authority to do, namely, to prevent the owner from making any use of Lot 74...

- [44] Mr. Katz submitted that in this case, to force the subject property to comply with the Setback requirements of the *Edmonton Zoning Bylaw* would effectively make it a “holding zone” and therefore, unusable.
- [45] Further, he noted that in the 2012 decision of this Board, which granted the initial approval for the subject Sign, the Board found that enforcement of the Setback requirements pursuant to the *Edmonton Zoning Bylaw* would have little benefit. The Appellant submitted that although Board decisions are not precedent-setting, a consistent approach is preferred. As such, the required Setback variance should be granted.
- [46] The Board noted that although the Board approved the initial Sign application in 2012, it subsequently refused to grant an extension of the Sign permit in 2014. The Board questioned how a “consistent” approach could be applied in this case. Mr. Katz submitted that in 2014, a safety aspect was raised by the City, to which the Applicant had not been prepared to respond.

- [47] The difference between the 2014 appeal and the case before this Board, is that the safety concerns raised by the City have now been refuted by the CIMA study. Furthermore, the Sign illumination concerns are minimal, as per the conclusions from the light report. As such, the remaining issues are the required variances to the Setback and separation distance requirements, as was the case in 2012. It therefore follows that a consistent approach would contemplate that this panel of the Board come to the same conclusion as it did in its 2012 decision.
- [48] Upon questioning by the Board, Mr. Katz clarified that although the Board approved the permit application in 2012, the Sign was not constructed or functional until 2014.

Section 59F.3(6)(e) Separation Distance

- [49] Section 59F.3(6)(e) provides as follows:

Minor Digital On-premises Off-premises Signs and Minor Digital Off-premises Signs shall be subject to the following regulations:

...

- e. proposed Sign locations shall be separated from any other Digital Sign greater than 8.0 m² or Off-premises Sign as follows:

Proposed Sign Area	Minimum separation distance from Digital Signs greater than 8.0 m ² or other Off-premises Sign
Greater than 8.0 m ² to less than 20 m ²	100 m
20 m ² to 40 m ²	200 m
Greater than 40 m ²	300 m

The separation shall be applied from the larger Off-premises Sign or Digital Sign location.

- [50] Since the subject Sign is 30 square metres in Sign Area, and falls halfway between twenty and forty square metres, Mr. Katz submitted that it would be appropriate to impose a separation distance requirement halfway between the minimum separation distance of 100 metres and 200 metres. In other words, a separation distance of 150 metres is appropriate, and since the subject Sign is located 152 metres from the nearest Digital Sign, a variance should be granted to Section 59F.3(6)(e).

Conduct of Neighbouring Property Owner in Opposition to the Development

- [51] Mr. Katz submitted that numerous attempts were made to consult with Ms. Ayres, but all attempts were rebuffed. He noted that Ms. Ayres elected to approach local politicians and media outlets rather than speak with the Applicant to come to an amicable resolution.

It was the Appellant's view that various options were available to mitigate many of Ms. Ayres' concerns, but she chose instead to pursue the matter through the court of public opinion. In his view, this behavior should not be supported.

ii) *Position of the Development Authority*

- [52] The Development Authority was represented by Mr. H. Luke and Mr. S. Ahuja. They were accompanied by representatives from Transportation Planning, Mr. C. Fremmerland and Ms. X. Wang.
- [53] Mr. Luke explained that prior to the construction of the subject Sign, the pre-existing Sign was a static Sign of approximately 18.6 square metres. The subject Sign is significantly larger, at approximately 30 square metres. He also noted that the rear of the Sign is aesthetically unappealing, with the wiring and construction materials being clearly visible to drivers heading southbound along 99 Street.
- [54] He stated that the Development Authority has taken a consistent stance with respect to this development, beginning with its 2012 refusal of the subject Sign (which was later approved by the Subdivision and Development Appeal Board), and its 2014 refusal to extend the approved permit (which the Board subsequently upheld).
- [55] He explained that since the subject development is a Discretionary Use in the IB Zone, the Development Authority takes the view that it is inherently impactful. However, the problem with Digital Signs is that the extent of its impact cannot truly be determined until after the Sign has been constructed, hence the usual limitation of such permits to a five year term. The limited duration of Digital Sign development permits allow the Development Authority to reassess the Sign's impact on a regular basis.
- [56] In this case, based on the photographs obtained by Bylaw enforcement, it is clear that the Sign is visible from neighbouring residential properties. He also disagreed with the Appellant's submission that the Sign faces south, away from the residential properties to the east of 99 Street. Referring to a Pictometry image from his laptop, he compared the subject Sign to the Sign for the Barb and Ernie restaurant. The image showed that while the Barb and Ernie sign was oriented completely north-south, the subject Sign was erected at an angle facing southeast, which results in an impact upon the residential properties east of 99 Street.
- [57] Upon questioning by the Board with respect to separation distance calculations, Mr. Ahuja stated that while other jurisdictions or municipalities may contemplate fractional increments to separation distances, the *Edmonton Zoning Bylaw* does not. The minimum separation distances are strictly 100 metres, 200 metres, or 300 metres, dependent on the Sign Area.

Section 59.2(2)(c) Driver Field of View

- [58] The Board questioned whether the Development Officer stood by his refusal based in part on his consultation with Transportation Planning. Mr. Ahuja deferred the question to Mr. Fremmerland, who confirmed that the subject Sign encroaches into the 20 degree cone of vision associated with the intersection of 72 Avenue and 99 Street. Upon questioning by the Board, he clarified that the cone applies to both northbound and southbound traffic along 99 Street. He acknowledged that Transportation Planning did not refute the findings from the CIMA safety report.
- [59] With respect to Transportation Planning's report which flagged safety concerns arising from bus stops near the intersection of 99 Street and 77 Avenue, the Development Authority confirmed that based on their Pictometry software, it would appear that there is a bus stop located at the southwest corner. It would also appear that fencing along the median starts south of 72 Avenue, extending for one block to 71 Avenue. The fencing is to prevent pedestrians from crossing 99 Street in the middle of the block, forcing them to use the uncontrolled pedestrian crossings at the intersection of 99 Street and 72 Avenue, or the controlled pedestrian crossing at the intersection of 99 street and 71 Avenue.

Section 59.2(3) Sign Illumination

- [60] The Development Authority clarified that a compliance officer did test the light intensity of the Sign. However, the equipment used to test the Sign illumination is limited to recordings no more than 20 to 30 feet away from the Sign. Furthermore, one of the limitations of the equipment is that it must be aligned in a certain manner. As such, although the results showed that the Sign meets the maximum illumination allowed under the Bylaw, the Development Authority cannot conclude that the Sign has a negligible impact upon neighbouring property owners on that basis alone.

iii) Position of Affected Property Owner, Ms. A. Mosley

- [61] Ms. Mosley clarified that she rents the property at 9858 – 72 Avenue. She stated that she is not against billboard signs, but the impact from the large Digital Sign that is the subject of this appeal.
- [62] At night, even with her blinds closed, the flickering lights caused by the Sign's display changes are especially disruptive and annoying in a darkened room, which affects her sleep quality. She has reached a point where she is contemplating sleeping in another room. She stated that if she had inspected the house at 11:30 p.m. rather than during the daytime, she would have reconsidered her decision to rent the property.

iv) Position of Affected Property Owner, Beech Investments Ltd. ("Beech")

- [63] Beech Investments Ltd. was represented by legal counsel, Ms. A. Steen.
- [64] Beech owns property located west of the subject Sign. The owner, Mr. Slotsky, had previously written in opposition to the Sign in 2012, sharing similar concerns to those detailed by the City.
- [65] Ms. Steen noted that under Section 400.1, the General Purpose of the IB Zone is “to provide for industrial businesses that carry out their operations such that no nuisance is created or apparent outside and enclosed building”. She referred the Board to Section 6.1(67), which defines nuisance as “anything that is obnoxious, offensive or interferes with the use or enjoyment of property, endangers personal health or safety... This could include that which creates or is liable to create a nuisance through emission of... light...”.
- [66] It was Beech’s submission that the subject development does create a nuisance. In particular, the property owner is concerned that the subject Sign appears to be perilously close to his property. In the event of high winds or a fire, the close proximity could result in the hazard spreading to his own property. It was therefore Beech’s position that the subject development creates a nuisance as contemplated under Section 6.1(67), and does not meet the General Purpose of the IB Zone.

v) *Position of Affected Property Owner, Ms. C. Ayres*

- [67] Ms. Ayres wished to display two videos to demonstrate the impact of the subject development. One video was recorded from her backyard, showing that the subject Sign could be viewed from the back yard. The second video consisted of a recent segment recorded by Global Media. Ms. Ayres stated that the news segment would not have audio, and that she only wished to use the footage recorded of the subject Sign.
- [68] The Board declined to accept the second video of the media footage. The Board was of the opinion that both the video from her backyard, as well as the photographic evidence submitted by multiple parties to this appeal, should be sufficient.
- [69] Ms. Ayres proceeded with her presentation. She stated that contrary to the Appellant’s submissions, she had only been approached once for consultation. She emphasized that it is not only the light emitting from the Sign, but also the changing face Copy, that is negatively impacting her.
- [70] She acknowledges that she and her neighbours chose to reside in a residential zone that abuts an industrial zone, and they accept that minor nuisances such as road noise are to be expected. However, the impact of a large Digital Sign that is effectively a large digital television operating daily and viewable from her backyard is an unanticipated and unreasonable nuisance.

[71] Upon questioning by the Board with respect to the petition she had submitted, she acknowledged that the signatories included those who reside outside the 60 metre notification area. However, she chose to include them in the petition because they are or have been impacted by the subject Sign. For example, there are signatories who have visited houses in the areas, or who reside ten blocks away from the subject Site, but can still view the Sign and have been negatively impacted by it. It was her belief that most of the individuals who signed the petition resided within the boundaries of the Ritchie and Hazledean Community Leagues.

vi) Position of the Ritchie Community League (the “Community League”)

[72] The Community League was represented by Mr. M. Merrett, Civics Director.

[73] Mr. Merrett confirmed that the Community League does not support the subject development for the reasons already enumerated by the parties who have spoken in opposition to the appeal.

[74] Upon questioning by the Board, he confirmed that J. H. Picard school, just south of 72 Avenue, is a K-12 school, with children crossing not only 99 Street, but 72 Avenue as well. He clarified that the Community League actually covers the entire area from 72 Avenue to 82 Avenue, and 99 Street to 100 Street. As such, the industrial development west of 99 Street also falls within the boundaries of the Ritchie Community League.

[75] Mr. Merrett was not aware of any Digital Signs within the boundaries of the Community League that face onto a residential neighbourhood. It was his belief that any such Digital Signs were oriented strictly north-south.

vii) Position of the City of Edmonton Planning Branch (the “Planning Branch”)

[76] The Planning Branch was represented by legal counsel, Mr. M. Gunther. He emphasized that he did not represent the Development Authority. He represented the Planning Branch with the mandate of ensuring effective sustainable development of the City.

[77] Mr. Gunther requested that the Board reconsider its decision to not view the Global Media footage, as there would be no audio to prevent influence upon the Panel by the commentary. He stated that based on the standard of admissibility, a tribunal may admit evidence so long as it could be relevant, and not so irrelevant as to taint the mind of the Board. He submitted that the Global Media video footage illustrates the impact of the subject Sign from within Ms. Ayres’ property, and is extremely relevant to the issues before this Board.

- [78] The Board reiterated its position that the photographic evidence and Ms. Ayres' backyard video was sufficient, and that it did not believe that a second video footage would be necessary.
- [79] Mr. Gunther submitted that there are two legal issues before this Board:
- a) What is the proper test when determining whether a Discretionary Use should be granted?
 - b) Does the subject development meet the test under Section 687(3)(d) of the *Municipal Government Act*?
- [80] With respect to the first issue, he submitted that there is no rigid test, and the determination of whether to grant a Discretionary Use relies upon the planning and development expertise of the Development Officer and the Subdivision and Development Appeal Board. In effect, the determination is a practical test based on whether there are good planning reasons to grant the Discretionary Use.
- [81] In support, he referenced *Park v Ponoka (County No. 3) Subdivision and Development Appeal Board*, 2001 ABCA 142, at paragraph 3, where the Court stated that "Under the Land Use Bylaw, the proposed development is a discretionary use. The role of the SDAB is to consider relevant planning principles mindful of the views of neighbouring landowners and other pertinent considerations."
- [82] In this case, the subject Sign is located in the IB Zone, essentially a light industrial zone. In some instances where the light industrial zone is located in an isolated area, a Digital Sign such as the one before this Board may be appropriate. However, in this case, where the Digital Sign is located in a transitional zone that abuts single family uses, there is impact upon landowners, and the impact presents a conflict from a planning perspective.
- [83] With respect to the second issue, Mr. Gunther stated that the Planning Branch is not advancing any submissions regarding safety. However, other factors remain relevant considerations, such as Setbacks, Sign separation distances, and whether the subject Sign is facing residential properties and emanating light onto abutting or adjacent residential properties.
- [84] Regarding the wording of Section 59.2(3) of the *Edmonton Zoning Bylaw* which states, in part, that "Minor Digital Off-premises Signs... shall not face an abutting or adjacent Residential Use Class", Mr. Gunther noted that it is a principle of statutory interpretation that where two different words are used, they will have two different meanings. He submitted that should the Board choose to grant this appeal, then the requirement under Section 59.2(3) will need to be waived, and the Board may only do so if it determines that the proposed development passes the test under Section 687(3)(d) of the *Municipal Government Act*. Although various submissions have been made regarding the technical aspects of the Sign's illumination, it remains that there is clearly impact upon nearby residences based on evidence before this Board.

- [85] The Sign separation distance requirements under Section 59F.3(6)(e) should also be taken into consideration, as they were put in place by Council with the intent to avoid the proliferation of signs.
- [86] It is also a principle of administrative law that quasi-judicial tribunals are not bound by its own previous decisions. However, Mr. Gunther referenced a recent 2015 Alberta Court of Appeal decision, wherein the Court held that where there is no significant difference to the evidence or substantial changes to the situation, a tribunal must have good reasons for why a latter decision would differ from its previous one. In this case, with virtually the same parties and the same issues before the Board, absent an error of law or significant factual difference, the previous 2014 decision of the Board should be followed.
- [87] Upon questioning by the Board, he disagreed with the Appellant's submission that refusing the subject development would amount to sterilization of the land. In his view, the sterilization of land amounts to *de facto* expropriation by the municipality, in which case the municipality must purchase that land. However, the issue before this Board is the denial of a specific digital billboard, not all billboards in general. Further, the bylaw lists various other Permitted and Discretionary Uses which may be developed on the subject Site.

viii) *Rebuttal of the Appellant*

- [88] The Appellant reiterated the view that the subject Sign does not face onto abutting residential use classes. He referenced development bylaws in other jurisdictions which are much more restrictive with respect to Sign illumination regulations. Since the wording in Section 59.2(3) is more expansive, the provision should be interpreted in the Appellant's favour.
- [89] The Appellant also reiterated his point that digital photography is not an accurate reflection of actual light emanation, and questioned the accuracy of the photographs submitted by Ms. Ayres.
- [90] With respect to the typical condition that Sign permits be granted for a period of five years to enable periodic review of the Sign's impact, he submitted that a new property owner (Ms. Ayres) moving into the area is not sufficient to meet the intent of the five year permit limit. In support, he referenced *263657 Alberta Ltd. v Banff (Town of) SDAB*, 2003 ABCA 244, at paragraph 13, quoting from *Van Panhuis v Lamont (Town)*, [2000] AJ No 834 (CA): "Even a refusal of a permit only bars a new application for six months, because it is a statutory bar. I cannot conceive how one finds a ban on two successive permits, which would only last a few months, without specific legislation."
- [91] The Appellant was also prepared to accept various conditions, including:

- a) If the Board finds that the proposed development runs afoul of Section 59.2(3), the Appellant was prepared to reorient the subject Sign so that it faces 90 degrees from 99 Street, rather than angling onto the residents east of 99 Street; and
- b) Installation of something more artistic to the rear of the Sign to make it more aesthetically appealing.

Decision

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

Reasons for Decision

[93] In reaching its decision, the Board considered that the subject Freestanding Minor Digital Off-premises Signs is a Discretionary Use in the IB Industrial Business Zone. The Board must therefore be convinced that it is compatible with surrounding uses.

Impact Upon Value of Neighbouring Parcels of Land

[94] The Board notes that submissions were made by both the Appellant and affected property owners with respect to the impact, or lack thereof, of the subject development upon the value of nearby properties. However, the Board does not find these submissions convincing, as no actual comparative empirical data was presented showing a difference, or lack thereof, of pre-Sign and post-Sign installation property values. The Board therefore makes no finding with respect to the impact of the subject development upon neighbouring property values.

[95] With respect to the realtor's report submitted by the Appellant, the Board makes no conclusion as to whether the realtor is an expert, as he was not present for questioning by the Board. However, the Board notes that the realtor's report makes several conclusions about neighbourhood impact, which goes beyond the scope of real estate property valuation. These conclusions about neighbourhood impact were made without the benefit of hearing or considering all the information that was presented before this Board.

[96] Further, the Board disagrees with several of the conclusions in the realtor's report. First, the Board notes that the report expresses the view that the Sign faces exclusively to the south. However, based on information presented before this Board, the Board finds that the Sign faces southeast (see paragraph 105 below).

[97] Second, many of the conclusions focus on how the subject Sign is consistent with surrounding industrial developments, concluding that it is typical of the industrial

community. However, the Board must consider not only impact upon neighbouring businesses, but also upon the residential properties abutting this industrial zone.

In this regard, the Board finds that illumination from the subject Sign does project onto the residential properties east of 99 Street (see paragraph 104, below), and that this illumination creates a “nuisance” contrary to the General Purpose of the IB Industrial Business Zone and materially impacts the use and enjoyment of neighbouring property owners (see paragraphs 106-07, below).

Section 59F.3(g)(j) Setback Requirement

[98] The subject development requires variances to Setback requirements pursuant to Section 59F.3(6)(j), as well as Sign separation distance requirements pursuant to Section 59F.3(6)(e). The Board finds that a variance to the Setback requirement will have a negative impact upon the use and enjoyment of neighbouring residential properties as it will permit the Sign to be placed closer to neighbouring residential use classes.

[99] During the course of the hearing, the Board heard that the original Sign existing prior to 2014 was 18.6 square metres and was a static billboard oriented north-south. At that time, a 1.5 metre Setback may have been acceptable to serve as a sufficient buffer to the residential properties to the east of 99 Street. However, the subject Sign development before this Board is a Digital Sign with changing Copy that faces southeast and is 30 square metres. The impact is therefore significantly different, and the Board finds that granting the required Setback variance will not be appropriate.

Section 59F.3(6)(e) Separation Distance

[100] The Board was also provided with presentations to the effect that there are many other Signs along 99 Street. Allowing a variance to the separation distance requirement will result in a proliferation effect that is aesthetically unappealing and incompatible with the neighbouring residential use classes. Indeed, the Board notes that the realtor’s report submitted by the Appellant included the following comment: “There are more signs [than] I can count all along 99th street’s west edge (Frankly, almost uninterrupted at every 100 meter interval)” [emphasis as per original document], which further speaks to the proliferation of Signs in this area.

Section 59.2(2)(c) Traffic Safety

[101] The Board acknowledges that there was overall agreement between the parties with respect to the safety report that was completed by the Appellant. However, the impact of the subject Sign upon driver and pedestrian safety is only one aspect of the test established under Section 687(3)(d) of the *Municipal Government Act*.

Section 59.2(3) Sign Illumination

[102] The Board notes that Section 59.2(3) of the *Edmonton Zoning Bylaw* provides for four restrictions upon Sign illumination. The provision states, in part: “Minor Digital Off-premises Signs... shall be located or constructed such that Sign illumination shall not project onto any surrounding residential premises, shall not face an abutting or adjacent Residential Use Class, shall not face an abutting or adjacent Residential-Related Use Class, and shall not face the Extended Medical Treatment Services Use Class”.

[103] The Board heard no submissions with respect to whether the subject Sign’s illumination faces an Extended Medical Treatment Service Use Class or Residential-Related Use Class, therefore it makes no finding in this regard.

a) Sign illumination projects onto surrounding residential premises

[104] The Board finds that the Sign’s illumination does project onto surrounding residential premises. Section 7.2 of the *Edmonton Zoning Bylaw* lists the ten categories of Residential Use Classes, which includes Single Detached Housing, Secondary Suites and Semi-detached Housing. Based on information presented to this Board, including photographs and testimonies from residential property owners within the 60 metre notification area, the Board finds that the subject Sign illumination does project onto surrounding residential use classes.

b) Sign illumination faces an abutting or adjacent Residential Use Class

[105] Furthermore, the Board finds that the Sign’s illumination does face an abutting or adjacent Residential Use Class, specifically those residential premises to the east of 99 Street. Although the *Edmonton Zoning Bylaw* does not define “face”, the ordinary and plain meaning of the word (in its verb form) is generally understood to mean the positioning of the front of some object or person toward a specific direction. In this case, the Sign is oriented or “facing” toward the southeast, where residential properties are located. It is clearly visible from neighbouring properties within the 60 metre notification radius to the east of 99 Street, and based on photographic and video evidence before this Board, the advertisement Copy is readable from those residential properties.

Impact Upon Neighbouring Property Owners

[106] Finally, the Board notes that under Section 400.1, the General Purpose of the IB Industrial Business Zone is “to provide for industrial businesses that carry out their operations such that no *nuisance* [emphasis added] is created or apparent outside an enclosed building”. Section 6.1(67) defines nuisance as “anything that is obnoxious, offensive or interferes with the use or enjoyment of property... This could include that which creates or is liable to create a nuisance through emission of... light”.

[107] The Board finds that the subject Digital Sign creates a nuisance that impacts the use and enjoyment of neighbouring property owners, and does not meet the General Purpose of the IB Industrial Business Zone, for the following reasons:

- a) The Board finds that the subject Sign is located in the IB Industrial Business Zone which abuts a Residential Neighbourhood thus making this a transitional zone in nature. Although located across from a major thoroughfare, this transitional zone abuts residential use classes. As such, special attention must be given to the effects and impact of the development upon both the neighbouring industrial uses as well as residential use classes.
- b) The impact of the subject Sign upon neighbouring residential properties is particularly evident in the evening hours, when residents have returned home and are affected by the flickering lights of the Sign's changing Copy.
- c) The Board distinguishes the operational differences of a Digital Sign with constantly changing Copy, operating non-stop throughout the day and night, from ambient lighting such as traffic signals and street lights. The Board heard evidence that based on recordings taken from industry-approved light measurement devices, that ambient lighting is brighter than the illumination from the Sign itself. However, the Board finds that the "nuisance" created by the subject Sign is not merely the illumination itself, but also that the Sign's frequently changing Copy, with changes in colours and lighting, has had a significant and detrimental impact upon neighbouring residential property owners.
- d) The Board accepts that there are property owners within the 60 metre notification radius who have expressed support for the subject development. However, all of the support (with the exception of one residential property owner who is now deceased) are from existing industrial uses, whereas all those opposed to the development included a number of residential property owners, one business, and the Ritchie Community League.
- e) The Board accepts that the subject Site is located within the boundaries of the Ritchie Community League, which runs along 99 Street between 72 Avenue and 82 Avenue. The Board recognizes that the Community League must balance the conflicting needs and interests of residences east of 99 Street, and the business owners west of 99 Street. The Board notes that the Community League appeared before this Board in opposition to this development.

[108] The Board recognizes that the petition submitted by Ms. Ayres included signatories from outside the 60 metre notification area, and the Board makes no conclusions with respect to this petition, other than noting that it was signed by individuals who opposed the development. However, the Board notes that it has found that the subject Sign does impact properties within the 60 metre notification area, and that the Sign could impact upon properties outside the notification area.

Previous Decisions of this Board

- [109] The Board acknowledges that although its decisions are not precedent-setting, that it is a principle of administrative law that quasi-judicial tribunals should strive for consistency in its decision-making.
In this respect, the Respondent City of Edmonton Planning Branch argued that a consistent approach would entail following the 2014 decision, wherein the subject development was refused. It was the Respondent's position that in the absence of a significant difference to the evidence or substantial change to the situation, where all the parties and issues before the Board remain virtually the same, then the Board should follow its previous 2014 decision.
- [110] From the Appellant, the Board heard arguments to the effect that a consistent approach would mean that the Board should follow the 2012 decision which approved the subject development. It was the Appellant's position that the only difference between the 2012 decision and 2014 decision was that in 2014, safety concerns were raised to which the Appellant had not been prepared to address. In the present case, since the CIMA safety report has concluded that the Sign does not present a safety risk, the safety issues at play in the 2014 decision no longer apply, and the 2012 decision should be followed.
- [111] The Board agrees with neither the Appellant nor the Respondent in this regard. First, contrary to the submission of the Respondent City Planning Branch, the Board finds that the facts are significantly different from the 2014 decision. Primarily, at the 2014 hearing, the subject Digital Sign was not yet in operation and its actual impact could not be fully assessed. Furthermore, the Appellant has now submitted a Digital Sign Safety Review which was not available to the Board in 2014.
- [112] Second, the Board disagrees with the Appellant's submission that absent the safety issues that were at play in the 2014 decision, the remaining issues are the same as those in 2012 and therefore, the Board should follow the 2012 decision. The Board is of the view that an analysis of the impact of a subject development upon neighbouring property owners goes beyond a safety review. In that regard, this Board has the benefit of hearing testimony and reviewing submissions from property owners who have had first-hand experience with the subject Digital Sign. This information was not available for the 2012 panel which made the initial approval.
- [113] It is therefore appropriate for this Board to note that each hearing of this Board is a *de novo* hearing, and that the Board considers each appeal based solely on its own merits.

Sterilization of the Subject Site

- [114] The Board also heard submissions with respect to whether refusing this development amounts to creating a "holding zone" that effectively prevents the owner from making use of the property, effectively "sterilizing" the Site. The Board is of the view that there

are other possible uses on this Site, including a regular non-digital billboard, which had existed on the subject Site prior to 2014, and which would not result in the impacts arising from the illumination caused by the changing Copy of the subject Digital Off-premises Sign.

Appellant's Proposed Conditions

- [115] Finally, the Board notes that the Appellant was prepared to accept various conditions, including reorienting the subject Sign and making the rear of the Sign more aesthetically pleasing. However, the Board is of the view that the conditions proposed by the Appellant would not address the previously stated reasons related to the juxtaposition of the Sign and residential use classes.
- [116] Furthermore, the Board notes that should the Sign be rotated perpendicular to 99 Street, with a safe distance provided between the existing adjacent building and the Sign, it is possible that the Sign could project over the property line above the adjacent sidewalk. However, the Board is not prepared to make findings in this regard, as it was not presented with any revised plans pertaining to the Appellant's proposed changes.
- [117] Also, the Board is of the view that these alterations should be the subject of a new development application, so that the Development Authority can provide a complete review and issue proper notices to all property owners within the 60 metre notification area.
- [118] For the above reasons, it is the opinion of the Board that the proposed development will unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use and enjoyment of neighbouring parcels of land. The subject development therefore does not meet the test established under Section 687(3)(d) of the *Municipal Government Act*, and the appeal is denied.

Mr. Vince Laberge, 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*, R.S.A. 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, Edmonton.

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.